

This is the 1<sup>st</sup> Affidavit  
of William Tucker in this case  
and was made on January 10, 2024

No. \_\_\_\_\_  
Vancouver Registry

**IN THE SUPREME COURT OF BRITISH COLUMBIA**

**IN THE MATTER OF THE *COMPANIES' CREDITORS*  
*ARRANGEMENT ACT*, RSC 1985, c. C-36, as amended**

**and**

**IN THE MATTER OF NEXII BUILDING SOLUTIONS INC.,  
NEXII CONSTRUCTION INC, NBS IP INC. and NEXII HOLDINGS INC.**

**PETITIONERS**

**AFFIDAVIT**

I, William Tucker, of Suite 500 – 595 Burrard Street, Vancouver, BC, businessperson  
SWEAR/AFFIRM THAT:

1. I am the Acting Chief Executive Officer of the Petitioner Nexii Building Solutions Inc. (“**NBSI**”) and as such I have personal knowledge of the facts deposed to in this affidavit except where stated to be on information and belief, in which case I verily believe the information and the resulting statements to be true. In preparing this Affidavit, I have also consulted with the other members of the Petitioners’ senior management.
2. This Affidavit is sworn in support of the Petitioners’ application for an order (the “**Initial Order**”) and related relief under the *Companies’ Creditors Arrangement Act*, R.S.C. 1985, c. C-36 (the “**CCAA**”). I am authorized to swear this Affidavit on behalf of all the Petitioners.

**I. OVERVIEW**

3. The Petitioners (or, collectively, “**Nexii**”) face significant liquidity constraints and are in default to their creditors, including suppliers and their primary secured creditors (the Senior Secured Lenders, defined below), all of whom are collectively owed more than US\$80

million. Nexii intends to undertake a restructuring transaction in the context of these CCAA proceedings, but, more importantly, Nexii requires immediate additional funding to meet operating expenses, including its next payroll, which is paid in arrears and scheduled to be paid on January 12, 2024.

4. Nexii's only available source of funding is the Senior Secured Lenders, who have advised that they are unwilling to advance further funds without a clear path to a sale of Nexii's business. Accordingly, with the support of the Senior Secured Lenders, Nexii seeks to commence these proceedings (the "**CCAA Proceedings**") to obtain financing to meet critical expenses and to conduct a process for the sale of the Group's business as a going concern (the "**Sale Process**").
5. Senior Management (as defined below) and I believe that the CCAA Proceedings and the proposed Sale Process will preserve value and, to the extent possible, ensure Nexii's business operates as a going concern, to the benefit of stakeholders in Canada and the US, including employees, customers, suppliers and contracting parties.
6. Nexii uses its proprietary material, Nexiite, to manufacture high performance cladding and structural wall panels which are used in the construction of high-performance buildings. The Nexii panels and construction configurations are desirable because they are lightweight, more sustainable than concrete (lower embodied carbon) and result in buildings that are recyclable, energy efficient and resistant to fire, water and mold. The entire wall and cladding system is premanufactured, which allows for very quick and efficient assembly of buildings on construction sites. The system is also manufactured in a zero-waste certified manufacturing environment (the first of its kind in North America).
7. Since 2010, Nexiite has been installed in numerous buildings, including new-builds and retrofits in both commercial and industrial structures. Nexii believes that its business, including Nexiite and the Nexii building system, has significant value, in addition to offering sustainable construction options.
8. Currently, Nexii Construction Inc. and NBS IP Inc. have no assets or operations. They are, however, borrowers under various agreements with the Senior Secured Lenders.



9. NBSI is also the ultimate parent company of Omicron Canada Inc. (“**OCI**”) and its subsidiaries, Omicron Consulting Ltd., Grant & Sinclair Architects Ltd., Omicron Interiors Ltd., Omicron Construction Ltd., as well as Omicron Construction Management Ltd. (collectively, the “**Omicron Entities**”). The Omicron Entities are in the business of design, building and construction of large commercial and residential projects in Western Canada. The Omicron Entities were founded in 1998, and NBSI acquired the Omicron Entities in 2021. I have been involved with the Omicron Entities since 2000, and I have been the chief executive officer of OCI since 2006.
10. The Omicron Entities are operated separately from Nexii, including keeping separate management (other than myself), and separate books and accounting records. The Omicron Entities have different creditors than Nexii, although they have shared debt owing to the Senior Secured Lenders and to a bonding company.
11. The Omicron Entities are self-funding and profitable. Over the past year the Omicron Entities made cash advances to assist Nexii in making payroll obligations and covered costs that would otherwise be the responsibility of the Nexii. Nexii owes the Omicron Entities, without security, approximately \$4 million to Nexii for these amounts.

## **II. THE PETITIONERS**

### **A. Corporate Structure**

12. NBSI, Nexii Construction Inc. and NBS IP Inc. are each incorporated in British Columbia. NBSI has a head office in Vancouver and a manufacturing facility in Squamish, BC.
13. Nexii Holdings Inc. (“**Nexii US**”) is a company incorporated pursuant to the laws of Delaware. Nexii US employs Nexii’s US-based employees, but it does not have significant assets and all US contracts are with NBSI.
14. NBSI is the ultimate parent company and direct or indirect shareholder of the other Petitioners and the Omicron Entities (collectively, the “**Group**”). Attached and marked as **Exhibit “A”** is a true copy of the Group’s organization chart.

15. Historically, NBSI's board of directors was composed of individuals with extensive practical knowledge and skills in the building and technology industries. As NBSI's business grew, so did its board of directors, which currently includes several individuals with experience at multi-billion dollar companies having diverse expertise across a wide array of industries.
16. Given the anticipated reduction in operations in connection with the proposed restructuring proceedings, NBSI's board has determined that a smaller and more streamlined board of directors, consisting primarily of members having expertise in the building and technology industries, should remain in place to efficiently assist the company during its restructuring and the Sale Process. Accordingly, it is expected that several members of NBSI's board will resign their positions in the coming days.

***B. Operational Overview***

17. Nexii is a green construction company. Its distinguishing features and assets are the Nexii building system and associated intellectual property.
18. Although NBSI is not publicly traded, its shares are widely held. Since 2019, it has raised over \$125 million from shareholders. These funds were used to pursue growth, including investments in its technology.
19. Nexii's costs have been high relative to revenue, resulting in negative gross margins, including, for 2022, \$23 million (-335%). Over the past year, Nexii has taken steps to significantly reduce expenses.
20. For 2023, Nexii anticipates revenue of approximately \$14 million (an increase of \$7.1 million from 2022). As of September 30, 2023, Nexii achieved its first positive gross margin (approximately 5%).
21. Nexii has four (4) ongoing construction projects that are nearing completion, and six (6) projects under contract where work has not yet begun.
22. For the ongoing projects, Nexii expects to receive additional revenue of approximately \$8.3 million.

23. For the six projects where work has not yet begun, Nexii would require labour and material bonds. Nexii is not able to obtain bonding without cash collateral. Nexii is exploring alternatives and options, but if it is unable to secure bonding, these projects will be cancelled, which would significantly reduce Nexii's operating expenses and overhead. To minimize funding requirements in these proceedings, Nexii, with the assistance of KSV, has estimated funding requirements on the assumption that only the four ongoing projects will continue if NBSI is able to reach agreements with the project owners to fund operating costs.
24. Nexii requires additional funding to pursue its growth and business strategy. Historically, Nexii had funded growth through equity, and some debt financing (described further below). Currently, Nexii is not able to raise additional capital through equity and the Senior Secured Lenders are not prepared to advance additional funds without a clear path to the sale of Nexii's business.

*The Omicron Entities*

25. The Omicron Entities' business has two components: designing buildings and managing construction. The Omicron Entities are currently overseeing the construction of several large projects in BC. In connection with ongoing and upcoming projects, the Omicron Entities contract with various vendors and subtrades.
26. The Omicron Entities' primary assets are their contracts for building design and construction. OCI currently has 67 contracts that are in-progress (with total value of approximately CA\$150 million, before costs) and numerous other contracts for which construction has not yet begun (total value of approximately CA\$110 million before costs).
27. As noted above, the Omicron Entities share some debt with Nexii, but are otherwise independent and the Omicron Entities are able to meet their expenses as they come due. I believe that the Omicron Entities have significant potential value, including to NBSI as their ultimate parent company.

*Value and potential of the Nexii business*

28. Despite its liquidity challenges and operating losses, I believe that Nexii has significant potential value. Its technology and Nexiite are proprietary, and Nexii customers include established companies: the State of New York, WalMart, Chase Bank and Prologis, among others. The underlying business opportunity is strong, and is particularly desirable in the current market since there is a premium placed on sustainable and environmentally conscious building practices.
29. To respond to its challenges and financial difficulty, Nexii has been working to reduce its costs and pursue other strategic alternatives. To assist with those efforts, Nexii engaged a financial advisor in or about July 2023.
30. In August 2023, NBSI obtained a \$5 million investment from Investcorp Green Limited (“**Investcorp**”). Nexii has also explored other options, including raising funds from strategic investors in the Middle East. In that regard, in November 2023, NBSI entered into a term sheet for a substantial investment (approximately \$18 million). Unfortunately, shortly before closing, one of the investors terminated its involvement and the investment did not proceed. Losing access to these funds significantly limited the Petitioners’ options.

**C. Current Management**

31. The current members of senior management are:

Name	Office/Title	Entity	Location
William (Bill) Tucker	Acting Chief Executive Officer	NBSI (officer role only)	Vancouver, BC
David Bryant	Senior Executive Advisor	NBSI	Chicago, Illinois

(collectively “**Senior Management**”).

32. Since November 2023, I have had primary responsibility for the direction of Nexii’s corporate, management and strategic functions, including overseeing the team that manages Nexii’s bank accounts and accounting functions (which are managed from the Vancouver head office). Nexii’s only finance personnel are based in Vancouver.

33. In the months leading up to these proceedings, Nexii has had a number of senior management changes, including the departures of Brian Carter (former executive VP manufacturing) in August 2023, Stephen Sidwell (former chief executive officer) in October 2023, Todd Buchanan (former VP investor relations) in December 2023 and Bonnie Dawe (former VP finance) at the end of December 2023.
34. Since Mr. Sidwell's departure, in addition to my role with OCI, and although I am not an employee of any Nexii entity, I have been acting CEO of NBSI in order to support the restructuring and ongoing operation of the business.

***D. Employees***

35. As of December 20, 2023, NBSI has 137 employees, of which, 75 work in the Squamish facilities and 62 work at the Vancouver head office. Nexii US has five employees in the United States, all working remotely.
36. Nexii Construction Inc. and NBS IP Inc. have no employees or contractors.
37. A third party payroll processing company administers payroll for NBSI and Nexii US.
38. NBSI sponsors certain employee benefit plans, including, among other things, health care, dental and life and disability benefits for each employee.
39. Nexii does not sponsor a pension plan.
40. NBSI and Nexii US are each current on their respective employee payroll and remittance obligations.

***E. Owned and Leased Real Property***

41. Nexii does not own any real property.
42. NBSI has leases for a manufacturing facility in Squamish, head office space in Vancouver, a research and development facility in Squamish and a manufacturing facility in Moose Jaw, Saskatchewan. Other than the manufacturing premises in Squamish, Nexii no longer requires these premises as Nexii no longer performs active operations there.

43. NBSI obtained the manufacturing facility lease pursuant to an assignment in 2019. The lease term ends in November 2027. The monthly rent is approximately CA\$39,000 plus taxes, utilities and other fees associated with the facility. NBSI has rent arrears owing under manufacturing facility lease. In May of 2023, the landlord for the manufacturing facility agreed to defer all payments owing under the lease until the end of December 2023. The deferral period has now lapsed. NBSI was unable to make its rent payment for January, and will be unable to pay its rent owing under this lease without funds from the Interim Loan (defined below).
44. The head office lease is for a 5-year term, ending August 2027. The monthly base rent is approximately CA\$47,500, increasing to approximately CA\$52,400 by the end of the lease term. NBSI has rent arrears owing with respect to the Vancouver office lease, having not paid rent since October, 2023.
45. NBSI leases a research and development facility in Squamish. The lease term ends November 30, 2027. The monthly rent is approximately CA\$41,000, plus taxes. NBSI has rent arrears owing with respect to the Squamish research and development facility, having not paid rent since December, 2023.
46. NBSI also has a lease for a manufacturing facility in Moose Jaw, Saskatchewan, which was closed to reduce operating costs in May 2023. The lease term ends May 2029. The monthly rent is CA\$19,205, plus taxes. NBSI stopped making rent payments for this facility in October, 2023.
47. NBSI has been unable to pay rent for several months, and currently owes approximately CA\$950,000 for unpaid rent.

### **III. THE SENIOR SECURED LENDERS**

#### ***A. Loans and Security***

48. The Group's primary secured creditors are Powerscourt Investments XXV, LP ("PC LP") as lender, Powerscourt Investments XXV Trust as assignee of PC LP as lender, Trinity Capital Inc. as lender, Horizon Technology Finance Corporation ("Horizon") as lender, Horizon Credit II LLC as assignee of Horizon as lender, Horizon Funding I LLC as

assignee of Horizon as lender and Horizon Funding Trust 2022-1 as assignee of Horizon as lender (collectively, the “**Senior Secured Lenders**”).

49. The Group debt to the Senior Secured Lenders is for loans and credit facilities (collectively, the “**Loans**”) made available pursuant to, among other things, an Amended and Restated Venture Loan and Security Agreement dated as of June 8, 2022 (as amended from time to time, the “**Loan Agreement**”) entered into between Horizon, as collateral agent for and on behalf of the Senior Secured Lenders, and each of the Senior Secured Lenders and the Group entities.
50. The Group is also indebted to the Senior Secured Lenders pursuant to an Accommodation Agreement dated June 21, 2023 (the “**Accommodation Agreement**”) and an Amended and Restated Accommodation Agreement dated December 15, 2023 (the “**A&R Accommodation Agreement**”). A copy of the Accommodation Agreement is attached and marked as **Exhibit “B”**. A copy of the A&R Accommodation Agreement is attached and marked as **Exhibit “C”**.
51. The Senior Secured Lenders advanced nine loans (collectively, the “**Loans**”) to the Group under the Loan Agreement in the combined principal amount of US\$60 million. Each of the Senior Secured Lenders have advanced Loans, documented in promissory notes. As among the Senior Secured Lenders, there have been various assignments of the right, title and interest in and to the Loans.
52. Under the Accommodation Agreement, the Senior Secured Lenders agreed to make funds available in tranches, up to US\$5 million, but ultimately advanced US\$7 million pursuant to promissory notes (the “**Accommodation Notes**”) drawn between June 21, 2023 and December 15, 2023.
53. The key terms of the Loan Agreement and the Accommodation Agreement include:
  - (a) interest accrues at a rate of the prime rate published in the Wall Street Journal, plus 7.00% per annum (with a minimum rate of 10.25% per annum);
  - (b) upon an event of default, the interest rate increases by 5.00% per annum;

- (c) upon an event of default under the Loan Agreement or the Accommodation Agreement, all amounts owing become immediately due and payable; and
  - (d) each entity of the Group is joint and severally liable for all obligations owing under the Loan Agreement.
54. The Group's obligations to the Senior Secured Lenders are secured by:
- (a) a general security agreement dated August 27, 2021, which is attached and marked as **Exhibit "D"**;
  - (b) a Grant of Security Interest – Patents dated August 27, 2021, executed by each of NBSI, which is attached and marked as **Exhibit "E"**
  - (c) a Grant of Security Interest – Patents dated August 27, 2021 executed by Nexii Holdings Inc. which is attached and marked as **Exhibit "F"**; and
  - (d) a Grant of Security Interest – Trademarks dated August 27, 2021, executed by NBSI, which is attached and marked as **Exhibit "G"**
- (collectively, the "**Security**").

***B. Defaults and Demands for Payment***

55. Beginning in April, 2023, the Group began to fail to pay the amounts owing to the Senior Secured Lenders.
56. The Senior Secured Lenders made formal demand for payment in a letter dated June 21, 2023 (the "**Demand**") and delivered notice of intention to enforce security. Copies of the Demand and enclosures are attached as **Exhibit "H"**.
57. As of January 2, 2024, the Group owes the Senior Secured Lenders approximately US\$79 million and is in default under agreements with the Senior Secured Lenders, including:
- (a) since April 2023, failing to pay amounts owing under the Loan Agreement; and
  - (b) granting unpermitted liens on the Group's property.



**C. ASSETS AND OTHER LIABILITIES**

**A. Financial Statements**

Attached and marked as **Exhibit “I”** is a true copy of Nexii’s consolidated, unaudited financial statements dated as of December 31, 2022 and November 30, 2023. The Nexii entities do not prepare individual financial statements, and these are the most recent financial statements available.

**B. Assets**

58. Nexii’s assets through operations are described above. Nexii’s other assets include intellectual property and various contracts for projects, including use of Nexiite. As of November 30, 2023, Nexii’s assets had a total estimated book value of approximately \$69 million. Below is the summary from Nexii’s November 30, 2023 (being its most recent balance sheet):

Description	Book Value (CAD, \$000s)
Cash	3,163
Accounts receivable	4,579
Inventory	2,595
Prepaid expenses and deposits	2,405
Property, plant and equipment	25,373
Intangible assets	895
Investment	30,662
Other assets	320
<b>Total Assets</b>	<b>69,992</b>
Accounts payable and accrued liabilities	15,416
Contract liabilities, refundable deposits and provisions	4,031
Lease obligations	13,297
Long-term debt	96,173
Net Due to Intercompany	1,462
Preferred shares and subscription deposits	12,930
Derivative liabilities	4,921
Due to related parties	4,408
<b>Total Liabilities</b>	<b>152,638</b>
<b>Equity</b>	<b>(82,646)</b>
<b>Total Liabilities &amp; Equity</b>	<b>69,992</b>

59. As of November 30, 2023, Nexii's accounts receivable were valued at approximately \$2.6 million.

60. Nexii also owns various equipment, with book value of approximately \$25 million.

**B. Other Secured Liabilities**

61. In addition to the indebtedness owing to the Senior Secured Lenders, Nexii also has various leased equipment, including vehicles, office equipment, software licencing and industrial machinery. Approximately CA\$625,000 remains owing to those creditors.

62. For certain projects, Nexii is required to obtain project bonding. Accordingly, in March 2023, the Group entered into an indemnity agreement in favour of Tokio Marine Canada ("TMC") in connection with bonds issued by TMC. The indemnity agreement included a security interest in favour of TMC.

63. NBSI has also executed an indemnity agreement in favour of Trisura Guarantee Insurance Company (“**Trisura**”) for bonds issued by Trisura.
64. If Nexii is unable to continue its operations, I expect that the bonds would be drawn, triggering corresponding liability under the bonding and indemnity agreements. I estimate that the potential current exposure regarding bonds to be approximately \$2 million.

**C. Unsecured Creditors**

65. Nexii is behind on amounts (collectively, approximately \$5.6 million) owing to various trade creditors and service providers.
66. NBSI is in default of amounts owing to its landlords, with approximately CA\$950,000 owing, collectively, for base rent in arrears.
67. As noted above, NBSI is not occupying most of its leased space, and it has been unable to pay rent for several months.
68. NBSI is a defendant in some ongoing litigation. As of January 2, 2024, these include claims in British Columbia to collect unpaid amounts:
  - (a) Verigo Logistics Ltd., commenced in the BC Supreme Court in December 2023;
  - (b) Goldbeck Recruiting Inc., commenced in the BC Provincial Court in December 2023; and
  - (c) McKercher LLP, commenced in the BC Provincial Court in December 2023, to enforce a Saskatchewan Provincial Court judgment.
69. As of January, 2024, NBSI is a party to litigation in Ontario, including:
  - (a) an action commenced in Ontario by Symphony Advanced Building Technologies asserting breach of contract in respect of a manufacturing license agreement; and
  - (b) an action commenced in Ontario by Advance Building Systems Ltd. (in January 2024) to collect unpaid amounts.

70. NBSI is also a party to litigation in the United States, including as the plaintiff in an action in Delaware against NexUS1 LLC, and as the defendant in an action in Pennsylvania by NexUS1 LLC, both in respect to the licencing agreement described below.

#### **IV. FINANCIAL DIFFICULTY AND RESTRUCTURING**

71. Beginning in 2021, Nexii pursued aggressive growth, including expansion of its facilities and operations. The financing from investors and the Senior Secured Lenders funded this expansion.
72. Nexii's expansion included a Nexii Certified Manufacturing Agreement (licencing) for a manufacturing facility in Pennsylvania. The counterparty under this agreement did not pay their initial licencing fee (\$5 million) and was unable to perform due to lack of working capital. The agreement ultimately came at significant cost to Nexii. Nexii worked, with no compensation, for over a year, to assist in delivering the contracted business under the Certified Manufacturing Agreement in order to protect the Nexii brand from potential project defaults.
73. Following this expansion effort, Nexii's business grew, but not to the extent anticipated, and the costs were high relative to revenue. The Group was also unable to service its obligations under the Loan Agreement.
74. In 2021, Nexii realized that the product cost structure required significant rework to achieve a competitive price position in the marketplace. Over the past two years, Nexii has preformed extensive redesign and testing necessary to reengineer the product so that it was competitive and profitable in the marketplace. Although the company was successful in the reengineering, and the product demonstrated strong profitability in late in 2023, Nexii had consumed significant capital over the prior 24 months.
75. Despite these challenges, Senior Management and I believe that Nexii has significant value, and the underlying business has strong potential now that the product has been successfully reengineered. In particular, Senior Management and I believe that the proprietary materials and technology has value in today's market, where a premium is being placed on sustainable and environmentally conscious building practices.

76. In response to its financial challenges, Nexii reduced its costs, and began discussions with the Senior Secured Lenders, including to develop a strategy to preserve value.
77. Cost reduction steps included:
- (a) two staff-level adjustments (in January 2023 and fall 2023) that resulted in the termination of over 40% of NBSI's staff;
  - (b) shutting down operations at a NBSI facility in Moose Jaw, Saskatchewan; and
  - (c) significantly reducing selling, general and administrative expenses.
78. Despite these steps, in or about April 2023, and as described above, NBSI (along with the other Petitioners) failed to make the scheduled payment owing under the Loan Agreement, and these defaults have continued in the following months.
79. As mentioned above, following these missed payments, the Senior Secured Lenders issued the Demands in June 2023.
80. Nexii has been in ongoing discussions with the Senior Secured Lenders regarding the appropriate next steps and funding requirements. As detailed above, the Senior Secured Lenders have made incremental funding available and entered into the Accommodation Agreement in June 2023 and the A&R Accommodation Agreement in December 2023.
81. Nexii requires additional funding to meet critical obligations (including payroll), which, at this time, will only be available in these proceedings through an interim financing facility (the "**Interim Loan**"), secured by a charge in these CCAA Proceedings.
82. The Group and the Senior Secured Lenders entered into a restructuring support term sheet (the "**Support Term Sheet**"), pursuant to which the Senior Secured Lenders agreed to support Nexii in commencing these CCAA Proceedings. Attached and marked as **Exhibit "J"** is a true copy of the Support Term Sheet. The Support Term Sheet contemplates, among other things, commencing the CCAA Proceedings and the Senior Secured Lenders providing the Interim Loan.

83. If the Senior Secured Lenders were to enforce their rights under the Loan Agreement, I believe that it would be destructive to the business and value of the Group. In particular, the value and continuity of the Group's contracts (which represents most of its value) would be jeopardized and at risk in enforcement proceedings.
84. If granted, the Initial Order will stabilize its business (avoiding termination of contracts that would be detrimental to operations and value) and allow Nexii to pursue a sale process to identify a buyer (or buyers) so that the value can be preserved as a going-concern. Nexii's business includes a proprietary process that requires specific engineering and manufacturing expertise but has significant value and potential.
85. Nexii will also continue to consider cost-reduction options so that it can right-size its operations and expenses. I expect that this will include, at the earliest opportunity, terminating leases for premises that are not required for Nexii's operations (and for which Nexii is not currently paying rent).
86. Nexii expects to seek recognition of these proceedings in the United States to preserve and protect the value of the assets and operations in the US. All but one of Nexii's contracts are for projects in the US, and the Canadian project is one of the forthcoming projects that cannot proceed without bonding.
87. Although Nexii's contracts are in the US, the head office and chief place of business for Nexii is British Columbia, all strategic and key operational decisions, including for Nexii US, are made by senior management located in Vancouver. The vast majority of Nexii's employees are located in British Columbia, as are the majority of Nexii's physical assets.

## **V. RELIEF SOUGHT AT INITIAL APPLICATION**

### ***A. Appointment of Monitor and Enhanced Powers***

88. KSV has, subject to court approval, consented to be appointed Monitor in these proceedings. A copy of KSV's consent to act will be attached to a report to be filed by KSV in its capacity as proposed monitor (the "**Report**").

89. At no time in the past two years has KSV or any of its partners or managers been the auditor, accountant or employee of the Group.
90. KSV was engaged by the Senior Secured Lenders in September 2023 to provide financial advisory services in respect of the Group, and has accumulated significant knowledge regarding Nexii, its background and financial difficulties.
91. Nexii seeks to enhance the Monitor's powers to include, among other things, the ability to exercise any powers of Nexii's board of directors and to cause Nexii to perform such functions as the Monitor considers necessary for the Sale Process and the restructuring and the sale of the business and assets.
92. These enhanced powers are a condition of the Senior Secured Lenders supporting these proceedings, including providing the Interim Loan, but they will also assist Nexii (and the efficient conduct of these proceedings) since, as noted above, there have been significant management changes prior to these proceedings. Senior Management support enhancing the Monitor's powers to assist with these proceedings and to ensure access to the Interim Loan.

***B. Stay of Proceedings***

93. Nexii requires a stay of proceedings in light of their financial circumstances and the defaults under the Loan Agreement. Without a stay of proceedings, Senior Management and I are concerned that there will be an immediate and significant erosion of value. In particular, Senior Management and I are mindful of the following risks: (a) suppliers ceasing to supply or tightening payment terms in a manner that further exacerbates liquidity challenges; (b) suppliers and creditors commencing legal action to recover amounts owing to them; (c) customers terminating agreements or exploring alternative suppliers; and (d) potential termination of other agreements that are critical to Nexii's operations and business. Specifically in respect of actions by creditors, I note that in December 2023, multiple creditors commenced actions to collect amounts owing.
94. Nexii seeks to extend the benefits of the stay of proceedings to the Omicron Entities, even though they are not Petitioners in these CCAA Proceedings. As noted above, the Omicron

Entities operate independently and are able to meet their obligations as they come due. However, I am concerned that Nexii commencing these proceedings may expose the Omicron Entities to risk, including potential termination of contracts or agreements that are critical to the Omicron Entities' operations and business. Extending the stay of proceedings to the Omicron Entities is intended to preserve the value of the Omicron Entities by preventing enforcement attempts and disruption of their business. Since Nexii owns the shares of OCI, I believe that preserving the Omicron Entities' value is necessary to preserve and maximize value for stakeholders, including the Senior Secured Lenders (the primary secured creditor of Nexii and the Omicron Entities).

95. I understand that KSV, as proposed monitor, supports the stay of proceedings, including its extension to the Omicron Entities.

**C. Cash management system**

96. Nexii's cash management system (the "**Cash Management System**"), including the collection, transfer and disbursements of funds, is administered from its head office in Vancouver.
97. NBSI has seven bank accounts, five with Bank of Montreal ("**BMO**"), one with Royal Bank of Canada ("**RBC**"), and one with Cannacord Genuity Corp. ("**Cannacord**"), although the account held with Cannacord currently (and typically) carries a zero-balance.
98. NBSI's accounts at BMO are two USD accounts and three CAD accounts. These accounts are primarily used for chequing/operations, and there are two savings accounts (one USD and one CAD). More specifically:
- (a) NBSI's CAD chequing account is used to receive income on Canadian-based projects and pay operating expenses, including payroll, and vendors. The account also transfers funds to, and receives funds from, NBSI's USD operating account described below on an as-needed basis;
  - (b) NBSI's USD chequing account is used to receive income in USD from US-based projects, loan draws and capital raises, and to pay vendor invoices in USD. The



account also transfers funds to, and receives funds from, NBSI's CAD operating account on an as-needed basis;

(c) NBSI's other bank accounts typically have minimal transactions.

99. NBSI's account at RBC is a CAD account used for the corporate credit cards provided by RBC and issued to NBSI's management for business expenses. The RBC account receives funds monthly from NBSI's CAD operating account described above. The amounts transferred are variable based on amounts incurred on the credit cards and liquidity.
100. Nexii US has one bank account in the United States with BMO Harris Bank N.A., which is a USD account that receives income for US projects and pay payroll for US-based employees. The account also transfers funds to, and receives funds from, NBSI's USD account described above on an as-needed basis. Nexii US is in the process of opening a bank account in Canada.
101. In connection with the CCAA Proceedings, Nexii seeks to continue to operate the Cash Management System to fund its obligations and to maintain its existing banking arrangements. Continuing the Cash Management System will minimize disruption to Nexii's operations and avoid the need to negotiate and implement alternative banking arrangements. The Cash Management System includes the necessary accounting controls to enable Nexii and the proposed Monitor to trace funds and ensure that all transactions are adequately documented and readily ascertainable.

***D. Cash Flow Forecast and the Interim Loan***

102. A cash flow forecast, which was prepared with the assistance of KSV (the "**Cash Flow Forecast**") will be attached to the Report, shows that Nexii will require access to additional funding while undertaking the Sale Process and working to implement a transaction. Nexii's principal use of cash during these CCAA Proceedings will be operating costs, including, among other things, payroll, supplier payments, lease payments and general administrative expenses. In addition to these normal course operating expenditures, Nexii will also incur professional fees and disbursements in connection with these CCAA Proceedings and the Sale Process.

103. Although Nexii has significant potential value, the entities have few tangible assets and a tenuous financial position, as a result of which there is a limited pool of potential lenders in the context of a restructuring proceeding. In discussions with the Senior Secured Lenders in connection with the preparation for the initiation of these proceedings, those entities advised that they were prepared to advance sufficient funds to Nexii in order for it to carry on business while it undertakes the Sale Process. After consultation with, among others, KSV, Nexii determined that the Senior Secured Lenders were the best (if not the only) option for interim financing. Apart from the fact that the terms of the proposed financing is, in my view, exceedingly fair, the Senior Secured Lenders are the Group's primary financial stakeholder and I understand that they would oppose a third-party obtaining priority over their position.
104. Accordingly, Nexii, as borrowers, have negotiated a term sheet with the Senior Secured Lenders (in their capacity as lenders under this term sheet, the "**Interim Lenders**") dated January 9, 2024 (the "**Interim Facility Term Sheet**"), pursuant to which the Interim Lenders will fund the Interim Loan in a maximum principal amount of US\$4,300,000. The Interim Facility Term Sheet provides for an initial authorized advance of up to the maximum amount of US\$750,000 for use during the initial stay of proceedings, with the remaining amount to be available if such borrowing is authorized by the Court at the subsequent application (the "**Comeback Hearing**"), subject to the terms of the Interim Facility Term Sheet and the Cash Flow Forecast.
105. The Interim Loan is expected to provide Nexii with sufficient liquidity to continue its business operations during these CCAA Proceedings while conducting the Sale Process for the benefit of Nexii and its stakeholders.
106. As noted above, the Omicron Entities are financially self-sufficient and the Interim Facility Term Sheet prohibits advances to the Omicron Entities from the interim financing facility.
107. The Interim Facility Term Sheet contemplates the granting of a super-priority, Court-ordered charge over Nexii's property (the "**Interim Lenders' Charge**") to secure the obligations outstanding in connection with the Interim Loan. The Interim Lenders' Charge will not secure any obligation that existed prior to the date of the Initial Order. Given

Nexii’s current financial circumstances, the Interim Lenders have indicated that they are not prepared to advance additional funds without the security of the Interim Lenders’ Charge.

108. The material terms of the Interim Facility Term Sheet are summarized in the below table. Capitalized terms used in the below table that are not otherwise defined herein have the meaning given to such terms in the Interim Facility Term Sheet, a copy of which is attached and marked as **Exhibit “K”**.

Summary of Certain Key Terms of the DIP Loan (all amounts in US\$)	
Lenders	Powerscourt Investments XXV, LP, Trinity Capital Inc. and Horizon Technology Finance Corporation
Borrowers	The Petitioners, jointly and severally.
Maximum Availability	Maximum Amount: US\$4,300,000 (non-revolving) Initial Advance: US\$750,000
Interest	15.5% per annum, compounded and calculated weekly; added to the principal amount on the first day of each month
Fees	2% of the Maximum Amount (US\$86,000) Payable: US\$15,000 from the Initial Advance, and the balance payable from the first advance after the Amended and Restated Initial Order is made authorizing the Maximum Amount
Costs and Expenses	All reasonable and documented fees, costs and expenses of the Interim Lenders, including legal fees and financial advisor, that are incurred in connection with these CCAA proceedings.
Use of Funds	In accordance with cash flow projections, and include costs of the CCAA proceedings, operating expenses and amounts payable under the Interim Facility Term Sheet.
Maturity	April 30, 2024, unless extended by the Interim Lenders (in their discretion) or terminated earlier because of, among other things, an Event of Default, closing of a transaction for all or substantially all of the assets and business of the Borrowers.
Certain Key Conditions Precedent to Initial Advance	<ul style="list-style-type: none"> <li>• Bringing the application for the Initial Order no later than January 11, 2024</li> <li>• KSV Restructuring Inc. being appointed as Monitor, with powers as are acceptable to the Interim Lenders (in their sole discretion)</li> <li>• The Borrowers engaging the IB prior to the Initial Order to assist in the Sale Process</li> <li>• The Initial Order is made and approves the Initial Advance and grants a charge for the Initial Advance</li> <li>• The Interim Lenders’ Charge has priority over all Liens, except the Charges</li> <li>• The Initial Cash Flow Projections shall be acceptable to the Interim Lenders</li> </ul>

Summary of Certain Key Terms of the DIP Loan (all amounts in US\$)	
Certain Key Conditions Precedent to Subsequent Advances	<ul style="list-style-type: none"> <li>• Bringing the application for the Amended and Restated Initial Order no later than January 22, 2024</li> <li>• The Amended and Restated Initial Order is made and approves the Maximum Advance and increased the charge to secure all amounts owing under the Interim Facility Term Sheet</li> <li>• The Interim Lenders' Charge shall have priority over all Liens, except for the Charges</li> <li>• The amounts requested are consistent with the Updated Cash Flow Projects, unless otherwise agreed by the Interim Lenders in advance</li> <li>• The Sale Process terms and conditions, including milestones, are approved by the Court in form and substance satisfactory to the Monitor and the Interim Lenders</li> <li>• All representations and warranties are true, and there are no events of default</li> <li>• The Borrowers bring a motion to obtain Chapter 15 Recognition of the CCAA proceedings no later than February 2, 2024</li> </ul>
Events of Default	<p>Events of Default include:</p> <ol style="list-style-type: none"> <li>1. Failure to pay amounts when due under the Interim Facility Term Sheet or any other breach of covenants</li> <li>2. If an order approving the Sale Process is not made by January 22, 2024</li> <li>3. If I resign as CEO of Nexii prior to the Maturity Date</li> <li>4. If the cumulative disbursements and receipts have a variance of greater than 15% of the cumulative budget, measured on a weekly basis</li> <li>5. If the Interim Facility Term Sheet or related documents cease to be effective or are contested by a Borrower</li> <li>6. The CCAA Proceedings are terminated or converted into proceedings under the BIA, or an order is made granting relief from the stay of proceedings (unless agreed by the Interim Lenders)</li> <li>7. The Borrowers make material payments that aren't permitted under the Interim Facility Term Sheet, the Cash Flow Projections or any Court order</li> <li>8. The Borrowers make any distributions or payments to the Omicron Entities</li> </ol>
Security and Interim Lenders' Charge	The Interim Lenders' Charge, covering all the Borrowers' present and future assets, property and undertaking.
Priority of the Interim Lenders' Charge	In priority to all other security interests, encumbrances and charges except for (i) the Administration Charge, (ii) the Directors' Charge, (iii) the KERP Charge, and (iv) the IB Charge.

