



Memorandum

To: Finance and Operations Committee

From: David DeSantis, Director of Education

Prepared by: Angela Woodland, Manager of Financial Services

Date: June 14, 2022

Subject: Borrowing By-Law 2021-22-02-06

Priority

Resource Management

Strategic Directions

Efficiently and Effectively Allocate the Resources of the ALCDSB

UN Sustainable Development Goal

Goal 4: Quality Education

Goals

Protect the Assets and Resources of the Board

Action/Strategy

Develop short and long-term financial and operational strategies that will provide for a balanced budget.

Issue

There are three major construction projects currently underway as approved by the Ministry of Education, namely Kingston West elementary school, St. Joseph's Catholic School, and Our Lady of Mount Carmel Catholic School. These projects are in various stages of progress and are incurring ongoing costs which the Board spends upfront and then generally twice per year, the Ministry of Education reimburses the Board for these costs. Because of the significant spending planned on these projects and the delay in obtaining the funds from the Ministry of Education, administration is forecasting a strain on the Board's cash flow.

Background

Pursuant to the *Education Act*:

247.(1) *Subject to any other provision of this Act and the regulations made under subsection 242 (1) and subsection (3) of this section, a district school board may by by-law borrow money or incur debt for permanent improvements and may issue or execute any instrument prescribed under clause (3) (f) in respect of the money borrowed or the debt incurred.*

The By-Law would be in effect after approval by the Finance and Operations Committee and until the completion of the three capital projects named above.

Recommendation

It is recommended:

1. THAT By-Law 2021-2022-02-06, a by-law authorizing three demand bridge loans for Kingston West elementary school, St. Joseph’s Catholic School, and Our Lady of Mount Carmel Catholic School capital projects approved by the Ministry of Education with an aggregate amount of \$49,520,492 and an effective date of June 14, 2022, be read a first and second time.

2. THAT By-Law 2021-2022-02-06, a by-law authorizing three demand bridge loans for Kingston West elementary school, St. Joseph’s Catholic School, and Our Lady of Mount Carmel Catholic School capital projects approved by the Ministry of Education with an aggregate amount of \$49,520,492 and an effective date of June 14, 2022, be read a third time and enacted.

Attachment: 1

Primary Responsibility for Follow-up

Chair of the Board

Vice-Chair of the Board

Senior Administration v Angela Woodland, Manager of Financial Services

Other

ALGONQUIN AND LAKESHORE CATHOLIC DISTRICT SCHOOL BOARD

BORROWING RESOLUTION

BY-LAW 2021-2022-02-06

A RESOLUTION AUTHORIZING THE BORROWING OF MONEY BY WAY OF:

DEMAND BRIDGE LOANS

WHEREAS the Algonquin and Lakeshore Catholic District Board (hereinafter called the "Board") finds it necessary to borrow up to the sum of \$49,520,492 by way of demand bridge loans for three capital projects as approved by the Ontario Ministry of Education.

AND WHEREAS the estimated current revenues of the Board have not yet been received or fully received and such revenues hereafter to be received are sufficient to repay all unpaid sums borrowed hereunder and interest thereon:

THEREFORE, the Board enacts as follows:

1. That the Chair or Vice Chair and the Treasurer are hereby authorized on behalf of the Board, pursuant to the orders to borrow by way of demand bridge loans, sums not exceeding the aggregate of \$49,520,492 to meet capital expenditures of the Board for various approved capital projects, and are hereby authorized to give, on behalf of the Board, to the lender a credit agreement signed by the Chair or Vice Chair and Treasurer for monies borrowed hereunder with interest and other charges that may be agreed upon from time to time with the bank.
2. The Treasurer of the Board is hereby authorized and directed to apply in payment of all sums borrowed as aforesaid, together with interest thereon, all monies comprising of current revenue of the Board hereafter received.

We hereby certify that the foregoing is a true and complete copy of a Resolution of the Board in the Province of Ontario, duly passed at a meeting of the Board and that this Resolution is in force and effect.

DATED this 14th day of June, 2022.

WITNESS the corporate seal

Chair

Secretary

Treasurer



David Cohen, Manager
Public Sector and Not-for-Profit Group
222 Queen Street, 2nd Floor
Ottawa, Ontario
K1P 5V9

May 3, 2022

Algonquin and Lakeshore Catholic District School Board
151 Dairy Avenue
Napanee, Ontario
K7R 4B2

Attention: Ms. Breanne Bradshaw
Superintendent of Finance and Business Services

Dear Ms. Bradshaw:

Re: Credit Facility

Canadian Imperial Bank of Commerce (“**CIBC**”) is pleased to establish the following credit facility in favour of Algonquin and Lakeshore Catholic District School Board (the “**Borrower**”).

Credit A: Demand Operating Credit

Credit Limit: \$10,000,000

The aggregate outstanding amount of Canadian dollar loans, standby L/Cs and B/As under this Credit may not at any time exceed the limit of this Credit set out above.

Purpose: All amounts obtained under this Credit are to be used for current expenditures only.

Description and Rate: A revolving Credit, available as follows:

- ▶ Canadian dollar loans which will also be available by way of overdrafts.
Interest on Canadian dollar loans will be calculated at the Prime Rate per annum.
- ▶ Canadian dollar standby L/Cs. At no time shall the total amount of outstanding standby L/Cs (which for greater certainty shall be net of the amount of any previous drawing made under any standby L/C then outstanding) under this Credit exceed \$2,500,000. Standby L/Cs under this Credit may not have terms to expiry of more than 12 months. Fees for standby financial L/Cs (being L/Cs that serve as direct credit substitutes and secure, directly or indirectly, payment of financial obligations such as indebtedness for borrowed money or the purchase price of goods or services, or

lease payments) under this Credit will be calculated at 1.0% per annum, and for standby non-financial L/Cs (being all other types of L/Cs including generally those that relate to transaction-related contingencies arising in the normal course of business) under this Credit will be calculated at 1.0% per annum. The minimum fee for each standby L/C under this Credit is \$300. In each case the Borrower shall reimburse CIBC for its out-of-pocket expenses relative to all standby L/Cs under this Credit. CIBC's standard L/C documentation is also required.

- ▶ Canadian dollar B/As. The maximum term is six months. CIBC's stamping fee for B/As will be calculated at 0.95% per annum.

Repayment: All amounts under this Credit are repayable immediately on demand by CIBC, and this Credit may be terminated in whole or in part by CIBC at any time.

The Borrower shall have the option to repay any amount under this Credit at any time provided that B/As may be repaid only on their maturity.

Special Provisions: At CIBC's request, any outstanding overdraft borrowing will be converted to promissory note format.

Credit B: Demand Bridge Loan – Kingston West

Loan Amount: \$18,856,298

Purpose: To provide interim financing for the construction of a new public school in Kingston as approved by the Ontario Ministry of Education.

Description and Rate: A non-revolving loan available as follows:

- ▶ Canadian dollar loans. Interest on Canadian dollar loans will be calculated at the Prime Rate minus 0.50% per annum.
- ▶ Canadian dollar B/As (minimum draw \$50,000) for terms not to exceed 90 days. CIBC's stamping fee for B/As will be calculated at 75 basis points per annum.

Repayment: All amounts under this Credit are repayable immediately on demand by CIBC, and this Credit may be terminated in whole or in part by CIBC at any time. Prior to the time that any such demand is made, and without prejudice to CIBC's right to require immediate payment, the demand bridge loan will be carried interest only pending liquidation from direct grants. 100% of the net proceeds of any direct grant received for this capital project will be paid within three business days of receipt, or upon the maturity of the related B/As. This loan is to be liquidated the earlier of (i) six months after project completion, and (ii) August 31, 2024.

Credit C: Demand Bridge Loan – St. Joseph’s

Loan Amount:	\$18,551,886
Purpose:	To provide interim financing for the renovation of, and additions to, an existing public school in Belleville as approved by the Ontario Ministry of Education.
Description and Rate:	<p>A non-revolving loan available as follows:</p> <ul style="list-style-type: none">▶ Canadian dollar loans. Interest on Canadian dollar loans will be calculated at the Prime Rate minus 0.50% per annum.▶ Canadian dollar B/As (minimum draw \$50,000) for terms not to exceed 90 days. CIBC’s stamping fee for B/As will be calculated at 75 basis points per annum.
Repayment:	All amounts under this Credit are repayable immediately on demand by CIBC, and this Credit may be terminated in whole or in part by CIBC at any time. Prior to the time that any such demand is made, and without prejudice to CIBC’s right to require immediate payment, the demand bridge loan will be carried interest only pending liquidation from direct grants. 100% of the net proceeds of any direct grant received for this capital project will be paid within three business days of receipt, or upon the maturity of the related B/As. This loan is to be liquidated the earlier of (i) six months after project completion, and (ii) August 31, 2024.