109. Based on discussions with KSV, I believe that the economic terms of the Interim Facility Term Sheet are reasonable and that the interest rates are consistent with current market

terms, and is the same as currently provided under the existing loan facilities. The structure and terms of the Interim Facility Term Sheet otherwise provide significant flexibility to allow Nexii to continue operations and conduct the Sale Process.

***E. Administration Charge***

110. Nexii's counsel, the Monitor and the Monitor's counsel are essential to Nexii's restructuring. They have each advised that they are prepared to provide or continue professional services to Nexii only if they are protected by a charge over Nexii's assets. Accordingly, Nexii seeks a priority charge over their assets in favour of their counsel, the Monitor and the Monitor's counsel (the "**Administration Charge**") of CAD\$1,500,000 (with CAD\$500,000 being sought on the first hearing in these proceedings).
111. Nexii believes the Administration Charge is necessary in the circumstances. Specifically, Nexii requires the expertise, knowledge and continuing participation of their counsel, the Monitor and the Monitor's counsel in the CCAA Proceedings and I believe that the professionals who benefit from the Administration Charge are unlikely to continue providing essential services without the benefit of it.
112. I understand that the Senior Secured Lenders support the Administration Charge.

***F. Directors' Charge***

113. The directors and officers of Nexii (collectively the "**Directors and Officers**") have been actively involved in efforts to address Nexii's challenging circumstances, including through: (i) overseeing liquidity management, reviewing and exploring strategic options and alternatives in connection with its financial challenges; and (ii) communicating with key creditors and preparing for the CCAA Proceedings.
114. The continued participation of the Directors and Officers is essential to preserving value of Nexii. The Directors and Officers have considerable industry and operational knowledge regarding Nexii's businesses, which will assist in maximizing value in the Sale Process.
115. NBSI maintains insurance policies in respect of potential liabilities of the Directors and Officers (the "**D&O Policy**"). However, I understand that the D&O Policy contains certain

retentions, limitations and exclusions to the coverage provided, and there is the potential for there to be insufficient coverage in respect of claims against the Directors and Officers.

116. Nexii requests a Court-ordered charge in the amount of CA\$1,315,000 (CA\$1,040,000 on the first hearing) over Nexii's property (the "**Directors' Charge**") to secure Nexii's indemnity of the obligations and liabilities that the Directors and Officers may incur, during the CCAA Proceedings, in their capacities as Directors and Officers.
117. With the assistance of KSV, Nexii calculated the size of the proposed Directors' Charge based on the estimated exposure of the Directors and Officers for unremitted employee wages, source deductions, GST, and PST, which may be incurred during the CCAA Proceedings. The proposed Directors' Charge would apply only to the extent that there is insufficient coverage under the D&O Policy.

**G. *US Recognition of the CCAA Proceedings***

118. As noted above, NBSI has operations and assets in the US, including equipment (owned by NBSI) and ongoing contracts (between NBSI and third parties). If the Initial Order is granted, Nexii intends to seek recognition of these proceedings in the United States pursuant to Chapter 15 of the US Bankruptcy Code in the United States Bankruptcy Court for the District of Delaware (the "**Chapter 15 Proceedings**").

**VI. RELIEF TO BE SOUGHT AT THE COMEBACK HEARING**

**A. *Key Employee Retention Plan***

119. The retention of key employees is of vital importance to Nexii during the CCAA Proceedings, including in connection with maintaining ongoing business operations, pursuing the Sale Process and completing a transaction for Nexii. This is particularly important in these proceedings given recent senior management departures.
120. Accordingly, Nexii has developed a key employee retention plan (the "**KERP**") with the assistance of KSV and the Senior Secured Lenders. The individuals identified in the KERP (the "**Key Employees**") were identified by me, in consultation with KSV and the Senior Lenders, as individuals that are essential to the Sale Process, specifically in respect of Nexii, and to maintaining value during the CCAA Proceedings. Certain of the Key

Employees are not employed by Nexii, but rather by OCI. These employees will provide significant value to Nexii by assisting Nexii and the Omicron Entities in the Sales Process. Their continued involvement with OCI during the CCAA Proceeding will preserve the value of the Omicron Entities to Nexii's benefit.

121. The KERP is intended to incentivize the Key Employees remain in their employment and assist with Nexii's restructuring and the Sale Process during the CCAA proceeding,s and is designed to align the interests of Nexii, its stakeholders and the Key Employees, as beneficiaries of the KERP.
122. The KERP will provide a pool of funds to be distributed among the Key Employees (the "**KERP Pool**"). The KERP Pool will be a minimum of CA\$200,000 (the "**Retention Amount**"), even if no transaction is completed. In the event of a successful transaction, the KERP Pool will include, in addition to the CA\$200,000 Retention Amount, a percentage of the transaction value, which increases incrementally based on the dollar amount of a transaction (the "**Incentive Amount**" together, the "**KERP Amounts**").
123. It is contemplated that the KERP Amounts would be secured by a court-ordered charge, which will be sought on the Comeback Hearing, along with approval of the KERP.
124. The Key Employees have significant knowledge and responsibility with respect to Nexii and their operations, and their commitment is key to Nexii's restructuring efforts and to an effective Sale Process. All the Key Employees will be actively involved in the Sale Process, including gathering information to support the process and participating in management meetings.
125. The KERP is designed to encourage the Key Employees to continue their employment through to the completion of a transaction. Without the KERP, the Key Employees may seek alternative employment which would be detrimental to the business and the Sale Process, both since Nexii would lose the benefit of their experience and expertise, and because it would be difficult and disruptive to find replacement employees during this critical time.



126. The KERP is also designed to recognize the significant importance of the Key Employees to the pursuit and implementation of a transaction, and the significant amount of additional work and effort required to advance and assist with Nexii's efforts in these CCAA Proceedings.
127. I understand that further details in respect of the proposed KERP, including a confidential schedule with further details in respect of the roles of the Key Employees and the proposed KERP payments, will be provided in a report from the Monitor. Nexii intends to seek approval of the KERP and associated charge at the Comeback Hearing.

***B. Approval of Financial Advisor***

128. In considering and discussing the Sale Process, Senior Management and I, in consultation with the Senior Secured Lenders and KSV, determined that it was necessary and appropriate to engage a financial advisor to assist with the Sale Process. NBSI, KSV and the Senior Secured Lenders met with various candidates and have identified Origin Merchant Partners (the "**IB**") as the preferred advisor.
129. Origin provided NBSI with an engagement letter dated December 23, 2023 (the "**IB Engagement Letter**"). The IB Engagement Letter includes sensitive information that may impact the Sale Process and, accordingly, Nexii proposes to keep the specific terms confidential.
130. The IB Engagement Letter provides:
- (a) that Nexii will seek a court-ordered charge to secure the fees payable to the IB under the IB Engagement Letter;
  - (b) the IB is entitled to a work fee of CA\$50,000 per month beginning in January 2024; and
  - (c) in the event of a successful transaction, the IB is entitled to a transaction fee (against which the monthly work fees paid will be credited), calculated based on transaction value.



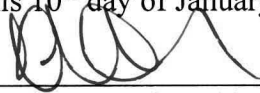
131. On the Comeback Hearing, Nexii intends to seek relief in respect of the IB Engagement Letter including:
- (a) a sealing order to ensure the specific terms of the engagement are not publicly disclosed (which I believe may be detrimental to the Sale Process);
  - (b) approval of the IB Engagement Letter; and
  - (c) charges to secure the amounts owing. The work fee described at 130(b) will be secured over all of Nexii's property and assets. The transaction fee described at paragraph 130(c) will be secured against the sale proceeds of a transaction(s). Any transaction fee payable in respect of the Omicron Entities shall only be against the sale proceeds attributed to that transaction.

**C. *Sale Process***

132. As noted above, the Sale Process is a critical component of the CCAA Proceedings and a condition to funding under the Interim Facility Term Sheet.
133. Accordingly, Nexii is drafting the proposed procedures for the Sale Process with the assistance of the IB, KSV and the Senior Secured Lenders, which includes the dates on which bids must be submitted, and the requirements for bids to be considered "Qualified Bids" and ultimately presented to the Court for approval.
134. I understand that the Sale Process terms will be attached to a report to be filed by the Monitor. Nexii proposes to seek approval of these procedures at the Comeback Hearing.

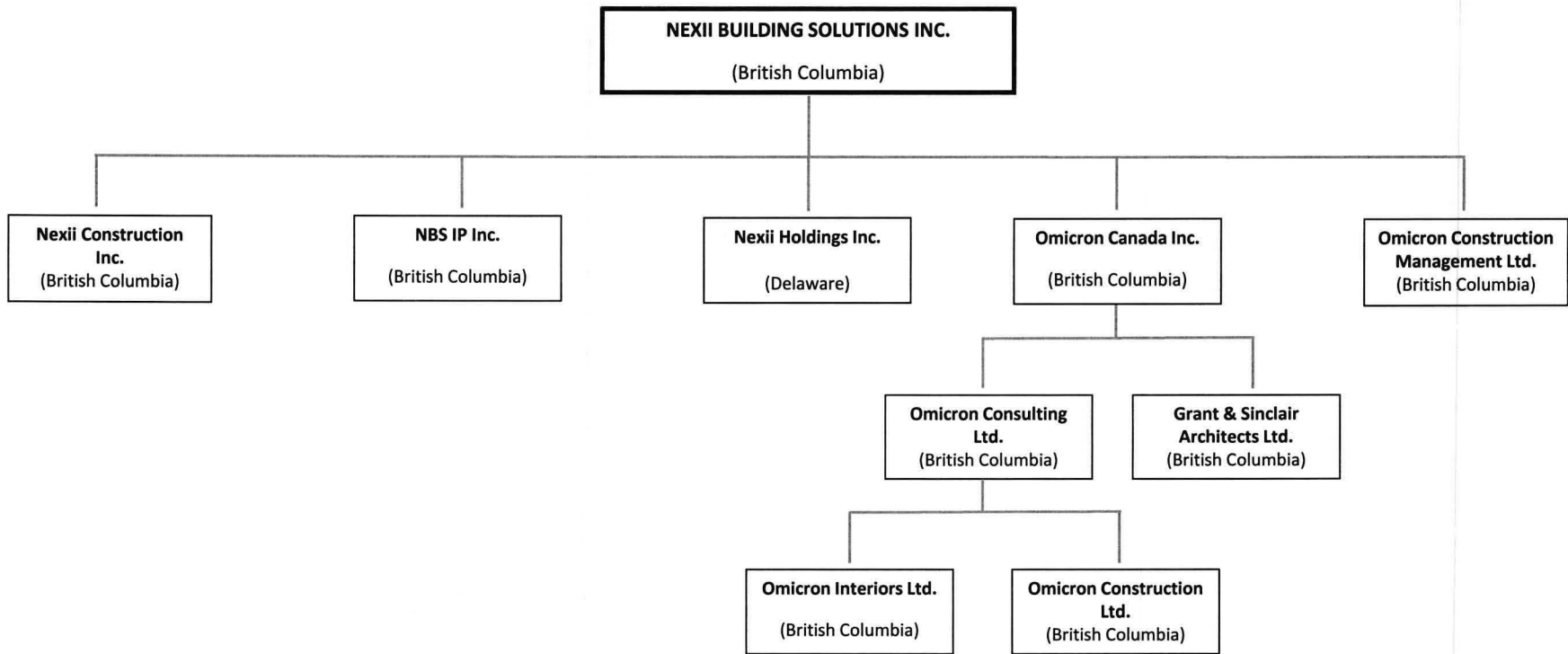


This is Exhibit " A " referred to in the  
Affidavit of William Tucker  
sworn before me at Vancouver  
this 10<sup>th</sup> day of January, 2024

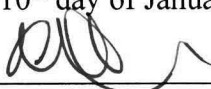


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A Commissioner for taking Affidavits  
for British Columbia



This is Exhibit “ **B** ” referred to in the  
Affidavit of William Tucker  
sworn before me at Vancouver  
this 10<sup>th</sup> day of January, 2024



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A Commissioner for taking Affidavits  
for British Columbia

## ACCOMMODATION AGREEMENT

THIS AGREEMENT is made as of this 21<sup>st</sup> day of June, 2023.

### AMONG:

**POWERSCOURT INVESTMENTS XXV, LP (“PC LP”), POWERSCOURT INVESTMENTS XXV TRUST (“Powerscourt”),** as assignee of PC LP, **TRINITY CAPITAL INC. (“Trinity”), HORIZON TECHNOLOGY FINANCE CORPORATION (“Horizon”), HORIZON CREDIT II LLC (“HCIF”),** as assignee of Horizon, **HORIZON FUNDING I, LLC (“HFI”),** as assignee of Horizon, and **HORIZON FUNDING TRUST 2022-1 (“Trust”),** as assignee of Horizon

(hereinafter referred to collectively as the “**Lenders**” and each a “**Lender**”)

- and -

**NEXII BUILDING SOLUTIONS INC. (“Borrowers Representative”),** each of the other Borrowers listed on **Schedule “A”** attached hereto

(hereinafter referred to collectively as the “**Borrowers**”, and each a “**Borrower**”)

- and -

**HORIZON TECHNOLOGY FINANCE CORPORATION,** as collateral agent  
(hereinafter referred to as the “**Collateral Agent**”)

### RECITALS:

**WHEREAS** the Borrowers, the Lenders and the Collateral Agent are parties to that certain Amended and Restated Venture Loan and Security Agreement dated as of June 8, 2022 (as amended, the “**Loan Agreement**”), a copy of which is attached hereto as **Schedule “B”**;

**AND WHEREAS** pursuant to the terms of the Loan Agreement, the Lenders extended the following loans to the Borrowers to date:

- a. PC LP provided: (a) a loan to the Borrowers as evidenced by that certain Secured Promissory Note (Loan A) executed by the Borrowers in favor of PC LP, dated as of August 27, 2021, in the original principal amount of Seven Million Five Hundred Thousand Dollars (\$7,500,000) (the “**Loan A Note**”) and (b) a loan to Borrowers as evidenced by that certain Secured Promissory Note (Loan F) executed by Borrowers in favor of PC LP, dated as of June 8, 2022, in the original principal amount of Five Million Dollars (\$5,000,000) (the “**Loan F Note**”);

- b. Horizon provided (a) a loan to Borrowers as evidenced by that certain Secured Promissory Note (Loan B) executed by Borrowers in favor of Horizon, dated as of August 27, 2021, in the original principal amount of Seven Million Five Hundred Thousand Dollars (\$7,500,000) (the “**Loan B Note**”), (b) a loan to Borrowers as evidenced by that certain Secured Promissory Note (Loan C) executed by Borrowers in favor of Horizon, dated as of August 27, 2021, in the original principal amount of Seven Million Five Hundred Thousand Dollars (\$7,500,000) (the “**Loan C Note**”), (c) a loan to Borrowers as evidenced by that certain Secured Promissory Note (Loan D) executed by Borrowers in favor of Horizon, dated as of August 27, 2021, in the original principal amount of Seven Million Five Hundred Thousand Dollars (\$7,500,000) (the “**Loan D Note**”), (d) a loan to Borrowers as evidenced by that certain Secured Promissory Note (Loan H) executed by the Borrowers in favor of Horizon, dated as of June 8, 2022, in the original principal amount of Five Million Dollars (\$5,000,000) (the “**Loan H Note**”) and (e) a loan to Borrowers as evidenced by that certain Secured Promissory Note (Loan I) executed by Borrowers in favor of Horizon, dated as of June 8, 2022, in the original principal amount of Five Million Dollars (\$5,000,000) (the “**Loan I Note**”); and
- c. Trinity provided (a) a loan to Borrowers as evidenced by that certain Secured Promissory Note (Loan E) executed by Borrowers in favor of Trinity, dated as of August 27, 2021, in the original principal amount of Ten Million Dollars (\$10,000,000) (the “**Loan E Note**”) and (b) a loan to Borrowers as evidenced by that certain Secured Promissory Note (Loan G) executed by Borrowers in favor of Trinity, dated as of June 8, 2022, in the original principal amount of Five Million Dollars (\$5,000,000) (the “**Loan G Note**” and collectively with the Loan A Note, the Loan B Note, the Loan C Note, the Loan D Note, the Loan E Note, the Loan F Note, the Loan H Note and the Loan I Note, the “**Existing Notes**”);

**AND WHEREAS** on November 30, 2021, all of PC LP’s right, title and interest in and to the Loan A Note was assigned to Powerscourt;

**AND WHEREAS** on August 27, 2021, all of Horizon’s right, title and interest in and to the Loan B Note was assigned to HCII, who, on November 9, 2022, subsequently assigned all of its right, title and interest in and to the Loan B Note to Trust;

**AND WHEREAS** on August 27, 2021, all of Horizon’s right, title and interest in and to the Loan C Note was assigned to HCII;

**AND WHEREAS** on August 27, 2021, all of Horizon’s right, title and interest in and to the Loan D Note was assigned to Horizon Secured Loan Fund I LLC (“**HSLF**”), who subsequently assigned all of its right, title and interest in and to the Loan D Note to HFI;

**AND WHEREAS** on June 15, 2022, all of PC LP’s right, title and interest in and to the Loan F Note was assigned to Powerscourt;

**AND WHEREAS** on June 8, 2022, all of Horizon’s right, title and interest in and to the Loan H Note was assigned to HSLF, who subsequently assigned all of its right, title and interest in and to the Loan H Note to HFI;

**AND WHEREAS** on June 8, 2022, all of Horizon's right, title and interest in and to the Loan I Note was assigned to HSLF, who subsequently assigned all of its right, title and interest in and to the Loan I Note to HFI;

**AND WHEREAS** to secure the obligations of the Borrowers to the Lenders, including, without limitation, those arising under the Loan Agreement, the Borrowers have provided certain security in favour of the Collateral Agent (collectively, as amended, restated, supplemented, replaced or otherwise altered from time to time being the "**Security**") including, without limitation, the security set out in **Schedule "C"** hereto;

**AND WHEREAS** certain Events of Default have occurred under the terms of the Loan Agreement including, but not limited to, (i) breaches of Section 8.1 of the Loan Agreement due to the Borrowers' failure to make the Scheduled Payments when due on each of (x) April 1, 2023, (y) May 1, 2023 and (z) June 1, 2023 as set forth in Section 2.2(a) of the Loan Agreement; (ii) a breach of Section 7.3 of the Loan Agreement due to a Borrowers granting a Lien on its property that is not a Permitted Lien and (iii) a breach of Section 7.10 of the Loan Agreement due to a Borrowers incurring Indebtedness pursuant to Simple Agreements for Future Equity without obtaining Lenders' consent and a subordination agreement, intercreditor agreement or other similar agreement as set forth in the definition of Subordinated Debt in the Loan Agreement (any and all such default as may be existing and known to the Lenders as of the date hereof being referred to as the "**Existing Defaults**"), which Events of Default entitled the Lenders to issue demand for immediate repayment of the Loans under the Loan Agreement.

**AND WHEREAS** the Collateral Agent, for and on behalf of the Lenders, has made formal demand for repayment of the Loans issued to the Borrowers by letters each dated June 21, 2023 (the "**Demand**"), and on the same date delivered a notice of intention to enforce security pursuant to section 244(1) of the *Bankruptcy and Insolvency Act* (the "**BIA**") to each of the Borrowers (collectively, the "**Notices**");

**AND WHEREAS** in consideration of the provision of the Accommodation Loan, subject to the terms of this Agreement, the Borrowers hereby waive the ten (10) day notice period required to enforce any security interest that may be required pursuant to section 244(1) of the BIA in respect of the Security and that, subject only to the terms of this Agreement, there are no further steps required by the Lenders in order to enforce the Security.

**AND WHEREAS** as of June 13, 2023, the total amount of the Obligations secured by the Security in respect of the Loan Agreement was \$66,028,810.92, in principal, interest, fees, expenses and other sums due under the Loan Agreement, plus accruing interest and other fees and expenses of the Lenders, including without limitation, the Lenders' legal fees, which amounts remain outstanding;

**AND WHEREAS** the Borrowers have requested and the Lenders have agreed (i) to forbear from taking certain actions under the Loan Agreement and the Security in connection with the Existing Defaults of the Borrowers, (ii) to provide the Accommodation Loan (as defined herein) on the terms and conditions set out herein and secured by the Security, and (iii) to continue to extend the Loans to the Borrowers, all solely on the terms and conditions and subject to the limitations as specified in this Agreement, so that the Borrowers have the opportunity to remain in



business and pursue a refinancing or sale of the business and assets with a view to repaying the Lenders in full on or before the expiry of the Accommodation Period (as defined herein);

**NOW THEREFORE**, in consideration of the respective covenants of the parties hereto as herein contained, and other good and valuable consideration (the receipt and sufficiency of which are hereby acknowledged), the parties hereby agree as follows:

## **ARTICLE 1 INTERPRETATION**

### **1.1 Definitions**

In this Agreement, unless the context otherwise requires, all terms defined in the Loan Agreement, but not otherwise defined herein, shall have the respective meanings ascribed to them in the Loan Agreement. In addition to the terms defined in the preamble and recitals to this Agreement above, the following capitalized terms used in this Agreement have the meanings set out below:

- (a) **“2023 Warrant”** means those certain warrants dated on or about the date hereof in favour of each Lender or its designee to purchase common shares in the capital of the Borrower Representative. For the avoidance of doubt, each 2023 Warrant shall be a *“Warrant”* under the Loan Agreement.
- (b) **“Accommodation Fee”** has the meaning given to such term in Section 4.4 of this Agreement.
- (c) **“Accommodation Loan”** has the meaning given to such term in Section 6.2 of this Agreement.
- (d) **“Accommodation Note”** means each promissory note executed in connection with an Accommodation Loan in substantially the form of **Schedule “E”** hereto. For the avoidance of doubt, each Accommodation Note shall be a *“Note”* under the Loan Agreement.
- (e) **“Code”** means (a) with respect to any assets located in the United States, the Uniform Commercial Code, as the same may, from time to time, be enacted and in effect in the State of Connecticut; provided, that, to the extent that the Code is used to define any term herein or in any Financing Document and such term is defined differently in different Articles or Divisions of the Code, the definition of such term contained in Article or Division 9 shall govern; provided further, that in the event that, by reason of mandatory provisions of law, any or all of the attachment, perfection, or priority of, or remedies with respect to, the Lenders’ lien any Collateral is governed by the Uniform Commercial Code in effect in a jurisdiction other than the State of Connecticut, the term **“Code”** shall mean the Uniform Commercial Code as enacted and in effect in such other jurisdiction solely for purposes of the provisions thereof relating to such attachment, perfection, priority, or remedies and for purposes of definitions relating to such provisions, and (b) with respect to any assets located in Canada, the PPSA.

- (f) “**Financing Agreements**” means, collectively, the Loan Agreement, this Agreement, the Security and the other Loan Documents (excluding the Warrant) or any other agreement, document or instrument executed by one or more of the Borrowers in connection therewith, all as amended, restated, supplemented, replaced or otherwise altered from time to time.
- (g) “**PPSA**” means the Personal Property Security Act (British Columbia) and all regulations made thereunder, as amended from time to time, and any other applicable legislation governing security interests in personal property.

## **1.2 Gender and Number**

Words importing the singular include the plural and vice versa and words importing gender include all genders.

## **1.3 Severability**

Each of the provisions contained in this Agreement is distinct and severable, and a declaration of invalidity, illegality or unenforceability of any such provision or part thereof by a court of competent jurisdiction shall not affect the validity or enforceability of any other provision of this Agreement.

## **1.4 Headings**

The division of this Agreement into articles, sections and clauses, and the insertion of headings are for convenience of reference only and shall not affect the construction or interpretation of this Agreement.

## **1.5 Entire Agreement**

Except for the other Financing Agreements (as defined herein) and the additional documents provided for herein, this Agreement constitutes the entire agreement of the parties and supersedes all prior agreements, representations, warranties, statements, promises, information, arrangements and understandings, whether oral or written, express or implied, relating to the subject matter hereof. This Agreement may not be amended or modified except by written consent executed by all the parties. No provision of this Agreement will be deemed waived by any course of conduct unless such waiver is in writing and signed by all the parties, specifically stating that it is intended to modify this Agreement.

## **1.6 Currency**

All dollars or other monetary amounts referred to in this Agreement shall refer to United States dollars.

## **1.7 Governing Law**

This Agreement, other than the provisions of Article 6 of this Agreement, shall be governed by and construed in accordance with the laws of the Province of British Columbia and the federal

laws of Canada applicable therein, without regard to any conflicts of law or principles of comity. The provisions of Article 6 of this Agreement, shall be governed by and construed and enforced in accordance with the laws of the State of Connecticut.

### **1.8 Attornment**

Each party hereto irrevocably attorns to the non-exclusive jurisdiction of the courts sitting in the City of Vancouver in the Province of British Columbia for all matters arising out of or in connection with this Agreement. Without limiting the foregoing and with respect to the provisions of Article 6 of this Agreement, each of Borrower, Collateral Agent, and Lenders hereby submit to the non-exclusive jurisdiction of the state and federal courts located in the State of Connecticut; and Borrower, Collateral Agent and Lenders hereby waive their respective rights to a jury trial of any claim or cause of action based upon or arising out of any of the Loan Documents or any of the transactions contemplated therein, including contract claims, tort claims, breach of duty claims, and all other common law or statutory claims.

### **1.9 Conflicts**

If there is any inconsistency or conflict between the terms of this Agreement and the terms of the other Financing Agreements or any other agreement executed in connection therewith, the provisions of this Agreement shall prevail to the extent of the inconsistency, but the foregoing shall not apply to limit or restrict in any way the rights and remedies of the Lenders under the other Financing Agreements or this Agreement other than as may be specifically contemplated herein.

## **ARTICLE 2 ACKNOWLEDGEMENT AND CONFIRMATION**

### **2.1 Acknowledgement of Obligations**

- (a) Each of the Borrowers hereby acknowledges, confirms and agrees that, as of June 13, 2023, the total amount of the Obligations was \$66,028,810.92 and owing to Lenders, which is exclusive of amounts accruing for subsequent interest or for subsequent fees and expenses owing to the Lenders under the Loan Agreement or due under this Agreement, including principal and interest due and payable with respect to the Accommodation Loan, and is unconditionally payable by the Borrowers to the Lenders under the Financing Agreements.
- (b) Each of the Borrowers hereby acknowledges, confirms and agrees that the Obligations set out herein and any other amounts now properly payable by the Borrowers to the Lenders under the Financing Agreements are unconditionally owing to the Lenders, without any right of set-off, defence, counterclaim or reduction of any kind, nature or description whatsoever, and the Borrowers are estopped from disputing such Obligations.
- (a) A certificate as to the amount of the Obligations delivered to the Borrowers by the Lenders shall be conclusive absent manifest error., absent manifest error.

## **2.2 Acknowledgement of Security Interests**

- (a) Each of the Borrowers hereby acknowledges, confirms and agrees that the Security has not been discharged, waived or varied, that it is binding upon the Borrowers and that the Security is enforceable in accordance with its written terms until such time as the obligations of the Borrowers to the Lenders have been indefeasibly paid and satisfied in full.

## **2.3 Acknowledgement of Certain Events of Default**

- (a) Each of the Borrowers hereby acknowledges, confirms and agrees that the Existing Defaults have occurred and are continuing pursuant to the provisions of the Financing Agreements.
- (b) Each of the Borrowers further acknowledges, confirms and agrees that, as of the date hereof, except as expressly provided for in this Agreement including, without limitation Section 4.1 hereof, the Lenders have made no promises and have not waived, and do not intend to waive such Existing Defaults herein, and nothing contained herein or the transactions contemplated hereby shall be deemed to constitute any such waiver.

## **2.4 Acknowledgement of Demands and Notice of Intention to Enforce Security**

Each of the Borrowers hereby acknowledges, confirms and agrees that each of the Borrowers has, prior to the execution and delivery of this Agreement, received from the Lenders validly issued and delivered Demand. Each of the Borrowers further acknowledges, confirms and agrees that each of them has, as of the date of this Agreement, received from the Lenders a validly issued and delivered Notice in respect of the Security and that by execution of this Agreement, each of the Borrowers has waived the ten (10) day notice period required to enforce any security interest that may be required pursuant to section 244(1) of the BIA in respect of the Security and that, subject only to the terms of this Agreement, there is no further step required by the Lenders in order to enforce the Security. Each of the Borrowers further acknowledges that nothing in this Agreement shall constitute a waiver or revocation of the Demand or the Notices.

## **2.5 Acknowledgement of Rights**

Each of the Borrowers hereby acknowledges, confirms and agrees that the Lenders are entitled to exercise their rights and remedies under the Financing Agreements, the Code, the PPSA and other applicable law.

## **2.6 Additional Acknowledgements**

Each of the Borrowers hereby acknowledges, confirms and agrees that:

- (a) the facts set out in the recitals to this Agreement are true and accurate;
- (b) except as hereby amended, the Financing Agreements will remain in full force and effect, unamended, except as provided for herein;

- (c) except as provided for in this Agreement including, without limitation in Section 4.1, the Lenders (either by themselves or through their employees or agents) have made no promises, nor have they taken any action or omitted to take any action, that would constitute a waiver of their rights to enforce the Security and pursue their remedies in respect of the obligations of the Borrowers to the Lenders, or that would stop it from doing so; and
- (d) to the date hereof, the Lenders have acted in a commercially reasonable manner and in good faith, and each of the Borrowers are estopped from disputing same.

### ARTICLE 3 CONDITIONS PRECEDENT

#### 3.1 Conditions Precedent to the Effectiveness of this Agreement

The forbearance obligations of the Lenders under this Agreement shall not be effective unless and until the Collateral Agent shall be in receipt of each of the following, all in form and substance satisfactory to the Collateral Agent:

- (a) a copy of this Agreement, fully executed by all of the Borrowers;
- (b) a copy of the fully executed engagement letter with the Advisor (or Advisors pursuant to Section 4.6 below) acknowledged by the Borrower Representative;
- (c) the Lenders shall have received an executed consent from each of the Borrowers, in the form set out in **Schedule “D”** hereto (the “**Consents**”), to the immediate private or court-appointment of an interim receiver, receiver or receiver and manager in respect of all the assets, properties and undertakings of the Borrowers, which shall be held in escrow by the Lenders’ Canadian counsel, Aird & Berlis LLP, and used in the event of the termination, expiration or non-commencement of the Accommodation Period if the Lenders are not indefeasibly repaid in full;
- (d) the Lenders shall have received an accurate and complete summary of the nature and the amounts of any outstanding and owing Priority Payables (as defined below), by any of the Borrowers, including the most recent statement of accounts issued by Canada Revenue Agency (“**CRA**”) for each of the Borrowers;
- (e) a copy of the fully executed transaction engagement agreement with Capstone Partners (“**Capstone**”) acknowledged by the Borrower Representative;
- (f) the Lenders shall have completed due diligence with each of Capstone and Canaccord, satisfactory to Lenders;
- (g) the Lenders shall have received satisfactory evidence from the Borrowers confirming a commitment from a funding source that will provide a minimum of \$5,000,000.00 to the Borrowers during the Accommodation Period;
- (h) the 2023 Warrant duly executed by the Borrower Representative;

- (i) compiled officer certificates from each of the Borrowers with copies of the following documents attached: (i) the certificate of incorporation, articles and bylaws, notice of articles or other equivalent documents certified by an officer of such Borrower as being complete and in full force and effect on the date hereof, (ii) incumbency and representative signatures and (iii) resolutions authorizing the execution and delivery of this Agreement and any other agreement, document or instrument executed in connection therewith and the Accommodation Loan being extended hereunder; and
- (j) good standing certificates from each Borrower's state or province of organization and the state or province in which such Borrower's principal place of business is located.

### **3.2 No Conditions Precedent to the Effectiveness of the Consents**

Each of the Consents shall be effective immediately upon its respective execution and delivery to the Lenders.

## **ARTICLE 4 ACCOMMODATION CONDITIONS**

### **4.1 Forbearance**

Unless an Intervening Event (as hereinafter defined and pursuant to Section 7.1 of this Agreement) occurs under this Agreement, and in reliance upon the acknowledgements, representations, warranties and covenants of the Borrowers contained in this Agreement and subject to the terms and conditions of this Agreement, and any documents executed in connection herewith, the Lenders agree to forbear from exercising their rights and remedies under the Financing Documents, the Code and other applicable law, until the earlier of:

- (a) September 30, 2023; and
- (b) the occurrence of an Intervening Event (as hereinafter defined and pursuant to Section 7.1 of this Agreement), which results in the Lenders terminating this Agreement,

(the "**Accommodation Period**").

### **4.2 Expiration or Termination of the Accommodation Period**

Upon the expiration or termination of the Accommodation Period, the agreement of the Lenders to forbear shall automatically and without further action terminate and be of no further force and effect, it being expressly agreed that the effect of such expiration or termination will be to permit the Lenders to exercise its rights and remedies under this Agreement, the other Financing Agreements, the Consents and any other agreement or documents executed in connection herewith immediately, including, without limitation: (i) the exercise of all remedies available pursuant to the Financing Agreements; (ii) the acceleration of all the obligations of the Borrowers to the Lenders without any further notice, passage of time or forbearance of any kind; (iii) the

appointment of a private or court-appointed receiver (at the Lenders' option) under the Security and the Consents; and (iv) the making of an application to a court of competent jurisdiction, in accordance with Section 1.8 of this Agreement, to enforce any private or other remedies available to the Lenders, or to seek the appointment by such court of a trustee in bankruptcy of any of the Borrowers.

#### 4.3 Tolling

- (a) As of the date hereof and continuing until the expiration or termination of the Accommodation Period, as applicable, and thereafter until the termination of the tolling arrangements in the manner provided for at Section 4.3(b) herein, the Lenders and the Borrowers hereby agree to toll and suspend the running of the applicable statutes of limitations, laches and other doctrines related to the passage of time in relation to the Obligations, the Security and any entitlements arising from the Obligations or the Security and any other related matters, and each of the parties confirms that this Agreement is intended to be an agreement to suspend or extend the basic limitation period, provided under the *Limitation Act* (British Columbia) (the "**Limitation Act**") as well as with any ultimate limitation period provided under the Limitation Act and as a security agreement in accordance with the provisions of the Limitation Act and any contractual time limitations on the commencement of proceedings, any claims or defences based upon such application statute of limitations, contractual limitations or any time related doctrine including waiver, estoppel or laches.
- (b) The tolling provisions of this Agreement will terminate upon either of its parties providing the other with 60 days' written notice of an intention to terminate the tolling provisions hereof, and upon the expiry of such 60 days' notice, any time provided for under the statute of limitations, laches or any other doctrine related to the passage of time in relation to the Obligations, the Security or any claims arising thereunder, will recommence running as of such date, and for greater certainty the time during which the parties agree to the suspension of the limitation period pursuant to the tolling provisions of this Agreement shall not be included in the computation of any limitation period.

#### 4.4 Accommodation Fee

In consideration of the Lenders entering into this Agreement, the Borrowers shall pay to the Lenders an accommodation fee in the amount of \$50,000.00 (the "**Accommodation Fee**"), which fee is fully earned upon execution of this Agreement, and payable upon the earlier of (A) expiry or termination of the Accommodation Period, and (B) repayment in full of the Accommodation Loan. The Accommodation Fee is in addition to all other fees, interest, costs and expenses payable in connection with the Financing Agreements or this Agreement. The Accommodation Fee shall be added to the Obligations and shall be secured by the Security.



#### 4.5 No Other Waivers; Reservation of Rights

Subject to Section 4.1 of this Agreement, the Collateral Agent and the Lenders reserve the right, in its sole and absolute discretion, to exercise any or all of its rights or remedies under any one or more of the Financing Agreements, the Code, the PPSA or other applicable law, and the Lenders have not waived any such rights or remedies, and nothing in this Agreement and no delay on the part of the Lenders in exercising any such rights or remedies, shall be construed as a waiver of any such rights or remedies.