Credit D: Demand Bridge Loan – Our Lady of Mount Carmel

Loan Amount:	\$12,112,308
Purpose:	To provide interim financing for the construction of a new public school in Amherstview as approved by the Ontario Ministry of Education.
Description and Rate:	<p>A non-revolving loan available as follows:</p> <ul style="list-style-type: none">▶ Canadian dollar loans. Interest on Canadian dollar loans will be calculated at the Prime Rate minus 0.50% per annum.▶ Canadian dollar B/As (minimum draw \$50,000) for terms not to exceed 90 days. CIBC’s stamping fee for B/As will be calculated at 75 basis points per annum.
Repayment:	All amounts under this Credit are repayable immediately on demand by CIBC, and this Credit may be terminated in whole or in part by CIBC at any time. Prior to the time that any such demand is made, and without prejudice to CIBC’s right to require immediate payment, the demand bridge loan will be carried interest only pending liquidation from direct grants. 100% of the net proceeds of any direct grant received for this capital project will be paid within three business days of receipt, or upon the maturity of the related B/As. This loan is to be liquidated the earlier of (i) six months after project completion, and (ii) August 31, 2024.

Documentation

Documentation: The following documentation, which shall be in form and substance satisfactory to CIBC, is required to support all present and future indebtedness and liabilities of the Borrower to each of CIBC and CIBC's Affiliates.

- ▶ Resolution passed by the Board of Trustees authorizing Credit A Demand Operating Credit. A new resolution is to be provided within 30 days of the fiscal year end.
- ▶ Original or certified copy of the borrowing resolution authorizing the respective loans for each of the Demand Bridge Loan facilities.

Positive Covenants

Covenants: The Borrower will ensure that:

- ▶ CIBC senior debt is to rank pari passu with all other unsecured lenders.
- ▶ Fixed price contracts are to be in place for major contracts for all Demand Bridge loans.
- ▶ Cost overruns on the projects for all Demand Bridge loans are for the account of the Borrower.
- ▶ Compliance is maintained with all Ministry of Education requirements regarding school capital projects including required reporting for all Demand Bridge Loans.
- ▶ Expenditures being financed under the school capital projects will only be used for those needs identified and approved by the Ministry of Education for all Demand Bridge Loans.

Conditions Precedent

Conditions Precedent: In addition to the documentation specified in section 5.1 of Schedule A hereto, the obligation of CIBC to make available any Credit is Subject to CIBC's receipt of the following, in form and substance satisfactory to CIBC:

- ▶ Notice of Borrowing in accordance with Section 3.1 of Schedule A hereto which also includes a summary of the particulars and amounts to be financed under the respective programs. This applies to initial and subsequent drawdowns for all Demand Bridge Loans.

Reporting Requirements

- Reporting Requirements: The Borrower will provide to CIBC:
- ▶ Within 120 days after the end of each fiscal year, the audited consolidated financial statements of the Borrower for such year, prepared in accordance with Canadian public sector accounting standards.
 - ▶ Within 150 days after the end of each fiscal year, the Revised Estimates for the next fiscal year.
 - ▶ Any other information that CIBC may reasonably request.

Other Provisions

- Schedule A: The attached Schedule A, which contains certain additional provisions applicable to the Credits, and certain definitions, forms part of this Agreement.
- Notice of Borrowing: Whenever the Borrower desires to obtain any amount under a Credit (other than by way of a permitted overdraft), it will give to CIBC irrevocable prior written notice as specified in Schedule A hereto.
- Notice of Repayment: Whenever the Borrower desires to make one or more repayments under one or more Credits in an aggregate amount exceeding \$10,000,000 (or the equivalent in any other currency) on any day, it will give to CIBC irrevocable prior written notice as specified in Schedule A hereto.
- Interest on Excess Amounts: The interest rate applicable to any outstanding amount under a Credit which is in excess of the limit of such Credit shall be the Interest Rate Applicable to Credit Limit Excesses specified in Schedule A hereto.
- Interest on Overdue Amounts: Interest on overdue amounts is payable as specified in Schedule A hereto.
- Interest Payment Dates: Except with respect to interest on amounts in default, which is payable on demand, or as otherwise specified herein or in Schedule A hereto, interest and fees will be calculated and payable monthly in arrears on such day in each month as CIBC requires.
- Authorized Debits: The Borrower authorizes CIBC to debit its Operating Account for any interest, fees or other amounts that are payable by the Borrower to CIBC with respect to the Credits, as and when such amounts are payable.
- Confidential Information: The terms of this Agreement contain commercial information which is being supplied in confidence by CIBC and which, if disclosed, could significantly prejudice the competitive position of, or result in undue losses to, CIBC.
- Communications: Any communication or notice to be given with respect to the Credits may

be effectively given by delivering the same at the addresses set out on the signature page hereof, or by sending the same by facsimile or prepaid registered mail to the parties at such addresses. Any notice so mailed will be deemed to have been received on the tenth day next following the mailing thereof, provided that postal service is in normal operation during such time. Any facsimile notice will be deemed to have been received on transmission if sent on a Business Day and, if not, on the next Business Day following transmission. Either party may from time to time notify the other party, in accordance with this section, of any change of its address which thereafter will be the address of such party for all purposes of the Credits.

Replacement:

This letter supersedes and replaces all prior discussions, letters and agreements (if any) describing the terms and conditions of any credit facility established by CIBC in favour of the Borrower.

Please indicate your acceptance of these terms by signing below and returning the enclosed copy to our attention no later than May 31, 2022.

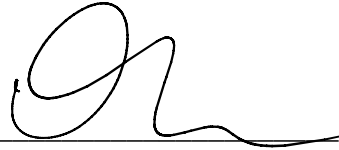
Yours truly,

CANADIAN IMPERIAL BANK OF COMMERCE



By: _____

Name: David Cohen
Title: Authorized Signatory



By: _____

Name: Doug Mara
Title: Authorized Signatory

Accepted this day of , 2022.

ALGONQUIN AND LAKESHORE CATHOLIC DISTRICT SCHOOL BOARD

By: _____

Name:
Title:

By: _____

Name:
Title:

1. GENERAL

1.1 Use of Funds, Returns. The Borrower will use the Credits only for the purposes specified in this Agreement. The Borrower may not at any time exceed the limit of any Credit, and CIBC may, without notice to the Borrower, return any item that, if paid, would result in the limit of any Credit being exceeded. If, on the other hand, CIBC in its sole discretion elects to pay any such item, the Borrower will pay to CIBC immediately the amount by which the limit of the applicable Credit has been exceeded.

1.2 Notice of Failure. The Borrower will promptly notify CIBC of the occurrence of any failure to perform or observe any of its covenants in this Agreement.

1.3 Confidentiality. The terms of this Agreement are confidential between the Borrower and CIBC, and accordingly the Borrower will not disclose the contents of this Agreement to anyone except its professional advisors.

1.4 Applying money received. At any time that the Borrower has failed (beyond any period of grace permitted by CIBC) to perform or observe any of its covenants in this Agreement, all moneys received by CIBC from the Borrower or from any Security may be applied on such parts of the Borrower's liabilities to CIBC as CIBC may determine.

1.5 Right of Set-Off. At any time that the Borrower has failed (beyond any period of grace permitted by CIBC) to perform or observe any of its covenants in this Agreement, CIBC is authorized at any time to set-off and apply any deposits held by it and any other amounts owed by it to or for the credit of the Borrower against any and all of the obligations of the Borrower with respect to the Credits, irrespective of whether or not CIBC has made any demand and even though any such obligations may not yet be due and payable.

1.6 Registration of Security. The Security will be registered or filed in all jurisdictions and in all offices as CIBC considers necessary or advisable from time to time to create, perfect or protect any Lien created thereby.

1.7 Expenses. The Borrower will reimburse CIBC for all fees and out of pocket expenses (including fees and expenses of CIBC's solicitors and of any other experts and advisors hired by CIBC) incurred in preparing, registering and renewing any Security, in responding to requests from the Borrower for waivers, amendments and other matters, in enforcing CIBC's rights under this Agreement or any Security, and in discharging any Security.

1.8 Further information requirements. The Borrower will provide such further information about its business and its Subsidiaries as is reasonably requested by CIBC from time to time, and such information shall be in a form acceptable to CIBC.

1.9 Consent to release information. CIBC may from time to time give any credit or other information about the Borrower to, or receive such information from, (i) any financial institution, credit reporting agency, rating agency or credit bureau, (ii) any person, firm or corporation with whom the Borrower may have or proposes to have financial dealings, and (iii) any person, firm or corporation in connection with any dealings the Borrower has or proposes to have with CIBC. The Borrower agrees that CIBC may use that information to establish and maintain the Borrower's relationship with CIBC and to offer any services as permitted by law, including services and products offered by CIBC's Subsidiaries when it is considered that this may be suitable to the Borrower.