#### 4.6 Engagement of Advisory

The Borrowers acknowledge that the Lenders have engaged Rock Creek Advisors, LLC, as of June 12, 2023, and shall have the right to engage KSV Restructuring Inc. at any time during the Accommodation Period, or such other advisor as the Lenders may determine in their sole discretion, as the Lenders' financial advisor (collectively, the "**Advisor**") to assist the Lenders including for the purposes of reviewing the business of the Borrowers, overseeing any investment or sale process, assisting with cost cutting initiatives to be implemented by the Borrowers, valuing the assets subject to the Security, assessing any Priority Payables (as defined below) and with respect to any other matter or thing relating to the potential repayment of the Loans. The Borrowers agree to cooperate fully with the Advisor, to provide unfettered access to the Advisor to the business premises of the Borrowers as well as to the books and records of the Borrowers as and when required by the Advisor, and acknowledge that the fees of the Advisor are for the account of the Borrowers under the Loan Agreement. The Borrowers further agree that the Advisor shall be authorized to act as agent for the Lenders in discussions with financial institutions and potential other sources of funding for repayment of the Loans.

### ARTICLE 5 REPORTING

#### 5.1 Reporting Requirements

- (a) The Borrowers hereby agree to cooperate with the Advisor and shall execute such further agreements and consents as requested by the Lenders and Advisor in order for the Advisor to fulfil its mandate to monitor the business and operations of the Borrowers, including the cash flows, through the pendency of the Accommodation Period.
- (b) During the Accommodation Period, the Borrowers agree to continue to honour the reporting requirements as previously agreed with the Lenders in the Financing Agreements, or as amended herein, and shall continue to do so until such time as the obligations of the Borrowers to the Lenders have been indefeasibly repaid in full. Without limiting the generality of the foregoing, the Borrowers, with oversight from the Advisor, shall provide the Lenders with the following additional reporting or information, independently of any other reporting obligations until the Borrowers receive written notice from the Lenders that it is no longer required:
  - (i) rolling 13 week cash flow reports ("**Cash Flow Reports**") for the Borrowers, on a consolidated basis, illustrating any variances from any



previously delivered Cash Flow Reports, which Cash Flow Reports shall be delivered no later than the close of business on the Monday of the subsequent week;

- (ii) monthly management prepared financial statements, including a balance sheet and income statements, for the Borrowers, on a consolidated basis, which financial statements shall be delivered no later than the close of business on the fourth Friday of the subsequent month;
- (iii) bi-monthly aging accounts payable and aging accounts receivable the Borrowers, which aging lists shall be delivered no later than the close of business of the second Friday and fourth Friday of each month;
- (iv) monthly written updates on the status of Priority Payables, which updates shall be delivered no later than the close of business on the third Friday of the subsequent month; and
- (v) weekly written updates or calls with respect to the Borrowers' refinancing and/or sale and investments efforts.

## ARTICLE 6

### ACCOMMODATION LOAN AND OBLIGATIONS OF THE BORROWERS DURING THE ACCOMMODATION PERIOD

#### 6.1 Financing Agreements

During the Accommodation Period, the Borrowers shall strictly adhere to all the terms, conditions and covenants of the Loan Agreement, this Agreement and the other Financing Agreements, including, without limitation, terms requiring prompt payment of principal, interest, fees and other amounts when due, except to the extent that such terms, conditions and covenants are otherwise specifically amended by this Agreement.

#### 6.2 Extension of Accommodation Loan

Horizon, PC LP and Trinity, as Lenders, have agreed to make available additional Loans to the Borrowers during the Accommodation Period, all subject to the terms and conditions outlined below:

- (a) The Facility. Lenders agree, upon the request of the Borrowers, to make one or more secured term loans ("**Accommodation Loan**" and for greater certainty a "*Loan*" under the Loan Agreement) in an aggregate principal amount not to exceed \$5,000,000 to Borrowers prior to September 30, 2023. The Accommodation Loan shall be made available to the Borrowers in one or more tranches, (i) the first tranche to be advanced on the date hereof in the aggregate principal amount of \$1,250,000 (the "**Initial Accommodation Loan**"), subject to satisfaction of the conditions set forth in Section 6.2(i), and (ii) each subsequent tranche to be advanced once per calendar week, at the Lenders' sole discretion, in the aggregate principal amount of \$500,000 or such other amount as the Lenders may agree in

their sole discretion, subject to satisfaction of the conditions set forth in Section 6.2(j). The Accommodation Loan, including without limitation, all related interest, fees and expenses shall form a part of the “**Obligations**” as such term is defined in the Loan Agreement.

- (b) Accommodation Notes. The obligation of each Borrower to repay the unpaid principal amount of and interest on each Accommodation Loan shall be evidenced by an Accommodation Note issued to the applicable Lender.
- (c) Use of Proceeds. The proceeds of each Accommodation Loan shall be used solely to provide short term interim funding to support (i) payments to critical vendors, operating expenses and working capital requirements, including payments to Borrowers’ legal counsel, as set forth in the Cash Flow Reports or as otherwise consented to Lenders, and (ii) the payment of the engagement fees for each of Canaccord and Capstone (or other investment bank satisfactory to the Lenders) to support a sale and investment process or refinancing of the Obligations (“**Permitted Purposes**”).
- (d) Procedure for Making the Accommodation Loan. Each request for an Accommodation Loan shall be made in accordance with Section 2.5 of the Loan Agreement.
- (e) Payment of Interest. The Borrowers shall pay interest on each Accommodation Loan at the Loan Rate as set forth in Section 2.2(c) of the Loan Agreement.
- (f) Payment of the Accommodation Loan. All interest payable on each Accommodation Loan shall accrue on the first day of each calendar month on the then outstanding principal amount of such Accommodation Loan and shall be capitalized and added to the outstanding principal amount of such Accommodation Loan, and shall be payable upon termination or expiration, as the case may be, of the Accommodation Period as set forth in the Accommodation Note applicable to such Accommodation Loan.
- (g) Security. The Accommodation Loan shall be secured by the Security, including over all Intellectual Property. The existing Security shall secure all Obligations under the Accommodation Loan and this Agreement.
- (h) Loan Agreement. Unless otherwise provided herein, all the terms and conditions (including all defined terms) included in the Loan Agreement will apply to the Accommodation Loan as though it were a “Loan” thereunder.
- (i) Conditions Precedent to the Making of the Initial Accommodation Loan. In addition to the conditions set out in Section 3.1 of this Agreement, the obligation of each applicable Lender to make the Initial Accommodation Loan is further subject to satisfaction of the following conditions as of the Funding Date:
  - (i) No Default, Event of Default or Intervening Event, other than the Existing Defaults, shall have occurred and be continuing.

- (ii) The Lenders shall have received, in form and substance satisfactory to the Lenders, an updated Cash Flow Report from the previous week approved by the Advisor illustrating any variances from any previously delivered cash flow reports and supporting the Permitted Purposes.
  - (iii) The Borrowers shall have executed and delivered an Accommodation Note to the applicable Lender in the amount of the Accommodation Loan being advanced by such Lender.
  - (iv) The Borrowers shall have executed and delivered to the Lenders a Funding Certificate for the Initial Accommodation Loan substantially in the form of Exhibit B to the Loan Agreement, qualified in relation to the Existing Defaults.
  - (v) The representations and warranties made by the Borrowers in Section 5 of the Loan Agreement and in any other Financing Agreement shall be true and correct (other than arising out of or in connection with the Existing Defaults) as of the Funding Date of the Initial Accommodation Loan.
- (j) Conditions Precedent to the Making of Each Subsequent Accommodation Loan. In addition to the conditions set out in this Agreement, the obligation of each applicable Lender to make each subsequent Accommodation Loan is further subject to satisfaction of the following conditions as of such Funding Date:
- (i) No Default, Event of Default or Intervening Event, other than the Existing Defaults, shall have occurred and be continuing.
  - (ii) The Lenders shall have received, in form and substance satisfactory to the Lenders, an updated Cash Flow Report from the previous week approved by the Advisor illustrating any variances from any previously delivered cash flow reports and supporting the Permitted Purposes.
  - (iii) The Lenders shall have received, in form and substance satisfactory to the Lenders, confirmation or evidence that all applicable “milestones” set out in Section 6.3 of this Agreement have been satisfied at the time of the request for such Accommodation Loan.
  - (iv) The Borrowers shall have executed and delivered an Accommodation Note to the applicable Lender in the amount of the Accommodation Loan being advanced by such Lender.
  - (v) The Borrowers shall have executed and delivered to the Lenders a Funding Certificate for the Initial Accommodation Loan substantially in the form of Exhibit B to the Loan Agreement, qualified in relation to the Existing Defaults.
  - (vi) The representations and warranties made by the Borrowers in Section 5 of the Loan Agreement and in any other Financing Agreement shall be true

and correct (other than arising out of or in connection with the Existing Defaults) as of such Funding Date.

### 6.3 Sale and Investment or Refinancing Covenants

In connection with the Accommodation Loan and during the pending of the Accommodation Period, each of the Borrowers hereby covenants and agrees with the Collateral Agent and the Lenders as follows:

- (a) On or before June 26, 2023, the Borrowers shall deliver to the Lenders a copy of the fully executed term sheet with Canaccord Genuity (Dubai) Ltd. (“**Canaccord**”) acknowledged by the Borrower Representative.
- (b) On or before June 26, 2023, the Borrowers, with assistance of Canaccord and Capstone, shall have commenced a sale and investment solicitation process, or refinancing efforts of the Obligations, in form and substance satisfactory to the Lenders.
- (c) On or before July 31, 2023, the Borrowers shall have received and accepted a letter of intent, agreement or commitment, as applicable, for (i) a SPAC, acquisition, Sale Transaction or capital raise transaction, or (ii) a refinancing commitment from an alternative lender, in each case, satisfactory to the Lenders (a “**Refinancing Transaction**”).
- (d) On or before August 31, 2023, all due diligence in connection with any Refinancing Transaction shall have been completed or waived in writing by the Lenders.
- (e) On or before September 30, 2023, a Refinancing Transaction shall have closed.

### 6.4 Lenders’ Success Fee

In the event that a Sale Transaction is completed during the Accommodation Period, the Lenders shall be entitled to a success fee equal to 100% of the aggregate principal amount of the Accommodation Loan advanced under this Agreement (the “**Success Fee**”). The Success Fee shall be fully earned upon the completion of the Sale Transaction and payable upon the earlier of (A) termination or expiration of the Accommodation Period and (B) repayment in full of the Accommodation Loan. The Success Fee is in addition to all other fees, interest, costs and expenses payable in connection with the Financing Agreements or this Agreement. Once earned, the Success Fee shall form part of the total Obligations and shall be secured by the Security.

For the purposes of this Section 6.4, “**Sale Transaction**” means any transaction or series of related transactions involving: (i) the sale, lease, exclusive license, or other disposition of all or substantially all of the assets of Borrower Representative other than to a wholly owned subsidiary for the purpose of completing a corporate reorganization of Borrower Representative and such subsidiary; (ii) any merger, amalgamation or consolidation of Borrower Representative into or with another person or entity (other than a merger, amalgamation or consolidation effected exclusively to change Borrower Representative’s domicile), or any other corporate reorganization, in which the shareholders of Borrower Representative (and their affiliates) in their capacity as such

immediately prior to such merger, amalgamation, consolidation or reorganization, own less than a majority of Borrower Representative's (or the surviving or successor entity's) outstanding voting power immediately after such merger, amalgamation, consolidation or reorganization; or (iii) any sale or other transfer by the shareholders of Borrower Representative, to an arm's-length unrelated party or parties, of shares representing at least a majority of the votes attaching to Borrower Representative's then-total outstanding combined voting equity securities.

### **6.5 Full Co-Operation**

During the Accommodation Period, the Borrowers shall cooperate fully with the Lenders and with the Advisor, by promptly providing all the information requested by the Lenders and the Advisor, and by providing to the Lenders, and the Advisor, full access to the books, records, property, assets and personnel of the Borrowers wherever they may be situated and in whatever medium they may be recorded, at the request of and at times convenient to the Lenders and the Advisor, which right of access shall include the right to inspect and appraise any property and assets of the Borrowers.

### **6.6 Payment and Other Obligations**

Each of the Borrowers hereby covenants and agrees with the Lenders to reimburse the Lenders for all reasonable expenses, including, without limitation, actual legal and other professional expenses that the Lenders have incurred or will incur arising out of its dealings with any of the Borrowers and in the protection, preservation and enforcement of the Security, including, without limitation, the actual fees and expenses of the Lenders' solicitors, Aird & Berlis LLP and the Advisor (collectively, the "**Professional Expenses**"), and that the Professional Expenses shall be for the account of the Borrowers and that payment may be made by the Lenders for later repayment by the Borrowers or debit the account of the Borrowers held at the Lenders. Nothing in this Agreement shall derogate from the Borrowers' obligation to pay for all the Professional Expenses or shall constitute a cap on Professional Expenses.

### **6.7 Accommodation Loan Availability Not a Waiver**

To the extent that the Lenders make any advance of funds or credit available to any of the Borrowers during the Accommodation Period, including the Accommodation Loan, such advance of funds shall not constitute a waiver of any Existing Default or any additional defaults of any of the Borrowers.

### **6.8 Additional Covenants**

During the Accommodation Period, the Borrowers agree (i) to continue to abide by the covenants as previously agreed with the Lenders in the Financing Agreements, including but not limited to Sections 6 and 7 of the Loan Agreement, except as may be amended herein, and (ii) in addition to the other covenants contained herein, each of the Borrowers hereby covenants and agrees with the Lenders as follows:

- (a) each of the Borrowers shall maintain its corporate existence as a valid and subsisting entity and shall not merge, amalgamate or consolidate with any other entity(ies), except with the Lenders' prior written consent;

- (b) each of the Borrowers shall comply with the covenants and deliverables in Section 6.3 above;
- (c) except as specifically provided for in this Agreement including, without limitation Section 4.1, each of the Borrowers shall comply in all respects with all terms and provisions of the Financing Agreements and this Agreement and nothing herein derogates therefrom. For greater certainty, except as provided for herein, the Borrowers shall continue to remit all payments when due under the Financing Agreements and shall operate all facilities within the terms and the limits prescribed therein, except as amended by this Agreement;
- (d) each of the Borrowers shall comply with any and all cash management obligations, and provide full disclosure of all account activities with respect to any accounts maintained with financial institutions, and obligations to maintain insurance in accordance with the Financing Agreements;
- (e) the Borrowers shall not open or maintain any other deposit or securities accounts with any institutions other than its current financial institutions without the Lenders' prior written consent;
- (f) the Borrowers shall not, without the prior written consent of the Lenders, make any distribution or payment to any secured or unsecured creditor subordinate in interest to the Lenders, including but not limited to any payments or distributions of dividends, interest or other payments to preferred shareholders, management fees, administration fees or charges or payment to any person, corporation or other entity who does not deal with the Borrowers at arm's length (as such term is determined in the *Income Tax Act* (Canada)), except for the Permitted Purposes, payments to contractors, suppliers, vendors and other payees as set forth in the Cash Flow Reports or as otherwise consented to Lenders;
- (g) the Borrowers shall not, without the prior written consent of the Lenders, make any loans or advance money or property to any other party (including, without limitation, any subsidiary or affiliate of any of the Borrowers) or invest in (by capital contribution, dividend or otherwise) or purchase or repurchase the shares or indebtedness or all or a substantial part of the assets or property of any other party (including, without limitation, any subsidiary or affiliate of any of the Borrowers), or guarantee, assume, endorse, or otherwise become responsible (directly or indirectly) for the indebtedness, performance, obligations or dividends of any other party (including, without limitation, any subsidiary or affiliate of any of the Borrowers) or agree to do any of the foregoing, other than as required by the Financing Agreements;
- (h) the Borrowers shall not encumber, mortgage, hypothec, pledge or otherwise cause any form of lien or charge on any of their property or assets, including intangible and contingent assets, without the prior written consent of the Lenders;



- (i) the Borrowers shall not repay any principal or interest which may be owing or become owing in connection with any shareholder or related party loan or any loan made by any party subordinate to the Lenders, without the prior written consent of the Lenders;
- (j) the Borrowers shall not make any distribution (whether by dividend or otherwise) or effect any return of capital on any investment made by any shareholder, or any party related to any shareholder, of the Borrowers, without the prior written consent of the Lenders;
- (k) none of the Borrowers shall, in any case, make any payment to any party if the financial position of such Borrowers after making such payment would put such Borrowers in a position of breach or default of its obligations under the Financing Agreements or this Agreement (other than the Existing Defaults) or constitute an Intervening Event;
- (l) each of the Borrowers shall keep current at all times all obligations that constitute priority obligations, meaning those obligations payable in priority to the obligations owed to the Lenders (“**Priority Payables**”), including wages and remittances required to be made for taxes and other liabilities owed to federal, provincial and municipal governments, including, without limitation, property taxes and money owed in respect of employee source deductions pursuant to the *Canada Pension Plan Act* (Canada), *Employment Insurance Act* (Canada) and *Income Tax Act* (Canada), and in respect of HST, and the Borrowers shall provide on a regular basis evidence of such payments satisfactory to the Lenders;
- (m) the Borrowers shall give to the Lenders prompt notice of any litigation, arbitration or administrative proceeding before or of any court, arbitration, tribunal or governmental authority adversely and materially affecting any of the assets, property or undertakings of the Borrowers;
- (n) each of the Borrowers shall take all steps required to cure any deficiencies, if any, in the Security;
- (o) unless otherwise agreed to herein, the Borrowers shall not do any act or thing which may have the effect of defeating or delaying the enforcement of the Lenders’ rights and remedies under any of the Security; and
- (p) no later than 10 days after the date hereof, (i) the Borrowers, the Lenders and the Collateral Agent shall enter into an amendment to the Loan Agreement to amend Section 2.2(a) of the Loan Agreement to provide for the accrual of capitalized interest during the Accommodation Period and to make such other amendments as Lenders deem necessary in connection therewith and (ii) the Borrowers shall execute and deliver to the Lenders amendments and restatements of the Existing Notes to provide for the accrual of capitalized interest during the Accommodation Period and to make such other amendments as Lenders deem necessary in connection therewith.

Each of the Borrowers represents and warrants to the Lenders that all its obligations with respect to employee wages and vacation pay are or will be current as of the date of the execution by the Borrowers of this Agreement and shall remain current throughout the Accommodation Period.

## ARTICLE 7 INTERVENING EVENTS

### 7.1 Intervening Events

Upon the happening of any one of the following events from and after the date of this Agreement (each an “**Intervening Event**”), this Agreement and the Accommodation Period shall forthwith terminate:

- (a) any representation, warranty or statement made by any of the Borrowers in this Agreement, any Financing Agreement or any other agreement with the Lenders was untrue or incorrect when made or becomes untrue or incorrect in any material respect (other than arising out of or in connection with the Existing Defaults);
- (b) any Default or Event of Default occurs under the Loan Agreement or any of the Borrowers defaults in the performance of any obligation under any of the other Financing Agreements after the date hereof, other than any of the Existing Defaults;
- (c) the Borrowers fail to meet any of the “milestones” outlined in Section 6.3 above;
- (d) the occurrence of any other event which, in the opinion of the Lenders, acting reasonably, may materially and adversely impact the priority or enforceability of the Security granted by the Borrowers, or the realizable value of the collateral subject to such Security;
- (e) any of the Borrowers fails to maintain and keep current payments of Priority Payables, which may result in any claim ranking in priority or *pari passu* to the claim of the Lenders;
- (f) the Security ceases to constitute a first-ranking, valid and perfected security interest against all assets of each of the Borrowers, as applicable;
- (g) the loss, damage, destruction or confiscation of the Security or any part thereof, unless upon such event, the Borrowers pay to the Lenders forthwith such amount as the Lenders, acting reasonably, determine is satisfactory;
- (h) any person takes possession of any property of any of the Borrowers by way of or in contemplation of enforcement of security, or a distress or execution or similar process levied or enforced against any property of any of the Borrowers;
- (i) any change of control in the ownership, or management of any of the Borrowers, as applicable, without the Lenders’ prior written consent;



- (j) the Borrowers fail to maintain current insurance;
- (k) in the Lenders' sole opinion, a material adverse change occurs in the business, affairs, financial condition, operation or ownership of any of the Borrowers arising for any reason whatsoever;
- (l) without the Lenders' prior written consent, any of the Borrowers ceases to carry on business in the normal course in the same manner as such business has previously been carried on or as specifically amended by this Agreement or commits or threatens to commit an act of bankruptcy;
- (m) without the prior written consent of the Lenders, any action or proceeding is taken or commenced by another person or persons against any of the Borrowers, which the Borrowers are not contesting, relating to the reorganization, readjustment, compromise or settlement of the debts owed by any of the Borrowers to its creditors where such reorganization, readjustment, compromise or settlement shall affect a substantial portion of any of the Borrowers' assets and property, including, without limitation, the filing of a Notice of Intention to Make a Proposal under the BIA, the making of an order under the *Companies' Creditors Arrangement Act* (Canada) or the commencement of any similar action or proceeding by any party other than the Lenders;
- (n) the filing of an application for a bankruptcy order against any of the Borrowers pursuant to the provisions of the BIA by any party other than the Lenders;
- (o) any of the Borrowers fails to meet its payroll obligations or does not have sufficient funds available to fund its payroll obligations;
- (p) any of the Borrowers fails to make one or more of the payments to the Lenders, in full or in part, in accordance with the Financing Agreements, as amended only by this Agreement and which become due and payable after the date hereof;
- (q) any of the Borrowers fails to meet one or more of the reporting requirements required to be met after the date hereof in accordance with Section 5.1 of this Agreement and not cured within 5 days of the earlier of (A) the Borrowers becoming aware of such failure to meet such reporting requirement(s) or (B) the Collateral Agent or the Lenders giving notice thereof;
- (r) at any time any of the Borrowers fails to operate and maintain sufficient funds to cover any and all items attempting to clear any of their bank accounts;
- (s) the Borrowers fail to repay the Accommodation Loan in full on or before the termination or expiration of the Accommodation Period; or
- (t) the expiration or termination of the Accommodation Period, unless extended by the agreement of the parties.

## **ARTICLE 8 GENERAL PROVISIONS**

### **8.1 Effect of this Agreement**

Except as modified pursuant hereto, no other changes or modifications to the terms of the Financing Agreements are intended or implied and in all other respects, the terms of the Financing Agreements are confirmed.

### **8.2 Further Assurances**

The parties hereto shall execute and deliver such supplemental documents and take such supplemental action as may be necessary or desirable to give effect to the provisions and purposes of this Agreement, all at the sole expense of the Borrowers.

### **8.3 Binding Effect**

This Agreement shall be binding upon and enure to the benefit of each of the parties hereto and its respective successors and permitted assigns.

### **8.4 Survival of Representations and Warranties**

All representations and warranties made in this Agreement or any other document furnished in connection herewith shall survive the execution and delivery of this Agreement and such other document delivered in connection herewith, and no investigation by the Lenders or any closing shall affect the representations and warranties or the rights of the Lenders to rely upon such representations and warranties.

### **8.5 Confidentiality**

Each of the Borrowers acknowledges and agrees that the Lenders and their professional advisors shall be at liberty, in their sole discretion, to disclose any information obtained from the Borrowers to any party or parties in order to recover amounts owed to the Lenders by the Borrowers.

### **8.6 Release**

In consideration of the agreements of the Lenders contained herein and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, each of the Borrowers, on its behalf and on behalf of its successors, assigns, and other legal representatives, hereby absolutely, unconditionally and irrevocably release, remise and forever discharge the Lenders and each of their successors and assigns, participants, affiliates, subsidiaries, branches, divisions, predecessors, directors, officers, attorneys, employees, lenders and other representatives and advisors (the Lenders and all such other persons being hereinafter referred to collectively as the "**Releasees**" and individually as a "**Releasee**"), of and from all demands, actions, causes of action, suits, covenants, contracts, controversies, agreements, promises, sums of money, accounts, bills, reckonings, damages and any and all other claims, counterclaims, defences, rights of set-off, demands and liabilities whatsoever (individually, a "**Claim**" and collectively, "**Claims**") of every

name and nature, known, both arising at law and in equity, which each of the Borrowers or any of its successors, assigns or other legal representatives may now own, hold, have or claim to have against the Releasees or any of them for, upon or by reason of any circumstance, action, cause or thing whatsoever which arises at any time on or prior to the date of this Agreement, on account of, or in relation to or in any way in connection with, any of the Financing Agreements or transactions thereunder or related thereto.

#### **8.7 No Novation**

This Agreement will not discharge or constitute novation of any debt, obligation, covenant or agreement contained in any of the Financing Agreements but the same shall remain in full force and effect save to the extent amended by this Agreement.

#### **8.8 Notice**

Without prejudice to any other method of giving notice, any notice required or permitted to be given to a party pursuant to this Agreement will be conclusively deemed to have been received by such party on the day of the sending of the notice by prepaid private courier to such party at its, his or her address noted below or by email at its, his or her email address noted below. Any party may change its, his or her address for service or address by notice given in the foregoing manner.

Notice to the Borrowers shall be sent to:

c/o Nexii Building Solutions Inc.  
200-1455 West Georgia Street  
Vancouver, BC, V6G 2T3  
Attention: Stephen Sidwell  
Email: [ssidwell@nexii.com](mailto:ssidwell@nexii.com)

with a copy to:

Norton Rose Fulbright Canada LLP  
510 West Georgia Street, Suite 1800,  
Vancouver, BC V6B 0M3  
Attention: Christopher Horte  
Email: [Christopher.Horte@nortonrosefulbright.com](mailto:Christopher.Horte@nortonrosefulbright.com)

- and -

Fasken Martineau DuMoulin LLP  
550 Burrard Street, Suite 2900  
Vancouver, BC V6C 0A3  
Attention: Kibben Jackson  
Email: [kjackson@fasken.com](mailto:kjackson@fasken.com)

Notice to the Lenders or Collateral Agent shall be sent to:

If to Horizon, HCII, HFI or Trust:

c/o Horizon Technology Finance Corporation  
312 Farmington Avenue  
Farmington, CT 06032  
Attention: Legal Department  
Fax: (860) 676-8655  
Ph: (860) 676-8654  
Email: [legal@horizontechfinance.com](mailto:legal@horizontechfinance.com)

If to PC LP or Powerscourt:

Powerscourt Investments XXV Trust  
c/o Waterfall Asset Management, LLC  
1251 Avenue of the Americas, 50<sup>th</sup> Floor  
New York, NY 10020  
Attention: General Counsel  
Ph: (212) 257-4600  
Email: [notices@waterfallam.com](mailto:notices@waterfallam.com)

If to Trinity:

Trinity Capital Inc.  
1 N 1st Street, Floor 3  
Phoenix, AZ 85004  
Email: [legal@trincapinvestment.com](mailto:legal@trincapinvestment.com)  
Fax: (480) 546-5349  
Phone: (480) 374-5350

with a copy to:

Aird & Berlis LLP  
181 Bay Street, Suite 1800  
Toronto, ON M5J 2T9  
Attention: Kyle Plunkett and Graham Topa  
Email: [kplunkett@airdberlis.com](mailto:kplunkett@airdberlis.com) and [gtopa@airdberlis.com](mailto:gtopa@airdberlis.com)

## **8.9 Binding and Enforceable Agreement**

In order for this Agreement to be binding and enforceable, it shall be signed by the Borrowers and delivered to Lenders by no later than 2:00 P.M. (ET time) on June 20, 2023.

## **8.10 Execution in Counterparts**

This Agreement may be executed in counterparts, each of which shall be deemed to be an original and which taken together will be deemed to constitute one and the same instrument. Counterparts may be executed either in original or portable document format (“**PDF**”) form and

the parties adopt any signatures received by emailed PDF as original signatures of the parties, provided, however, that any party providing its signature in such manner will promptly forward to the other party an original of the signed copy of the Agreement which was so emailed.

**8.11 No Set Off, etc.**

Each of the Borrowers reaffirms that the Financing Agreements remain in full force and effect as amended hereby and acknowledge and agree that, as of the date hereof, there is no defence, set off or counterclaim of any kind, nature or description to its obligations arising under the Financing Agreements as a result of the execution of this Agreement or otherwise.

**8.12 Independent Legal Advice, etc.**


Each of the Borrowers acknowledges and declares that: (a) it has had an adequate opportunity to read and consider this Agreement and to obtain such advice in regard to it as it considers advisable, including, without limitation, independent legal advice; (b) it fully understands the nature and effect of this Agreement; and (c) this Agreement has been duly executed voluntarily.

*[This remainder of this page is intentionally left blank.]*

IN WITNESS WHEREOF, the parties hereto have entered into this Agreement as of the date first above mentioned.

LENDERS:

TRINITY CAPITAL INC.

By:   
Name: Sarah Stanton  
Title: General Counsel

HORIZON FUNDING I, LLC

By: Horizon Secured Loan Fund I LLC, its sole member

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

POWERSCOURT INVESTMENTS XXV, LP

By: Powerscourt Investments GP, LLC, its general partner

By: Maples Fiduciary Services (Delaware) Inc., its managing member

HORIZON FUNDING TRUST 2022-1

By: Horizon Technology Finance Corporation, its agent

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

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

POWERSCOURT INVESTMENTS XXV TRUST

By: 1485 Management, LLC, as Trust's Agent

LENDER and COLLATERAL AGENT:

HORIZON TECHNOLOGY FINANCE CORPORATION

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

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

HORIZON CREDIT II LLC

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

IN WITNESS WHEREOF, the parties hereto have entered into this Agreement as of the date first above mentioned.

LENDERS:

TRINITY CAPITAL INC.

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

HORIZON FUNDING I, LLC

By: Horizon Secured Loan Fund I LLC, its sole member

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

POWERSCOURT INVESTMENTS XXV, LP

By: Powerscourt Investments GP, LLC, its general partner

By: Maples Fiduciary Services (Delaware) Inc., its managing member

By: \_\_\_\_\_  
Name: Daniel Grugan  
Title: Authorized Signatory

HORIZON FUNDING TRUST 2022-1

By: Horizon Technology Finance Corporation, its agent

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

POWERSCOURT INVESTMENTS XXV TRUST

By: 1485 Management, LLC, as Trust's Agent

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

LENDER and COLLATERAL AGENT:

HORIZON TECHNOLOGY FINANCE CORPORATION

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

HORIZON CREDIT II LLC

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

IN WITNESS WHEREOF, the parties hereto have entered into this Agreement as of the date first above mentioned.

LENDERS:

TRINITY CAPITAL INC.

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

HORIZON FUNDING I, LLC

By: Horizon Secured Loan Fund I LLC, its sole member

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

POWERSCOURT INVESTMENTS XXV, LP

By: Powerscourt Investments GP, LLC, its general partner

By: Maples Fiduciary Services (Delaware) Inc., its managing member

HORIZON FUNDING TRUST 2022-1


By: Horizon Technology Finance Corporation, its agent

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

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

POWERSCOURT INVESTMENTS XXV TRUST

By: 1485 Management, LLC, as Trust's Agent

By:   
Name: Glenn Guskowski  
Title: Authorized Person

LENDER and COLLATERAL AGENT:

HORIZON TECHNOLOGY FINANCE CORPORATION

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

HORIZON CREDIT II LLC

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



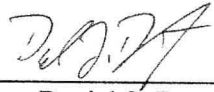
IN WITNESS WHEREOF, the parties hereto have entered into this Agreement as of the date first above mentioned.

LENDERS:

TRINITY CAPITAL INC.

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

HORIZON FUNDING I, LLC  
By: Horizon Secured Loan Fund I LLC, its sole member

By:   
Name: Daniel S. Devorsetz  
Title: Manager

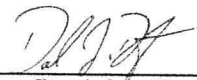
POWERSCOURT INVESTMENTS XXV, LP

By: Powerscourt Investments GP, LLC, its general partner

By: Maples Fiduciary Services (Delaware) Inc., its managing member

HORIZON FUNDING TRUST 2022-1  
By: Horizon Technology Finance Corporation, its agent

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

By:   
Name: Daniel S. Devorsetz  
Title: Executive Senior Vice President,  
Chief Operating Officer and Chief Investment Officer

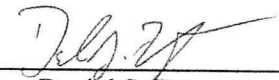
POWERSCOURT INVESTMENTS XXV TRUST

By: 1485 Management, LLC, as Trust's Agent

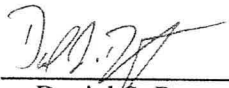
LENDER and COLLATERAL AGENT:

HORIZON TECHNOLOGY FINANCE CORPORATION

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

By:   
Name: Daniel S. Devorsetz  
Title: Executive Senior Vice President,  
Chief Operating Officer and Chief Investment Officer

HORIZON CREDIT II LLC


By:   
Name: Daniel S. Devorsetz  
Title: Executive Senior Vice President,  
Chief Operating Officer and  
Chief Investment Officer

BORROWERS:

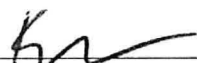
NEXII BUILDING SOLUTIONS INC.

By:   
Name: Stephen Sidwell  
Title: CEO

OMICRON CANADA INC.

By:   
Name: Kyle Sidwell  
Title: Director


GRANT & SINCLAIR ARCHITECTS LTD.

By:   
Name: Kyle Sidwell  
Title: Director

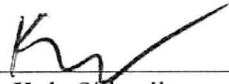
OMICRON CONSTRUCTION LTD.

By:   
Name: Kyle Sidwell  
Title: Director


NBS IP INC.

By:   
Name: Kyle Sidwell  
Title: Director

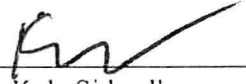
OMICRON CONSTRUCTION MANAGEMENT LTD.

By:   
Name: Kyle Sidwell  
Title: Director

NEXII CONSTRUCTION INC.

By:   
Name: Kyle Sidwell  
Title: Director

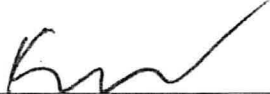
OMICRON CONSULTING LTD.

By:   
Name: Kyle Sidwell  
Title: Director

NEXII HOLDINGS INC.

By:   
Name: Stephen Sidwell  
Title: President

OMICRON INTERIORS LTD.

By:   
Name: Kyle Sidwell  
Title: Director

**SCHEDULE "A"****BORROWERS**

1. Grant & Sinclair Architects Ltd.
2. NBS IP Inc.
3. Nexii Construction Inc.
4. Nexii Holdings Inc.
5. Omicron Canada Inc.
6. Omicron Construction Ltd.
7. Omicron Consulting Ltd.
8. Omicron Interiors Ltd.
9. Omicron Construction Management Ltd.

**SCHEDULE "B"**

**Amended and Restated Venture Loan and Security Agreement dated as of June 8, 2022**

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(See attached.)

## AMENDED AND RESTATED VENTURE LOAN AND SECURITY AGREEMENT

Amended and Restated as of June 8, 2022

by and among

HORIZON TECHNOLOGY FINANCE  
CORPORATION,  
a Delaware corporation  
312 Farmington Avenue  
Farmington, CT 06032

POWERSCOURT INVESTMENTS XXV, LP,  
a Delaware Limited Partnership  
1251 Avenue of the Americas  
New York, NY 10036

as a Lender

as a Lender and Collateral Agent

TRINITY CAPITAL INC.  
a Maryland corporation  
3075 W. Ray Road, Suite 525  
Chandler, AZ 85226

as a Lender

HORIZON CREDIT II LLC  
a Delaware limited liability company  
312 Farmington Avenue  
Farmington, CT 06032

as a Lender

HORIZON FUNDING I, LLC  
a Delaware limited liability company  
312 Farmington Avenue  
Farmington, CT 06032

as a Lender

and

NEXII BUILDING SOLUTIONS INC.,  
a corporation existing under the laws of British Columbia  
200-1455 West Georgia St.  
Vancouver, British Columbia  
Canada V6G 2T3

as a Borrower, and each of the other Borrowers party hereto, as "Borrowers"

Loan A Commitment Amount: \$7,500,000  
Loan B Commitment Amount: \$7,500,000  
Loan C Commitment Amount: \$7,500,000  
Loan D Commitment Amount: \$7,500,000  
Loan E Commitment Amount: \$10,000,000  
Loan F Commitment Amount: \$5,000,000  
Loan G Commitment Amount: \$5,000,000  
Loan H Commitment Amount: \$5,000,000  
Loan I Commitment Amount: \$5,000,000

Loan A Commitment Termination Date: August 27, 2021  
Loan B Commitment Termination Date: August 27, 2021  
Loan C Commitment Termination Date: August 27, 2021  
Loan D Commitment Termination Date: August 27, 2021  
Loan E Commitment Termination Date: August 27, 2021  
Loan F Commitment Termination Date: June 8, 2022  
Loan G Commitment Termination Date: June 8, 2022  
Loan H Commitment Termination Date: June 8, 2022  
Loan I Commitment Termination Date: June 8, 2022

This Amended and Restated Venture Loan and Security Agreement is made as of the date on the cover page hereto (as it may from time to time be amended, restated or supplemented in writing signed by Borrowers, Collateral Agent and Lender and including all exhibits, attachments and appendices hereto, this "Agreement"), by and among Borrowers, Lenders and Collateral Agent.

WHEREAS, Borrowers, Horizon, Powerscourt and Trinity, as lenders, and Collateral Agent entered into a certain Venture Loan and Security Agreement, dated as of August 27, 2021 (the "Original Agreement"), pursuant to which, among other things, (a) Powerscourt provided to Borrowers a loan in the original principal amount of Seven Million Five Hundred Thousand Dollars (\$7,500,000) ("Loan A"), which Loan A is evidenced by a certain Secured Promissory Note (Loan A) executed by Borrowers in favor of Powerscourt, dated as of August 27, 2021, in the original principal amount of Seven Million Five Hundred Thousand Dollars (\$7,500,000), (b) Horizon provided to Borrowers (i) a loan in the original principal amount of Seven Million Five Hundred Thousand Dollars (\$7,500,000) ("Loan B"), which Loan B is evidenced by a certain Secured Promissory Note (Loan B) executed by Borrower in favor of Horizon, dated as of August 27, 2021, in the original principal amount of Seven Million Five Hundred Thousand Dollars (\$7,500,000) (the "Loan B Note"), (ii) a loan in the original principal amount of Seven Million Five Hundred Thousand Dollars (\$7,500,000) ("Loan C"), which Loan C is evidenced by a certain Secured Promissory Note (Loan C) executed by Borrower in favor of Horizon, dated as of August 27, 2021, in the original principal amount of Seven Million Five Hundred Thousand Dollars (\$7,500,000) (the "Loan C Note"), and (iii) a loan in the original principal amount of Seven Million Five Hundred Thousand Dollars (\$7,500,000) ("Loan D"), which Loan D is evidenced by a certain Secured Promissory Note (Loan D) executed by Borrower in favor of Horizon, dated as of August 27, 2021, in the original principal amount of Seven Million Five Hundred Thousand Dollars (\$7,500,000) (the "Loan D Note"), (c) Trinity provided to a loan in the original principal amount of Ten Million Dollars (\$10,000,000) ("Loan E"), and collectively with Loan A, Loan B, Loan C and Loan D, the "Original Loans"), which Loan E is evidenced by a certain Secured Promissory Note (Loan E) executed by Borrowers in favor of Trinity, dated as of August 27, 2021, in the original principal amount of Ten Million Dollars (\$10,000,000), and (e) Collateral Agent and Lenders have been granted a security interest in all assets of Borrower, as set forth in Section 4.1 of the Loan Agreement;

WHEREAS, in connection with the making of each of the Original Loans, Nexii Building (a) issued to Powerscourt that certain Warrant to Purchase Common Shares (Loan A), having a Date of Grant of August 27, 2021, which granted Powerscourt the right to purchase up to One Million One Hundred Twenty-Five Thousand Dollars (\$1,125,000) of the common shares of Nexii Building, (b) issued to Horizon that certain Warrant to Purchase Common Shares (Loan B), having a Date of Grant of August 27, 2021, which granted Horizon the right to purchase up to One Million One Hundred Twenty-Five Thousand Dollars (\$1,125,000) of the common shares of Nexii Building (the "Loan B Warrant"), (c) issued to Horizon that certain Warrant to Purchase Common Shares (Loan C), having a Date of Grant of August 27, 2021, which granted Horizon the right to purchase up to One Million One Hundred Twenty-Five Thousand Dollars (\$1,125,000) of the common shares of Nexii Building (the "Loan C Warrant"), (d) issued to Horizon that certain Warrant to Purchase Common Shares (Loan D), having a Date of Grant of August 27, 2021, which granted Horizon the right to purchase up to One Million One Hundred Twenty-Five Thousand Dollars (\$1,125,000) of the common shares of Nexii Building (the "Loan D Warrant") and (e) issued to Trinity that certain Warrant to Purchase Common Shares (Loan E), having a Date of

Grant of August 27, 2021, which granted Trinity the right to purchase up to One Million Five Hundred Thousand Dollars (\$1,500,000) of the common shares of Nexii Building.

WHEREAS, on or about August 27, 2021, Horizon assigned all of its right, title and interest in and to Loan B, including the Loan B Note and the Loan B Warrant, to Horizon Credit II LLC (“HCII”);

WHEREAS, on or about August 27, 2021, Horizon assigned all of its right, title and interest in and to Loan C, including the Loan C Note and the Loan C Warrant, to HCII;

WHEREAS, on or about August 27, 2021, Horizon assigned all of its right, title and interest in and to Loan D, including the Loan D Note and the Loan D Warrant, to Horizon Funding I, LLC;

WHEREAS, the parties hereto desire to amend and restate the Loan Agreement to, among other things, add additional Loan Commitments from Horizon, Trinity and Powerscourt to Borrowers.

The Lenders, Collateral Agent and Borrower hereby agree as follows:

#### AGREEMENT

##### 1. Definitions and Construction.

1.1 Definitions. As used in this Agreement, the following capitalized terms shall have the following meanings (such meanings to be equally applicable to both the singular and plural forms of the terms defined):

“2021 Warrant” means those certain separate warrants dated as of August 27, 2021 in favor of each Lender or its designees to purchase common shares of Nexii Building.

“2022 Warrant” means those separate warrants dated on or about the date hereof in favor of each Lender or its designees to purchase common shares of Nexii Building.

“Account Control Agreement” means a blocked account or control agreement acceptable to Lenders which perfects via control Lender’s and Collateral Agent’s security interest in Borrower’s deposit accounts and/or securities accounts.

“Additional Commitment Fee” has the meaning given such term in Section 2.6(c) of this Agreement.

“Additional Good Faith Deposit” has the meaning given such term in Section 2.6(a) of this Agreement.

“Affiliate” means, with respect to any Person, any other Person that owns or controls directly or indirectly twenty-five percent (25%) or more of the stock of another entity of such Person, any other Person that controls or is controlled by or is under common control with such Person. For purposes of this definition, the term “control” of a Person means the possession, direct

or indirect, of the power to direct or cause the direction of the management and policies of such Person, whether through the ownership of voting Equity Securities, by contract or otherwise and the terms “controlled by” and “under common control with” shall have correlative meanings.

“Agreement” means this certain Amended and Restated Venture Loan and Security Agreement by and among Borrower, Collateral Agent and Lenders dated as of the date on the cover page hereto (as it may from time to time be amended, modified or supplemented in a writing signed by Borrower, Collateral Agent and Lenders).

“Anti-Terrorism Laws” means any laws relating to terrorism or money laundering, including Executive Order No. 13224 (effective September 24, 2001), the USA PATRIOT Act, the laws comprising or implementing the Bank Secrecy Act, and the laws administered by OFAC and the laws of Canada (including, without limitation, the *Proceeds of Crime Money Laundering and Terrorist Financing Act* (Canada), as amended).

“Borrower” means, singularly and collectively, jointly and severally, Nexii Building, Nexii Construction Inc., a corporation existing under the laws of British Columbia, NBS IP Inc., a corporation existing under the laws of British Columbia, Omicron Canada Inc., a corporation existing under the laws of Canada, Omicron Consulting Ltd., a corporation existing under the laws of British Columbia, Grant & Sinclair Architects Ltd., a corporation existing under the laws of British Columbia, Omicron Construction Ltd., a corporation existing under the laws of British Columbia, Omicron Interiors Ltd., a corporation existing under the laws of British Columbia, Omicron Construction Management Ltd., a corporation existing under the laws of British Columbia and Nexii US, and any other entity joined hereto as a “Borrower” from time to time.

“Business Day” means any day that is not a Saturday, Sunday, or other day on which banking institutions are authorized or required to close in Connecticut or the Province of British Columbia, Canada.

“Canadian Security Agreement” means that certain General Security Agreement by each Borrower incorporated under the laws of Canada or a province thereof in favour of the Collateral Agent and the Lenders dated as of August 27, 2021, as may be amended modified or restated from time to time.

“Claim” has the meaning given such term in Section 10.3 of this Agreement.

“Code” means (a) with respect to Nexii US or any assets located in the United States, the Uniform Commercial Code as adopted and in effect in the State of Connecticut, as amended from time to time; *provided* that if by reason of mandatory provisions of law, the creation and/or perfection or the effect of perfection or non-perfection of the security interest in any Collateral is governed by the Uniform Commercial Code as in effect in a jurisdiction other than the State of Connecticut, the term “Code” shall also mean the Uniform Commercial Code as in effect from time to time in such jurisdiction for purposes of the provisions hereof relating to such creation, perfection or effect of perfection or non-perfection; and (b) with respect to each Borrower incorporated or formed under the laws of Canada or a province thereof, or any property or assets located in Canada, the PPSA.

“Collateral” has the meaning given such term in Section 4.1 of this Agreement.



“Collateral Agent” means Horizon, or any successor collateral agent appointed by Lenders.

“Commitment Amount” means the Loan A Commitment Amount, the Loan B Commitment Amount, the Loan C Commitment Amount, the Loan D Commitment Amount, the Loan E Commitment Amount, the Loan F Commitment Amount, the Loan G Commitment Amount, the Loan H Commitment Amount or the Loan I Commitment Amount.

“Consolidated” means the consolidation of accounts in accordance with GAAP.

“Default” means any Event of Default or any event which with the passing of time or the giving of notice or both would become an Event of Default hereunder.

“Default Rate” means the per annum rate of interest equal to five percent (5%) over the Loan Rate, but such rate shall in no event be more than the highest rate permitted by applicable law to be charged on commercial loans in a default situation.

“Disclosure Schedule” means Exhibit A attached hereto.

“Environmental Laws” means all foreign, federal, state, provincial or local laws, statutes, common law duties, rules, regulations, ordinances and codes, together with all administrative orders, directed duties, requests, licenses, authorizations and permits of, and agreements with, any Governmental Authorities, in each case relating to environmental, health, safety and land use matters, including the Comprehensive Environmental Response, Compensation and Liability Act of 1980, the Clean Air Act, the Federal Water Pollution Control Act of 1972, the Solid Waste Disposal Act, the Federal Resource Conservation and Recovery Act, the Toxic Substances Control Act and the Emergency Planning and Community Right-to-Know Act.

“Equity Securities” of any Person means (a) all common stock, preferred stock, participations, shares, partnership interests, membership interests or other equity interests in and of such Person (regardless of how designated and whether or not voting or non-voting) and (b) all warrants, options and other rights to acquire any of the foregoing.

“ERISA” has the meaning given to such term in Section 7.12 of this Agreement.

“Event of Default” has the meaning given to such term in Section 8 of this Agreement.

“Excluded Account” means any deposit account (a) specifically and exclusively used for payroll, payroll taxes and other employee wage and benefit payments to or for the benefit of any Borrower's employees, provided, however, that the amount on deposit in such accounts shall not, in the aggregate, exceed the amount necessary to fund one full payroll cycle of all Borrowers, (b) subject to, and used solely in connection with, a Permitted Lien (but only to the extent such account is used exclusively for cash collateral securing letters of credit that are permitted hereunder), (c) constituting a custodian, trust, fiduciary or other escrow account established solely for the benefit of third parties in the ordinary course of business, and (d) which constitutes a Petty Cash Account.

“Excluded Taxes” means, in respect of any Lender: (a) taxes imposed on or measured by its overall net income (however denominated), branch profits taxes and franchise Taxes imposed by the jurisdiction (or any political subdivision thereof) under the laws of which such Lender is

organized or in which its principal office is located or in which its applicable lending office is located, (b) any taxes imposed on such Lender as a result of a present or former connection between such Lender and the jurisdiction imposing such Tax, (c) any withholding Tax that is imposed on amounts payable to such Lender at the time such Lender becomes a party hereto (or designates a new lending office) or is attributable to such Lender's failure or inability to comply with Section 2.4(c)(iv), (d) any tax imposed under FATCA.

“FATCA” means Sections 1471 through 1474 of the Internal Revenue Code, as of the date of this Agreement (or any amended or successor version), any current or future regulations or official interpretations thereof, any agreements entered into pursuant to Section 1471(b)(1) of the Internal Revenue Code and any fiscal or regulatory legislation rules or practices adopted pursuant to any intergovernmental agreement entered into in connection with the implementation of such Sections of the Internal Revenue Code.

“Funding Certificate” means a certificate executed by a duly authorized Responsible Officer of Borrower substantially in the form of Exhibit B or such other form as Lenders may agree to accept.

“Funding Date” means (i) in respect of Loan A, Loan B, Loan C, Loan D and Loan E, August 27, 2021 and (i) in respect of any other Loan, the date on which the Loan is made to or on account of Borrower under this Agreement.

“GAAP” means accounting principles applied by the Borrower in the preparation of its financial statements from time to time, being either (i) International Financial Reporting Standards as issued by the International Accounting Standards Board or (ii) generally accepted accounting principles as in effect in the United States of America from time to time, in either case, consistently applied.

“Good Faith Deposit” has the meaning given such term in Section 2.6(a) of this Agreement.

“Governmental Authority” means (a) any federal, state, provincial, county, municipal or foreign government, or political subdivision thereof, (b) any governmental or quasi-governmental agency, authority, board, bureau, commission, department, instrumentality or public body, (c) any court or administrative tribunal, or (d) with respect to any Person, any arbitration tribunal or other non-governmental authority to whose jurisdiction that Person has consented.

“Go-Public Transaction” means an initial public offering, whether on a treasury or secondary basis, to the public, of any securities in Canada or the United States by way of a prospectus, registration statement or other similar disclosure document, or a direct listing transaction, which results in such securities being freely tradable in a jurisdiction to and between members of the public without the requirement of filing a further prospectus or similar disclosure document, and shall include other comparable go-public transactions such as a reverse take-over transaction, a go-public transaction with a special-purpose acquisition company (SPAC), or analogous “blank check company” effected via a “de-SPAC” transaction or analogous transaction.

“Hazardous Materials” means all those substances which are regulated by, or which may form the basis of liability under, any Environmental Law, including all substances identified under any Environmental Law as a pollutant, contaminant, hazardous waste, hazardous constituent,

special waste, hazardous substance, hazardous material, or toxic substance, or petroleum or petroleum derived substance or waste.

“Horizon” means Horizon Technology Finance Corporation.

“Indebtedness” means, with respect to any Person, the aggregate amount of, without duplication, (a) all obligations of such Person for borrowed money, (b) all obligations of such Person evidenced by bonds, debentures, notes or other similar instruments, (c) all obligations of such Person to pay the deferred purchase price of property or services (excluding trade payables aged less than one hundred eighty (180) days), (d) all capital lease obligations of such Person, (e) all obligations or liabilities of others in the nature of (a), (b) or (c) secured by a Lien on any asset of such Person, whether or not such obligation or liability is assumed, (f) all obligations or liabilities of others in the nature of (a), (b) or (c) guaranteed by such Person, and (g) any other obligations or liabilities which are required by GAAP to be shown as debt on the balance sheet of such Person.

“Indemnified Person” has the meaning given such term in Section 10.3 of this Agreement.

“Indemnified Taxes” means any taxes other than Excluded Taxes.

“Intellectual Property” means, with respect to any Person, all of such Person’s right, title and interest in and to patents, patent rights (and applications and registrations therefor and divisions, continuations, renewals, reissues, extensions and continuations-in-part of the same), trademarks and service marks (and applications and registrations therefor and the goodwill associated therewith), whether registered or not, inventions, copyrights (including applications and registrations therefor and like protections in each work or authorship and derivative work thereof), whether published or unpublished, mask works (and applications and registrations therefor), trade names, trade styles, software and computer programs, source code, object code, trade secrets, licenses, methods, processes, know how, drawings, specifications, descriptions, and all memoranda, notes, and records with respect to any research and development, all whether now owned or subsequently acquired or developed by such Person and whether in tangible or intangible form or contained on magnetic media readable by machine together with all such magnetic media (but not including embedded computer programs and supporting information included within the definition of “goods” under the Code).

“Internal Revenue Code” has the meaning given such term in Section 5.20 of this Agreement.

“Investment” means the purchase or acquisition of any capital stock, equity interest, or any obligations or other securities of, or any interest in, any Person, or the extension of any advance, loan, extension of credit or capital contribution to, or any other investment in, or deposit with, any Person.

“ITA” means the *Income Tax Act* (Canada), as amended.

“IP Agreement” means one or more Grants of Security Interest by Borrower in favour of Collateral Agent and the Lenders dated as of August 27, 2021, as may be amended, modified or restated from time to time, with respect to Borrower’s Intellectual Property.

“Landlord Agreement” means an agreement substantially in the form provided by Lenders to Borrower or such other form as Lenders may agree to accept.

“Lender” means each Lender as set forth on the cover page of this Agreement and “Lenders” means all such Lenders.

“Lenders’ Expenses” means all reasonable costs or expenses (including reasonable attorneys’ fees and expenses) incurred in connection with the preparation, negotiation, documentation, drafting, amendment, modification, administration, perfection and funding of the Loan Documents; and all of each Lender’s attorneys’ fees, costs and expenses incurred in enforcing or defending the Loan Documents (including fees and expenses of appeal or review), including the exercise of any rights or remedies afforded hereunder or under applicable law, whether or not suit is brought, whether before or after bankruptcy or insolvency, including all fees and costs incurred by any Lender in connection with such Lender’s enforcement of its rights in a bankruptcy or insolvency proceeding filed by or against Borrower, any Subsidiary or their respective Property.

“Lien” means any voluntary or involuntary security interest, pledge, bailment, lease, mortgage, hypothecation, conditional sales and title retention agreement, encumbrance or other lien with respect to any Property in favor of any Person.

“Loan” means each advance of credit by Lender to Borrower under this Agreement.

“Loan A” means the advance of credit by Lender to Borrower under this Agreement in the Loan A Commitment Amount.

“Loan A Commitment Amount” has the meaning set forth on the cover page of this Agreement.

“Loan A Commitment Termination Date” has the meaning set forth on the cover page of this Agreement.

“Loan A Final Payment” has the meaning given such term in Section 2.2(g) of this Agreement.

“Loan Amortization Date” means, with respect to each Loan, the Payment Date on which Borrower is required, pursuant to Section 2.2 (a) below, to commence making equal payments of principal plus accrued interest on the outstanding principal amount of such Loan.

“Loan B” means the advance of credit by Lender to Borrower under this Agreement in the Loan B Commitment Amount.

“Loan B Commitment Amount” has the meaning set forth on the cover page of this Agreement.

“Loan B Commitment Termination Date” has the meaning set forth on the cover page of this Agreement.

“Loan B Final Payment” has the meaning given such term in Section 2.2(g) of this Agreement.

“Loan C” means the advance of credit by Lender to Borrower under this Agreement in the Loan C Commitment Amount.

“Loan C Commitment Amount” has the meaning set forth on the cover page of this Agreement.

“Loan C Commitment Termination Date” has the meaning set forth on the cover page of this Agreement.

“Loan C Final Payment” has the meaning given such term in Section 2.2(g) of this Agreement.

“Loan D” means the advance of credit by Lender to Borrower under this Agreement in the Loan D Commitment Amount.

“Loan D Commitment Amount” has the meaning set forth on the cover page of this Agreement.

“Loan D Commitment Termination Date” has the meaning set forth on the cover page of this Agreement.

“Loan D Final Payment” has the meaning given such term in Section 2.2(g) of this Agreement.

“Loan Documents” means, collectively, this Agreement, the Note, the Warrant, the IP Agreement, the Canadian Security Agreement, any Landlord Agreement, any Account Control Agreement and all other documents, instruments and agreements entered into in connection with this Agreement.

“Loan E” means the advance of credit by Lender to Borrower under this Agreement in the Loan E Commitment Amount.

“Loan E Commitment Amount” has the meaning set forth on the cover page of this Agreement.

“Loan E Commitment Termination Date” has the meaning set forth on the cover page of this Agreement.

“Loan E Final Payment” has the meaning given such term in Section 2.2(g) of this Agreement.

“Loan F” means the advance of credit by Lender to Borrower under this Agreement in the Loan F Commitment Amount.

“Loan F Commitment Amount” has the meaning set forth on the cover page of this Agreement.

“Loan F Commitment Termination Date” has the meaning set forth on the cover page of this Agreement.

“Loan F Final Payment” has the meaning given such term in Section 2.2(g) of this Agreement.

“Loan G” means the advance of credit by Lender to Borrower under this Agreement in the Loan G Commitment Amount.

“Loan G Commitment Amount” has the meaning set forth on the cover page of this Agreement.

“Loan G Commitment Termination Date” has the meaning set forth on the cover page of this Agreement.

“Loan G Final Payment” has the meaning given such term in Section 2.2(g) of this Agreement.

“Loan H” means the advance of credit by Lender to Borrower under this Agreement in the Loan H Commitment Amount.

“Loan H Commitment Amount” has the meaning set forth on the cover page of this Agreement.

“Loan H Commitment Termination Date” has the meaning set forth on the cover page of this Agreement.

“Loan H Final Payment” has the meaning given such term in Section 2.2(g) of this Agreement.

“Loan I” means the advance of credit by Lender to Borrower under this Agreement in the Loan I Commitment Amount.

“Loan I Commitment Amount” has the meaning set forth on the cover page of this Agreement.

“Loan I Commitment Termination Date” has the meaning set forth on the cover page of this Agreement.

“Loan I Final Payment” has the meaning given such term in Section 2.2(g) of this Agreement.

“Loan Rate” means, with respect to each Loan, the sum of (a) the per annum rate of interest from time to time published in The Wall Street Journal or any successor publication thereto as the “prime rate” then in effect, plus (b) 7.00%; provided that, in the event that such rate of interest

published in The Wall Street Journal is less than 3.25%, such rate shall be deemed to be 3.25% for purposes of calculating the Loan Rate, provided, further, that if the “prime rate”, (a) is no longer reported in the Wall Street Journal, (b) is no longer widely used as a benchmark market rate for new facilities of this type, or (c) becomes permanently unavailable, Lender, in consultation with the Borrower, shall select a successor benchmark rate, which successor rate shall be applied in a manner consistent with market practice, or if there is no consistent market practice, such successor rate shall be applied in a manner reasonably determined by Lender, in consultation with the Borrower. Notwithstanding the foregoing, in no event shall the Loan Rate be less than 10.25%. The Borrower acknowledges that the “prime rate” is used for reference purposes only as an index and is not necessarily the lowest or the best interest rate charged to any borrower of Lender. The Loan Rate applied as of the Funding Date of each Loan shall be the Loan Rate on the date that is five (5) Business Days prior to the Funding Date.

“Material Adverse Effect” means a material adverse effect on (a) the condition (financial or otherwise), business or operations of Borrower on a Consolidated basis, (b) the ability of Borrower as a whole to perform any of its material Obligations under the Loan Documents or (c) the Collateral or Collateral Agent’s or any Lender’s security interest in the Collateral.

“Maturity Date” means, (a) with respect to Loan A, Loan B, Loan C, Loan D and Loan E, August 27, 2025, or if earlier, the date of acceleration of the Loan following an Event of Default or the date of prepayment, whichever is applicable; and (b) with respect to Loan F, Loan G, Loan H and Loan I, June 8, 2026, or if earlier, the date of acceleration of the Loan following an Event of Default or the date of prepayment, whichever is applicable.

“NCM” means a Person that is approved by the Borrower as a Nexii Certified Manufacturer.

“Nexii Building” means Nexii Building Solutions Inc., a corporation existing under the laws of British Columbia.

“Nexii US” means NEXII Holdings Inc., a Delaware corporation.

“Note” means (i) with respect to Loan A, Loan B, Loan C, Loan D and Loan E those certain secured promissory notes dated as of August 27, 2021 executed by the Borrower in connection with such Loans; and (ii) with respect to Loan F, Loan G, Loan H and Loan I, each secured promissory note executed in connection with such Loan in substantially the form of Exhibit C attached hereto.

“Obligations” means all debt, principal, interest, fees, charges, expenses and attorneys’ fees and costs and other amounts, obligations, covenants, and duties owing by Borrower to Collateral Agent or any Lender of any kind and description (whether pursuant to or evidenced by the Loan Documents (other than the Warrant), or by any other agreement between Lenders and Borrower (other than the Warrant), and whether or not for the payment of money), whether direct or indirect, absolute or contingent, due or to become due, now existing or hereafter arising, including all Lenders’ Expenses, but excluding all obligations arising under or in connection with the Warrant.



“OFAC” means the Office of Foreign Assets Control of the United States Department of the Treasury.

“Officer’s Certificate” means a certificate executed by a Responsible Officer substantially in the form of Exhibit D or such other form as Lenders may agree to accept.

“Original Agreement” means that certain Venture Loan and Security Agreement dated as of August 27, 2021 by and among the Borrowers, the Horizon, Trinity and Powerscourt and the Collateral Agent.

“Original Commitment Fee” has the meaning given such term in Section 2.6(c) of this Agreement.

“Original Good Faith Deposit” has the meaning given such term in Section 2.6(a) of this Agreement.

“Payment Date” has the meaning given such term in Section 2.2(a) of this Agreement.

“Permitted Indebtedness” means and includes:

- (a) Indebtedness of Borrower to Lenders under the Loan Documents;
- (b) Unsecured credit card indebtedness incurred in the ordinary course of the Borrowers’ business, in an aggregate amount outstanding at any time not to exceed Two Hundred Fifty Thousand Dollars (\$250,000);
- (c) Indebtedness of Borrower secured by Liens permitted under clause (e) of the definition of Permitted Liens, up to an aggregate principal amount of Ten Million Dollars (\$10,000,000) at any one time;
- (d) Indebtedness arising from the endorsement of instruments in the ordinary course of business;
- (e) Indebtedness of Borrower existing on the date hereof and set forth on the Disclosure Schedule;
- (f) Subordinated Debt;
- (g) intercompany Indebtedness owed by (i) any Borrower to another Borrower, (ii) by any Subsidiary to Borrower or (iii) by any Borrower to any other wholly-owned Subsidiary, as applicable; *provided* that, in the case of (iii), such Indebtedness is also permitted as a Permitted Investment and, in the case of such Indebtedness owed to Borrower by a party that is not a Borrower, such Indebtedness shall be evidenced by one or more promissory notes;
- (h) Cash collateralization of Indebtedness by a Borrower incurred by NCMs in respect of startup and operating costs, including purchases from the Borrower, in an amount not to exceed Twenty-Five Million Dollars (\$25,000,000) in the aggregate at any time (which amount



shall be net of any investments made pursuant to clause (g) of the definition of Permitted Investments below); and

(i) extensions, refinancings, modifications, amendments and restatements of any items of Permitted Indebtedness; *provided* that the principal amount thereof is not increased or the terms thereof are not modified to impose materially more burdensome terms upon Borrower.

“Permitted Investments” means and includes any of the following Investments as to which Collateral Agent and each Lender have a perfected security interest:

(a) Deposits and deposit accounts with commercial banks organized under the laws of the United States, to the extent: (i) the deposit accounts of each such institution are insured by the Federal Deposit Insurance Corporation up to the legal limit; and (ii) each such institution has an aggregate capital and surplus of not less than One Hundred Million Dollars (\$100,000,000) or Deposits and deposit accounts with Schedule I or Schedule II banks in Canada;

(b) Deposits and deposit accounts or securities accounts with Canaccord Genuity Corp. or its affiliates;

(c) Investments in marketable obligations issued or fully guaranteed by the United States or Canada, or any province of Canada and maturing not more than one (1) year from the date of issuance;

(d) Investments in open market commercial paper or bankers’ acceptances rated at least “A1” or “P1” or higher by a national credit rating agency and maturing not more than one (1) year from the creation thereof;

(e) Investments pursuant to or arising under currency agreements or interest rate agreements entered into in the ordinary course of business;

(f) Investments by Borrower and Subsidiaries in their Subsidiaries outstanding on the date hereof;

(g) Investments in NCMs made in the ordinary course of business, in an amount not to exceed Two Million Dollars (\$2,000,000) per NCM relationship and Twenty-Five Million Dollars (\$25,000,000) in the aggregate for all NCM relationships, which aggregate amount shall be net of any Indebtedness incurred pursuant to clause (h) of the definition of Permitted Indebtedness above;

(h) other Investments aggregating not in excess of One Million Dollars (\$1,000,000) at any time; and

(i) other Investments with the consent of the Lenders, not to be unreasonably withheld, conditioned or delayed.

“Permitted Liens” means and includes:

(a) the Liens created by this Agreement;

(b) Liens for fees, taxes, levies, imposts, duties or other governmental charges of any kind which are not yet delinquent or which are being contested in good faith by appropriate proceedings which suspend the collection thereof (*provided* that such appropriate proceedings do not involve any substantial danger of the sale, forfeiture or loss of any material item of Collateral which in the aggregate is material to Borrower and that Borrower has adequately bonded such Lien or reserves sufficient to discharge such Lien have been provided on the books of Borrower);

(c) Liens identified on the Disclosure Schedule;

(d) carriers', warehousemen's, mechanics', materialmen's, repairmen's or other similar Liens arising in the ordinary course of business and which are not delinquent or remain payable without penalty or which are being contested in good faith and by appropriate proceedings (*provided* that such appropriate proceedings do not involve any substantial danger of the sale, forfeiture or loss of any material item of Collateral or Collateral which in the aggregate is material to Borrower and that Borrower has adequately bonded such Lien or reserves sufficient to discharge such Lien have been provided on the books of Borrower);

(e) Liens upon any equipment or other personal property acquired by Borrower after the date hereof to secure (i) the purchase price of such equipment or other personal property, or (ii) equipment and capital lease obligations or indebtedness incurred solely for the purpose of financing the acquisition of such equipment or other personal property; *provided* that (A) such Liens are confined solely to the equipment or other personal property so acquired and the amount secured does not exceed the acquisition price thereof, and (B) no such Lien shall be created, incurred, assumed or suffered to exist in favor of Borrower's officers, directors or shareholders holding five percent (5%) or more of Borrower's Equity Securities;

(f) non-exclusive licenses of Intellectual Property entered into in the ordinary course of business and licenses that could not result in a legal transfer of title of the licensed property but that may be exclusive in respects other than territory and that may be exclusive as to territory only as to discreet geographical areas outside of the United States entered into in the ordinary course of business;

(g) liens in respect of the Indebtedness described in clause (h) of the definition of "Permitted Indebtedness";

(h) Liens arising from judgments, decrees or attachments in circumstances not constituting an Event of Default;

(i) Liens securing Subordinated Debt on terms and in form acceptable to Lender, acting reasonably;

(j) leases or subleases and licenses and sublicenses granted in the ordinary course of business;

(k) Liens on insurance proceeds securing the payment of financed insurance premiums;

(l) deposits in the ordinary course of business under worker's compensation, unemployment insurance, social security and other similar laws, or to secure the performance of bids, tenders or contracts (other than for the repayment of borrowed money) or to secure indemnity, performance or other similar bonds for the performance of bids, tenders or contracts (other than for the repayment of borrowed money) or to secure statutory obligations or surety or appeal bonds, or to secure indemnity, performance or other similar bonds.

“Petty Cash Accounts” means deposit accounts with deposits at any time in an aggregate amount not in excess of \$50,000 for any one account and \$100,000 in the aggregate for all such accounts.

“Person” means and includes any individual, any partnership, any corporation, any business trust, any joint stock company, any limited liability company, any unincorporated association or any other entity and any domestic or foreign national, state, provincial or local government, any political subdivision thereof, and any department, agency, authority or bureau of any of the foregoing.

“Powerscourt” means Powerscourt Investments XXV, LP, a Delaware limited partnership.

“Property” means any interest in any kind of property or asset, whether real, personal or mixed, whether tangible or intangible.

“PPSA” means the *Personal Property Security Act* (British Columbia) or any successor personal property security statutes or similar legislation of any other Canadian provinces or territorial jurisdictions, the laws of which are required by such legislation to be applied in connection with the issue, perfection, enforcement, opposability, priority, validity or effect of security interests or other applicable Liens.

“Receiver” has the meaning giving such term in Section 9.1 of this Agreement.

“Responsible Officer” has the meaning given such term in Section 6.3 of this Agreement.

“Restricted License” means any license or other agreement with respect to which Borrower is the licensee and such license or agreement is material to Borrower’s business and (a) that prohibits or otherwise restricts Borrower from granting a security interest in Borrower’s interest in such license or agreement or any other property or (b) for which a default under or termination of could interfere with Collateral Agent’s or Lenders’ right to sell any Collateral.

“Sanctions” means any sanction administered or enforced by the United States Government (including, without limitation, OFAC and the United States Department of State), the United Nations Security Council, the European Union, Her Majesty’s Treasury or other relevant sanctions authority.

“Scheduled Payments” has the meaning given such term in Section 2.2(a) of this Agreement.

“Solvent” has the meaning given such term in Section 5.12 of this Agreement.

“Subordinated Debt” means unsecured Indebtedness incurred by Borrower or any Subsidiary, the incurrence of which by Borrower or such Subsidiary is consented to by Lenders and which is subordinated to all Indebtedness to Lender pursuant to a subordination agreement, intercreditor agreement, or similar agreement, in form and substance acceptable to Lenders, acting reasonably.

“Subsidiary” means any corporation or other entity of which a majority of the outstanding Equity Securities entitled to vote for the election of directors or other governing body (otherwise than as the result of a default) is owned by Borrower directly or indirectly through Subsidiaries.

“Transfer” has the meaning given such term in Section 7.4 of this Agreement.

“Trinity” means Trinity Capital Inc., a Maryland corporation.

“Warrant” means collectively, the 2021 Warrant and the 2022 Warrant.

1.2 Construction. References in this Agreement to “Articles,” “Sections,” “Exhibits,” “Schedules” and “Annexes” are to recitals, articles, sections, exhibits, schedules and annexes herein and hereto unless otherwise indicated. References in this Agreement and each of the other Loan Documents to any document, instrument or agreement shall include (a) all exhibits, schedules, annexes and other attachments thereto, (b) all documents, instruments or agreements issued or executed in replacement thereof, and (c) such document, instrument or agreement, or replacement or predecessor thereto, as amended, modified and supplemented from time to time and in effect at any given time (subject, in the case of clauses (b) and (c), to any restrictions on such replacement, amendment, modification or supplement set forth in the Loan Documents). The words “hereof,” “herein” and “hereunder” and words of similar import when used in this Agreement or any other Loan Document shall refer to this Agreement or such other Loan Document, as the case may be, as a whole and not to any particular provision of this Agreement or such other Loan Document, as the case may be. The words “include” and “including” and words of similar import when used in this Agreement or any other Loan Document shall not be construed to be limiting or exclusive. Unless the context requires otherwise, any reference in this Agreement or any other Loan Document to any Person shall be construed to include such Person’s successors and assigns. Unless otherwise indicated in this Agreement or any other Loan Document, all accounting terms used in this Agreement or any other Loan Document shall be construed, and all accounting and financial computations hereunder or thereunder shall be computed, in accordance with GAAP, and all terms describing Collateral shall be construed in accordance with the Code. The terms and information set forth on the cover page of this Agreement are incorporated into this Agreement. Unless otherwise expressly indicated in this Agreement or in any other Loan Document, all references to dollars or other monetary amounts shall be references to United States Dollars. Any reference to matters being within the “knowledge” of the Borrower means, with respect to a particular fact or matter, if an executive officer of Borrower is actually aware of such fact or matter, or a reasonably prudent individual operating in the capacity of an executive officer of Borrower could be expected to discover or otherwise become aware of such fact or matter in the ordinary course of fulfilling the responsibilities of an executive officer.

## 2. Loan; Repayment.

### 2.1 Commitments.

(a) The Commitment Amounts. Subject to the terms and conditions of this Agreement, and relying upon the representations and warranties herein set forth as and when made or deemed to be made, (i) Powerscourt agrees to lend to Borrower prior to the Loan A Commitment Termination Date, Loan A and prior to the Loan F Commitment Termination Date, Loan F (ii) Horizon agrees to lend to Borrower, prior to the Loan B Commitment Termination Date, Loan B, prior to the Loan C Commitment Termination Date, Loan C and prior to the Loan D Commitment Termination Date, Loan D, prior to the Loan H Commitment Termination Date, Loan H, and prior to the Loan I Commitment Termination Date, Loan I and (iii) Trinity agrees to lend to Borrower, prior to the Loan E Commitment Termination Date, Loan E and prior to the Loan G Commitment Termination Date, Loan G.