1.10 Instructions by fax, phone and e-mail. The Borrower may deliver, and CIBC may accept, instructions by fax, telephone (including cellular phone) and internet e-mail ("Electronic Communication"), according to CIBC-approved procedures, which procedures may be limited to particular types of communications or services. Unless the Borrower expressly indicates otherwise, the Borrower agrees that CIBC may also communicate with the Borrower by e-mail or fax. This may include (i) CIBC sending confidential information to the Borrower, at the Borrower's request; or (ii) the Borrower sending confidential information to CIBC. An Electronic Communication may not be a secure means of communication and the Borrower assumes responsibility for the risks of using Electronic Communications including, without limitation, the possibility that an Electronic Communication is: intercepted by or sent to an unauthorized person, misunderstood, lost, delayed, or not received by CIBC at all. CIBC is entitled to rely upon any Electronic Communication from or purporting to be from the Borrower, as if such instructions were given in writing. However, CIBC may choose not to act upon an Electronic Communication if it believes that the Electronic Communication is unauthorized, incorrect or unclear. CIBC shall not be liable for, and the Borrower will indemnify and save CIBC harmless from, any claims, losses, damages, liabilities and expenses that CIBC incurs (other than those due to CIBC's gross negligence or wilful misconduct) including among other things all legal fees and expenses, arising from CIBC acting or declining to act on any of your Electronic Communications given under this Agreement. This indemnity is in addition to any other indemnity or assurance against loss provided by you to CIBC under this Agreement or otherwise.

1.11 Further Assurances. The Borrower will from time to time promptly upon request by CIBC do and execute all such acts and documents as may be reasonably required by CIBC to give effect to the Credits and the Security, and to any transfer pursuant to section 1.15 of this Schedule.

1.12 Insurance. The Borrower will keep all its assets and property insured (to the full insurable value) against loss or damage by fire and all other risks usual for similar property and for any other risks CIBC may reasonably require. If CIBC requests, these policies will include a loss

payable clause (and with respect to mortgage security, a mortgagee clause) in favour of CIBC. As further security, the Borrower assigns all insurance proceeds to CIBC. The Borrower will provide to CIBC either the policies themselves or adequate evidence of their existence. If any insurance coverage for any reason stops, CIBC may (but shall have no obligation to) insure the property. Finally, the Borrower will notify CIBC immediately of any loss or damage to any of its property.

1.13 Environmental. The Borrower will, and will ensure that each of its Subsidiaries will, carry on its business, and maintain its assets and property in accordance with all applicable environmental, health and safety laws and regulations. If there occurs or occurred in the past any release, deposit, discharge or disposal of any substance that may cause any environmental harm or adverse environmental effect or that is or may be regulated by any law for the protection of the environment, human health or safety, (collectively, a "Discharge") in connection with the business or property of the Borrower or any of its Subsidiaries, and as a result CIBC suffers any third party claim, legal obligation, loss, expense or damage whatsoever, the Borrower will reimburse CIBC, its directors, officers, employees and agents for any and all losses, damages, fines, costs and other amounts that result (including amounts spent conducting any necessary environmental assessments or investigations or defending any third party claims or proceedings, government demands or orders). If CIBC asks, the Borrower will defend any third party claims or proceedings, investigations or prosecutions brought against CIBC or any of its directors, officers, employees and agents in connection with any Discharge. The Borrower's obligation under this section continues even after all Credits have been repaid and this Agreement has terminated.

1.14 Waiver. No delay on the part of CIBC in exercising any right or privilege will operate as a waiver thereof, and no waiver of any failure or default will operate as a waiver thereof unless made in writing and signed by an authorized officer of CIBC, or will be applicable to any other failure or default.

1.15 Assignment. CIBC may assign, sell or participate (herein referred to as a "transfer") all or any part of its rights and obligations under all or any of the Credits to any third party, and the Borrower agrees to sign any documents and take any actions that CIBC may reasonably require in connection with any such transfer. Upon completion of the transfer, the third party will have the same rights and obligations under this Agreement as if it were a party to it, with respect to all rights and obligations included in the transfer. The Borrower may not assign any of its rights or obligations under any of the Credits. The Borrower agrees that CIBC may disclose any information (including, without limitation, any personal information) relating to such Credits (including any personal guarantee) to such third party, or its agents, any assignee of such third party, any service provider (as defined below), or any prospective assignee, purchaser or participant. Personal information includes all information provided by a principal of the Borrower or a guarantor of the Borrower's debt or other information obtained by CIBC in connection with the Borrower's credit application and/or the Agreement, and any ongoing information and documentation about the Borrower, any guarantor of the Borrower's debt, or the Credits, to the extent required by the third party, its agent or assignee, or any service provider, to enable such person to administer the Credits and exercise its rights thereunder. "Service Provider" means a person or entity that has been engaged in connection with the servicing, maintenance, collection or operation of the Credits or the provision of services or benefits to the Borrower and/or any guarantor of the Borrower's debt (including loyalty programs). The Borrower may not assign any of its rights or obligations under any of the Credits.

1.16 Application to Subsidiaries. The Borrower will ensure that each of its Subsidiaries complies with sections 1.11, 1.12 and 1.13 of this Schedule, as if the references to the Borrower therein were references to each such Subsidiary.

1.17 Governing Law. This Agreement shall be governed by the laws of Ontario, and the Borrower submits itself to the jurisdiction of any competent federal or provincial court in such jurisdiction.

1.18 Counterparts. This Agreement and any amendment to this Agreement may be executed in one or more counterparts and may be delivered by facsimile, .pdf or other similar electronic transmission, and all of such counterparts shall constitute originals and the same agreement. The words "executed", "execution", "signed", "signature", and words of like import in this Agreement and the other loan documents, shall be deemed to include electronic signatures or electronic records, 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 record keeping system, as the case may be, to the extent permitted under, and as provided for in, any applicable law.

1.19 Certain Definitions. In this Agreement the following terms have the following meanings:

"Affiliate" means, with respect to any person, any other person who directly or indirectly controls, is controlled by, or is under direct or indirect common control with, such person, and includes any person in like relation to an Affiliate. A person shall be deemed to control another person if the first person possesses, directly or indirectly, the power to direct or cause the direction of the management and policies of the other person, whether through the ownership of voting securities, by contract or otherwise.

"Agreement" means the attached letter agreement between CIBC and the Borrower, including this Schedule and any other Schedules thereto, as the same may be amended or supplemented from time to time.

"Business Day" means (i) with respect to any amount denominated in Canadian dollars and all matters pertaining thereto, any day excluding Saturday, Sunday and any day which is a legal holiday in Toronto, Canada; (ii) with respect to any amount denominated in US dollars (except as provided below) and all matters pertaining thereto, any day excluding Saturday, Sunday or any day which is a legal holiday in New York, U.S.A. or Toronto, Canada, (iii) with respect to any LIBOR Loan and all matters pertaining thereto, any day which is a day for dealings by and between banks in US dollars in the London interbank market, excluding Saturday, Sunday or any day which is a legal holiday in London, England or New York, U.S.A. or Toronto, Canada, and (iv) with respect to any SOFR Loan and all matters pertaining thereto, any day excluding Saturday, Sunday or any day which is a legal holiday in New York, U.S.A. or Toronto, Canada and also excluding any day on which the Securities Industry and Financial Markets Association recommends that

the fixed income departments of its members be closed for the entire day for purposes of trading in United States government securities.

“Compliance Certificate” means an Officer’s Certificate stating, as of the applicable date, (i) that the Borrower is not in default of the observance or performance of any of its covenants in this Agreement (or describing any default then existing), (ii) that all representations and warranties contained in this Agreement are true and accurate as if made on and as of such date (or describing any thereof that are not then true and accurate), (iii) the particulars and calculation of all financial covenants of the Borrower contained in this Agreement, and (iv) where applicable, the amount and particulars of calculation of Receivable Value, Inventory Value and Priority Claims, and the resulting maximum available amount and undrawn amount of any Credit, as of such date. Unless otherwise prescribed by CIBC, a Compliance Certificate shall be substantially in the form attached to this Schedule A.

“GAAP” means those accounting principles which are recognized as being generally accepted in Canada from time to time as set out in the handbook published by the Canadian Institute of Chartered Accountants. If the Borrower, or the party to which references to GAAP are intended to apply, has adopted International Financial Reporting Standards (“IFRS”), then the applicable references in this Agreement to GAAP or Generally Accepted Accounting Principles may be interpreted to mean IFRS, but only if CIBC has consented to such change.

“Investment” means, with respect to any person, any direct or indirect investment in or purchase or other acquisition of the securities of or any equity interest in any other person, any loan or advance to, or arrangement for the purpose of providing funds or credit to (excluding extensions of trade credit in the ordinary course of business in accordance with customary commercial terms), or capital contribution to, any other person, or any purchase or other acquisition of all or substantially all of the property of any other person.

“Lien” includes without limitation a mortgage, charge, lien, security interest or encumbrance of any sort on any property or asset, and includes conditional sales contracts, title retention agreements, capital trusts and capital leases.

“Loan” means any advance of moneys made by CIBC to the Borrower under this Agreement and, where the context permits or requires, includes Bankers Acceptances, Letters of Credit, equipment leases, credit cards and all other forms of credit provided by CIBC to the Borrower under this Agreement.

“Material Adverse Effect” means a material adverse effect on the business, property, condition (financial or otherwise) or prospects of the Borrower and its Subsidiaries, considered as a whole, or a material adverse effect on the ability of any of the Borrower and its Subsidiaries to perform its obligations under any of this Agreement and the Security to which it is a party.