(b) The Loan and the Note. The obligation of Borrower to repay the unpaid principal amount of and interest on each Loan shall be evidenced by one or more Notes issued to the Lender.

(c) Use of Proceeds. The proceeds of each Loan shall be used solely for (i) the payment of fees and expenses in relation to this Agreement and the Loan Documents and (ii) working capital or general corporate purposes of Borrower, including building out of Borrower's manufacturing space with the proceeds of Loan F, Loan G, Loan H and Loan I.

(d) Termination of Commitment to Lend. Notwithstanding anything in the Loan Documents, each respective Lender's obligation to lend the undisbursed portion of the Commitment Amount to Borrower hereunder shall terminate on the earlier of (i) at such Lender's sole election, upon the occurrence of any Default or Event of Default hereunder that has not been waived by Lenders, and (ii) with respect to Loan A, the Loan A Commitment Termination Date, with respect to Loan B, the Loan B Commitment Termination Date, with respect to Loan C, the Loan C Commitment Termination Date, with respect to Loan D, the Loan D Commitment Termination Date, with respect to Loan E, the Loan E Commitment Termination Date, with respect to Loan F, the Loan F Commitment Termination Date, with respect to Loan G, the Loan G Commitment Termination Date, with respect to Loan H, the Loan H Commitment Termination Date and with respect to Loan I, the Loan I Commitment Termination Date. Notwithstanding the foregoing, each Lender's obligation to lend the undisbursed portion of the Commitment Amount to Borrower shall terminate if, in such Lender's sole discretion, there has been a material adverse change in the general affairs, management, results of operations, condition (financial or otherwise) or prospects of Borrower, whether or not arising from transactions in the ordinary course of business, or there has been any material adverse deviation by Borrower from the business plan of Borrower presented to Lenders on or before the date of this Agreement.

### 2.2 Payments.

(a) Scheduled Payments. Borrower shall make (i) a payment of accrued interest only to each applicable Lender on the outstanding principal amount of the Loan on the first twenty-four (24) Payment Dates specified in the Note applicable to the Loan and (ii) an equal

payment of principal plus accrued interest to each applicable Lender on the outstanding principal amount of the Loan on the next twenty-four (24) Payment Dates as set forth in the Note (collectively, the “Scheduled Payments”). Borrower shall make such Scheduled Payments commencing on the date set forth in the Note applicable to each Loan and continuing thereafter on the first Business Day of each calendar month (each a “Payment Date”) through the Maturity Date. In any event, all unpaid principal and accrued interest shall be due and payable in full on the Maturity Date.

(b) Interim Payment. Unless the Funding Date for a Loan is the first day of a calendar month, Borrower shall pay the per diem interest (accruing at the Loan Rate from the Funding Date through the last day of that month) payable with respect to such Loan on the first Business Day of the next calendar month.

(c) Payment of Interest. Borrower shall pay interest on each Loan at a per annum rate of interest equal to the Loan Rate. Changes to the Loan Rate based on changes to the Prime Rate (or such substitute benchmark rate selected in accordance with the definition of “Loan Rate” set forth in Section 1.1 above) shall be effective on the effective date of any change to the Prime Rate (or such substitute benchmark rate selected in accordance with the definition of “Loan Rate” set forth in Section 1.1 above) and to the extent of any such change. Interest (including interest at the Default Rate, if applicable) shall be computed on the basis of a 360-day year for the actual number of days elapsed. Notwithstanding any other provision hereof, the amount of interest payable hereunder shall not in any event exceed the maximum amount permitted by the law applicable to interest charged on commercial loans. For purposes of the *Interest Act* (Canada), (i) whenever any interest or fee under this Agreement or under the Notes is calculated using a rate based on a number of days less than 365 or 366, as the case may be, 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 based on which such rate is calculated, (ii) the principle of deemed reinvestment of interest shall not apply to any interest calculation under this Agreement, and (iii) the rates of interest stipulated in this Agreement are intended to be nominal rates and not effective rates or yields. The Borrower acknowledges and confirms that the foregoing satisfies the requirements of Section 4 of the *Interest Act* (Canada) to the extent it applies to the expression or statement of any interest payable hereunder.

(d) Application of Payments. All payments received by Lenders prior to an Event of Default shall be applied as follows: (i) first, to each Lender’s pro rata portion of the Lenders’ Expenses then due and owing; and (ii) second, ratably, to all Scheduled Payments then due and owing (*provided*, however, if such payments are not sufficient to pay the whole amount then due, such payments shall be applied first to unpaid interest at the Loan Rate, then to the remaining amounts then due). After an Event of Default, all payments and application of proceeds shall be made as set forth in Section 9.7.

(e) Late Payment Fee. Borrower shall pay to the Lenders a late payment fee equal to six percent (6%) of any Scheduled Payment not paid when due to such Lender.



(f) Default Rate. Borrower shall pay interest at a per annum rate equal to the Default Rate on any amounts required to be paid by Borrower to Collateral Agent or any Lender under this Agreement or the other Loan Documents (including Scheduled Payments), payable with respect to any Loan, accrued and unpaid interest, and any fees or other amounts which remain unpaid after such amounts are due. If an Event of Default has occurred and the Obligations have been accelerated (whether automatically or by any Lender's election), Borrower shall pay interest on the aggregate, outstanding accelerated balance hereunder from the date of the Event of Default until all Events of Default are cured, at a per annum rate equal to the Default Rate.

(g) Final Payment.

(i) Loan A Final Payment. Borrower shall pay to the applicable Lender a payment in an amount equal to One Hundred Eighty-Seven Thousand Five Hundred Dollars (\$187,500) (the "Loan A Final Payment") upon the earlier of (A) payment in full of the principal balance of Loan A, (B) an Event of Default and demand by Lenders of payment in full of Loan A or (C) the Maturity Date, as applicable.

(ii) Loan B Final Payment. Borrower shall pay to the applicable Lender a payment in an amount equal to One Hundred Eighty-Seven Thousand Five Hundred Dollars (\$187,500) (the "Loan B Final Payment") upon the earlier of (A) payment in full of the principal balance of Loan B, (B) an Event of Default and demand by Lenders of payment in full of Loan B or (C) the Maturity Date, as applicable.

(iii) Loan C Final Payment. Borrower shall pay to the applicable Lender a payment in an amount equal to One Hundred Eighty-Seven Thousand Five Hundred Dollars (\$187,500) (the "Loan C Final Payment") upon the earlier of (A) payment in full of the principal balance of Loan C, (B) an Event of Default and demand by Lenders of payment in full of Loan C or (C) the Maturity Date, as applicable.

(iv) Loan D Final Payment. Borrower shall pay to the applicable Lender a payment in an amount equal to One Hundred Eighty-Seven Thousand Five Hundred Dollars (\$187,500) (the "Loan D Final Payment") upon the earlier of (A) payment in full of the principal balance of Loan D, (B) an Event of Default and demand by Lenders of payment in full of Loan D or (C) the Maturity Date, as applicable.

(v) Loan E Final Payment. Borrower shall pay to the applicable Lender a payment in an amount equal to Two Hundred Fifty Thousand Dollars (\$250,000) (the "Loan E Final Payment") upon the earlier of (A) payment in full of the principal balance of Loan E, (B) an Event of Default and demand by Lenders of payment in full of Loan E or (C) the Maturity Date, as applicable.

(vi) Loan F Final Payment. Borrower shall pay to the applicable Lender a payment in an amount equal to One Hundred Twenty-Five Thousand Dollars (\$125,000) (the "Loan F Final Payment") upon the earlier of (A) payment in full of the principal balance of Loan F, (B) an Event of Default and demand by Lenders of payment in full of Loan F or (C) the Maturity Date, as applicable.

(vii) Loan G Final Payment. Borrower shall pay to the applicable Lender a payment in an amount equal to One Hundred Twenty-Five Thousand Dollars (\$125,000) (the “Loan G Final Payment”) upon the earlier of (A) payment in full of the principal balance of Loan G, (B) an Event of Default and demand by Lenders of payment in full of Loan G or (C) the Maturity Date, as applicable.

(viii) Loan H Final Payment. Borrower shall pay to the applicable Lender a payment in an amount equal to One Hundred Twenty-Five Thousand Dollars (\$125,000) (the “Loan H Final Payment”) upon the earlier of (A) payment in full of the principal balance of Loan H, (B) an Event of Default and demand by Lenders of payment in full of Loan H or (C) the Maturity Date, as applicable.

(ix) Loan I Final Payment. Borrower shall pay to the applicable Lender a payment in an amount equal to One Hundred Twenty-Five Thousand Dollars (\$125,000) (the “Loan I Final Payment”) upon the earlier of (A) payment in full of the principal balance of Loan I, (B) an Event of Default and demand by Lenders of payment in full of Loan I or (C) the Maturity Date, as applicable.

### 2.3 Prepayments.

(a) Mandatory Prepayment Upon an Acceleration. If the Loans are accelerated following the occurrence of an Event of Default pursuant to Section 9.1(a) hereof, then Borrower, in addition to any other amounts which may be due and owing hereunder, shall immediately pay to Lenders the amount set forth in Section 2.3(b) below, as if Borrower had opted to prepay on the date of such acceleration.

(b) Optional Prepayment. Upon ten (10) Business Days’ prior written notice to Lenders, Borrower may, at its option, at any time, prepay all (and not less than all) of the outstanding Loans by simultaneously paying to the Lenders an amount equal to (i) any accrued and unpaid interest on the outstanding principal balance of the Loan; *plus* (ii) an amount equal to (A) if such Loan is prepaid before the Loan Amortization Date applicable to such Loan, three percent (3%) of the then outstanding principal balance of such Loan, (B) if such Loan is prepaid on or after the Loan Amortization Date applicable to such Loan, but on or before the date that is twelve (12) months after such Loan Amortization Date, two percent (2%) of the then outstanding principal balance of such Loan, or (C) if such Loan is prepaid on or after the date that is twelve (12) months after the Loan Amortization Date applicable to such Loan, one percent (1%) of the then outstanding principal balance of such Loan; *plus* (iii) the outstanding principal balance of such Loan; *plus* (iv) all other sums, if any, that shall have become due and payable hereunder.

### 2.4 Other Payment Terms.

(a) Place and Manner. Borrower shall make all payments due to Lenders in lawful money of the United States. All payments of principal, interest, fees and other amounts payable by Borrower hereunder shall be made, in immediately available funds, not later than 12:00 noon Connecticut time, on the date on which such payment is due. Borrower shall make such payments to the Lenders via wire transfer or ACH as instructed by the Lenders from time to time.



(b) Date. Whenever any payment is due hereunder on a day other than 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.

(c) Taxes.

(i) Unless otherwise required under applicable law, any and all payments made hereunder or under the Notes shall be made free and clear of and without deduction or withholding for any taxes; *provided* that if Borrower shall be required to deduct or withhold any Indemnified Taxes from such payments, then (A) the sum payable shall be increased as necessary so that after making all required deductions and withholdings (including deductions and withholdings applicable to additional sums payable under this Section 2.4(c)) the relevant Lender receives an amount equal to the sum it would have received had no such deductions or withholdings been made, (B) Borrower shall make such deductions or withholdings and (C) Borrower shall pay the full amount deducted or withheld to the relevant Governmental Authority in accordance with applicable law.

(ii) Borrower shall indemnify each Lender, within 10 days after written demand therefor, for the full amount of any Indemnified Taxes imposed or asserted directly on such Lender by any Governmental Authority on or attributable to amounts payable under this Agreement solely as a result of such Lender entering into this Agreement to the extent such taxes are paid by such Lender, and any penalties, interest and reasonable expenses arising therefrom or with respect thereto, whether or not such Indemnified 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 Borrower by a Lender shall be conclusive absent manifest error.

(iii) As soon as practicable after any payment of taxes by Borrower hereunder to a Governmental Authority, Borrower shall deliver to Lenders the original or a certified copy of a receipt issued by such Governmental Authority evidencing such payment or other evidence of such payment reasonably satisfactory to Lenders.

(iv) If any Lender is entitled to an exemption from or reduction of withholding tax under the law of the jurisdiction in which Borrower is located, or any treaty to which such jurisdiction is a party, with respect to payments under this Agreement, such Lender shall deliver to Borrower, as reasonably requested by Borrower, such properly completed and executed documentation prescribed by applicable law as will permit such payments to be made without withholding or at a reduced rate.

(v) If a Lender receives a refund in respect of taxes paid by Borrower pursuant to this Section 2.4(c), which in the sole discretion of such Lender exercised in good faith is allocable to such payment, it shall promptly pay such refund, together with any other amounts paid by Borrower in connection with such refunded taxes, to Borrower, net of all out-of-pocket expenses (including any taxes to which such Lender has become subject as a result of its receipt of such refund) of such Lender incurred in obtaining such refund and without interest (other than any interest paid by the relevant Governmental Authority with respect to such refund); *provided* that Borrower, upon the request of the applicable Lender, shall repay to such Lender amounts paid over pursuant to the preceding clause (plus any interest or other charges imposed by

the relevant Governmental Authority) in the event that such Lender is required to repay such refund to such Governmental Authority. Notwithstanding anything to the contrary in this paragraph (v), in no event will any Lender be required to pay any amount to Borrower pursuant to this paragraph (v) the payment of which would place such Lender in a less favorable net after-tax position than such Lender would have been in if the indemnification payments or additional amounts giving rise to such refund had never been paid. This paragraph shall not be construed to require any Lender to make available its tax returns (or any other information relating to its taxes that it deems confidential) to Borrower or any other Person.

#### 2.5 Procedure for Making the Loans.

(a) Notice. Borrower shall notify each Lender of the date on which Borrower desires the Lenders to make any Loan at least five (5) Business Days in advance of the desired Funding Date, unless the Lenders elect at their sole discretion to allow the Funding Date for a Loan to be made by the Lenders to be within five (5) Business Days of Borrower's notice. Borrower's execution and delivery to Lenders of one or more Notes in respect of a Loan shall be Borrower's agreement to the terms and calculations thereunder with respect to such Loan. Each Lender's obligation to make any Loan shall be expressly subject to the satisfaction of the conditions set forth in Section 3.

(b) Loan Rate Calculation. Prior to each Funding Date for any Loan, the applicable Lender shall establish the Loan Rate with respect to such Loan, which shall be conclusive in the absence of a manifest error.

(c) Disbursement. Lenders shall disburse the proceeds of the Loan by wire transfer to Borrower at the account specified in the Funding Certificate for such Loan.

#### 2.6 Good Faith Deposit; Legal and Closing Expenses; and Commitment Fee.

(a) Good Faith Deposit. Borrower has, (i) in connection with the execution and delivery of the Original Agreement, delivered to Horizon, Powerscourt and Trinity a good faith deposit in the amount of Forty-Nine Thousand Nine Hundred Eighty-Five Dollars (\$49,985) (the "Original Good Faith Deposit"), and (ii) in connection with this Agreement, delivered to Lenders a good faith deposit in the amount of Forty-Nine Thousand Nine Hundred Eighty-Five Dollars (\$49,985) (the "Additional Good Faith Deposit"). The Original Good Faith Deposit was paid to Horizon, Powerscourt and Trinity and credited after legal due diligence and documentation expenses to the Original Commitment Fee paid to the Lenders. The Additional Good Faith Deposit paid to Lenders will be credited after legal, due diligence and documentation expenses to the Additional Commitment Fee payable to the Lenders. If the Funding Date of any of Loan F, Loan G, Loan H and Loan I does not occur, Lenders shall retain the Additional Good Faith Deposit as compensation for their time, expenses and opportunity cost.

(b) Legal, Due Diligence and Documentation Expenses. Concurrently with its execution and delivery of this Agreement and the advance of the Loans, Borrower shall pay to Lenders all of Lenders' reasonable legal, due diligence and documentation expenses in connection with the negotiation, preparation and documentation of the term sheet dated April 22, 2022, this Agreement and the Loan Documents, including the review and delivery of the conditions precedent

and registration of PPSA and UCC financing statements (all of which amounts shall be paid out of the Additional Good Faith Deposit).

(c) Commitment Fee.

(i) Original Commitment Fee. Borrowers paid, concurrently with the execution and delivery of the Original Agreement and the advance of Loan A, Loan B, Loan C, Loan D and Loan E, a commitment fee to Horizon, Powerscourt and Trinity in the amount of Three Hundred Thousand Dollars (\$300,000) (the "Original Commitment Fee").

(ii) Additional Commitment Fee. Borrower shall pay, concurrently with its execution and delivery of this Agreement and the advance of Loan F, Loan G, Loan H and Loan I, an additional commitment fee to Horizon, Powerscourt and Trinity in the amount of Two Hundred Thousand Dollars (\$200,000.00) (the "Additional Commitment Fee", and collectively with the Original Commitment Fee, the "Commitment Fee"). The Additional Commitment Fee shall be paid by Borrower as set forth in the Funding Certificate with respect to Loan F, Loan G, Loan H and Loan I. The Additional Commitment Fee shall be retained by Horizon, Powerscourt and Trinity and be deemed fully earned upon receipt.

3. Conditions of Loans.

3.1 Conditions Precedent to Closing. At the time of the execution and delivery of this Agreement, each Lender shall have received, in form and substance reasonably satisfactory to such Lender, all of the following (unless the Lenders have agreed in writing to waive such condition or document, in which case such condition or document shall be a condition precedent to the making of any Loan and shall be deemed added to Section 3.2):

(a) Loan Agreement. This Agreement duly executed by Borrower, Collateral Agent and Lenders.

(b) Warrants. The 2022 Warrants duly executed by Nexii Building.

(c) Secretary's Certificate. A certificate of the secretary or assistant secretary or other officer, of each Borrower, dated as of the date hereof, with copies of the following documents attached: (i) the certificate of incorporation, articles and bylaws or notice of articles (or equivalent documents) of Borrower certified by an officer of such Borrower as being complete and in full force and effect on the date thereof, (ii) incumbency and representative signatures, and (iii) resolutions authorizing the execution and delivery of this Agreement and each of the other Loan Documents.

(d) Good Standing Certificates. A good standing certificate from Borrower's state or province of organization and the state or province in which Borrower's principal place of business is located, if applicable, each dated as of a date no earlier than thirty (30) days prior to the date hereof.

(e) Certificate of Insurance. Evidence of the insurance coverage required by Section 6.8 of this Agreement.

(f) Consents. All necessary consents of shareholders and other third parties with respect to the execution, delivery and performance of this Agreement, the 2022 Warrant and the other Loan Documents.

(g) Legal Opinions. A legal opinion of Borrowers' Canadian counsel, dated as of the date hereof, in a form satisfactory to the to the Collateral Agent and the Lenders.

(h) Account Control Agreements. Account Control Agreements for all of Borrower's deposit accounts and securities accounts, duly executed by all of the parties thereto.

(i) Grants of Security Interests in Intellectual Property. Grants of security interests in any United States and Canadian federally registered Intellectual Property, in the forms provided by Lenders and the results of recent intellectual property searches (including searches with the United States Patent and Trademark Office and United States Copyright Office and the Canadian Intellectual Property Office) with respect to each Borrower, with the results of such searches to be satisfactory to the Lenders.

(j) Fees and Expenses. Payment of all fees and expenses then due hereunder or under any other Loan Document.

3.2 Conditions Precedent to Making Loan A, Loan B, Loan C, Loan D and Loan E. The obligation of each Lender to make each of Loan A, Loan B, Loan C, Loan D and Loan E as applicable, is further subject to satisfaction of the following conditions as of the applicable Funding Date:

(a) No Default. No Default or Event of Default shall have occurred and be continuing.

(b) Landlord Agreements. Borrower shall have provided Lenders with a Landlord Agreement for each location where Borrower's books and records and the Collateral is located (unless Borrower is the owner of such property).

(c) Note. Borrower shall have duly executed and delivered one or more Notes in the amount of each of Loan A, Loan B, Loan C, Loan D and Loan E to each applicable Lender.

(d) UCC Financing Statements. Lenders shall have received such documents, instruments and agreements, including UCC and PPSA financing statements or amendments to UCC and PPSA financing statements and UCC and PPSA financing statement searches, as the Lenders shall reasonably request to evidence the perfection and priority of the security interests granted to Collateral Agent and each Lender pursuant to Section 4, provided that no registrations to perfect any security interest in motor vehicles or other assets subject to certificates of title or PPSA registration by serial number shall be required. Borrower authorizes Collateral Agent and each Lender to file any UCC and PPSA financing statements, continuations of or amendments to UCC and PPSA financing statements they deem necessary to perfect the Lenders' security interest in the Collateral.

(e) UCC and PPSA Searches. Copies, dated a recent date, of UCC financing statement searches and PPSA searches, as Lender shall reasonably request, accompanied by written evidence that the Liens indicated in any such UCC and PPSA search results either constitute Permitted Liens (including any applicable PPSA confirmations) or have been or, in connection with funding of such Loan, will be terminated, released or subordinated to the sole satisfaction of the Lenders.

(f) Funding Certificate. Borrower shall have duly executed and delivered to Lenders a Funding Certificate for such Loans.

(g) Representations and Warranties. The representations and warranties made by Borrower in Section 5 and in the other Loan Documents shall be true and correct as of such Funding Date.

3.3 Conditions Precedent to Making Loan F, Loan G, Loan H and Loan I. The obligation of each Lender to make each of Loan F, Loan G, Loan H and Loan I as applicable, is further subject to satisfaction of the following conditions as of the applicable Funding Date:

(a) No Default. No Default or Event of Default shall have occurred and be continuing.

(b) Note. Borrowers shall have duly executed and delivered one or more Notes in the amount of each of Loan F, Loan G, Loan H and Loan I to each applicable Lender.

(c) UCC Financing Statements. Lenders shall have received such documents, instruments and agreements, including UCC and PPSA financing statements or amendments to UCC and PPSA financing statements and UCC and PPSA financing statement searches, as the Lenders shall reasonably request to evidence the perfection and priority of the security interests granted to Collateral Agent and each Lender pursuant to Section 4, provided that no registrations to perfect any security interest in motor vehicles or other assets subject to certificates of title or PPSA registration by serial number shall be required. Borrower authorizes Collateral Agent and each Lender to file any UCC and PPSA financing statements, continuations of or amendments to UCC and PPSA financing statements they deem necessary to perfect the Lenders' security interest in the Collateral.

(d) UCC and PPSA Searches. Copies, dated a recent date, of UCC financing statement searches and PPSA searches, as Lender shall reasonably request, accompanied by written evidence that the Liens indicated in any such UCC and PPSA search results either constitute Permitted Liens (including any applicable PPSA confirmations) or have been or, in connection with funding of such Loan, will be terminated, released or subordinated to the sole satisfaction of the Lenders.

(e) Funding Certificate. Borrower shall have duly executed and delivered to Lenders a Funding Certificate for such Loans.

(f) Representations and Warranties. The representations and warranties made by Borrower in Section 5 and in the other Loan Documents shall be true and correct as of such Funding Date.

3.4 Covenant to Deliver. Borrower agrees (not as a condition but as a covenant) to deliver to Lenders each item required to be delivered to Lenders as a condition to the Loan, if such Loan is advanced. Borrower expressly agrees that the extension of any Loan prior to the receipt by a Lender of any such item shall not constitute a waiver by such Lender of Borrower's obligation to deliver such item, and any such extension in the absence of a required item shall be in each Lender's sole discretion.

#### 4. Creation of Security Interest.

4.1 Grant of Security Interests. Borrower grants to Collateral Agent and each Lender a valid, continuing lien upon and security interest in all presently existing and hereafter acquired or arising Collateral in order to secure prompt, full and complete payment of any and all Obligations and in order to secure prompt, full and complete performance by Borrower of each of its covenants and duties under each of the Loan Documents (other than the Warrants). The "Collateral" shall mean and include all right, title, interest, claims and demands of Borrower in the following:

(a) All goods (and embedded computer programs and supporting information included within the definition of "goods" under the Code) and equipment now owned or hereafter acquired, including all laboratory equipment, computer equipment, office equipment, machinery, fixtures, vehicles (including motor vehicles and trailers), and any interest in any of the foregoing, and all attachments, accessories, accessions, replacements, substitutions, additions, and improvements to any of the foregoing, wherever located;

(b) All inventory now owned or hereafter acquired, including all merchandise, raw materials, parts, supplies, packing and shipping materials, work in process and finished products including such inventory as is temporarily out of Borrower's custody or possession or in transit and including any returns upon any accounts or other proceeds, including insurance proceeds, resulting from the sale or disposition of any of the foregoing and any documents of title representing any of the above, and Borrower's books relating to any of the foregoing;

(c) All contract rights and general intangibles (including Intellectual Property), now owned or hereafter acquired, including goodwill, license agreements, franchise agreements, blueprints, drawings, purchase orders, customer lists, route lists, infringements, claims, software, computer programs, computer disks, computer tapes, literature, reports, catalogs, design rights, income tax refunds, payment intangibles, commercial tort claims, payments of insurance and rights to payment of any kind;

(d) All now existing and hereafter arising accounts, contract rights, royalties, license rights, license fees and all other forms of obligations owing to Borrower arising out of the sale or lease of goods, the licensing of technology or the rendering of services by Borrower (subject, in each case, to the contractual rights of third parties to require funds received by Borrower to be expended in a particular manner), whether or not earned by performance, and any and all credit insurance, guaranties, and other security therefor, as well as all merchandise returned to or reclaimed by Borrower and Borrower's books relating to any of the foregoing;



(e) All documents, cash, deposit accounts, letters of credit and letters of credit rights (whether or not the letter of credit is evidenced by a writing) and other supporting obligations, certificates of deposit, instruments, promissory notes, chattel paper (whether tangible or electronic) and investment property, including all securities, whether certificated or uncertificated, security entitlements, securities accounts, commodity contracts and commodity accounts, and all financial assets held in any securities account or otherwise, wherever located, now owned or hereafter acquired and Borrower's books relating to the foregoing; and

(f) To the extent not covered by clauses (a) through (e), all other personal property of the Borrower, whether tangible or intangible, and any and all rights and interests in any of the above and the foregoing and, any and all claims, rights and interests in any of the above and all substitutions for, additions and accessions to and proceeds thereof, including insurance, condemnation, requisition or similar payments and proceeds of the sale or licensing of Intellectual Property,

Provided, however, that, if the grant of any lien or security interest in any contract, license or agreement, Intellectual Property, permit, license, authorization, approval or right would result in the termination or breach thereof or is otherwise prohibited or ineffective (whether by the terms thereof or under applicable law), then the applicable contract, license or agreement, Intellectual Property, permit, license, authorization, approval or right will not be subject to any lien or security interest but will be held in trust by the Borrower for the benefit of the Collateral Agent, provided, however, that upon termination of such prohibition, such contract, license or agreement, Intellectual Property, permit, license, authorization, approval or right, as applicable, shall immediately become Collateral without any action by such Co-Borrower or Lender. The liens and security interests created by this Agreement do not extend to any Excluded Account, any consumer goods (as defined in the PPSA) or the last day of the term of any lease or agreement for lease of real property. Such last day will be held by the Borrower in trust for the Collateral Agent and, on the exercise by the Collateral Agent of any of its rights under this Agreement following the occurrence of an Event of Default which is continuing, will be assigned by the Borrower as directed by the Collateral Agent.

4.2 After-Acquired Property. If Borrower shall at any time acquire a commercial tort claim, as defined in the Code, Borrower shall promptly thereafter notify Collateral Agent and Lenders in writing signed by Borrower of the brief details thereof and grant to Collateral Agent and each Lender in such writing a security interest therein and in the proceeds thereof, all upon the terms of this Agreement, with such writing to be in form and substance satisfactory to Collateral Agent and each Lender.

4.3 Duration of Security Interest. Collateral Agent's and each Lender's security interest in the Collateral shall continue until the indefeasible payment in full and the satisfaction of all Obligations, and termination of each Lender's commitment to fund the Loan, whereupon such security interest shall terminate. Collateral Agent and each Lender shall, at Borrower's sole cost and expense, execute such further documents and take such further actions as may be reasonably necessary to make effective the release contemplated by this Section 4.3, including duly authorizing and delivering termination statements for filing in all relevant jurisdictions under the Code.

4.4 Location and Possession of Collateral. The Collateral is and shall remain in the possession of Borrower at its location listed on the cover page hereof or as set forth in the Disclosure Schedule. Borrower shall remain in full possession, enjoyment and control of the Collateral (except only as may be otherwise required by Collateral Agent or any Lender for perfection of the security interests therein created hereunder) and so long as no Event of Default has occurred and not been waived by the Lenders, shall be entitled to manage, operate and use the same and each part thereof with the rights and franchises appertaining thereto; *provided* that the possession, enjoyment, control and use of the Collateral shall at all times be subject to the observance and performance of the terms of this Agreement.

4.5 Delivery of Additional Documentation Required. Borrower shall from time to time execute and deliver to Collateral Agent and Lenders, at the request of Collateral Agent or any Lender, all financing statements and other documents Collateral Agent or any Lender may reasonably request, in form satisfactory to Collateral Agent and Lenders, to perfect and continue Collateral Agent's and Lenders' perfected security interests in the Collateral and in order to consummate fully all of the transactions contemplated under the Loan Documents.

4.6 Right to Inspect. Collateral Agent and each Lender (through any of their officers, employees, or agents) shall have the right, upon reasonable prior notice, from time to time during Borrower's usual business hours, to inspect the books and records of Borrower and Subsidiaries and to make copies thereof and to inspect, test, and appraise the Collateral in order to verify Borrower's financial condition or the amount, condition of, or any other matter relating to, the Collateral. Any inspection, test or appraisal conducted hereunder shall be conducted at the sole cost and expense of Borrower, provided that, except when an Event of Default has occurred that has not been waived by the Lenders, the Borrower shall not be required to pay expenses in respect of more than one site visit for inspection, testing or appraisal in any 12 month period.

4.7 Intellectual Property.

(a) At any Lender's request, Borrower shall register or cause to be registered with the United States Copyright Office or the Canadian Intellectual Property Office, as applicable, (i) any software (material to the business of Borrower) developed or acquired by Borrower in connection with any product developed or acquired for sale or licensing, (ii) any software (material to the business of Borrower) developed or acquired by Borrower hereafter from time to time in connection with any product developed or acquired for sale or licensing, and (iii) any major revisions or upgrades to any software that has previously been registered by or on behalf of Borrower with the United States Copyright Office or the Canadian Intellectual Property Office, as applicable.

(b) Borrower shall promptly notify Lenders on or before the federal registration or filing by Borrower of any patent or patent application, or trademark or trademark application, or copyright or copyright application and shall promptly execute and deliver to Lenders any grants of security interests in same, in form acceptable to Lenders, to file with the United States Patent and Trademark Office or the United States Copyright Office or the Canadian Intellectual Property Office, as applicable.

4.8 Protection of Intellectual Property. Borrower shall:



(a) protect, defend and maintain the validity and enforceability of its Intellectual Property and promptly advise Collateral Agent in writing of material infringements;

(b) not allow any Intellectual Property material to Borrower's business to be abandoned, forfeited or dedicated to the public without the Lenders' written consent, acting reasonably;

(c) provide written notice to Collateral Agent within ten (10) days of entering or becoming bound by any Restricted License (other than over-the-counter software that is commercially available to the public); and

(d) take such commercially reasonable steps as Collateral Agent or any Lender requests to obtain the consent of, or waiver by, any person whose consent or waiver is necessary for (i) any Restricted License to be deemed "Collateral" and for Collateral Agent and Lenders to have a security interest in it that might otherwise be restricted or prohibited by law or by the terms of any such Restricted License, whether now existing or entered into in the future, and (ii) Collateral Agent and each Lender to have the ability in the event of a liquidation of any Collateral to dispose of such Collateral in accordance with Collateral Agent's or Lenders' rights and remedies under this Agreement and the other Loan Documents.

5. Representations and Warranties. Except as set forth in the Disclosure Schedule, Borrower represents and warrants as follows:

5.1 Organization and Qualification. Each of Borrower and its Subsidiaries is a corporation duly organized and validly existing under the laws of its state or province of its organization and qualified and licensed to do business in, and is in good standing in, any jurisdiction in which the conduct of its business or its ownership of Property requires that it be so qualified and licensed or in which the Collateral is located, except for such states and/or provinces as to which any failure to so qualify would not have a Material Adverse Effect.

5.2 Authority. Each Borrower has all necessary power and authority to execute, deliver, and perform in accordance with the terms thereof, the Loan Documents to which it is a party. Each Borrower and its Subsidiaries have all requisite power and authority to own and operate their Property and to carry on their businesses as now conducted. Each Borrower and Subsidiaries have obtained all licenses, permits, approvals and other authorizations necessary for the operation of their business.

5.3 Conflict with Other Instruments, etc. Neither the execution and delivery of any Loan Document to which any Borrower is a party nor the consummation of the transactions therein contemplated nor compliance with the terms, conditions and provisions thereof will conflict with or result in a breach of any of the terms, conditions or provisions of such Borrower's articles of incorporation, by-laws, or any other organizational documents of such Borrower or any law or any regulation, order, writ, injunction or decree of any court or Governmental Authority by which such Borrower or any Subsidiary or any of their respective property or assets may be bound or affected or any material agreement or instrument to which such Borrower is a party or by which it or any of its Property is bound or to which it or any of its Property is subject, or

constitute a default thereunder or result in the creation or imposition of any Lien, other than Permitted Liens.

5.4 Authorization; Enforceability. The execution and delivery of this Agreement, the granting of the security interest in the Collateral, the incurrence of the Loan, the execution and delivery of the other Loan Documents to which Borrower is a party and the consummation of the transactions herein and therein contemplated have each been duly authorized by all necessary action on the part of Borrower. No authorization, consent, approval, license or exemption of, and no registration, qualification, designation, declaration or filing with, or notice to, any Person is, was or will be necessary to (a) the valid execution and delivery of any Loan Document to which Borrower is a party, (b) the performance of Borrower's obligations under any Loan Document or (c) the granting of the security interest in the Collateral, except for filings in connection with the perfection of the security interest in any of the Collateral or the issuance of the Warrants. The Loan Documents have been duly executed and delivered and constitute legal, valid and binding obligations of Borrower, enforceable in accordance with their respective terms, except as the enforceability thereof may be limited by bankruptcy, insolvency or other laws of general application relating to or affecting the enforcement of creditors' rights or by general principles of equity.

5.5 No Prior Encumbrances. Borrower has good and marketable title to the Collateral, free and clear of Liens except for Permitted Liens. Borrower has good title and ownership of, or is licensed under, all of Borrower's current Intellectual Property. Borrower is the sole owner of the Intellectual Property which it owns or purports to own except for (a) non-exclusive licenses granted to its customers, resellers and/or distributors in the ordinary course of business, (b) over-the-counter software that is commercially available to the public and (c) material Intellectual Property licensed to Borrower and noted on the Disclosure Schedule. Each patent which it owns or purports to own and which is material to Borrower's business is valid and enforceable, and no part of the Intellectual Property which Borrower owns or purports to own and which is material to Borrower's business has been judged invalid or unenforceable, in whole or in part. Borrower is not a party to, nor is it bound by, any Restricted License. Borrower has not received any communications alleging that Borrower has violated, or by conducting its business as proposed, would violate any proprietary rights of any other Person. Borrower has no knowledge of any infringement or violation by it of the intellectual property rights of any third party and has no knowledge of any violation or infringement by a third party of any of its Intellectual Property. The Collateral and the Intellectual Property constitute substantially all of the assets and property of Borrower, and Borrower owns all Intellectual Property associated with the business of Borrower and Subsidiaries, free and clear of any liens other than Permitted Liens.

5.6 Security Interest. The provisions of this Agreement create legal and valid security interests in the Collateral in favor of Collateral Agent and each Lender, and, assuming the proper filing of one or more financing statement(s) identifying the Collateral with the proper state and/or local authorities, the security interests in the Collateral granted to Collateral Agent and each Lender pursuant to this Agreement (a) constitute and will continue to constitute first priority security interests (except to the extent any Permitted Liens may have a superior priority to Collateral Agent's and Lenders' Liens under this Agreement) and (b) are and will continue to be superior and prior to the rights of all other creditors of Borrower (except to the extent any

Permitted Liens may have a superior priority to Collateral Agent's and Lenders' Liens under this Agreement), in each case in the Collateral to which the PPSA or UCC applies.