“Normal Course Lien” means, at any time, the following:

- (i) Liens for taxes not overdue, or which are being contested if adequate reserves with respect thereto are maintained by the Borrower and its Subsidiaries in accordance with GAAP and the enforcement of any related Lien is stayed;
- (ii) undetermined or inchoate Liens arising in the ordinary course of business which relate to obligations not overdue or a claim for which has not been filed or registered pursuant to applicable law;
- (iii) carriers’, warehousemen’s, mechanics’, materialmen’s, repairmen’s, construction or other similar Liens arising in the ordinary course of business which relate to obligations not overdue;
- (iv) easements, rights-of-way, restrictions and other similar encumbrances incurred in the ordinary course of business which, in the aggregate, are not substantial in amount, and which do not in any case materially detract from the value of the property subject thereto or interfere with the ordinary conduct of the business of the Borrower or its Subsidiaries;
- (v) zoning and building by-laws and ordinances and municipal by-laws and regulations so long as the same are complied with;
- (vi) statutory Liens incurred or deposits made in the ordinary course of business in connection with workers’ compensation, unemployment insurance and other social security legislation;
- (vii) the reservations and exceptions contained in, or implied by statute in, the original disposition from the Crown and grants made by the Crown of interests so reserved or excepted;
- (viii) Liens created by the Security; and
- (ix) Liens in respect of which CIBC has given its specific written consent.

“Officer’s Certificate” means a certificate, in form satisfactory to CIBC, signed by a senior officer of the Borrower.

“Operating Account” means a Canadian dollar account or US dollar account or such other account, in each case as is agreed upon by the Borrower and CIBC from time to time for the purposes hereof.

“Priority Claims” means, at any time, any liability of any of the Borrower and its Subsidiaries that ranks, in right of payment in any circumstances, equal to or in priority to any liability of the Borrower or such Subsidiary to CIBC, and may include unpaid wages,

salaries and commissions, unremitted source deductions for vacation pay, arrears of rent, unpaid taxes, amounts owed in respect of worker's compensation, amounts owed to unpaid vendors who have a right of repossession, and amounts owing to creditors which may claim priority by statute or under a Purchase Money Lien.

"Purchase Money Lien" means any Lien which secures a Purchase Money Obligation permitted by this Agreement, provided that such Lien is created not later than 30 days after such Purchase Money Obligation is incurred and does not affect any asset other than the asset financed by such Purchase Money Obligation.

"Purchase Money Obligation" means any Debt (including without limitation a capitalized lease obligation) incurred or assumed to finance all or any part of the acquisition price of any asset acquired by any of the Borrower and its Subsidiaries or to finance all or any part of the cost of any improvement to any asset of any of the Borrower and its Subsidiaries, provided that such obligation is incurred or assumed prior to or within 30 days after the acquisition of such asset or the completion of such improvement and does not exceed the lesser of the acquisition price payable by the Borrower or such Subsidiary for such asset or improvement and the fair market value of such asset or improvement; and includes any extension, renewal or refunding of any such obligation so long as the principal amount thereof outstanding on the date of such extension, renewal or refunding is not increased.

"Security" means, collectively, all of the items of security held by CIBC for the indebtedness and liabilities, or any part or parts thereof, of the Borrower to CIBC.

"Subsidiary" of any person means any other person of which shares or other equity units having ordinary voting power to elect a majority of the board of directors or other individuals performing comparable functions, or which are entitled to or represent more than 50% of the owners' equity or capital or entitlement to profits, are owned beneficially or controlled, directly or indirectly, by any one or more of such first person and the Subsidiaries of such first person, and shall include any other person in like relationship to a Subsidiary of such first person.

2. INTEREST RATES; PAYMENTS; CALCULATIONS

2.1 Interest Rates. Interest is payable with respect to:

- (i) excess amounts (provided that nothing herein shall be deemed to imply that the Borrower is entitled to obtain any such excess amount, or that the limit of a Credit is to be increased in any circumstance) above the limit of a Credit or a part of a Credit, as described in section 2.4 of this Schedule,
- (ii) amounts that are not paid when due, at the Interest Rate Applicable to Credit Limit Excesses, and
- (iii) any other amounts, at the rate specified in this Agreement.

2.2 Variable interest. Each variable interest rate provided for in this Agreement will change automatically, without notice, whenever the Prime Rate, the US Base Rate, applicable Bankers Acceptance Yield, LIBO Rate, or any applicable SOFR Benchmark Rate, as the case may be, changes.

2.3 Payment of interest. Interest is calculated on the applicable balance at the end of each day. Interest is payable in arrears once a month on the day required by CIBC, unless otherwise specified in this Agreement.

2.4 Interest Rate Applicable to Credit Limit Excesses. To determine whether the Interest Rate Applicable to Credit Limit Excesses is to be charged, the following rules apply:

- (a) The Interest Rate Applicable to Credit Limit Excesses will be charged on the amount that exceeds the limit of any particular Credit.
- (b) If there are several parts of a Credit, the Interest Rate Applicable to Credit Limit Excesses will be charged if the limit of a particular part is exceeded. For example, if Credit A's limit is \$250,000, and the limit of one part of Credit A is \$100,000 and the limit of that part is exceeded by \$25,000, the Interest Rate Applicable to Credit Limit Excesses will be charged on that \$25,000 excess, even if the total amount outstanding under Credit A is less than \$250,000.
- (c) To determine if the limit of a Credit has been exceeded, any amounts in a currency other than the currency in which the limit is designated will be converted into that currency, as described in section 2.11 of this Schedule.

2.5 Interest on Overdue Amounts. Except as otherwise specified herein, if any principal is not paid when due, such overdue principal will bear interest (as well after as before judgement), payable on demand, at the interest rate applicable to such principal prior to default, and interest will be payable on overdue interest (as well after as before judgement) at the same rate as is applicable to the related principal. If any amount is not paid by the Borrower when due and there is no interest otherwise applicable to such amount specified herein, such overdue amount will bear interest (as well after as before judgement), payable on demand, at a rate per annum equal at all times to the Prime Rate plus 5% (in the

case of any such amount payable in Canadian dollars) or the US Base Rate plus 5% (in the case of any such amount payable in US dollars) from the date of non-payment until paid in full.

2.6 Reductions of Limit of Credits. On or prior to each date on which the limit of any Credit is reduced, the Borrower will repay such outstanding amounts thereunder, if any, as are necessary so that, after giving effect to the repayment, the total of all amounts outstanding under such Credit does not exceed the limit as so reduced.

2.7 Payments. Except as otherwise expressly provided in this Schedule "A", if any payment is due on a day other than a Business Day, such payment will be due on the next Business Day.

2.8 CIBC's pricing policy. The fees, interest rates and other charges for the Borrower's banking arrangements with CIBC are dependent upon each other. Accordingly, if the Borrower cancels or does not follow through with, in the manner originally contemplated, any of these arrangements, CIBC reserves the right to require payment by the Borrower of increased or added fees, interest rates and charges as a condition of the continuation of the Borrower's banking arrangements.

2.9 Calculations. The following terms apply to all calculations under the Credits:

- (a) CDOR, Federal Funds Rate, Bankers' Acceptance Yield, LIBO Rate, any SOFR Benchmark Rate, Prime Rate and US Base Rate shall be determined by CIBC if and whenever such determination is required for the purpose of this Agreement, and such determination by CIBC shall be conclusive evidence of such rate.
- (b) Except as provided in the next sentence, all interest and fees hereunder shall be computed on the basis of the actual number of days elapsed divided by 365. Interest on each LIBOR Loan and SOFR Loan shall be computed on the basis of the actual number of days elapsed divided by 360. Any such applicable interest rate, expressed as an annual rate of interest for the purpose of the Interest Act (Canada), shall be equivalent to such applicable interest rate multiplied by the actual number of days in the calendar year in which the same is to be determined and divided by 365 or 360, as the case may be.
- (c) In calculating interest or fees payable hereunder for any period, unless otherwise specifically stated, the first day of such period shall be included and the last day of such period shall be excluded.

2.10 CIBC's Records. CIBC's loan accounting records will provide conclusive evidence of all terms and conditions of the Credits such as principal loan balances, interest calculations, and payment dates.

2.11 Foreign Currency Conversion. If it is necessary for any purpose relating to the Credits that an amount denominated in a currency other than Canadian dollars be expressed in or equated to an amount of Canadian dollars (such as, for example, to determine whether amounts denominated in US dollars that are outstanding under a Credit which has a limit specified in Canadian dollars exceed the limit of such Credit so as to make applicable the Interest Rate Applicable to Credit Limit Excesses), the applicable amount of Canadian dollars shall be determined by CIBC in accordance with its normal practice.

2.12 Deemed Re-Investment Principle. For the purpose of the *Interest Act* (Canada) and any other purpose, the principle of deemed re-investment of interest is not applicable to any calculation under this Agreement, and the rates of interest and fees specified in this Agreement are intended to be nominal rates and not effective rates or yields.