5.7 Name; Location of Chief Executive Office, Principal Place of Business and Collateral. Borrower has not done business under any name other than that specified on the signature page hereof. Borrower's jurisdiction of incorporation, chief executive office, principal place of business, and the place where Borrower maintains its records concerning the Collateral are presently located in the province and at the address set forth on the cover page of this Agreement. The Collateral is presently located at the address set forth on the cover page hereof or as set forth in the Disclosure Schedule.

5.8 Litigation. There are no actions or proceedings pending by or against Borrower or any Subsidiary before any court, arbitral tribunal, regulatory organization, administrative agency or similar body in which an adverse decision could have a Material Adverse Effect. Borrower does not have knowledge of any such pending or threatened actions or proceedings.

5.9 Financial Statements. All financial statements relating to Borrower, any Subsidiary or any Affiliate that have been or may hereafter be delivered by Borrower to Collateral Agent or any Lender present fairly in all material respects Borrower's Consolidated financial condition as of the date thereof and Borrower's Consolidated results of operations for the period then ended.

5.10 No Material Adverse Effect. No event has occurred and no condition exists which could reasonably be expected to have a Material Adverse Effect since December 31, 2020.

5.11 Full Disclosure. No representation, warranty or other statement made by Borrower in any Loan Document (including the Disclosure Schedule), certificate or written statement furnished to Collateral Agent or any Lender contains any untrue statement of a material fact or omits to state a material fact necessary in order to make the statements contained the Loan Documents or certificates or written statements, taken as a whole not misleading.

5.12 Solvency, Etc. Borrower is Solvent (as defined below) on a Consolidated basis and, after the execution and delivery of the Loan Documents and the consummation of the transactions contemplated thereby, Borrower will be Solvent on such basis. "Solvent" means, with respect to any Person on any date, that on such date (a) the fair value of the property of such Person is greater than the fair value of the liabilities (including contingent liabilities) of such Person, (b) the present fair saleable value of the assets of such Person is not less than the amount that will be required to pay the probable liability of such Person on its debts as they become absolute and matured, (c) such Person does not intend to, and does not believe that it will, incur debts or liabilities beyond such Person's ability to pay as such debts and liabilities mature and (d) such Person is not engaged in business or a transaction, and is not about to engage in business or a transaction, for which such Person's property would constitute an unreasonably small capital.

5.13 Subsidiaries. Other than entities that are parties to this Agreement no Borrower has any other Subsidiaries.

5.14 Capitalization. All issued and outstanding Equity Securities of Borrower are duly authorized and validly issued, fully paid and non-assessable, and such securities were issued

in compliance with all applicable provincial and federal laws concerning the issuance of securities, except for such compliance with such laws that would not reasonably be expected to result in a Material Adverse Effect.

5.15 Catastrophic Events; Labor Disputes. None of Borrower, any Subsidiary or any of their respective Property is or has been affected by any fire, explosion, accident, strike, lockout or other labor dispute, drought, storm, hail, earthquake, embargo, act of God or other casualty that could reasonably be expected to have a Material Adverse Effect. There are no disputes presently subject to grievance procedure, arbitration or litigation under any of the collective bargaining agreements, employment contracts or employee welfare or incentive plans to which Borrower or any Subsidiary is a party, and there are no strikes, lockouts, work stoppages or slowdowns, or, to the knowledge of Borrower, jurisdictional disputes or organizing activity occurring or threatened which could reasonably be expected to have a Material Adverse Effect.

5.16 Certain Agreements of Officers, Employees and Consultants.

(a) No Violation. To the knowledge of Borrower, no officer, employee or consultant of Borrower is, or is now expected to be, in violation of any term of any employment contract, proprietary information agreement, nondisclosure agreement, noncompetition agreement or any other material contract or agreement or any restrictive covenant relating to the right of any such officer, employee or consultant to be employed by Borrower because of the nature of the business conducted or to be conducted by Borrower or relating to the use of trade secrets or proprietary information of others, and to Borrower's knowledge, the continued employment of Borrower's officers, employees and consultants does not subject Borrower to any material liability for any claim or claims arising out of or in connection with any such contract, agreement, or covenant.

(b) No Present Intention to Terminate. To the knowledge of Borrower, no officer of Borrower, and no employee or consultant of Borrower whose termination, either individually or in the aggregate, could reasonably be expected to have a Material Adverse Effect, has any present intention of terminating his or her employment or consulting relationship with Borrower.

5.17 No Plan Assets. Neither Borrower nor any Subsidiary is an "employee benefit plan," as defined in Section 3(3) of ERISA, subject to Title I of ERISA, and none of the assets of Borrower or any Subsidiary constitutes or will constitute "plan assets" of one or more such plans within the meaning of 29 C.F.R. Section 2510.3-101. In addition, (a) neither Borrower nor any Subsidiary is a "governmental plan" within the meaning of Section 3(32) of ERISA and (b) transactions by or with Borrower or any Subsidiary are not subject to state statutes regulating investment of, and fiduciary obligations with respect to, governmental plans similar to the provisions of Section 406 of ERISA or Section 4975 of the Internal Revenue Code currently in effect, which prohibit or otherwise restrict the transactions contemplated by this Loan Agreement.

5.18 Sanctions, Etc. None of Borrower, any of its Subsidiaries or, any director or officer or, to the knowledge of the Borrower, any employee, agent or Affiliate of Borrower or any of its Subsidiaries, is a Person that is, or is owned or controlled by Persons that are, (a) the subject or target of any Sanctions or (b) located, organized or resident in a country or territory that is, or

whose government is, the subject of Sanctions. To the best of Borrower's knowledge, as of the date hereof and at all times throughout the term of this Agreement, including after giving effect to any transfers of interests permitted pursuant to the Loan Documents, none of the funds of Borrower, any Subsidiary or of their Affiliates have been (or will be) derived from any unlawful activity with the result that the investment in the respective party (whether directly or indirectly), is prohibited by applicable law or the Loans are in violation of applicable law.

5.19 Regulatory Compliance. Borrower is not a "bank holding company" or a direct or indirect subsidiary of a "bank holding company" as defined in the Bank Holding Company Act of 1956, as amended, and Regulation Y thereunder of the Board of Governors of the Federal Reserve System. Neither Borrower nor any Subsidiary is an "investment company" or a company controlled by an "investment company" under the Investment Company Act of 1940. Borrower is not engaged in the business of extending credit for the purpose of purchasing or carrying margin stock (as defined in Regulation U of the Board of Governors of the Federal Reserve System) and no proceeds of any Loan will be used to purchase or carry margin stock or to extend credit to others for the purpose of purchasing or carrying any margin stock.

5.20 Payment of Taxes. All federal and other material tax returns, reports and statements (including any attachments thereto or amendments thereof) of Borrower and its Subsidiaries filed or required to be filed by any of them have been timely filed (or extensions have been obtained and such extensions have not expired) and all taxes shown on such tax returns or otherwise due and payable and all assessments, fees and other governmental charges upon Borrower, its Subsidiaries and their respective properties, assets, income, businesses and franchises which are due and payable have been paid when due and payable, except for the payment of any such taxes, assessments, fees and other governmental charges which are being diligently contested by Borrower in good faith by appropriate proceedings and for which adequate reserves have been made under GAAP. To the knowledge of Borrower, no tax return of Borrower or any Subsidiary is currently under an audit or examination, and Borrower has not received written notice of any proposed audit or examination, in each case, where a material amount of tax is at issue. Borrower is not an "S corporation" within the meaning of Section 1361(a)(1) of the Internal Revenue Code of 1986, as amended (the "Internal Revenue Code").

5.21 Anti-Terrorism Laws. Borrower will not, directly or indirectly, use the proceeds of the Loans, or lend, contribute or otherwise make available such proceeds to any Subsidiary, joint venture partner or other Person, (i) to fund any activities or business of or with any Person, or in any country or territory, that, at the time of such funding, is, or whose government is, the subject of Sanctions, or (ii) in any other manner that would result in a violation of Sanctions by any Person (including any Person participating in any Loan, whether as lender, underwriter, advisor, investor or otherwise). Lenders hereby notify Borrower that pursuant to the requirements of Anti-Terrorism Laws, and each Lender's policies and practices, each Lender is required to obtain, verify and record certain information and documentation that identifies Borrower and its principals, which information includes the name and address of Borrower and its principals and such other information that will allow such Lender to identify such party in accordance with Anti-Terrorism Laws.



6. Affirmative Covenants. Borrower, until the full and complete payment of the Obligations, covenants and agrees that:

6.1 Good Standing. Borrower shall maintain, and cause each of its Subsidiaries to maintain, its corporate existence and its good standing in its jurisdiction of incorporation and maintain qualification in each jurisdiction in which the failure to so qualify could reasonably be expected to have a Material Adverse Effect. Borrower shall maintain, and cause each of its Subsidiaries to maintain, in force all licenses, approvals and agreements, the loss of which could reasonably be expected to have a Material Adverse Effect.

6.2 Government Compliance. Borrower shall comply, and cause each of its Subsidiaries to comply, with all statutes, laws, ordinances and government rules and regulations to which it is subject, noncompliance with which could reasonably be expected to have a Material Adverse Effect.

6.3 Financial Statements, Reports, Certificates. Borrower shall deliver to each Lender: (a) as soon as available, but in any event within thirty (30) days after the end of each month, a Borrower prepared Consolidated balance sheet, Consolidated income statement and Consolidated cash flow statement covering Borrower's operations during such period, certified by Borrower's president, treasurer or chief financial officer (each, a "Responsible Officer"), as well as a listing of Borrower's accounts receivable and accounts payable by age; (b) as soon as available, but in any event within one hundred twenty (120) days after the end of Borrower's fiscal year, audited Consolidated financial statements of Borrower prepared in accordance with GAAP, together with an unqualified opinion on such financial statements of a nationally recognized or other independent public accounting firm reasonably acceptable to Lenders; (c) as soon as available, but in any event within thirty (30) days after the end of Borrower's fiscal year, Borrower's operating budget and plan for the next fiscal year; and (d) such other financial information as any Lender may reasonably request from time to time, subject to customary confidentiality restrictions. In addition, Borrower shall deliver to each Lender (A) promptly upon becoming available, copies of all statements, reports and notices sent or made available generally by Borrower to its security holders and (B) promptly upon receipt of notice thereof, a report of any material legal actions pending or threatened against Borrower or any Subsidiary or the commencement of any action, proceeding or governmental investigation involving Borrower or any Subsidiary is commenced that is reasonably expected to result in damages or costs to Borrower of Two Hundred Thousand Dollars (\$200,000) or more. Notwithstanding the foregoing provisions of this Section 6.3, from and after such time as Borrower or its parent becomes a publicly reporting company, the Borrower shall only be required to deliver copies of such financial statements and other reports as the Borrower or its parent is obligated to prepare and publicly file in accordance with applicable securities law, which documents shall be deemed delivered when made available through the website of the Securities and Exchange Commission.

6.4 Certificates of Compliance. Each time financial statements are delivered pursuant to Section 6.3 above, Borrower shall deliver to each Lender an Officer's Certificate signed by a Responsible Officer in the form of, and certifying to the matters set forth in Exhibit D hereto.

6.5 Notice of Defaults. As soon as possible, and in any event within five (5) Business Days after the discovery of a Default or an Event of Default, Borrower shall provide each Lender with an Officer's Certificate setting forth the facts relating to or giving rise to such Default or Event of Default and the action which Borrower proposes to take with respect thereto.

6.6 Taxes. Borrower shall make, and cause each Subsidiary to make, due and timely payment or deposit of all applicable federal, state, provincial and local taxes, assessments, or contributions required of it by law or imposed upon any Property belonging to it, and will execute and deliver to Collateral Agent and Lenders, on demand, appropriate certificates attesting to the payment or deposit thereof; and Borrower will make, and cause each Subsidiary to make, timely payment or deposit of all tax payments and withholding taxes required of it by applicable laws, including those laws concerning income taxes, and will, upon request, furnish Collateral Agent and Lenders with proof satisfactory to each Lender indicating that Borrower and each Subsidiary has made such payments or deposits; *provided* that Borrower need not make any payment if the amount or validity of such payment is contested in good faith by appropriate proceedings which suspend the collection thereof (provided that such proceedings do not involve any substantial danger of the sale, forfeiture or loss of any material item of Collateral or Collateral which in the aggregate is material to Borrower and that Borrower has adequately bonded such amounts or reserves sufficient to discharge such amounts have been provided on the books of Borrower). In addition, Borrower shall not change, and shall not permit any Subsidiary to change, its respective jurisdiction of residence for taxation purposes.

6.7 Use; Maintenance. Borrower shall keep and maintain all items of equipment and other similar types of personal property that form any significant portion or portions of the Collateral in good operating condition and repair and shall make all necessary replacements thereof and renewals thereto so that the value and operating efficiency thereof shall at all times be maintained and preserved. Borrower shall not permit any such material item of Collateral to become a fixture to real estate or an accession to other personal property, without the prior written consent of Collateral Agent and each Lender. Borrower shall not permit any such material item of Collateral to be operated or maintained in violation of any applicable law, statute, rule or regulation. With respect to items of leased equipment (to the extent Collateral Agent and Lenders have any security interest in any residual Borrower's interest in such equipment under the lease), Borrower shall keep, maintain, repair, replace and operate such leased equipment in accordance with the terms of the applicable lease.

6.8 Insurance. Borrower shall keep its business and the Collateral insured for risks and in amounts as usual and standard for companies in Borrower's industry and location, and as Collateral Agent or any Lender may reasonably request. Insurance policies shall be in a form, with companies, and in amounts that are satisfactory to Collateral Agent and each Lender, acting reasonably. The Collateral Agent confirms that the insurance policies in effect on the date hereof are considered to be satisfactory. All property policies shall have a lender's loss payable endorsement showing Collateral Agent and each Lender as an additional loss payee and all liability policies shall show Collateral Agent and each Lender as an additional insured and all policies shall provide that the insurer must give Collateral Agent at least thirty (30) days' notice before canceling its policy. At Collateral Agent's or any Lender's request, Borrower shall deliver certified copies of policies and evidence of all premium payments. Proceeds payable under any property policy shall, at Collateral Agent's or any Lender's option, be payable to Collateral Agent,

for the benefit of Lenders, or to Lenders on account of the Obligations. Notwithstanding the foregoing, so long as no Event of Default has occurred and is continuing, Borrower shall have the option of applying the proceeds of any property policy, toward the replacement or repair of destroyed or damaged property; *provided* that (a) any such replaced or repaired property (i) shall be of equal or like value as the replaced or repaired Collateral and (ii) shall be deemed Collateral in which Collateral Agent and Lenders have been granted a first priority security interest and (b) after the occurrence and during the continuation of an Event of Default all proceeds payable under such property policy shall, at the option of Collateral Agent or any Lender, be payable to Collateral Agent, for the benefit of Lenders, or to Lenders on account of the Obligations. If Borrower fails to obtain insurance as required under Section 6.8 or to pay any amount or furnish any required proof of payment to third persons and Collateral Agent, Collateral Agent or any Lender may make all or part of such payment or obtain such insurance policies required in Section 6.8, and take any action under the policies Collateral Agent or any Lender deems prudent. On or prior to the first Funding Date and prior to each policy renewal, Borrower shall furnish to Collateral Agent certificates of insurance or other evidence satisfactory to Collateral Agent that insurance complying with all of the above requirements is in effect.

6.9 Further Assurances. At any time and from time to time Borrower shall execute and deliver such further instruments and take such further action as may reasonably be requested by Collateral Agent or any Lender to make effective the purposes of this Agreement, including the continued perfection and priority of Collateral Agent's and Lenders' security interest in the Collateral.

6.10 Subsidiaries. Borrower, upon any Lender's or Collateral Agent's request, shall cause any Subsidiary to provide Lenders and Collateral Agent with a guaranty of the Obligations and a security interest in such Subsidiary's assets to secure such guaranty.

6.11 Keeping of Books. Borrower shall keep proper books of record and account, in which full and correct entries shall be made of all financial transactions and the assets and business of Borrower and its Subsidiaries in accordance with GAAP.

6.12 Intentionally Omitted.

6.13 Revenue Covenant. Borrower shall, during the period commencing as of the date of the Original Agreement and continuing until the date on which Borrower receives cash proceeds in an amount not less than One Hundred Fifty Million Dollars (\$150,000,000) as the result of the closing of a Go-Public Transaction by the Borrower or its parent company, achieve Consolidated revenue (as determined in accordance with GAAP) in an amount not less than that shown below during each applicable three-month period shown below:

Three Month Period	Required Revenue
July 1, 2021 through September 30, 2021	\$14,115,420
October 1, 2021 through December 31, 2021	\$18,417,145
January 1, 2022 through March 30, 2022	\$19,946,645



April 1, 2022 through June 30, 2022	\$25,298,667
July 1, 2022 through September 30, 2022	\$28,972,236
October 1, 2022 through December 31, 2022	\$25,190,599

For each three-month period commencing on January 1, 2023 until the repayment in full of the Obligations, Borrower shall achieve Consolidated revenue (as determined in accordance with GAAP) in an amount not less than the product of (a) 0.75 multiplied by (b) the revenue projected to be achieved by Borrower during such three-month period in the Borrower's board-approved financial plan provided to Lender and approved by Lender in its reasonable discretion.

Notwithstanding any provision in this Agreement to the contrary, in the event that Borrower fails to achieve the Consolidated revenue required by this Section 6.13 during any period, such failure shall not be deemed to be an Event of Default if, Borrower, commencing on the date of such failure and continuing until the date on which Borrower achieves revenue as required by this Section 6.13 during the applicable period, maintains unrestricted and unencumbered cash in an aggregate amount of not less than Fifteen Million Dollars (\$15,000,000) in accounts over which Lenders either (i) maintain Account Control Agreements, or (ii) otherwise have a perfected security interest.

7. Negative Covenants. Borrower, until the full and complete payment of the Obligations, covenants and agrees that Borrower shall not:

7.1 Chief Executive Office. Change its name, jurisdiction of incorporation, chief executive office, principal place of business or any of the items set forth in Section 1 of the Disclosure Schedule without fifteen (15) days prior written notice to Collateral Agent.

7.2 Collateral Control. Subject to its rights under Sections 4.4 and 7.4, remove any items of Collateral from Borrower's facility located at the address set forth on the cover page hereof or as set forth on the Disclosure Schedule.

7.3 Liens. Create, incur, allow or suffer, or permit any Subsidiary to create, incur, allow or suffer, any Lien on any of its property, or assign or convey any right to receive income, including the sale of any accounts except for Permitted Liens, or permit any Collateral not to be subject to the first priority security interest granted herein (except for Permitted Liens that are permitted by the terms of this Agreement to have priority to Collateral Agent's and Lenders' Liens), or enter into any agreement, document, instrument or other arrangement (except with or in favor of Collateral Agent, for the benefit of Lenders, or Lenders) with any Person which directly or indirectly prohibits or has the effect of prohibiting Borrower or any Subsidiary from assigning, mortgaging, pledging, granting a security interest in or upon, or encumbering any of Borrower's or any Subsidiary's Intellectual Property, except (a) as otherwise permitted in Section 7.4 hereof and (b) as permitted in the definition of "Permitted Liens" herein.

7.4 Other Dispositions of Collateral. Convey, sell, lease or otherwise dispose of, or permit any Subsidiary to convey, sell, lease or otherwise dispose, of all or any part of the

Collateral to any Person (collectively, a “Transfer”), except for: (a) Transfers of inventory, licensing and sublicensing of Intellectual Property, leasing and subleasing of assets and Transfers to NCMs in the ordinary course of business; (b) Transfers of worn-out or obsolete equipment or assets made in the ordinary course of business or surplus property or property (including leasehold property interests) that are no longer economically practical in the business or commercially desirable to maintain or no longer used or useful in the ordinary course of business; (c) the lapse of registered Intellectual Property of the Borrower to the extent not economically desirable in the conduct of its business or (ii) the abandonment of Intellectual Property rights in the ordinary course of business (d) the termination or expiry of contracts and agreements and settlement of claims in the ordinary course of business or otherwise as would not have a Material Adverse Effect; the sale or disposition of equipment or other assets, to the extent that such equipment or other assets are exchanged for credit against the purchase price of similar replacement equipment or assets, (e) the granting of Permitted Liens, (f) the making of Permitted Investments (f) other Transfers with the consent of the Lenders, such consent not to be unreasonably withheld, conditioned or delayed.

7.5 Distributions. (a) Pay any dividends or make any distributions, or permit any Subsidiary to pay any dividends or make any distributions, on their respective Equity Securities; (b) purchase, redeem, retire, defease or otherwise acquire, or permit any Subsidiary to purchase, redeem, retire, defease or otherwise acquire, for value any of their respective Equity Securities (other than repurchases pursuant to the terms of employee stock purchase plans, employee restricted stock agreements or similar arrangements in an aggregate amount not to exceed One Hundred Thousand Dollars (\$100,000) in any fiscal year); (c) return, or permit any Subsidiary to return, any capital to any holder of its Equity Securities as such; (d) make, or permit any Subsidiary to make, any distribution of assets, Equity Securities, obligations or securities to any holder of its Equity Securities as such; or (e) set apart any sum for any such purpose; *provided*, however, (i) any Subsidiary may pay dividends or distributions solely to Borrower or another wholly-owned Subsidiary, (ii) any Borrower may engage in a transaction otherwise prohibited by this Section 7.5 solely with another Borrower (C) Borrower may pay dividends payable solely in Borrower’s common stock, (D) the Borrower may exchange any of its respective Equity Securities or Subordinated Debt, for Equity Interests of the Borrower or any Subsidiary, (E) in connection with a Go-Public Transaction by the Borrower or its parent company, the Borrower may pay a dividend in an amount up to twenty-five percent (25%) of the gross proceeds received by Borrower or its parent company from the sale of its equity securities in such Go-Public Transaction and (F) the Borrower may, with the consent of the Lenders, not to be unreasonably withheld, conditioned or delayed, pay dividends or distributions or undertake other transactions otherwise prohibited by this Section. Notwithstanding the foregoing, following the occurrence of a Go-Public Transaction raising at least One Hundred Million Dollars (\$100,000,000) with respect to the Borrower, Nexii Building may pay dividends in compliance with applicable law and approved by its board of directors.

7.6 Mergers, Amalgamations or Acquisitions. Other than in connection with a Go-Public Transaction by the Borrower or its parent company or with the consent of the Lenders (not to be unreasonably withheld, conditioned or delayed, merge, amalgamate or consolidate, or permit any Subsidiary to merge, amalgamate or consolidate, with or into any other Person or acquire, or permit any Subsidiary to acquire, all or substantially all of the capital stock or assets of another Person; *provided* that (a) any Subsidiary may merge or amalgamate into another

Subsidiary and (b) any Subsidiary may merge or amalgamate into Borrower so long as Borrower is the surviving entity or the resulting amalgamated entity has the same name as Borrower, as applicable.

7.7 Change in Business or Ownership. Engage, or permit any Subsidiary to engage, in any business other than the businesses currently engaged in by Borrower or such Subsidiary, as applicable, or reasonably related thereto or have a material change in Borrower's ownership equal to or greater than twenty-five percent (25%) other than (a) by the sale by Borrower of Borrower's Equity Securities in a Go-Public Transaction or (b) to investors so long as Borrower identifies to each Lender and Collateral Agent the investors prior to the execution of a definitive agreement relating to such change of ownership and any such investors that purchase or otherwise acquire twenty-five percent (25%) or more of the ownership of Borrower in one or a series of transactions have cleared each Lender's "know your customer" checks.

7.8 Transactions With Affiliates; Creation of Subsidiaries. (a) Enter, or permit any Subsidiary to enter, into any contractual obligation with any Affiliate or engage in any other transaction with any Affiliate except upon terms at least as favorable to Borrower or such Subsidiary, as applicable, as an arms-length transaction with Persons who are not Affiliates of Borrower or (b) create a Subsidiary without providing at least 10 Business Days advance notice thereof to Lenders and, if requested by Lenders, such Subsidiary guarantees the Obligations and grants a security interest in its assets to secure such guaranty, in each case on terms reasonably satisfactory to Collateral Agent and each Lender.

7.9 Indebtedness Payments. Except as set out in Schedule 7.9 or repay, redeem, purchase, defease or otherwise satisfy in any manner prior to the scheduled repayment thereof any Indebtedness for borrowed money (other than amounts due or permitted to be prepaid under this Agreement) or lease obligations, (b) amend, modify or otherwise change the terms of any Indebtedness for borrowed money or lease obligations so as to accelerate the scheduled repayment thereof or (c) repay any notes to officers, directors or shareholders.

7.10 Indebtedness. Create, incur, assume or permit, or permit any Subsidiary to create, incur, or permit to exist, any Indebtedness except Permitted Indebtedness.

7.11 Investments. Make, or permit any Subsidiary to make, any Investment except for Permitted Investments.

7.12 Compliance. (a) Become, or permit any Subsidiary to become, an "investment company" or a company controlled by an "investment company" under the Investment Company Act of 1940, or undertake as one of its important activities, extending credit to purchase or carry margin stock (as defined in Regulation U of the Board of Governors of the Federal Reserve System), or use the proceeds of any Loan for that purpose; (b) become, or permit any Subsidiary to become, subject to any other federal or state or provincial law or regulation which purports to restrict or regulate its ability to borrow money; or (c) (i) fail, or permit any Subsidiary to fail, to meet the minimum funding requirements of the Employment Retirement Income Security Act of 1974, and its regulations, as amended from time to time ("ERISA"), permit, or (ii) permit, or permit any Subsidiary to permit, a Reportable Event or Prohibited Transaction, as defined in ERISA, to occur; (d) fail, or permit any Subsidiary to fail, to comply

with the Federal Fair Labor Standards Act or the Canada Labour Code, as applicable, or violate any other law or regulation, if the violation could reasonably be expected to have Material Adverse Effect.

7.13 Maintenance of Accounts. After the date that is one hundred fifty (150) days after the date hereof, (a) maintain any deposit account or securities account (other than an Excluded Account) except accounts with respect to which Collateral Agent and each Lender have obtained a perfected security interest in such accounts, through one or more Account Control Agreements or (b) grant or allow any other Person (other than Collateral Agent or Lenders) to perfect a security interest in, or enter into any agreements with any Persons (other than Collateral Agent or Lenders) accomplishing perfection via control as to, any of its deposit accounts or securities accounts other than in favor of the lender providing Borrower with Indebtedness permitted under subsection (e) of the definition of Permitted Indebtedness.

7.14 Negative Pledge Regarding Intellectual Property. Create, incur, assume or suffer to exist, or permit any Subsidiary to create, incur, assume or suffer to exist, any Lien of any kind upon any Intellectual Property or Transfer any Intellectual Property, whether now owned or hereafter acquired, other than non-exclusive licenses of Intellectual Property entered into in the ordinary course of business.

8. Events of Default. Any one or more of the following events shall constitute an “Event of Default” by Borrower under this Agreement:

8.1 Failure to Pay. If Borrower fails to pay when due and payable or when declared due and payable in accordance with the Loan Documents: (a) any Scheduled Payment on or prior to the date that is two (2) Business Days after the relevant Payment Date or on the relevant Maturity Date; or (b) any other portion of the Obligations within five (5) Business Days after receipt of written notice from any Lender that such payment is due.

8.2 Certain Covenant Defaults. If Borrower fails to perform any obligation arising under Sections 6.5, 6.8, or 6.13 or violates any of the covenants contained in Section 7 of this Agreement.

8.3 Other Covenant Defaults. If Borrower fails or neglects to perform, keep, or observe any other term, provision, condition, covenant, or agreement contained in this Agreement (other than as set forth in Sections 8.1, 8.2 or 8.4 through 8.14), in any of the other Loan Documents and Borrower has failed to cure such default within thirty (30) days of the earlier of (i) the Borrower becoming aware of the occurrence of such default or (ii) the Collateral Agent or Lenders giving notice thereof. During this thirty (30) day period, the failure to cure the default is not an Event of Default (but no Loan will be made during the cure period).

8.4 Material Adverse Change. If there occurs a material adverse change in Borrower’s business, or if there is a material impairment of the prospect of repayment of any portion of the Obligations owing to Collateral Agent or any Lender or a material impairment of the value or priority of Collateral Agent’s and Lenders’ security interest in the Collateral.

8.5 Intentionally Omitted.

8.6 Seizure of Assets, Etc. (a) If any material portion of Borrower's or any Subsidiary's assets (i) is attached, seized, subjected to a writ or distress warrant, or is levied upon or (ii) comes into the possession of any trustee, receiver or Person acting in a similar capacity and such attachment, seizure, writ or distress warrant or levy has not been removed, discharged or rescinded within thirty (30) days, (b) if Borrower or any Subsidiary is enjoined, restrained or in any way prevented by court order from continuing to conduct all or any material part of its business affairs, (c) if a judgment or other claim becomes a lien or encumbrance upon any material portion of Borrower's or any Subsidiary's assets and remains for more than thirty (30) days and the Borrower is not contesting such judgment in good faith or (d) if a notice of lien, levy, or assessment is filed of record with respect to any of Borrower's or any Subsidiary's assets by the United States Government, or the government of Canada or any department agency or instrumentality thereof, or by any state, province, county, municipal, or governmental agency, and the same is not paid within ten (10) days after Borrower receives notice thereof; *provided* that none of the foregoing shall constitute an Event of Default where such action or event is stayed or an adequate bond has been posted pending a good faith contest by Borrower.

8.7 Service of Process. (a) The service of process upon Collateral Agent or any Lender seeking to attach by a trustee or other process any funds of Borrower on deposit or otherwise held by Collateral Agent or such Lender, (b) the delivery upon Collateral Agent or any Lender of a notice of foreclosure by any Person seeking to attach or foreclose on any funds of Borrower on deposit or otherwise held by Collateral Agent or such Lender or (c) the delivery of a notice of foreclosure or exclusive control to any entity holding or maintaining Borrower's deposit accounts or accounts holding securities by any Person (other than Collateral Agent or any Lender) seeking to foreclose or attach any such accounts or securities.

8.8 Default on Indebtedness. One or more defaults shall exist under any agreement with any third party or parties which consists of the failure to pay any Indebtedness of Borrower or any Subsidiary at maturity or which results in a right by such third party or parties, whether or not exercised, to accelerate the maturity of Indebtedness in an aggregate amount in excess of Two Hundred Thousand Dollars (\$200,000) or a default shall exist under any financing agreement with a Lender or any Lender's Affiliates.

8.9 Judgments. If a judgment or judgments for the payment of money in an amount, individually or in the aggregate, of at least Two Hundred Thousand Dollars (\$200,000) shall be rendered against Borrower or any Subsidiary and shall remain unsatisfied and unstayed for a period of ten (10) days or more.

8.10 Misrepresentations. If any material misrepresentation or material misstatement exists now or hereafter in any warranty, representation, statement, certification, or report made to Collateral Agent or any Lender by Borrower or any officer, or director of Borrower.

8.11 Breach of Warrant. If Borrower shall breach any material term of the Warrant.



8.12 Unenforceable Loan Document. If any Loan Document shall in any material respect cease to be, or Borrower shall assert that any Loan Document is not, a legal, valid and binding obligation of Borrower enforceable in accordance with its terms.

8.13 Involuntary Insolvency Proceeding. (a) If a proceeding shall have been instituted in a court having jurisdiction in the premises (i) seeking a decree or order for relief in respect of Borrower or any Subsidiary in an involuntary case under any applicable bankruptcy, insolvency or other similar law now or hereafter in effect, (ii) for the appointment of a receiver, liquidator, administrator, assignee, custodian, trustee (or similar official) of Borrower or any Subsidiary or for any substantial part of its Property or (iii) for the winding-up or liquidation of its affairs, and such proceeding shall remain undismissed or unstayed and in effect for a period of thirty (30) consecutive days or (b) such court shall enter a decree or order granting the relief sought in any such proceeding.

8.14 Voluntary Insolvency Proceeding. If Borrower or any Subsidiary shall (a) commence a voluntary case under any applicable bankruptcy, insolvency or other similar law now or hereafter in effect, (b) consent to the entry of an order for relief in an involuntary case under any such law, (c) consent to the appointment of or taking possession by a receiver, receiver and manager, interim receiver, liquidator, assignee, trustee, custodian (or other similar official) of Borrower or any Subsidiary or for any substantial part of its Property, (d) shall make a general assignment for the benefit of creditors, rearrangement or plan of arrangement (e) shall fail generally to pay its debts as they become due or (f) take any corporate action in furtherance of any of the foregoing.

## 9. Lenders' Rights and Remedies.

9.1 Rights and Remedies. Upon the occurrence of any Default or Event of Default that has not been waived by Lenders (any such waiver not to be unreasonably withheld, conditioned or delayed), no Lender shall have any further obligation to advance money or extend credit to or for the benefit of Borrower. In addition, upon the occurrence of an Event of Default that has not been waived by the Lenders, Collateral Agent and each Lender shall have the rights, options, duties and remedies of a secured party as permitted by law and, in addition to and without limitation of the foregoing, Collateral Agent, on behalf of Lenders, or any Lender may, at its election, without notice of election and without demand, do any one or more of the following, all of which are authorized by Borrower:

(a) Acceleration of Obligations. Declare all Obligations, whether evidenced by this Agreement, by any of the other Loan Documents, or otherwise, including (i) any accrued and unpaid interest, (ii) the amounts which would have otherwise come due under Section 2.3(b)(ii) if the Loan had been voluntarily prepaid, (iii) the unpaid principal balance of the Loan and (iv) all other sums, if any, that shall have become due and payable hereunder, immediately due and payable (*provided* that upon the occurrence of an Event of Default described in Section 8.13 or 8.14 all Obligations shall become immediately due and payable without any action by Collateral Agent or any Lender);

(b) Protection of Collateral. Make such payments and do such acts as Collateral Agent or such Lender considers necessary or reasonable to protect Collateral Agent's

and Lenders' security interest in the Collateral. Borrower agrees to assemble the Collateral if Collateral Agent or any Lender so requires and to make the Collateral available to Collateral Agent or Lenders as Collateral Agent or any Lender may designate. Borrower authorizes Collateral Agent, each Lender and their designees and agents to enter the premises where the Collateral is located, to take and maintain possession of the Collateral, or any part of it, and to pay, purchase, contest, or compromise any Lien which in Collateral Agent's or such Lender's determination appears or is claimed to be prior or superior to its security interest and to pay all expenses incurred in connection therewith. With respect to any of Borrower's owned premises, Borrower hereby grants Collateral Agent and each Lender a license to enter into possession of such premises and to occupy the same, without charge, for up to one hundred twenty (120) days in order to exercise any of Collateral Agent's and each Lender's rights or remedies provided herein, at law, in equity, or otherwise;

(c) Appointment of Receiver. Appoint in writing a receiver, receiver and manager or interim receiver (each a "Receiver") for all or any part of the Collateral who shall be vested with all of Collateral Agent's or Lenders' rights and remedies under this Agreement, at law or in equity. Any such Receiver, with respect to responsibility for its acts, shall to the extent permitted by applicable law be deemed to be the agent of the Borrowers or a Borrower and not an agent of Collateral Agent or Lender.

(d) Court Order for Receiver. Obtain from any court of competent jurisdiction and order for the appointment of a Receiver of the Borrowers or a Borrower or of any or all of the Collateral.

(e) Preparation of Collateral for Sale. Ship, reclaim, recover, store, finish, maintain, repair, prepare for sale, advertise for sale, and sell (in the manner provided for herein) the Collateral. Collateral Agent, each Lender and their agents and any purchasers at or after foreclosure are hereby granted a non-exclusive, irrevocable, perpetual, fully paid, royalty-free license or other right, solely pursuant to the provisions of this Section 9.1, to use, without charge, Borrower's Intellectual Property, including labels, patents, copyrights, rights of use of any name, trade secrets, trade names, trademarks, service marks, and advertising matter, or any Property of a similar nature, now or at any time hereafter owned or acquired by Borrower or in which Borrower now or at any time hereafter has any rights; *provided* that such license shall only be exercisable in connection with the disposition of Collateral upon Collateral Agent's or any Lender's exercise of its remedies hereunder;

(f) Sale of Collateral. Sell the Collateral at either a public or private sale, or both, by way of one or more contracts or transactions, for cash or on terms, in such manner and at such places (including Borrower's premises) as Collateral Agent or any Lender determines are commercially reasonable; and

(g) Purchase of Collateral. Credit bid and purchase all or any portion of the Collateral at any public sale.