2.13 Certain Definitions. If and whenever required for the purpose of this Agreement, the following terms have the following definitions:

"CDOR" means, for any day, the average of the annual discount rates for bankers' acceptances denominated in Canadian dollars of certain banks named in Schedule 1 to the Bank Act (Canada) for a specified term and face amount that appears on the CDOR page of the Reuters Screen as of 10:00 a.m. on such day (or, if such day is not a Business Day, as of 10:00 a.m. on the next preceding Business Day).

"Federal Funds Rate" means, for any day, an annual interest rate equal to the weighted average of the rates on overnight United States federal funds transactions with members of the Federal Reserve System arranged by United States federal funds brokers, as published for such day (or, if such day is not a business day in New York, for the next preceding business day in New York) by the Federal Reserve Bank of New York, or for any such business day on which such rate is not so published, the arithmetic average of the quotations for such day on such transactions received by CIBC from three United States federal funds brokers of recognized standing selected by it.

"Interest Rate Applicable to Credit Limit Excesses" means the annual interest rate generally established by CIBC from time to time for the purpose of calculating interest on overdrafts in accounts maintained with CIBC in Canada.

"Prime Rate" means a fluctuating annual interest rate equal at all times to the greater of (i) the reference rate of interest (however designated) of CIBC for determining interest chargeable by it on loans in Canadian dollars made in Canada and (ii) 3/4 of 1% per annum above the CDOR for 30-day bankers' acceptances from time to time.

“US Base Rate” means a fluctuating annual interest rate equal at all times to the greater of (i) the reference rate of interest (however designated) of CIBC for determining interest chargeable by it on loans in US dollars made in Canada, and (ii) 3/4 of 1% per annum above the Federal Funds Rate from time to time.

3. NOTICE OF BORROWING; NOTICE OF REPAYMENT; OVERDRAFTS

3.1 Notice of Borrowing. Whenever the Borrower desires to obtain any amount under a Credit (other than a loan by way of a permitted overdraft), it will give to CIBC irrevocable prior written notice (a “Notice of Borrowing”) specifying the Credit under which such amount is to be obtained and the particulars of such amount including the term of any Bankers’ Acceptances, the term of any LIBOR Period or SOFR Period, the particulars of all maturing Bankers’ Acceptances in the case of a rollover or conversion of Bankers’ Acceptances, and the Business Day on which such amount is to be obtained. No amount shall be obtained if the term thereof or any LIBOR Period or SOFR Period applicable thereto would mature beyond any scheduled repayment or reduction date for the applicable Credit and all or any part of such amount will be required to be repaid on such date. The amount to be obtained under any Credit at any time shall not exceed the undisbursed amount of that Credit at such time. CIBC will not be obliged to make available at any time LIBOR Loans or SOFR Loans in an aggregate amount less than US \$1,000,000. A notice requesting any loan in an amount exceeding \$10,000,000 or US \$10,000,000 (other than a LIBOR Loan or SOFR Loan) must be given not later than 10:00 a.m. on the Business Day preceding the applicable borrowing date; a notice requesting any Bankers’ Acceptances in an amount exceeding \$10,000,000 must be given not later than 10:00 a.m. on the second Business Day preceding the applicable borrowing date; and a notice requesting any LIBOR Loan or SOFR Loan of any amount must be given not later than 10:00 a.m. on the third Business Day preceding the applicable borrowing date.

3.2 Notice of Repayment. Whenever the Borrower desires to make any repayment or repayments under one or more of the Credits in an aggregate amount exceeding \$10,000,000 (or an equivalent amount in any other currency) on any day, it will give to CIBC irrevocable written notice specifying the particulars of such repayment not later than 10:00 a.m. on the Business Day preceding the applicable repayment date.

3.3 Overdrafts. If the Borrower is entitled under any Credit to obtain loans in Canadian dollars or US dollars by way of overdraft, the debit balance in the Borrower’s applicable Operating Account from time to time will be deemed to be a loan in Canadian dollars or US dollars, as the case may be, outstanding to the Borrower under such Credit and bearing interest as set out in this Agreement for loans in such currency under such Credit. If at any time the Borrower is a party to a cash concentration arrangement with CIBC, the amount of any overdraft from time to time in the Canadian dollar or US dollar concentration account of the Borrower established pursuant to such arrangement will also be deemed to be a loan in Canadian dollars or US dollars, as applicable, outstanding to the Borrower under the applicable Credit and bearing interest as set out above on the basis of the Prime Rate or the US Base Rate, as the case may be.

4. INDEMNITIES

4.1 Reserve Indemnity. If subsequent to the date of this Agreement any change in or introduction of any applicable law, or compliance by CIBC with any request or directive by any central bank, superintendent of financial institutions or other comparable authority, shall subject CIBC to any tax with respect to the Credits or change the basis of taxation of payments to CIBC of any amount payable under the Credits (except for changes in the rate of tax on the overall net income of CIBC), or impose any capital maintenance or capital adequacy requirement, reserve requirement or similar requirement with respect to the Credits, or impose on CIBC or the London interbank market (in the case of any matter relating to any actual or requested LIBOR Loan), any other condition or restriction, and the result of any of the foregoing is to increase the cost to CIBC of making or maintaining the Credits or any amount thereunder or to reduce any amount otherwise received by CIBC under the Credits, CIBC will promptly notify the Borrower of such event and the Borrower will pay to CIBC such additional amount calculated by CIBC as is necessary to compensate CIBC for such additional cost or reduced amount received. A certificate of CIBC as to any such additional amount payable to it and containing reasonable details of the calculation thereof shall be conclusive evidence thereof.

4.2 Currency Indemnity. Interest and fees hereunder shall be payable in the same currency as the principal to which they relate. Any payment on account of an amount payable in a particular currency (the “proper currency”) made to or for the account of CIBC in a currency (the “other currency”) other than the proper currency, whether pursuant to a judgement or order of any court or tribunal or otherwise and whether arising from the conversion of any amount denominated in one currency into another currency for any purpose, shall constitute a discharge of the Borrower’s obligation only to the extent of the amount of the proper currency which CIBC is able, in the normal course of its business within one Business Day after receipt by it of such payment, to purchase with the amount of the other currency so received. If the amount of the proper currency which CIBC is able to purchase is less than the amount of the proper currency due to CIBC, the Borrower shall indemnify and save CIBC harmless from and against any loss or damage arising as a result of such deficiency.

4.3 Tax Indemnity. All payments by the Borrower under this Agreement shall be made free and clear of, and without reduction for or on account of, any present or future income, stamp or other taxes, levies, imposts, duties, charges, fees, deductions or withholdings, other than taxes imposed on the overall net income of CIBC or franchise taxes, taxes on doing business or taxes measured by the capital or net worth of CIBC (collectively “Excluded Taxes”), now or hereafter imposed, levied, collected, withheld or assessed by any country or any political subdivision thereof (collectively “Taxes”); provided, however, that if any Taxes are required to be withheld from any interest or other amount payable to the CIBC hereunder, the amount so payable to the CIBC shall be increased to the extent necessary to yield to CIBC, on a net basis after payment of all Taxes and after payment of all Excluded Taxes imposed by any relevant jurisdiction on any additional amounts payable under this section, interest or any such other amount payable hereunder at the rate or in the amount specified in this Agreement. The Borrower shall be fully liable and responsible for and shall, promptly following receipt of a request from CIBC, pay to CIBC any and all sales, goods and services taxes payable under the laws of Canada or any political subdivision thereof with respect to any and all goods and services made available hereunder to the Borrower by CIBC, and such taxes shall be included in the definition of “Taxes” for all purposes hereof. Whenever any Taxes are payable by the Borrower, as promptly as possible thereafter it shall send to CIBC, a certified copy of an original official receipt showing payment thereof. If

the Borrower fails to pay any Taxes when due or fails to remit to CIBC as aforesaid the required documentary evidence thereof, the Borrower shall indemnify and save harmless CIBC from any incremental taxes, interest, penalties or other liabilities that may become payable by CIBC or to which CIBC may be subjected as a result of any such failure. A certificate of CIBC as to the amount of any such taxes, interest or penalties and containing reasonable details of the calculation thereof shall be *prima facie* evidence thereof.

4.4 Default Indemnity. The Borrower shall indemnify and save harmless CIBC from all claims, demands, liabilities, damages, losses, costs, charges and expenses, including any loss or expense arising from interest or fees payable by CIBC to lenders of funds obtained by it in order to make or maintain any amount under the Credits and any loss or expense incurred in liquidating or re-employing deposits from which such funds were obtained, which may be incurred by CIBC as a consequence of (i) default by the Borrower in the payment when due of any amount hereunder or the occurrence of any other default relative to any of the Credits, (ii) default by the Borrower in obtaining any amount after the Borrower has given notice hereunder that it desires to obtain such amount, (iii) default by the Borrower in making any optional repayment of any amount after the Borrower has given notice hereunder that it desires to make such repayment, or (iv) the repayment by the Borrower of any LIBOR Loan or SOFR Loan otherwise than on the expiration of any applicable LIBOR Period, SOFR Period, interest payment date or maturity or final payment date, as the case may be, or the repayment of any loan on which interest is payable at a fixed annual rate otherwise than on the expiration of the fixed interest rate period applicable thereto, or the repayment of any other amount otherwise than on any specified maturity date thereof. A certificate of CIBC as to any such loss or expense and containing reasonable details of the calculation thereof shall be *prima facie* evidence thereof.

5. CONDITIONS PRECEDENT

5.1 Conditions Precedent to the Initial Amount

CIBC shall not be obliged to make available the initial amount under the Credits unless:

- (a) CIBC shall have received the Security, which shall have been duly registered and filed as required hereby.
- (b) CIBC shall have received such financial and other information relating to the Borrower and its Subsidiaries, and any guarantor, as it shall have reasonably requested.
- (c) CIBC shall have received confirmation of all insurance maintained by the Borrower and its Subsidiaries, and such insurance shall comply with the requirements of this Agreement.
- (d) The Borrower shall have paid to CIBC all fees and other amounts which shall have become due and payable by it to CIBC on or prior to the initial borrowing date.
- (e) The following documents in form, substance and execution acceptable to CIBC shall have been delivered to CIBC:
 - (i) a certified copy of the constating documents and by-laws of each of the Borrower and its Subsidiaries, and of each corporate guarantor, and of all corporate proceedings taken and required to be taken by each of them to authorize the execution and delivery of such of this Agreement and the Security to which it is a party and the performance of the transactions by it contemplated therein;
 - (ii) a certificate of incumbency for each of the Borrower and its Subsidiaries, and for each corporate guarantor, setting forth specimen signatures of the persons authorized to execute such of this Agreement and the Security to which it is a party;
 - (iii) such legal opinions addressed to CIBC relative to the Borrower, this Agreement and the Security as CIBC may require; and
 - (iv) such other documents relative to this Agreement and the transactions contemplated herein as CIBC may reasonably require.

5.2 Conditions Precedent to All Amounts

CIBC shall not be obliged to make available any amount under the Credits unless:

- (a) CIBC shall have received any applicable Notice of Borrowing.
- (b) On the applicable borrowing date the Borrower shall not have failed to observe or perform any of its covenants in this Agreement, and the Borrower shall have delivered to CIBC, if so requested by CIBC, an Officers' Certificate to such effect.

- (c) The representations and warranties contained in this Agreement shall be true on and as of the applicable borrowing date with the same effect as if such representations and warranties had been made on and as of the applicable borrowing date, and the Borrower shall have delivered to CIBC, if so requested by CIBC, an Officers' Certificate to such effect.
- (d) All other conditions specified herein, to the extent not previously satisfied for any reason, other shall have been satisfied.
- (e) In respect of any amount that would result in the aggregate amount outstanding under the Credits being increased, there shall not have occurred subsequent to the date of last annual financial statements of the Borrower, in the opinion of CIBC, any event which (individually or with any other events) has had, or which has a reasonable possibility of having, a Material Adverse Effect.

6. REPRESENTATIONS AND WARRANTIES

6.1 Representations and Warranties. To induce CIBC to establish and maintain the Credits, the Borrower represents and warrants as follows:

- (a) Each of the Borrower and its Subsidiaries has all necessary power and authority to own its property, to carry on the business carried on by it, to enter into and perform its obligations under such of this Agreement and the Security to which it is a party, and in the case of the Borrower to obtain amounts under the Credits. Each of the Borrower and its Subsidiaries is in compliance with all applicable laws except to the extent that the failure to comply therewith would not, in the aggregate, have, or reasonably be expected to have, a Material Adverse Effect.
- (b) The Borrower has taken all action necessary to be taken to authorize the execution and delivery of and the performance of its obligations under this Agreement and the Security, and the obtaining of amounts under the Credits. Except as has been obtained and is in full force and effect, no consent, waiver or authorization of, or filing with or notice to, any person is required to be obtained in connection with the execution and delivery of and the performance by each of the Borrower and its Subsidiaries of its obligations under this Agreement and the Security, or the obtaining by the Borrower of amounts under the Credits. This Agreement and the Security have been duly executed and delivered by each of the Borrower and its Subsidiaries as are parties thereto, and constitute the legal, valid and binding obligation of each of them enforceable in accordance with their terms.
- (c) The execution and delivery by the Borrower and its Subsidiaries of this Agreement and the Security and the performance by them of their obligations thereunder, and the obtaining by the Borrower of amounts under the Credits, will not conflict with or result in a breach of any applicable law, and will not conflict with or result in a breach of or constitute a default under, or permit the termination of, or cause any material right of any of the Borrower and its Subsidiaries to be adversely affected under, any of the provisions of its constituting documents or by-laws or any agreement, permit, instrument, judgement, injunction or other contractual obligation to which it is a party or by which it is bound, or result in the creation or imposition of any Lien (other than the Security) upon any of its property or assets.
- (d) Except as disclosed in writing by the Borrower to CIBC prior to the date of this Agreement with specific reference to this paragraph or, with respect to events occurring subsequent to the date of this Agreement, as the Borrower has otherwise disclosed in writing to CIBC with specific reference to this paragraph, there is no action, suit or proceeding (whether or not purportedly on behalf of any of the Borrower and its Subsidiaries) pending or, to the knowledge of the Borrower, threatened, against or affecting any of its Borrower and its Subsidiaries before any court or before or by any governmental department, commission or agency, in Canada or elsewhere, or before any arbitrator or board, and none of the Borrower and its Subsidiaries is in default with respect to any order or award of any arbitrator or government department, commission or agency.
- (e) The Borrower has delivered to CIBC a true and complete copy of its most recent financial statements, and such financial statements present fairly the financial position of the Borrower, in accordance with GAAP, as of the date thereof and for the fiscal period then ended. All financial statements of the Borrower delivered by the Borrower to CIBC after the date of this Agreement will present fairly the financial position of the Borrower, in accordance with GAAP, as of the dates thereof and for the fiscal periods then ended.
- (f) Since the date of the most recent financial statements of the Borrower delivered to CIBC, there has occurred no event which (individually or with any other events) has had, or which may reasonably be expected to have, a Material Adverse Effect.

The Borrower has not failed to observe or perform (beyond any period of grace permitted by CIBC) any of its covenants in this Agreement.
- (g) Except as disclosed in writing by the Borrower to CIBC prior to the date of this Agreement with specific reference to this paragraph, to the best knowledge of the Borrower, (i) the business carried on and the property owned or used at any time by any of the Borrower and its Subsidiaries and their respective predecessors (including the lands owned or occupied by

any of them and the waters on or under such lands) have at all times been carried on, owned or used in compliance with all environmental laws; (ii) none of the Borrower and its Subsidiaries is subject to any proceeding alleging the violation of any environmental law, and no part of its business or property is the subject of any proceeding to evaluate whether remedial action is needed as a result of the release from or presence of any hazardous substance on any lands owned or occupied by it; (iii) there are no circumstances that could reasonably be expected to give rise to any civil or criminal proceedings or liability regarding the release from or presence of any hazardous substance on any lands used in or related to the business or property of any of the Borrower and its Subsidiaries or on any lands on which any of the Borrower and its Subsidiaries has disposed or arranged for the disposal of any materials arising from the business carried on by it, or regarding the violation of any environmental law by any of the Borrower and its Subsidiaries or by any other person for which it is responsible; (iv) all hazardous substances disposed of, treated or stored on lands owned or occupied by any of the Borrower and its Subsidiaries have been disposed of, treated and stored in compliance with all environmental laws; (v) there are no proceedings and there are no circumstances or material facts which could give rise to any proceeding in which it is or could be alleged that any of the Borrower and its Subsidiaries is responsible for any domestic or foreign clean up or remediation of lands contaminated by hazardous substances or for any other remedial or corrective action under any environmental laws; (vi) each of the Borrower and its Subsidiaries has maintained all environmental and operating documents and records relating to its business and property in the manner and for the time periods required by any environmental laws and has never had conducted an environmental audit of its business or property; and (vii) the Borrower is not aware of any pending or proposed change to any environmental law which would render illegal or materially adversely affect its business or property.

- (h) No representation or warranty made by the Borrower herein or in any other document furnished to CIBC from time to time contains or will contain any untrue statement of a material fact or omits or will omit to state any material fact necessary to make the statements herein or therein, in light of the circumstances under which they are made, not misleading. All projections and pro forma information delivered to CIBC from time to time by the Borrower were prepared in good faith based on assumptions believed by the Borrower to be reasonable at the time of delivery. There is no fact known to the Borrower on the date of this Agreement which has had, or which has a reasonable possibility of having, a Material Adverse Effect.

6.2 Survival. All representations and warranties contained in this Agreement shall survive the execution and delivery of this Agreement and the obtaining of amounts under the Credits, and the delivery of each Notice of Borrowing and the obtaining of any amount under any Credit shall constitute a reaffirmation on and as of such delivery date and such borrowing date, in each case by reference to the then-existing facts and circumstances, of all representations and warranties contained in this Agreement.