Any deficiency that exists after disposition of the Collateral as provided above will be paid immediately by Borrower.

9.2 Set Off Right. Collateral Agent and each Lender may set off and apply to the Obligations any and all Indebtedness at any time owing to or for the credit or the account of Borrower or any other assets of Borrower in Collateral Agent's or such Lender's possession or control.

9.3 Effect of Sale. Upon the occurrence of an Event of Default that has not been waived by the Lenders, to the extent permitted by law, Borrower covenants that it will not at any time insist upon or plead, or in any manner whatsoever claim or take any benefit or advantage of, any stay or extension law now or at any time hereafter in force, nor claim, take nor insist upon any benefit or advantage of or from any law now or hereafter in force providing for the valuation or appraisal of the Collateral or any part thereof prior to any sale or sales thereof to be made pursuant to any provision herein contained, or to the decree, judgment or order of any court of competent jurisdiction; nor, after such sale or sales, claim or exercise any right under any statute now or hereafter made or enacted by any state or otherwise to redeem the property so sold or any part thereof, and, to the full extent legally permitted, except as to rights expressly provided herein, hereby expressly waives for itself and on behalf of each and every Person, except decree or judgment creditors of Borrower, acquiring any interest in or title to the Collateral or any part thereof subsequent to the date of this Agreement, all benefit and advantage of any such law or laws, and covenants that it will not invoke or utilize any such law or laws or otherwise hinder, delay or impede the execution of any power herein granted and delegated to Collateral Agent or any Lender, but will suffer and permit the execution of every such power as though no such power, law or laws had been made or enacted. Any sale, whether under any power of sale hereby given or by virtue of judicial proceedings, shall operate to divest all right, title, interest, claim and demand whatsoever, either at law or in equity, of Borrower in and to the Property sold, and shall be a perpetual bar, both at law and in equity, against Borrower, its successors and assigns, and against any and all Persons claiming the Property sold or any part thereof under, by or through Borrower, its successors or assigns.

9.4 Power of Attorney in Respect of the Collateral. Borrower does hereby irrevocably appoint Collateral Agent, on behalf of each Lender (which appointment is coupled with an interest) the true and lawful attorney in fact of Borrower, with full power of substitution and in its name to file any notices of security interests, financing statements and continuations and amendments thereof pursuant to the Code or federal law, as may be necessary to perfect or to continue the perfection of Collateral Agent's and Lenders' security interests in the Collateral. Borrower does hereby irrevocably appoint Collateral Agent, on behalf of each Lender (which appointment is coupled with an interest) on the occurrence of an Event of Default that has not been waived by the Lenders, the true and lawful attorney in fact of Borrower, with full power of substitution and in its name: (a) to ask, demand, collect, receive, receipt for, sue for, compound and give acquittance for any and all rents, issues, profits, avails, distributions, income, payment draws and other sums in which a security interest is granted under Section 4 with full power to settle, adjust or compromise any claim thereunder as fully as if Collateral Agent or such Lender were Borrower itself; (b) to receive payment of and to endorse the name of Borrower to any items of Collateral (including checks, drafts and other orders for the payment of money) that come into Collateral Agent's or any Lender's possession or under Collateral Agent's or any Lender's control; (c) to make all demands, consents and waivers, or take any other action with respect to, the Collateral; (d) in Collateral Agent's or any Lender's discretion to file any claim or take any other action or proceedings, either in its own name or in the name of Borrower or otherwise,



which Collateral Agent or such Lender may reasonably deem necessary or appropriate to protect and preserve the right, title and interest of Collateral Agent and Lenders in and to the Collateral; (e) endorse Borrower's name on any checks or other forms of payment or security; (f) sign Borrower's name on any invoice or bill of lading for any account or drafts against account debtors; (g) make, settle, and adjust all claims under Borrower's insurance policies; (h) settle and adjust disputes and claims about the accounts directly with account debtors, for amounts and on terms Collateral Agent or Lenders determine reasonable; (i) transfer the Collateral into the name of Collateral Agent, any Lender or a third party as the Code permits; and (j) to otherwise act with respect thereto as though Collateral Agent or such Lender were the outright owner of the Collateral.

9.5 Lenders' Expenses. If Borrower fails to pay any amounts or furnish any required proof of payment due to third persons or entities, as required under the terms of this Agreement, then Collateral Agent or any Lender may do any or all of the following: (a) make payment of the same or any part thereof; or (b) obtain and maintain insurance policies of the type discussed in Section 6.8 of this Agreement, and take any action with respect to such policies as Collateral Agent or any Lender deems prudent. Any amounts paid or deposited by Collateral Agent or any Lender shall constitute Lenders' Expenses, shall be immediately due and payable, shall bear interest at the Default Rate and shall be secured by the Collateral. Any payments made by Collateral Agent or any Lender shall not constitute an agreement by Collateral Agent or any Lender to make similar payments in the future or a waiver by Collateral Agent or any Lender of any Event of Default under this Agreement. Borrower shall pay all reasonable fees and expenses, including Lenders' Expenses, incurred by Collateral Agent or any Lender in the enforcement or attempt to enforce any of the Obligations hereunder not performed when due.

9.6 Remedies Cumulative; Independent Nature of Lenders' Rights. Collateral Agent's and each Lender's rights and remedies under this Agreement, the Loan Documents, and all other agreements shall be cumulative. Collateral Agent and each Lender shall have all other rights and remedies not inconsistent herewith as provided under the Code, by law, or in equity. No failure on the part of Collateral Agent or any Lender to exercise, and no delay in exercising, any right or remedy hereunder shall operate as a waiver thereof; nor shall any single or partial exercise of any such right or remedy preclude any other or further exercise thereof or the exercise of any other right. The Obligations of Borrower to any Lender or Collateral Agent may be enforced by such Lender or Collateral Agent against Borrower in accordance with the terms of this Agreement and the other Loan Documents and, to the fullest extent permitted by applicable law, it shall not be necessary for Collateral Agent or any other Lender, as applicable, to be joined as an additional party in any proceeding to enforce such Obligations.

9.7 Application of Collateral Proceeds. The proceeds and/or avails of the Collateral, or any part thereof, and the proceeds and the avails of any remedy hereunder (as well as any other amounts of any kind held by Collateral Agent or any Lender, at the time of or received by Collateral Agent or any Lender after the occurrence of an Event of Default that has not been waived by the Lenders) shall be paid to and applied as follows:

(a) First, to the payment of out-of-pocket costs and expenses, including all amounts expended to preserve the value of the Collateral, of foreclosure or suit, if any, and of such sale and the exercise of any other rights or remedies, and of all proper fees, expenses, liability and

advances, including reasonable legal expenses and attorneys' fees, incurred or made hereunder by Collateral Agent or any Lender, including Lenders' Expenses;

(b) Second, to the payment to Lenders of the amount then owing or unpaid on the Loan for any accrued and unpaid interest, the amounts which would have otherwise come due under Section 2.3(b)(ii), if the Loan had been voluntarily prepaid, the principal balance of the Loan, and all other Obligations with respect to the Loan (*provided*, however, if such proceeds shall be insufficient to pay in full the whole amount so due, owing or unpaid upon the Loan, then *first*, to the unpaid interest thereon ratably, *second*, to the amounts which would have otherwise come due under Section 2.3(b)(ii) ratably, if the Loan had been voluntarily prepaid, *third*, to the principal balance of the Loan ratably, and *fourth*, to the ratable payment of other amounts then payable to Lenders under any of the Loan Documents); and

(c) Third, to the payment of the surplus, if any, to Borrower, its successors and assigns or to the Person lawfully entitled to receive the same.

9.8 Reinstatement of Rights. If Collateral Agent or any Lender shall have proceeded to enforce any right under this Agreement or any other Loan Document by foreclosure, sale, entry or otherwise, and such proceedings shall have been discontinued or abandoned for any reason or shall have been determined adversely, then and in every such case (unless otherwise ordered by a court of competent jurisdiction), Collateral Agent and Lenders shall be restored to their former position and rights hereunder with respect to the Property subject to the security interest created under this Agreement.

10. Waivers; Indemnification.

10.1 Demand; Protest. Borrower waives demand, protest, notice of protest, notice of default or dishonor, notice of payment and nonpayment, notice of any default, nonpayment at maturity, release, compromise, settlement, extension, or renewal of accounts, documents, instruments, chattel paper, and guarantees at any time held by Collateral Agent or any Lender on which Borrower may in any way be liable.

10.2 Lender's Liability for Collateral. So long as Collateral Agent and each Lender comply with their obligations, if any, under the Code, neither Collateral Agent nor any Lender shall in any way or manner be liable or responsible for: (a) the safekeeping of the Collateral; (b) any loss or damage thereto occurring or arising in any manner or fashion from any cause other than Collateral Agent's or any Lender's gross negligence or willful misconduct; (c) any diminution in the value thereof; or (d) any act or default of any carrier, warehouseman, bailee, forwarding agency, or other Person whomsoever. All risk of loss, damage or destruction of the Collateral shall be borne by Borrower.

10.3 Indemnification and Waiver. Whether or not the transactions contemplated hereby shall be consummated:

(a) General Indemnity. Borrower agrees upon demand to pay or reimburse Collateral Agent and each Lender for all liabilities, obligations and out-of-pocket expenses, including Lenders' Expenses and reasonable fees and expenses of counsel for Collateral Agent and each Lender from time to time arising in connection with the enforcement or collection of

sums due under the Loan Documents, and in connection with any amendment or modification of the Loan Documents or any “work-out” in connection with the Loan Documents. Borrower shall indemnify, reimburse and hold Collateral Agent, each Lender, and each of their respective successors, assigns, agents, attorneys, officers, directors, equity holders, servants, agents and employees (each an “Indemnified Person”) harmless from and against all liabilities, losses, damages, actions, suits, demands, claims of any kind and nature (including claims relating to environmental discharge, cleanup or compliance), all costs and expenses whatsoever to the extent they may be incurred or suffered by such Indemnified Person in connection therewith (including reasonable attorneys’ fees and expenses), fines, penalties (and other charges of any applicable Governmental Authority), licensing fees relating to any item of Collateral, damage to or loss of use of property (including consequential or special damages to third parties or damages to Borrower’s property), or bodily injury to or death of any person (including any agent or employee of Borrower) (each, a “Claim”), directly or indirectly relating to or arising out of the use of the proceeds of the Loan or otherwise, the falsity of any material representation or warranty of Borrower or Borrower’s failure to comply with the terms of this Agreement or any other Loan Document. The foregoing indemnity shall cover, without limitation, (i) any Claim in connection with a design or other defect (latent or patent) in any item of equipment or product included in the Collateral, (ii) any Claim for infringement of any patent, copyright, trademark or other intellectual property right, (iii) any Claim resulting from the presence on or under or the escape, seepage, leakage, spillage, discharge, emission or release of any Hazardous Materials on the premises owned, occupied or leased by Borrower, including any Claims asserted or arising under any Environmental Law, (iv) any Claim for negligence or strict or absolute liability in tort or (v) any Claim asserted as to or arising under any Account Control Agreement or any Landlord Agreement; *provided*, however, Borrower shall not indemnify any Indemnified Person for any liability incurred by such Indemnified Person primarily as a result of such Indemnified Person’s gross negligence or willful misconduct. Such indemnities shall continue in full force and effect, notwithstanding the expiration or termination of this Agreement. Upon Collateral Agent’s or any Lender’s written demand, Borrower shall assume and diligently conduct, at its sole cost and expense, the entire defense of Collateral Agent and Lenders, each of their members, partners, and each of their respective, agents, employees, directors, officers, equity holders, successors and assigns against any indemnified Claim described in this Section 10.3(a). Borrower shall not settle or compromise any Claim against or involving Collateral Agent or any Lender without first obtaining Collateral Agent’s or such Lender’s written consent thereto, which consent shall not be unreasonably withheld.

(b) Waiver. NOTWITHSTANDING ANYTHING TO THE CONTRARY CONTAINED IN THIS AGREEMENT OR ANYWHERE ELSE, BORROWER AGREES THAT IT SHALL NOT SEEK FROM COLLATERAL AGENT OR ANY LENDER UNDER ANY THEORY OF LIABILITY (INCLUDING ANY THEORY IN TORTS), ANY SPECIAL, INDIRECT, CONSEQUENTIAL OR PUNITIVE DAMAGES.

(c) Survival; Defense. The obligations in this Section 10.3 shall survive payment of all other Obligations pursuant to Section 12.8. At the election of any Indemnified Person, Borrower shall defend such Indemnified Person using legal counsel satisfactory to such Indemnified Person in such Person’s reasonable discretion, at the sole cost and expense of Borrower. All amounts owing under this Section 10.3 shall be paid within thirty (30) days after written demand.

11. Notices. Unless otherwise provided in this Agreement, all notices or demands by any party relating to this Agreement or any other agreement entered into in connection herewith shall be in writing and (except for financial statements and other informational documents which may be sent by first-class mail, postage prepaid) shall be personally delivered or sent by certified mail, postage prepaid, return receipt requested, by prepaid nationally recognized overnight courier, or by prepaid facsimile to Borrower or to Lender, as the case may be, at their respective addresses set forth below:

If to Borrower:	Nexii Building Solutions Inc. 200-1455 West Georgia Street Vancouver, BC, V6G 2T3 Attention: Suzanne Mercier Ph: (778) 990-8435
If to Horizon:	Horizon Technology Finance Corporation 312 Farmington Avenue Farmington, CT 06032 Attention: Legal Department Fax: (860) 676-8655 Ph: (860) 676-8654
If to Trinity:	Trinity Capital Inc. 1 N 1st Street, Floor 3 Phoenix, AZ 85004 Email: legal@trincapinvestment.com Fax: (480) 546-5349 Phone: (480) 374-5350

The parties hereto may change the address at which they are to receive notices hereunder, by notice in writing in the foregoing manner given to the other.

## 12. General Provisions.

12.1 Successors and Assigns. This Agreement and the Loan Documents shall bind and inure to the benefit of the respective successors and permitted assigns of each of the parties; *provided*, however, neither this Agreement nor any rights hereunder may be assigned by Borrower without each Lender's prior written consent, which consent may be granted or withheld in each Lender's sole discretion. Each Lender shall have the right without the consent of or notice to Borrower to sell, transfer, assign, negotiate, or grant participations in all or any part of, or any interest in such Lender's rights and benefits hereunder. Collateral Agent and each Lender may disclose the Loan Documents and any other financial or other information relating to Borrower to any potential participant or assignee of any of the Loan; *provided* that such participant or assignee agrees to protect the confidentiality of such documents and information using the same measures that it uses to protect its own confidential information and *provided further* that no purchaser, transferee, assignee or participant shall be entitled to any greater payment under Section 2.4 than the applicable Lender was entitled to receive at the time of such sale, transfer, assignment or grant of participation.

12.2 Time of Essence. Time is of the essence for the performance of all obligations set forth in this Agreement.

12.3 Severability of Provisions. Each provision of this Agreement shall be severable from every other provision of this Agreement for the purpose of determining the legal enforceability of any specific provision.

12.4 Entire Agreement; Construction; Amendments and Waivers.

(a) Entire Agreement. This Agreement and each of the other Loan Documents, taken together, constitute and contain the entire agreement among Borrower, Collateral Agent and Lenders and supersede any and all prior agreements, negotiations, correspondence, understandings and communications between the parties, whether written or oral, respecting the subject matter hereof. Borrower acknowledges that it is not relying on any representation or agreement made by Collateral Agent, any Lender or any employee, attorney or agent thereof, other than the specific agreements set forth in this Agreement and the Loan Documents.

(b) Construction. This Agreement is the result of negotiations between and has been reviewed by each of Borrower, Collateral Agent and each Lender as of the date hereof and their respective counsel; accordingly, this Agreement shall be deemed to be the product of the parties hereto, and no ambiguity shall be construed in favor of or against Borrower, Collateral Agent or any Lender. Borrower, Collateral Agent and Lenders agree that they intend the literal words of this Agreement and the other Loan Documents and that no parol evidence shall be necessary or appropriate to establish Borrower's, Collateral Agent's or any Lender's actual intentions.

(c) Amendments and Waivers. Any and all discharges or waivers of, or consents to any departures from any provision of this Agreement or of any of the other Loan Documents shall not be effective without the written consent of each Lender; *provided* that no such discharge, waiver or consent affecting the rights or duties of the Collateral Agent under this Agreement or any other Loan Document shall be effective without the written consent of the Collateral Agent. Any and all amendments and modifications of this Agreement or of any of the other Loan Documents shall not be effective without the written consent of each Lender and Borrower; *provided* that no such amendment or modification affecting the rights or duties of the Collateral Agent under this Agreement or any other Loan Document shall be effective without the written consent of the Collateral Agent. Any waiver or consent with respect to any provision of the Loan Documents shall be effective only in the specific instance and for the specific purpose for which it was given. No notice to or demand on Borrower in any case shall entitle Borrower to any other or further notice or demand in similar or other circumstances. Any amendment, modification, waiver or consent affected in accordance with this Section 12.4 shall be binding upon Collateral Agent, Lenders and on Borrower.

12.5 No Novation. Borrower, Lenders and the Collateral Agent hereby agree that, effective upon the execution and delivery of this Agreement by each such party, the terms and provisions of the Original Agreement shall be and hereby are amended, restated and superseded in their entirety by the terms and provisions of this Agreement. Nothing herein



contained shall be construed as a substitution or novation of the obligations of Borrower outstanding under the Original Agreement or instruments securing the same, which obligations shall remain in full force and effect, except to the extent that the terms thereof are modified hereby or by instruments executed concurrently herewith. Nothing expressed or implied in this Agreement shall be construed as a release or other discharge of Borrower from any of the Obligations or any liabilities under the Original Agreement or any of the security agreements, pledge agreements, mortgages, guaranties or other Loan Documents executed in connection therewith. Borrower hereby (i) confirms and agrees that each Loan Document to which it is a party is, and shall continue to be, in full force and effect and is hereby ratified and confirmed in all respects except that on and after the Effective Date all references in any such Loan Document to the “Loan and Security Agreement”, the “Loan Agreement” the “Agreement”, “thereto”, “thereof”, “thereunder” or words of like import referring to the Original Agreement shall mean the Original Agreement as amended and restated by this Agreement; (ii) confirms and agrees that to the extent that the Original Agreement or any Loan Document executed in connection therewith purports to assign or pledge to the Collateral Agent and the Lenders, or to grant to the Collateral Agent and the Lenders a Lien on, any collateral as security for the Obligations of Borrower from time to time existing in respect of the Original Agreement, such pledge, assignment or grant of the Lien is hereby ratified and confirmed in all respects in favor of the Collateral Agent and the Lenders and shall remain effective as of the first date it became effective and (iii) confirms that from the Effective Date of this Agreement, each of Loan A, Loan B, Loan C, Loan D and Loan E shall be Loans outstanding hereunder and subject to the terms of this Agreement.

12.6 Reliance by Lender. All covenants, agreements, representations and warranties made herein by Borrower shall be deemed to be material to and to have been relied upon by Collateral Agent and Lenders, notwithstanding any investigation by Collateral Agent or any Lender.

12.7 No Set-Offs by Borrower. All sums payable by Borrower pursuant to this Agreement or any of the other Loan Documents shall be payable without notice or demand and shall be payable in United States Dollars without set-off or reduction of any manner whatsoever.

12.8 Counterparts. This Agreement may be executed in any number of counterparts and by different parties on separate counterparts (including signatures delivered by facsimile or other electronic means), each of which, when executed and delivered, shall be deemed to be an original, and all of which, when taken together, shall constitute but one and the same Agreement.

12.9 Survival. All covenants, representations and warranties made in this Agreement shall continue in full force and effect so long as any Obligations or commitment to fund remain outstanding. The obligations of Borrower to indemnify Collateral Agent and Lenders with respect to the expenses, damages, losses, costs and liabilities described in Section 10.3 shall survive until all applicable statute of limitations periods with respect to actions that may be brought against Collateral Agent or any Lender have run.

13. Relationship of Parties. Borrower and Lenders acknowledge, understand and agree that the relationship between Borrower, on the one hand, and Lenders, on the other, is, and at all times shall remain solely that of a borrower and lender. No Lender shall, under any circumstances, be

construed to be a partner or a joint venturer of Borrower or any of its Affiliates; nor shall any Lender, under any circumstances, be deemed to be in a relationship of confidence or trust or a fiduciary relationship with Borrower or any of its Affiliates, or to owe any fiduciary duty or any other duty to Borrower or any of its Affiliates. Neither Collateral Agent nor any Lender undertakes or assumes any responsibility or duty to Borrower or any of its Affiliates to select, review, inspect, supervise, pass judgment upon or otherwise inform Borrower or any of its Affiliates of any matter in connection with its or their Property, any Collateral held by Collateral Agent or any Lender or the operations of Borrower or any of its Affiliates. Borrower and each of its Affiliates shall rely entirely on their own judgment with respect to such matters, and any review, inspection, supervision, exercise of judgment or supply of information undertaken or assumed by Collateral Agent or any Lender in connection with such matters is solely for the protection of Collateral Agent and Lenders and neither Borrower nor any Affiliate is entitled to rely thereon.

14. Confidentiality. All information (other than periodic reports filed by Borrower with the Securities and Exchange Commission) disclosed by Borrower to Collateral Agent or any Lender in writing or through inspection pursuant to this Agreement that is marked confidential shall be considered confidential. Collateral Agent and each Lender agrees to use the same degree of care to safeguard and prevent disclosure of such confidential information as Collateral Agent and such Lender uses with its own confidential information, but in any event no less than a reasonable degree of care. Neither Collateral Agent nor any Lender shall disclose such information to any third party (other than (a) to another party hereto, (b) to Collateral Agent's or any Lender's members, partners, attorneys, governmental regulators (including any self-regulatory authority) or auditors, (c) to Collateral Agent's or any Lender's subsidiaries and affiliates, (d) on a confidential basis, to any rating agency, (e) to prospective transferees and purchasers of the Loan or any actual or prospective party (or its Affiliates) to any swap, derivative or other transaction under which payments are to be made by reference to the Obligations, Borrower, any Loan Document or any payment thereunder, all subject to the same confidentiality obligation set forth herein or (f) as required by law, regulation, subpoena or other order to be disclosed) and shall use such information only for purposes of evaluation of its investment in Borrower and the exercise of Collateral Agent's or any Lender's rights and the enforcement of its remedies under this Agreement and the other Loan Documents. The obligations of confidentiality shall not apply to any information that (i) was known to the public prior to disclosure by Borrower under this Agreement, (ii) becomes known to the public through no fault of Collateral Agent or any Lender, (iii) is disclosed to Collateral Agent or any Lender on a non-confidential basis by a third party or (iv) is independently developed by Collateral Agent or any Lender. Notwithstanding the foregoing, Collateral Agent's and Lenders' agreement of confidentiality shall not apply if Collateral Agent or any Lender has acquired indefeasible title to any Collateral or in connection with any enforcement or exercise of Collateral Agent's or any Lender's rights and remedies under this Agreement following an Event of Default, including the enforcement of Collateral Agent's and Lender's security interest in the Collateral.

15. CHOICE OF LAW AND VENUE; JURY TRIAL WAIVER. THIS AGREEMENT SHALL BE GOVERNED BY, AND CONSTRUED AND ENFORCED IN ACCORDANCE WITH, THE LAWS OF THE STATE OF CONNECTICUT. EACH OF BORROWER, COLLATERAL AGENT AND LENDERS HEREBY SUBMITS TO THE NON-EXCLUSIVE JURISDICTION OF THE STATE AND FEDERAL COURTS LOCATED IN THE STATE OF CONNECTICUT. BORROWER, COLLATERAL AGENT AND LENDERS HEREBY WAIVE THEIR RESPECTIVE RIGHTS TO A JURY TRIAL OF ANY CLAIM OR CAUSE OF ACTION

BASED UPON OR ARISING OUT OF ANY OF THE LOAN DOCUMENTS OR ANY OF THE TRANSACTIONS CONTEMPLATED THEREIN, INCLUDING CONTRACT CLAIMS, TORT CLAIMS, BREACH OF DUTY CLAIMS, AND ALL OTHER COMMON LAW OR STATUTORY CLAIMS.

16. Cross-Guaranty of Borrowers.

16.1 Cross-Guaranty. Each Borrower hereby agrees that such Borrower is jointly and severally liable for, and hereby absolutely and unconditionally guarantees to each Lender and its successors and assigns, the full and prompt payment (whether at stated maturity, by acceleration or otherwise) and performance of, all Obligations owed or hereafter owing to Lenders by each other Borrower. Each Borrower agrees that its guaranty obligation hereunder is a continuing guaranty of payment and performance and not of collection, that its obligations under this Section 16 shall not be discharged until payment and performance, in full, of the Obligations has occurred, and that its obligations under this Section 16 shall be absolute and unconditional, irrespective of, and unaffected by:

(a) the genuineness, validity, regularity, enforceability or any future amendment of, or change in, this Agreement, any other Loan Document or any other agreement, document or instrument to which any Borrower is or may become a party;

(b) the absence of any action to enforce this Agreement (including this Section 16) or any other Loan Document, or the waiver or consent by Lender with respect to any of the provisions hereof or thereof;

(c) the existence, value or condition of, or failure to perfect its Lien against, any security for the Obligations or any action, or the absence of any action, by Lender in respect thereof (including the release of any such security);

(d) the insolvency of any Borrower or any other Person; or

(e) any other action or circumstances that might otherwise constitute a legal or equitable discharge or defense of a surety or guarantor.

Each Borrower shall be regarded, and shall be in the same position, as principal debtor with respect to the Obligations guaranteed hereunder.

16.2 Waivers by Borrowers. Each Borrower expressly waives all rights it may have now or in the future under any statute, at common law, at law, in equity or otherwise, to compel Lender to marshal assets or to proceed in respect of the Obligations guaranteed hereunder against any other Borrower, any other party or against any security for the payment and performance of the Obligations before proceeding against, or as a condition to proceeding against, such Borrower. Each Borrower and the Lender agrees that the foregoing waivers are of the essence of the transaction contemplated by this Agreement and the other Loan Documents and that, but for the provisions of this Section 16 and such waivers, Lender would decline to enter into this Agreement.



16.3 Benefit of Guaranty. Each Borrower agrees that the provisions of this Section 16 are for the benefit of Lenders and its successors, transferees, endorsees and assigns, and nothing herein contained shall impair, as between any other Borrower and the Lenders, the obligations of such other Borrower under the Loan Documents.

16.4 Waiver of Subrogation, Etc. Notwithstanding anything to the contrary in this Agreement or in any other Loan Document, and except as set forth in Section 16.7, each Borrower hereby expressly and irrevocably waives any and all rights at law or in equity to subrogation, reimbursement, exoneration, contribution, indemnification or set off and any and all defenses available to a surety, guarantor or accommodation co-obligor until the Obligations are indefeasibly paid in full in cash. Each Borrower acknowledges and agrees that this waiver is intended to benefit the Lenders and shall not limit or otherwise affect such Borrower's liability hereunder or the enforceability of this Section 16, and that the Lenders and its successors and assigns are intended third party beneficiaries of the waivers and agreements set forth in this Section 16.

16.5 Election of Remedies. If the Lenders may, under applicable law, proceed to realize their benefits under any of the Loan Documents giving the Lenders a Lien upon any Collateral, whether owned by any Borrower or by any other Person, either by judicial foreclosure or by non-judicial sale or enforcement, the Lenders may, at their sole option, determine which of its remedies or rights they may pursue without affecting any of their rights and remedies under this Section 16. If, in the exercise of any of its rights and remedies, the Lenders shall forfeit any of its rights or remedies (including, without limitation, its right to enter a deficiency judgment against any Borrower or any other Person), whether because of any applicable laws pertaining to "election of remedies" or the like, each Borrower hereby consents to such action by the Lenders and waives any claim based upon such action, even if such action by the Lenders shall result in a full or partial loss of any rights of subrogation that each Borrower might otherwise have had but for such action by the Lenders. Any election of remedies that results in the denial or impairment of the right of the Lenders to seek a deficiency judgment against any Borrower shall not impair any other Borrower's obligation to pay the full amount of the Obligations. In the event any Lender shall bid at any foreclosure or trustee's sale or at any private sale permitted by law or the Loan Documents, such Lender may bid all or less than the amount of the Obligations and the amount of such bid need not be paid by such Lender but shall be credited against the Obligations. The amount of the successful bid at any such sale, whether a Lender or any other party is the successful bidder, shall be conclusively deemed to be the fair market value of the Collateral and the difference between such bid amount and the remaining balance of the Obligations shall be conclusively deemed to be the amount of the Obligations guaranteed under this Section 16, notwithstanding that any present or future law or court decision or ruling may have the effect of reducing the amount of any deficiency claim to which such Lender might otherwise be entitled but for such bidding at any such sale.

16.6 Limitation. Notwithstanding any provision herein contained to the contrary, each Borrower's liability under this Section 16 (which liability is in any event in addition to amounts for which such Borrower is primarily liable under this Agreement) shall be limited to an amount not to exceed as of any date of determination the lesser of:

(a) the net amount of all Loans advanced to any other Borrower under this Agreement and then re-loaned or otherwise transferred to, or for the benefit of, such Borrower; and

(b) the amount that could be claimed by Lender from such Borrower under this Section 16 without rendering such claim voidable or avoidable under Section 548 of the Bankruptcy Code or under any applicable state Uniform Fraudulent Transfer Act, Uniform Fraudulent Conveyance Act, the Bankruptcy and Insolvency Act (Canada) or similar statute or common law after taking into account, among other things, such Borrower's right of contribution and indemnification from each other Borrower under Section 16.7.

#### 16.7 Contribution with Respect to Guaranty Obligations.

(a) To the extent that any Borrower shall make a payment under this Section 16 of all or any of the Obligations (other than Loans made to such Borrower for which it is primarily liable) (a "Guarantor Payment") that, taking into account all other Guarantor Payments then previously or concurrently made by any other Borrower, exceeds the amount that such Borrower would otherwise have paid if each Borrower had paid the aggregate Obligations satisfied by such Guarantor Payment in the same proportion that such Borrower's "Allocable Amount" (as defined below) (as determined immediately prior to such Guarantor Payment) bore to the aggregate Allocable Amounts of each of the Borrowers as determined immediately prior to the making of such Guarantor Payment, then, following indefeasible payment in full in cash of the Obligations and termination of the commitments to lend hereunder, such Borrower shall be entitled to receive contribution and indemnification payments from, and be reimbursed by, each other Borrower for the amount of such excess, pro rata based upon their respective Allocable Amounts in effect immediately prior to such Guarantor Payment.

(b) As of any date of determination, the "Allocable Amount" of any Borrower shall be equal to the maximum amount of the claim that could then be recovered from such Borrower under this Section 16 without rendering such claim voidable or avoidable under Section 548 of the Bankruptcy Code or under any applicable state Uniform Fraudulent Transfer Act, Uniform Fraudulent Conveyance Act, Bankruptcy and Insolvency Act (Canada) or similar statute or common law.

(c) This Section 16.7 is intended only to define the relative rights of each Borrower and nothing set forth in this Section 16.7 is intended to or shall impair the obligations of the Borrowers, jointly and severally, to pay any amounts as and when the same shall become due and payable in accordance with the terms of this Agreement. Nothing contained in this Section 16.7 shall limit the liability of each Borrower to pay the Loans made directly or indirectly to any Borrower and accrued interest, fees and expenses with respect thereto for which such Borrower shall be primarily liable.

(d) The parties hereto acknowledge that the rights of contribution and indemnification hereunder shall constitute assets of the Borrower to which such contribution and indemnification is owing.

(e) The rights of the indemnifying a Borrower against any other Borrower under this Section 16 shall be exercisable upon the full and indefeasible payment of the Obligations and the termination of the commitments to lend hereunder.

16.8 Liability Cumulative. The liability of each Borrower under this Section 16 is in addition to and shall be cumulative with all liabilities of each Borrower to the Lender under this Agreement and the other Loan Documents to which such Borrower is a party or in respect of any Obligations or obligation of any other Borrower, without any limitation as to amount, unless the instrument or agreement evidencing or creating such other liability specifically provides to the contrary.

[Remainder of page intentionally left blank.]

IN WITNESS WHEREOF, this Agreement and all documents executed in connection therewith or relating thereto, have been negotiated, prepared and duly executed by the Borrower in the United States of America. In addition, this Agreement is being executed as an instrument under the laws of the State of Connecticut and the parties hereto have caused this Agreement as of the date first above written.

BORROWER:

NEXII BUILDING SOLUTIONS INC.

By: 

Name: Stephen Sidwell

Title: CEO

NEXII CONSTRUCTION INC.

By: 

Name: Suzanne Mercier

Title: Director


NBS IP INC

By: 

Name: Suzanne Mercier

Title: Director

NEXII HOLDINGS INC.

By: 

Name: Stephen Sidwell

Title: President

OMICRON CANADA INC.

By: [Signature]

Name: Suzanne Mercier

Title: Director

OMICRON CONSULTING LTD.

By: [Signature]

Name: Suzanne Mercier

Title: Director

GRANT & SINCLAIR ARCHITECTS LTD.

By: [Signature]

Name: Suzanne Mercier

Title: Director

OMICRON CONSTRUCTION LTD.

By: [Signature]

Name: Suzanne Mercier

Title: Director

OMICRON INTERIORS LTD.

By: [Signature]

Name: Suzanne Mercier

Title: Director

OMICRON CONSTRUCTION  
MANAGEMENT LTD.

By: [Signature]

Name: Suzanne Mercier

Title: Director

LENDER and COLLATERAL AGENT:  
HORIZON TECHNOLOGY FINANCE  
CORPORATION

By: Gerald A. Michaud  
Name: Gerald A. Michaud  
Title: President

LENDER:  
HORIZON CREDIT II LLC

By: Gerald A. Michaud  
Name: Gerald A. Michaud  
Title: President

LENDER:  
HORIZON FUNDING I, LLC  
By: Horizon Secured Loan Fund I LLC, its  
sole member

By: Gerald A. Michaud  
Name: Gerald A. Michaud  
Title: Manager

LENDER:  
POWERSCOURT INVESTMENTS  
XXV, LP  
By: Powerscourt Investments GP, LLC By:  
Maples Fiduciary Services (Delaware)  
Inc., its Managing Member

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

LENDER:  
TRINITY CAPITAL INC.

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

LENDER and COLLATERAL AGENT:  
HORIZON TECHNOLOGY FINANCE  
CORPORATION

By: \_\_\_\_\_  
Name: Gerald A. Michaud  
Title: President

LENDER:  
HORIZON CREDIT II LLC

By: \_\_\_\_\_  
Name: Gerald A. Michaud  
Title: President

LENDER:  
HORIZON FUNDING I, LLC  
By: Horizon Secured Loan Fund I LLC, its  
sole member

By: \_\_\_\_\_  
Name: Gerald A. Michaud  
Title: Manager

LENDER:  
POWERSCOURT INVESTMENTS  
XXV, LP  
By: Powerscourt Investments GP, LLC By:  
Maples Fiduciary Services (Delaware)  
Inc., its Managing Member

By: \_\_\_\_\_  
Name: **James Lawler**  
Title: **Authorized Signatory**

LENDER:  
TRINITY CAPITAL INC.

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

LENDER and COLLATERAL AGENT:  
HORIZON TECHNOLOGY FINANCE  
CORPORATION

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

LENDER:  
HORIZON CREDIT II LLC

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


LENDER:  
HORIZON FUNDING I, LLC

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

LENDER:  
POWERSCOURT INVESTMENTS XXV,  
LP  
By: Powerscourt Investments GP, LLC  
By: Maples Fiduciary Services (Delaware)  
Inc., its Managing Member

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

LENDER:  
TRINITY CAPITAL INC.