7. FINANCIAL COVENANTS

7.1 Calculation. All financial covenants will be calculated including the Borrower and its Subsidiaries on a consolidated basis, and each amount derived from the Borrower's profit and loss statement shall be calculated as the total of such amount during the Borrower's four most recently-completed fiscal quarters (or, if agreed upon by CIBC in its sole discretion, during the Borrower's most recently-completed fiscal year), as shown in the Borrower's most recent financial statements delivered to CIBC.

7.2 Certain Definitions. In this Agreement the following terms have the following meanings:

"Adjusted Debt Service Ratio" means, for any period, the ratio of the sum of (i) EBITDA for such period, (ii) all management bonuses and similar payments deducted in the calculation of such EBITDA but not paid out during such period (and with respect to which the entitlement to receive payment thereof has been postponed in a manner satisfactory to CIBC) and (iii) all management bonuses and similar payments deducted in the calculation of such EBITDA and paid out during such period, and which have then been loaned back to the Borrower during such period by way of Postponed Debt, to Debt Service Requirements all calculated on a consolidated basis.

"Adjusted Fixed Charge Coverage Ratio" means, for any period, the ratio of (a) the sum of (i) EBITDA for such period, (ii) all management bonuses and similar payments deducted in the calculation of such EBITDA but not paid out during such period (and with respect to which the entitlement to receive payment thereof has been postponed in a manner satisfactory to CIBC) and (iii) all management bonuses and similar payments deducted in the calculation of such EBITDA and paid out during such period, and which have then been loaned back to the Borrower during such period by way of Postponed Debt to (b) the sum of (i) Debt Service Requirements for such period, all calculated on a consolidated basis.

"Capitalization" means Debt plus Shareholders' Equity plus minority interest.

"Cash Interest Coverage Ratio" means the ratio of EBITDA to Interest Expense calculated on a consolidated basis.

"Current Assets" means assets that would be shown as current assets on a consolidated balance sheet of the Borrower prepared in accordance with GAAP, and would include such assets as cash, accounts receivable, inventory and other assets that are likely to be converted into cash, sold, exchanged or expended in the normal course of business within one year or less, but shall exclude for the purpose of this definition all amounts due from Affiliates.

Current Liabilities” means liabilities that would be shown as current liabilities on a consolidated balance sheet of the Borrower prepared in accordance with GAAP, and would include such liabilities as Debt that is or will become payable within one year or one operating cycle, whichever is longer, accounts payable, accrued expenses and deferred revenue.

“Current Ratio” means the ratio of Current Assets to Current Liabilities.

“Debt” means, with respect to any person, (i) an obligation of such person for borrowed money, (ii) an obligation of such person evidenced by a note, bond, debenture or other similar instrument, (iii) an obligation of such person for the deferred purchase price of property or services, excluding trade payables and other accrued current liabilities incurred in the ordinary course of business in accordance with customary commercial terms, (iv) a capitalized lease obligation of such person, (v) a guarantee, indemnity, or financial support obligation of such person, determined in accordance with GAAP, (vi) an obligation of such person or of any other person secured by a Lien on any property of such person, even though such person has not otherwise assumed or become liable for the payment of such obligation, (vii) an obligation arising in connection with an acceptance facility or letter of credit issued for the account of such person, or (viii) a share in the capital of such person that is redeemable by such person either at a fixed time or on demand by the holder of such share (valued at the maximum purchase price at which such person may be required to redeem, repurchase or otherwise acquire such share).

“Debt to Capitalization” means the ratio of all Debt of the Borrower and its Subsidiaries on a consolidated basis, to Capitalization.

“Debt to EBITDA Ratio” means the ratio of all Debt of the Borrower and its Subsidiaries, to EBITDA all calculated on a consolidated basis.

“Debt Service Ratio” means the ratio of EBITDA to Debt Service Requirements on a consolidated basis.

“Debt Service Requirements” means (i) all permanent principal payments in respect of Debt made or required to be made during such period, (ii) Interest Expense for such period, and (iii) all dividends paid during such period on all preferred shares of the Borrower.

“Debt to Equity Ratio” means the ratio of all Debt of the Borrower and its Subsidiaries on a consolidated basis, to Shareholders’ Equity.

“Debt to Tangible Net Worth Ratio” means the ratio of all Debt of the Borrower and its Subsidiaries on a consolidated basis, to Tangible Net Worth.

“EBIT” means, for any period, Net Income for such period plus all amounts deducted in the calculation thereof on account of Interest Expense and income taxes.

“EBITDA” means, for any period, Net Income for such period plus all amounts deducted in the calculation thereof on account of Interest Expense, income taxes, depreciation and amortization.

“Effective Tangible Net Worth” means the sum of (i) Shareholders’ Equity less all amounts due from Affiliates and all Intangibles, and (ii) Postponed Debt.

“Fixed Charge Coverage Ratio” means the ratio of EBITDA to the sum of (i) Debt Service Requirements, all calculated on a consolidated basis.

“Intangible” includes without limitation such personal property as goodwill; copyrights, patents and trademarks; franchises; licences, leases; research and development costs; and deferred development costs.

“Interest Coverage Ratio” means the ratio of EBIT to Interest Expense all calculated on a consolidated basis.

“Interest Expense” means, for any period, the aggregate amount accrued (whether or not payable or paid) during such period in accordance with GAAP on account of (i) interest expense including amortization of debt discount and debt issuance costs, capitalized interest, standby fees, commissions, discounts and other fees and charges owed with respect to letters of credit and bankers’ acceptances and (ii) the interest expense components of all capitalized lease obligations.

“Net Income” means, for any period, the consolidated net income (loss) of the Borrower for such period, calculated in accordance with GAAP.

“Postponed Debt” means any Debt for borrowed money of any of the Borrower and its Subsidiaries that is incurred at such time as no failure by the Borrower to perform or observe any of its covenants in this Agreement is continuing or would be created by the incurrence thereof (to be evidenced by pro forma financial statements delivered to CIBC) and which has the following attributes: (i) no principal thereof is repayable so long as any amount is owed by the Borrower to CIBC (or until such earlier date as CIBC may agree upon in writing), (ii) no covenant with respect to such Debt is more onerous than or in addition to the covenants specified herein, and (iii) all rights of the holder of such Debt are postponed and subordinated to all rights of CIBC under or in respect of the Credits pursuant to a subordination agreement containing payment and non-payment default standstills and other provisions satisfactory in form and substance to CIBC.

“Restricted Payments” means any payment by any person (i) of any dividends on any of its shares, (ii) on account of the purchase, redemption or other acquisition of any of its shares or any rights to acquire any such shares, or any other distribution in respect of any of its shares, (iii) of any principal, interest or other amount in respect of any Postponed Debt, or (iv) by way of gift or other gratuity or in an amount exceeding an arms-length amount to any of its shareholders or affiliates or to any director or officer thereof.

“Senior Debt” means all Debt of the Borrower and its Subsidiaries, less all Postponed Debt.

“Senior Debt to EBITDA Ratio” means the ratio of Senior Debt to EBITDA on a consolidated basis.

“Senior Debt to Effective Tangible Net Worth Ratio” means the ratio of all Senior Debt of the Borrower and its Subsidiaries on a consolidated basis, to Effective Tangible Net Worth.

“Shareholders’ Equity” means the amount which would, in accordance with GAAP, then be included as shareholders’ equity on a consolidated balance sheet of the Borrower.

“Tangible Net Worth” means Shareholders’ Equity less all amounts that would be included on a consolidated balance sheet of the Borrower as amounts owed by any Affiliate of the Borrower or as Intangibles.

“Total Liabilities to Tangible Net Worth Ratio” means the ratio of all amounts that would be included as liabilities on a consolidated balance sheet of the Borrower, to Tangible Net Worth.

“Unfunded Capital Expenditures” means capital expenditures that are not specifically financed with long term Debt.

“Working Capital” means the excess of Current Assets over Current Liabilities.

8. BANKERS’ ACCEPTANCES

8.1 Power of Attorney. To facilitate the issuance of Bankers’ Acceptances under the Credits, the Borrower appoints CIBC to execute, endorse and deliver on behalf of the Borrower drafts in the form or forms prescribed by CIBC for bankers’ acceptances denominated in Canadian dollars (each such executed draft which has not yet been accepted by CIBC is referred to herein as a “Draft”). Each Bankers’ Acceptance executed and delivered by CIBC on behalf of the Borrower as provided herein shall be binding upon the Borrower as if it had been executed and delivered by a duly authorized officer or officers of the Borrower.

8.2 Drafts. Notwithstanding the above section, the Borrower will from time to time provide to CIBC if so required by CIBC an appropriate number of Drafts drawn by the Borrower upon CIBC and payable and endorsed as specified by CIBC. The dates, maturity dates and face amounts of all Drafts delivered by the Borrower shall be left blank, to be completed by CIBC as required. All such Drafts shall be held by CIBC subject to the same degree of care as if they were such Lender’s own property. CIBC will, upon written request by the Borrower, advise the Borrower of the number and designations, if any, of the Drafts of the Borrower then held by it. CIBC shall not be liable for its failure to accept a Draft as required hereby if the cause of such failure is, in whole or in part, due to the failure of the Borrower to provide appropriate Drafts to CIBC on a timely basis.

8.3 Term and Amount. The term of all Bankers’ Acceptances issued pursuant to any Notice of Borrowing must be identical. Each Bankers’ Acceptance shall be in a face amount of \$100,000 or any whole multiple thereof, and the aggregate face amount of Bankers’ Acceptances issued pursuant to any Notice of Borrowing must not be less than \$50,000. Each Bankers’ Acceptance will be dated the date on which it is issued, and will be for a term of one, two, or three months or such other period as may be agreed to by CIBC.

8.4 Calculation of Fee. The fee for any Bankers’ Acceptance will be calculated, at the rate specified, on the basis of the face amount and term of such Bankers’ Acceptance.

8.5 Payment of Fee. Upon acceptance of a Draft the Borrower will pay to CIBC the related fee specified in this Agreement, and to facilitate payment CIBC will be entitled to deduct and retain for its own account the amount of such fee from the amount to be paid by CIBC to the Borrower as the purchase price for the resulting Bankers’ Acceptance.

8.6 Purchase by CIBC. Each Bankers’ Acceptance will be purchased by CIBC for a price which produces a yield thereon equal to the Bankers’ Acceptance Yield then in effect. Such price will be credited by CIBC to the applicable Operating Account.

8.7 No Market. If CIBC determines in good faith, which determination will be conclusive and binding on the Borrower, and so notifies the Borrower, that there does not exist at the applicable time a normal market in Canada for the purchase and sale of bankers’ acceptances, then notwithstanding any other provision hereof any obligation of CIBC to purchase Bankers’ Acceptances will be suspended until CIBC determines that such market does exist and gives notice thereof to the Borrower, and any Notice of Borrowing requesting Bankers’ Acceptances will be deemed to be a Notice of Borrowing requesting Loans in Canadian dollars in a similar aggregate principal amount.

8.8 Payment on Maturity. On the maturity of each Bankers' Acceptance the Borrower will pay to CIBC, for the account of the holder of such Bankers' Acceptance, Canadian dollars in an amount equal to the face amount of such Bankers' Acceptance. The obligation of the Borrower to make such payment is absolute and unconditional, and will not be prejudiced by the fact that the holder of any such Bankers' Acceptance is CIBC. No days of grace may be claimed by the Borrower for the payment at maturity of any Bankers' Acceptance. If the Borrower does not make such payment, the amount of such payment shall be deemed to be a loan in Canadian dollars made to the Borrower by CIBC and payable on demand. The Borrower hereby confirms the application of the proceeds of such loan in payment of the liability of the Borrower with respect to the related Bankers' Acceptance.

8.9 Cash Collateralization. If any Bankers' Acceptance is outstanding at any time that an Event of Default occurs, the Borrower will forthwith upon demand by CIBC pay to CIBC, for the account of the holder of such Bankers' Acceptance, Canadian dollars in an amount equal to the face amount thereof. Such funds shall be held by CIBC for payment of the liability of the Borrower in respect of such Bankers' Acceptance on the maturity thereof.

8.10 Signatures on Drafts. The signature of any duly authorized officer of the Borrower on a Draft may be mechanically reproduced in facsimile or other electronic form acceptable to CIBC, and all Drafts bearing such facsimile or electronic signature shall be binding upon the Borrower as if they had been manually signed by such officer, notwithstanding that such person whose manual, facsimile or electronic signature appears on such Draft may no longer hold office at the date thereof or at the date of acceptance of such Draft by CIBC or at any time thereafter.

8.11 Undisbursed Credit. For the purpose of calculating the undisbursed amount of any Credit and for any other relevant provision of this Agreement, the amount constituted by any Bankers' Acceptance shall be the face amount thereof.

8.12 Certain Definitions. In this Agreement the following terms shall have the following meanings:

"Bankers' Acceptance" or "B/A" means a Draft which has been accepted by CIBC pursuant to a Credit.

"Bankers Acceptance Yield" means, with respect to any Bankers' Acceptance to be purchased by CIBC at any time, the annual yield resulting from the price at which CIBC is offering to purchase at such time bankers' acceptances accepted by it having a term identical to such Bankers' Acceptance and in a comparable face amount to the Bankers' Acceptances to be purchased by CIBC from the Borrower at such time.

"face amount" means, with respect to any Bankers' Acceptance, the principal amount thereof payable on the maturity thereof.

9. LETTERS OF CREDIT

The following terms apply to each Letter of Credit issued by CIBC for the Borrower whether issued under any Credit or otherwise.

9.1 Reimbursement, Payment or Prepayment. The Borrower agrees, forthwith upon demand by CIBC, to provide CIBC with cash in the proper currency to meet each drawing that CIBC is required to pay under an L/C or to reimburse CIBC for each drawing that CIBC has paid under an L/C. If we demand payment of any Credit under which a Letter of Credit is outstanding, or if the Borrower elects to permanently repay or terminate any Credit under which a Letter of Credit is outstanding, the Borrower must provide CIBC with cash, in the same currency as the L/C, or marketable securities satisfactory to us (collectively the "Cash Collateral") in an amount equal to CIBC's maximum potential liability under the L/C. The Cash Collateral will be held by us as security for, and may be applied to satisfy obligations under the L/C or otherwise under any Credit. We shall release any Cash Collateral that is no longer required for such purposes.

9.2 Neither CIBC nor any of its correspondents shall be liable for the use which may be made with respect to any L/C; any acts or omissions of the beneficiary of any L/C including the application of any payment made to such beneficiary; the form, validity, sufficiency, correctness, genuineness or legal effect of any document relating to any L/C, even if such document should prove to be in any respect invalid, insufficient, inaccurate, fraudulent or forged; any failure of the beneficiary of any L/C to meet the obligations of such beneficiary to the Borrower or to any other person; or any failure by CIBC to make payment under any L/C as a result of any law, control or restriction rightfully or wrongfully exercised or imposed by any domestic or foreign court or government or governmental authority or as a result of any other cause beyond the control of CIBC. The obligations of the Borrower under this Clause 9 are absolute and unconditional under all circumstances including without limitation any matter referred to above.

9.3 Indemnity. The Borrower hereby indemnifies and agrees to hold CIBC harmless from all losses, damages, costs, demands, claims, expenses (including out-of-pocket expenses) and other consequences which CIBC may incur, sustain or suffer, other than as a result of its own negligence or wilful misconduct, as a result of issuing or amending an L/C, including legal and other expenses incurred by CIBC in any action to compel payment by CIBC under an L/C or to restrain CIBC from making payment under an L/C. Any amounts due under this indemnity shall form part of the Debt.

9.4 L/C Fees. Unless the Borrower has made other arrangements with us, we will automatically debit the operating account of the Borrower for all fees payable with respect to L/Cs. Any Overdraft in the operating account in excess of any Credit Limit attached to the operating account will bear interest at the Excess Interest Rate.

9.5 Standard Agreements. The terms and conditions of our standard Application for Irrevocable Documentary Credit or Application for Standby Letter of Credit, as applicable, and any of our other standard documentation relating to L/C's, in effect from time to time will be applicable to each L/C whether or not any such Application or other documentation has been executed by or on behalf of the Business. A copy of any such Application or other documentation is available from CIBC.

9.6 Unless otherwise specified in the applicable Application or other documentation referred to above, and subject to any provision herein to the contrary, each L/C shall be subject to the Uniform Customs and Practice for Documentary Credits or the International Standby Practices, as applicable, of the International Chamber of Commerce current at the time of issuance of such L/C.

9.7 Cash Collateralization. If any Letter of Credit is outstanding at any time that the Borrower has failed to perform or observe (beyond any period of grace permitted by CIBC) any of its covenants in this Agreement, the Borrower will forthwith pay to CIBC, in the currency of such Letter of Credit, funds in an amount equal to the total maximum actual and contingent liability of CIBC pursuant thereto. Such funds will be held by CIBC for payment of the liability of the Borrower in respect of such Letter of Credit, and any excess thereof will be applied to any other liabilities of the Borrower pursuant to the Credits or will be returned to the Borrower at such time as no such liabilities exist or may arise.

9.8 Undisbursed Credit. For the purpose of calculating the undisbursed amount of any Credit and for any other relevant provision of this Agreement, the amount constituted by any Letter of Credit shall be the total maximum actual and contingent liability of CIBC pursuant thereto.

9.9 Definitions. In this Agreement, the following terms shall have the following meanings:

"Documentary L/C Sublimit" has the meaning specified under "Description and Rate" in the description of the Demand Operating Credit herein.

"Letter of Credit" or "L/C" means a documentary or standby letter of credit, a letter of guarantee or a similar instrument, in form and substance satisfactory to CIBC.

"L/C Acceptance" means an outstanding bill of exchange drawn by the beneficiary of a documentary L/C and which CIBC has accepted and is therefore obligated to pay at maturity.

"Undrawn Documentary L/C Sublimit" means the Documentary L/C Sublimit then in effect less the undrawn amount of all documentary L/Cs then outstanding under the Demand Operating Credit herein.