By:  \_\_\_\_\_  
Name: Sarah Stanton  
Title: General Counsel



LIST OF EXHIBITS AND SCHEDULES

- Exhibit A     Disclosure Schedule
- Exhibit B     Funding Certificate
- Exhibit C     Form of Note
- Exhibit D     Form of Officer's Certificate

EXHIBIT A

DISCLOSURE SCHEDULE

[Provided separately – to be inserted upon completion]

EXHIBIT B

**FUNDING CERTIFICATE**

The undersigned, being duly elected and acting officers of each entity comprising the Borrower (as defined in the Loan Agreement (as defined below)), does hereby certify to HORIZON TECHNOLOGY FINANCE CORPORATION ("Horizon"), POWERSCOURT INVESTMENTS XXV, LP., ("Powerscourt"), and TRINITY CAPITAL INC. ("Trinity," and collectively with Horizon and Powerscourt, "Lenders"), in connection with that certain Amended and Restated Venture Loan and Security Agreement dated as of [ ], 2022 by and among Borrower, Lenders and Horizon as Collateral Agent (the "Loan Agreement"; with other capitalized terms used below having the meanings ascribed thereto in the Loan Agreement) that:

1. The representations and warranties made by Borrower in Section 5 of the Loan Agreement and in the other Loan Documents are true and correct as of the date hereof.
2. No event or condition has occurred and not been waived by the Lenders that would constitute a Default or an Event of Default under the Loan Agreement or any other Loan Document.
3. Borrower is in compliance with the covenants and requirements contained in Sections 4, 6 and 7 of the Loan Agreement.
4. All conditions referred to in Section 3 of the Loan Agreement to the making of the Loan to be made on or about the date hereof have been satisfied.
5. No material adverse change in the general affairs, management, results of operations, condition (financial or otherwise) or prospects of Borrower, whether or not arising from transactions in the ordinary course of business, has occurred.
6. The proceeds for Loan F shall be disbursed as follows:

Disbursement from Powerscourt:		
Loan Amount	\$	
Less:		
Legal Fees	\$	
Balance of Additional Commitment Fee		\$
Net Proceeds due from Powerscourt:	\$	

7. The proceeds for Loan G shall be disbursed as follows:

Disbursement from Trinity:		
Loan Amount	\$	
Less:		
Legal Fees	\$	
Balance of Additional Commitment Fee		\$

Net Proceeds due from Trinity: \$

8. The proceeds for Loan H and Loan I shall be disbursed as follows:

Disbursement from Horizon:

Loan Amount	\$	
Less:		
Legal Fees	\$	
Balance of Additional Commitment Fee		\$

Net Proceeds due from Horizon: \$

9. The aggregate Net Proceeds of Loan F, Loan G, Loan H and Loan I in the amount of \$\_\_\_\_\_ shall be transferred by each respective Lender to Borrower's account as follows:

- Account Name:
- Bank Name:
- Bank Address:
- Attention:
- Telephone:
- Account Number:
- ABA Number:

Dated: [ ], 2022

BORROWER:

NEXII BUILDING SOLUTIONS INC.

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

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

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

NEXII CONSTRUCTION INC.

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

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

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

NBS IP INC.

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

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

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

NEXII HOLDINGS INC.

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

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

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

OMICRON CANADA INC.

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

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

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

OMICRON CONSULTING LTD.

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

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

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

GRANT & SINCLAIR ARCHITECTS LTD.

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

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

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

OMICRON CONSTRUCTION LTD.

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

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

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

OMICRON INTERIORS LTD.

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

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

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

OMICRON CONSTRUCTION  
MANAGEMENT LTD.

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

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

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

EXHIBIT C

**SECURED PROMISSORY NOTE**

**(Loan [F/G/H/I])**

\$ \_\_\_\_\_

Dated: [\_\_\_\_], 2022

FOR VALUE RECEIVED, the undersigned, being each entity comprising the Borrower (as defined in the Loan Agreement (as defined below)), HEREBY JOINTLY AND SEVERALLY PROMISE TO PAY to [HORIZON TECHNOLOGY FINANCE CORPORATION, a Delaware corporation/ POWERSCOURT INVESTMENTS XXV, LP, a Delaware Limited Partnership / TRINITY CAPITAL INC.] (“Lender”) the principal amount of \_\_\_\_\_ Dollars (\$\_\_\_\_\_) or such lesser amount as shall equal the outstanding principal balance of Loan [ ] (the “Loan”) made, and to pay all other amounts due with respect to the Loan on the dates and in the amounts set forth in the Loan Agreement. Capitalized terms used but not defined herein shall have the meaning ascribed thereto in the Loan Agreement.

Interest on the principal amount of this Note from the date of this Note shall accrue at the Loan Rate or, if applicable, the Default Rate, each as established in accordance with the Loan Agreement (as defined below). Interest shall be computed on the basis of a 360-day year for the actual number of days elapsed. If the Funding Date is not the first day of the month, interim interest accruing from the Funding Date through the last day of that month shall be paid on the first calendar day of the next calendar month. Commencing [ ], 2022, through and including [ ], 2024, on the first day of each month (each an “Interest Payment Date”) Borrower shall make payments of accrued interest only on the outstanding principal amount of the Loan in the amount of [ ] Dollars (\$[ ]). Commencing on [ ], 2024, and continuing on the first day of each month thereafter (each a “Principal and Interest Payment Date” and, collectively with each Interest Payment Date, each a “Payment Date”), Borrower shall make to Lender [ ] ([ ]) equal payments of principal in the amount of [ ] plus accrued interest on the then outstanding principal amount due hereunder. On the earliest to occur of (i) [ ], 202[ ], (ii) payment in full of the principal balance of the Loan or (iii) an Event of Default and demand by Lender of payment in full of the Loan, Borrower shall make a payment of [ ] and 00/100 United States Dollars (\$[ ]) to Lender (the “Final Payment”). If not sooner paid, all outstanding amounts hereunder and under the Loan Agreement shall become due and payable on [ ], 2026.

Principal, interest and all other amounts due with respect to the Loan, are payable in lawful money of the United States of America to Lender as set forth in the Loan Agreement. The principal amount of this Note and the interest rate applicable thereto, and all payments made with respect thereto, shall be recorded by Lender and, prior to any transfer hereof, endorsed on the grid attached hereto which is part of this Note.

This Note is referred to in, and is entitled to the benefits of, the Amended and Restated Venture Loan and Security Agreement dated as of [ ] (the “Loan Agreement”), among Borrower, Lender, Horizon Credit II LLC, Horizon Funding I, LLC and [HORIZON/POWERSCOURT/TRINITY]. The Loan Agreement, among other things, (a) provides for the making of a secured Loan to Borrower, and (b) contains provisions for acceleration of the maturity hereof upon the happening of certain stated events.

This Note may not be prepaid, except as set forth in Section 2.3 of the Loan Agreement.



This Note and the obligation of Borrower to repay the unpaid principal amount of the Loan, interest on the Loan and all other amounts due Lender under the Loan Agreement is secured under the Loan Agreement.

Presentment for payment, demand, notice of protest and all other demands and notices of any kind in connection with the execution, delivery, performance and enforcement of this Note are hereby waived.

Borrower shall pay all fees and expenses, including attorneys' fees and costs, incurred by Lender in the enforcement or attempt to enforce any of Borrower's obligations hereunder not performed when due.

Any reference herein to Lender shall be deemed to include and apply to every subsequent holder of this Note. Reference is made to the Loan Agreement for provisions concerning optional and mandatory prepayments, Collateral, acceleration and other material terms affecting this Note.

**This Note shall be governed by and construed under the laws of the State of Connecticut. Borrower agrees that any action or proceeding brought to enforce or arising out of this Note may be commenced in the state or federal courts located within the State of Connecticut.**

[Signature Page Follows]

IN WITNESS WHEREOF, Borrower has caused this Note to be duly executed by one of its officers thereunto duly authorized on the date hereof.

BORROWER:

NEXII BUILDING SOLUTIONS INC.

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

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

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

NEXII CONSTRUCTION INC.

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

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

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

NBS IP INC.

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

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

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

NEXII HOLDINGS INC.

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

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

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

OMICRON CANADA INC.

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

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

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

OMICRON CONSULTING LTD.

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

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

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

GRANT & SINCLAIR ARCHITECTS LTD.

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

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

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

OMICRON CONSTRUCTION LTD.

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

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

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

OMICRON INTERIORS LTD.

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

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

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

OMICRON CONSTRUCTION  
MANAGEMENT LTD.

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

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

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

EXHIBIT D

**FORM OF OFFICER'S CERTIFICATE**

TO: HORIZON TECHNOLOGY FINANCE CORPORATION, as Lender

AND TO POWERSCOURT INVESTMENTS XXV, LP, as Lender, and  
 TRINITY CAPITAL INC., as a Lender  
 HORIZON CREDIT II LLC, as a Lender  
 HORIZON FUNDING I, LLC, as a Lender

FROM: NEXII BUILDING SOLUTIONS INC., as Borrower

The undersigned authorized officer ("Officer") of NEXII BUILDING SOLUTIONS INC., on behalf of itself and all other Borrowers under and as defined in the Loan Agreement (as defined herein below) (individually and collectively, jointly and severally, "Borrower"), hereby certifies that in accordance with the terms and conditions of the Amended and Restated Venture Loan and Security Agreement dated as of June 8, 2022 by and among Borrower, Collateral Agent, and the Lenders from time to time party thereto (the "Loan Agreement;" capitalized terms used but not otherwise defined herein shall have the meanings given them in the Loan Agreement),

(a) Borrower is in complete compliance for the period ending \_\_\_\_\_ with all required covenants except as noted below;

(b) No Events of Default have occurred since [the date of the Loan Agreement / prior certificate], except as noted below;

(c) Except as noted below, all representations and warranties of Borrower stated in the Loan Documents are true and correct in all material respects on this date and for the period described in (a), above; provided, however, that such materiality qualifier shall not be applicable to any representations and warranties that already are qualified or modified by materiality in the text thereof; and provided, further that those representations and warranties expressly referring to a specific date shall be true, accurate and complete in all material respects as of such date.

(d) Borrower, and each of Borrower's Subsidiaries, has timely filed all required tax returns and reports, Borrower, and each of Borrower's Subsidiaries, has timely paid all foreign, federal, state, and local taxes, assessments, deposits and contributions owed by Borrower, or Subsidiary, except as otherwise permitted pursuant to the terms of Section 5.8 of the Loan Agreement;

(e) No Liens have been levied or claims made against Borrower or any of its Subsidiaries relating to unpaid employee payroll or benefits of which Borrower has not previously provided written notification to Collateral Agent and the Lenders.

Attached are the required documents, if any, supporting our certification(s). The Officer, on behalf of Borrower, further certifies that the attached financial statements are prepared in accordance with GAAP and are consistently applied from one period to the next except as

explained in an accompanying letter or footnotes and except, in the case of unaudited financial statements, for the absence of footnotes and subject to year-end audit adjustments as to the interim financial statements.

Please indicate compliance status since the last Officer's Certificate by circling Yes, No, or N/A under "Complies" column.

	Reporting Covenant	Requirement	Actual	Complies		
				Yes	No	N/A
1)	Financial statements	Monthly within 30 days		Yes	No	N/A
2)	Annual (CPA Audited) statements	Within 120 days after FYE		Yes	No	N/A
3)	Annual Financial Projections/Budget (prepared on a monthly basis)	Annually (within 30 days of the earlier of (i) FYE or (ii) BoD approval), and when revised		Yes	No	N/A
4)	A/R & A/P agings	Monthly within 30 days		Yes	No	N/A
5)	8-K, 10-K and 10-Q Filings	If applicable, within 5 days of filing		Yes	No	N/A
6)	Officer's Certificate	Monthly within 30 days		Yes	No	N/A
7)	IP Report	When required due to new IP filings		Yes	No	N/A
8)	Total amount of Borrower's cash and cash equivalents at the last day of the measurement period	\$ _____				
9)	Total amount of Borrower's Subsidiaries' cash and cash equivalents at the last day of the measurement period	\$ _____				

**Deposit and Securities Accounts:** *(Please list all accounts; attach separate sheet if additional space needed)*

	Institution Name	Account Number	New Account?		Account Control Agreement in place?	
			Yes	No	Yes	No
1)			Yes	No	Yes	No

2)			Yes	No	Yes	No
3)			Yes	No	Yes	No
4)			Yes	No	Yes	No

### **Financial Covenants**

<b>Covenant</b>	<b>Requirement</b>	<b>Actual</b>	<b>Compliance</b>	
Minimum Cash (See Section 6.12 of the Loan Agreement.)	\$15,000,000, or \$10,000,000, or \$0, as applicable	[\$_____]	Yes	No
Borrower's consolidated trailing three month revenue (See Section 6.13 of the Loan Agreement.)	[\$_____]	[\$_____]	Yes	No

### **Other Matters**

If the response to any of the below is "Yes", please provide an explanation of the circumstances giving rise to such "Yes" response on an attachment hereto.

1)	Have there been any changes in senior management since the last Officer's Certificate?	Yes	No
2)	Has there been any Transfers of Collateral prohibited by the Loan Agreement?	Yes	No
3)	Have there been any new or pending claims or causes of action against Borrower that involve more than Two Hundred Thousand Dollars (\$200,000)?	Yes	No
4)	Has any IP been abandoned, forfeited or dedicated to the public since the last Officer's Certificate?	Yes	No
5)	Has any Default or Event of Default occurred since the last Officer's Certificate?	Yes	No
6)	Has Borrower sold new shares of equity or made adjustments to existing shares of equity? If yes, please provide applicable supporting documentation.	Yes	No
7)	Has any direct or indirect Subsidiary been formed since the last Officer's Certificate?	Yes	No
8)	Has any piece of a Borrower's property been subject to a Lien (other than the lien of Lender pursuant to the Loan Agreement) since the date of the last Officer's Certificate?	Yes	No

9)	Has any Borrower or any Subsidiary incurred any Indebtedness since the date of the last Officer's Certificate?	Yes	No
10)	Has Borrower or any Subsidiary made any Investment since the date of the last Officer's Certificate?	Yes	No

**Exceptions:** Please explain any exceptions with respect to the certification above: (If no exceptions exist, state "No exceptions." Attach separate sheet if additional space needed.)

NEXII BUILDING SOLUTIONS INC., on behalf of itself and all other Borrowers

By \_\_\_\_\_

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

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

Date: \_\_\_\_\_



**SCHEDULE "C"****SECURITY**

1. Amended and Restated Venture Loan and Security Agreement dated as of June 8, 2022.
2. General Security Agreement dated as of August 27, 2021 by the Borrowers in favour of the Collateral Agent.
3. Confirmation of Grant of Security re United States Patents dated as of August 27, 2021 by Nexii Building Solutions Inc. in favour of the Collateral Agent.
4. Confirmation of Grant of Security re United States Patents dated as of August 27, 2021 by Nexii Holdings Inc. in favour of the Collateral Agent.
5. Confirmation of Grant of Security re United States Trademarks dated as of August 27, 2021 by Nexii Building Solutions Inc. in favour of the Collateral Agent.
6. Confirmation of Grant of Security Interest re Canadian Intellectual Property dated as of August 27, 2021 by Nexii Building Solutions Inc. in favour of the Collateral Agent.
7. Securities Account Control Agreement dated August 27, 2021 among the Collateral Agent, Nexii Building Solutions Inc. and Canaccord Genuity Corp.
8. Deposit Account Control Agreement dated as of August 26, 2021 among the Collateral Agent, Nexii Holdings Inc. and BMO Harris Bank N.A.

**SCHEDULE “D”**

**CONSENT TO RECEIVER**

**TO: POWERSCOURT INVESTMENTS XXV, LP (“PC LP”), POWERSCOURT INVESTMENTS XXV TRUST (“Powerscourt”), as assignee of PC LP, TRINITY CAPITAL INC. (“Trinity”), HORIZON TECHNOLOGY FINANCE CORPORATION (“Horizon”), HORIZON CREDIT II LLC (“HCII”), as assignee of Horizon, HORIZON FUNDING I, LLC (“HFI”), as assignee of Horizon, and HORIZON FUNDING TRUST 2022-1 (“Trust”, and together with PC LP, Powerscourt, Trinity, Horizon, HCII and HFI, the “Lenders” and each a “Lender”), as assignee of Horizon**

**AND TO: ITS SOLICITORS, AIRD & BERLIS LLP**

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Nexii Building Solutions Inc. (the “**Debtor**”) hereby consents to: (i) the immediate appointment by the Lenders of a private receiver or receiver and manager in respect of the Debtor’s assets, property and undertaking and any and all of the Debtor’s books and records (collectively, the “**Assets**”); and/or (ii) the immediate appointment by Court Order of an interim receiver, receiver or receiver and manager of the Assets pursuant to subsections 47(1) and 243(1) of the *Bankruptcy and Insolvency Act*.

**DATED** this \_\_\_ day of June, 2023.

**NEXII BUILDING SOLUTIONS INC.**

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

I have authority to bind the corporation.

**CONSENT TO RECEIVER**

**TO: POWERSCOURT INVESTMENTS XXV, LP (“PC LP”), POWERSCOURT INVESTMENTS XXV TRUST (“Powerscourt”), as assignee of PC LP, TRINITY CAPITAL INC. (“Trinity”), HORIZON TECHNOLOGY FINANCE CORPORATION (“Horizon”), HORIZON CREDIT II LLC (“HCII”), as assignee of Horizon, HORIZON FUNDING I, LLC (“HFI”), as assignee of Horizon, and HORIZON FUNDING TRUST 2022-1 (“Trust”, and together with PC LP, Powerscourt, Trinity, Horizon, HCII and HFI, the “Lenders” and each a “Lender”), as assignee of Horizon**

**AND TO: ITS SOLICITORS, AIRD & BERLIS LLP**

---

Grant and Sinclair Architects Ltd. (the “**Debtor**”) hereby consents to: (i) the immediate appointment by the Lenders of a private receiver or receiver and manager in respect of the Debtor’s assets, property and undertaking and any and all of the Debtor’s books and records (collectively, the “**Assets**”); and/or (ii) the immediate appointment by Court Order of an interim receiver, receiver or receiver and manager of the Assets pursuant to subsections 47(1) and 243(1) of the *Bankruptcy and Insolvency Act*.

**DATED** this \_\_\_\_ day of June, 2023.

**GRANT & SINCLAIR ARCHITECTS LTD.**

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

I have authority to bind the corporation.

**CONSENT TO RECEIVER**

**TO: POWERSCOURT INVESTMENTS XXV, LP (“PC LP”),  
POWERSCOURT INVESTMENTS XXV TRUST (“Powerscourt”), as  
assignee of PC LP, TRINITY CAPITAL INC. (“Trinity”), HORIZON  
TECHNOLOGY FINANCE CORPORATION (“Horizon”), HORIZON  
CREDIT II LLC (“HCII”), as assignee of Horizon, HORIZON FUNDING I,  
LLC (“HFI”), as assignee of Horizon, and HORIZON FUNDING TRUST  
2022-1 (“Trust”, and together with PC LP, Powerscourt, Trinity, Horizon, HCII  
and HFI, the “Lenders” and each a “Lender”), as assignee of Horizon**

**AND TO: ITS SOLICITORS, AIRD & BERLIS LLP**

NBS IP Inc. (the “**Debtor**”) hereby consents to: (i) the immediate appointment by the Lenders of a private receiver or receiver and manager in respect of the Debtor’s assets, property and undertaking and any and all of the Debtor’s books and records (collectively, the “**Assets**”); and/or (ii) the immediate appointment by Court Order of an interim receiver, receiver or receiver and manager of the Assets pursuant to subsections 47(1) and 243(1) of the *Bankruptcy and Insolvency Act*.

**DATED** this \_\_\_ day of June, 2023.

**NBS IP INC.**

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

I have authority to bind the corporation.

**CONSENT TO RECEIVER**

**TO: POWERSCOURT INVESTMENTS XXV, LP (“PC LP”),  
POWERSCOURT INVESTMENTS XXV TRUST (“Powerscourt”), as  
assignee of PC LP, TRINITY CAPITAL INC. (“Trinity”), HORIZON  
TECHNOLOGY FINANCE CORPORATION (“Horizon”), HORIZON  
CREDIT II LLC (“HCII”), as assignee of Horizon, HORIZON FUNDING I,  
LLC (“HFI”), as assignee of Horizon, and HORIZON FUNDING TRUST  
2022-1 (“Trust”, and together with PC LP, Powerscourt, Trinity, Horizon, HCII  
and HFI, the “Lenders” and each a “Lender”), as assignee of Horizon**

**AND TO: ITS SOLICITORS, AIRD & BERLIS LLP**

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Nexii Construction Inc. (the “**Debtor**”) hereby consents to: (i) the immediate appointment by the Lenders of a private receiver or receiver and manager in respect of the Debtor’s assets, property and undertaking and any and all of the Debtor’s books and records (collectively, the “**Assets**”); and/or (ii) the immediate appointment by Court Order of an interim receiver, receiver or receiver and manager of the Assets pursuant to subsections 47(1) and 243(1) of the *Bankruptcy and Insolvency Act*.

**DATED** this \_\_\_ day of June, 2023.

**NEXII CONSTRUCTION INC.**

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

I have authority to bind the corporation.

**CONSENT TO RECEIVER**

**TO: POWERSCOURT INVESTMENTS XXV, LP (“PC LP”), POWERSCOURT INVESTMENTS XXV TRUST (“Powerscourt”), as assignee of PC LP, TRINITY CAPITAL INC. (“Trinity”), HORIZON TECHNOLOGY FINANCE CORPORATION (“Horizon”), HORIZON CREDIT II LLC (“HCII”), as assignee of Horizon, HORIZON FUNDING I, LLC (“HFI”), as assignee of Horizon, and HORIZON FUNDING TRUST 2022-1 (“Trust”, and together with PC LP, Powerscourt, Trinity, Horizon, HCII and HFI, the “Lenders” and each a “Lender”), as assignee of Horizon**

**AND TO: ITS SOLICITORS, AIRD & BERLIS LLP**

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Nexii Holdings Inc. (the “Debtor”) hereby consents to: (i) the immediate appointment by the Lenders of a private receiver or receiver and manager in respect of the Debtor’s assets, property and undertaking and any and all of the Debtor’s books and records (collectively, the “Assets”); and/or (ii) the immediate appointment by Court Order of an interim receiver, receiver or receiver and manager of the Assets pursuant to subsections 47(1) and 243(1) of the *Bankruptcy and Insolvency Act*.

**DATED** this \_\_\_ day of June, 2023.

**NEXII HOLDINGS INC.**

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

I have authority to bind the corporation.

**CONSENT TO RECEIVER**

**TO: POWERSCOURT INVESTMENTS XXV, LP (“PC LP”), POWERSCOURT INVESTMENTS XXV TRUST (“Powerscourt”),** as assignee of PC LP, **TRINITY CAPITAL INC. (“Trinity”), HORIZON TECHNOLOGY FINANCE CORPORATION (“Horizon”), HORIZON CREDIT II LLC (“HCII”),** as assignee of Horizon, **HORIZON FUNDING I, LLC (“HFI”),** as assignee of Horizon, and **HORIZON FUNDING TRUST 2022-1 (“Trust”),** and together with PC LP, Powerscourt, Trinity, Horizon, HCII and HFI, the **“Lenders”** and each a **“Lender”**), as assignee of Horizon

**AND TO: ITS SOLICITORS, AIRD & BERLIS LLP**

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Omicron Canada Inc. (the **“Debtor”**) hereby consents to: (i) the immediate appointment by the Lenders of a private receiver or receiver and manager in respect of the Debtor’s assets, property and undertaking and any and all of the Debtor’s books and records (collectively, the **“Assets”**); and/or (ii) the immediate appointment by Court Order of an interim receiver, receiver or receiver and manager of the Assets pursuant to subsections 47(1) and 243(1) of the *Bankruptcy and Insolvency Act*.

**DATED** this \_\_\_ day of June, 2023.

**OMICRON CANADA INC.**

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

Name:

Title:

I have authority to bind the corporation.

**CONSENT TO RECEIVER**

**TO: POWERSCOURT INVESTMENTS XXV, LP (“PC LP”), POWERSCOURT INVESTMENTS XXV TRUST (“Powerscourt”), as assignee of PC LP, TRINITY CAPITAL INC. (“Trinity”), HORIZON TECHNOLOGY FINANCE CORPORATION (“Horizon”), HORIZON CREDIT II LLC (“HCII”), as assignee of Horizon, HORIZON FUNDING I, LLC (“HFI”), as assignee of Horizon, and HORIZON FUNDING TRUST 2022-1 (“Trust”, and together with PC LP, Powerscourt, Trinity, Horizon, HCII and HFI, the “Lenders” and each a “Lender”), as assignee of Horizon**

**AND TO: ITS SOLICITORS, AIRD & BERLIS LLP**

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Omicron Construction Ltd. (the “**Debtor**”) hereby consents to: (i) the immediate appointment by the Lenders of a private receiver or receiver and manager in respect of the Debtor’s assets, property and undertaking and any and all of the Debtor’s books and records (collectively, the “**Assets**”); and/or (ii) the immediate appointment by Court Order of an interim receiver, receiver or receiver and manager of the Assets pursuant to subsections 47(1) and 243(1) of the *Bankruptcy and Insolvency Act*.

**DATED** this \_\_\_ day of June, 2023.

**OMICRON CONSTRUCTION LTD.**

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

I have authority to bind the corporation.



**CONSENT TO RECEIVER**

**TO: POWERSCOURT INVESTMENTS XXV, LP (“PC LP”), POWERSCOURT INVESTMENTS XXV TRUST (“Powerscourt”), as assignee of PC LP, TRINITY CAPITAL INC. (“Trinity”), HORIZON TECHNOLOGY FINANCE CORPORATION (“Horizon”), HORIZON CREDIT II LLC (“HCII”), as assignee of Horizon, HORIZON FUNDING I, LLC (“HFI”), as assignee of Horizon, and HORIZON FUNDING TRUST 2022-1 (“Trust”, and together with PC LP, Powerscourt, Trinity, Horizon, HCII and HFI, the “Lenders” and each a “Lender”), as assignee of Horizon**

**AND TO: ITS SOLICITORS, AIRD & BERLIS LLP**

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Omicron Construction Management Ltd. (the “Debtor”) hereby consents to: (i) the immediate appointment by the Lenders of a private receiver or receiver and manager in respect of the Debtor’s assets, property and undertaking and any and all of the Debtor’s books and records (collectively, the “Assets”); and/or (ii) the immediate appointment by Court Order of an interim receiver, receiver or receiver and manager of the Assets pursuant to subsections 47(1) and 243(1) of the *Bankruptcy and Insolvency Act*.

**DATED** this \_\_\_ day of June, 2023.

**OMICRON CONSTRUCTION  
MANAGEMENT LTD.**

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

I have authority to bind the corporation.

**CONSENT TO RECEIVER**

**TO: POWERSCOURT INVESTMENTS XXV, LP (“PC LP”),  
POWERSCOURT INVESTMENTS XXV TRUST (“Powerscourt”), as  
assignee of PC LP, TRINITY CAPITAL INC. (“Trinity”), HORIZON  
TECHNOLOGY FINANCE CORPORATION (“Horizon”), HORIZON  
CREDIT II LLC (“HCII”), as assignee of Horizon, HORIZON FUNDING I,  
LLC (“HFI”), as assignee of Horizon, and HORIZON FUNDING TRUST  
2022-1 (“Trust”, and together with PC LP, Powerscourt, Trinity, Horizon, HCII  
and HFI, the “Lenders” and each a “Lender”), as assignee of Horizon**

**AND TO: ITS SOLICITORS, AIRD & BERLIS LLP**

Omicron Consulting Ltd. (the “**Debtor**”) hereby consents to: (i) the immediate appointment by the Lenders of a private receiver or receiver and manager in respect of the Debtor’s assets, property and undertaking and any and all of the Debtor’s books and records (collectively, the “**Assets**”); and/or (ii) the immediate appointment by Court Order of an interim receiver, receiver or receiver and manager of the Assets pursuant to subsections 47(1) and 243(1) of the *Bankruptcy and Insolvency Act*.

**DATED** this \_\_\_ day of June, 2023.

**OMICRON CONSULTING LTD.**

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

Name:

Title:

I have authority to bind the corporation.

**CONSENT TO RECEIVER**

**TO: POWERSCOURT INVESTMENTS XXV, LP (“PC LP”),  
POWERSCOURT INVESTMENTS XXV TRUST (“Powerscourt”), as  
assignee of PC LP, TRINITY CAPITAL INC. (“Trinity”), HORIZON  
TECHNOLOGY FINANCE CORPORATION (“Horizon”), HORIZON  
CREDIT II LLC (“HCII”), as assignee of Horizon, HORIZON FUNDING I,  
LLC (“HFI”), as assignee of Horizon, and HORIZON FUNDING TRUST  
2022-1 (“Trust”, and together with PC LP, Powerscourt, Trinity, Horizon, HCII  
and HFI, the “Lenders” and each a “Lender”), as assignee of Horizon**

**AND TO: ITS SOLICITORS, AIRD & BERLIS LLP**

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Omicron Interiors Ltd. (the “**Debtor**”) hereby consents to: (i) the immediate appointment by the Lenders of a private receiver or receiver and manager in respect of the Debtor’s assets, property and undertaking and any and all of the Debtor’s books and records (collectively, the “**Assets**”); and/or (ii) the immediate appointment by Court Order of an interim receiver, receiver or receiver and manager of the Assets pursuant to subsections 47(1) and 243(1) of the *Bankruptcy and Insolvency Act*.

**DATED** this \_\_\_ day of June, 2023.

**OMICRON INTERIORS LTD.**

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

Name:

Title:

I have authority to bind the corporation.

**SCHEDULE "E"**

**Form of Accommodation Note**

(See attached.)

53452921.2

**SECURED PROMISSORY NOTE****(Loan AL-[ ])**

\$[ ]

Dated: [ ], 2023

FOR VALUE RECEIVED, the undersigned, being each entity comprising the Borrower (as defined in the Loan Agreement (as defined below)), HEREBY JOINTLY AND SEVERALLY PROMISE TO PAY to [HORIZON TECHNOLOGY FINANCE CORPORATION, a Delaware corporation / POWERSCOURT INVESTMENTS XXV, LP, a Delaware limited partnership / TRINITY CAPITAL INC., a Maryland corporation] ("Lender"), the principal amount of [ ] and 00/100 United States Dollars (\$[ ]) or such lesser amount as shall equal the outstanding principal balance of Loan AL-[ ] (the "Loan") made to Borrower by Lender pursuant to the Loan Agreement, and to pay all other amounts due with respect to the Loan on the dates and in the amounts set forth in the Loan Agreement. Capitalized terms used but not defined herein shall have the meaning ascribed thereto in the Loan Agreement.

Interest on the principal amount of this Note from the date of this Note shall accrue at the Loan Rate or, if applicable, the Default Rate, each as established in accordance with the Loan Agreement (as defined below). Interest shall be computed on the basis of a 360-day year for the actual number of days elapsed. If the Funding Date is not the first day of the month, interim interest accruing from the Funding Date through the last day of that month shall be paid on the first calendar day of the next calendar month.

Commencing on [ ], 2023, and continuing on the first day of each month thereafter until the payment in full of the Loan (each an "Interest Payment Date"), accrued interest on the then outstanding principal amount of the Loan shall be capitalized and added to the outstanding principal amount of the Loan (such interest, "PIK Interest"). On September 30, 2023 (the "Principal Payment Date" and, collectively with each Interest Payment Date, each a "Payment Date"), Borrower shall make to Lender one payment of principal in the amount of [ ] and 00/100 United States Dollars (\$[ ]), plus all accrued but unpaid interest, including PIK Interest, plus all other outstanding amounts due hereunder and under the Loan Agreement with respect to the Loan. If not sooner paid, all outstanding amounts hereunder and under the Loan Agreement with respect to the Loan shall become due and payable on September 30, 2023.

Principal, interest and all other amounts due with respect to the Loan, are payable in lawful money of the United States of America to Lender as set forth in the Loan Agreement. The principal amount of this Note and the interest rate applicable thereto, and all payments made with respect thereto, shall be recorded by Lender and, prior to any transfer hereof, endorsed on the grid attached hereto which is part of this Note.

This Note is referred to in, and is entitled to the benefits of, (a) the Amended and Restated Venture Loan and Security Agreement, dated as of June 8, 2022 (the "A&R Agreement"), among Borrower, Horizon Credit II LLC ("HCII"), Horizon Funding I, LLC ("HFI"), Horizon Funding Trust 2022-1 ("Trust"), Horizon Technology Finance Corporation ("Horizon"), Powerscourt Investments XXV, LP ("PC LP"), Powerscourt Investments XXV Trust ("Powerscourt") and Trinity Capital Inc. ("Trinity") and (b) the Accommodation Agreement, dated as of June [ ],

2023 (collectively with the A&R Agreement, the “Loan Agreement”), among Borrower, HCII, HFI, Trust, Horizon, PC LP, Powerscourt and Trinity. The Loan Agreement, among other things, (a) provides for the making of a secured Loan to Borrower, and (b) contains provisions for acceleration of the maturity hereof upon the happening of certain stated events.

This Note may not be prepaid, except as set forth in Section 2.3 of the A&R Agreement.

This Note and the obligation of Borrower to repay the unpaid principal amount of the Loan, interest on the Loan and all other amounts due Lender under the Loan Agreement is secured under the Loan Agreement.

This Note is guaranteed pursuant to Section 16 of the A&R Agreement and reference is hereby made to such guarantee.

Presentment for payment, demand, notice of protest and all other demands and notices of any kind in connection with the execution, delivery, performance and enforcement of this Note are hereby waived.

Borrower shall pay all fees and expenses, including attorneys’ fees and costs, incurred by Lender in the enforcement or attempt to enforce any of Borrower’s obligations hereunder not performed when due.

Any reference herein to Lender shall be deemed to include and apply to every subsequent holder of this Note. Reference is made to the Loan Agreement for provisions concerning optional and mandatory prepayments, Collateral, acceleration and other material terms affecting this Note.

[Signature Page Follows]

**This Note shall be governed by and construed under the laws of the State of Connecticut. Borrower agrees that any action or proceeding brought to enforce or arising out of this Note may be commenced in the state or federal courts located within the State of Connecticut.**

IN WITNESS WHEREOF, Borrower has caused this Note to be duly executed by one of its officers thereunto duly authorized on the date hereof.

BORROWERS:

NEXII BUILDING SOLUTIONS INC.

NEXII HOLDINGS INC.

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

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

GRANT & SINCLAIR ARCHITECTS LTD.

OMICRON CANADA INC.

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

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

NBS IP INC.

OMICRON CONSTRUCTION LTD.

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

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

NEXII CONSTRUCTION INC.

OMICRON CONSTRUCTION  
MANAGEMENT LTD.

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

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

OMICRON CONSULTING LTD.

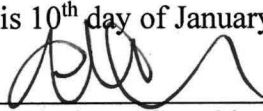
By: \_\_\_\_\_  
Name:  
Title:

OMICRON INTERIORS LTD.

By: \_\_\_\_\_  
Name:  
Title:  
53413481.2



This is Exhibit " C " referred to in the  
Affidavit of William Tucker  
sworn before me at Vancouver  
this 10<sup>th</sup> day of January, 2024



---

A Commissioner for taking Affidavits  
for British Columbia

**AMENDED AND RESTATED  
ACCOMMODATION AGREEMENT**

**THIS AGREEMENT** is made as of this 15 day of December, 2023.

**A M O N G:**

**POWERSCOURT INVESTMENTS XXV, LP (“PC LP”), POWERSCOURT INVESTMENTS XXV TRUST (“Powerscourt”),** as assignee of PC LP, **TRINITY CAPITAL INC. (“Trinity”), HORIZON TECHNOLOGY FINANCE CORPORATION (“Horizon”), HORIZON CREDIT II LLC (“HCII”),** as assignee of Horizon, **HORIZON FUNDING I, LLC (“HFI”),** as assignee of Horizon, and **HORIZON FUNDING TRUST 2022-1 (“Trust”),** as assignee of Horizon

(hereinafter referred to collectively as the “**Lenders**” and each a “**Lender**”)

- and -

**NEXII BUILDING SOLUTIONS INC. (“Borrowers Representative”),** and each of the other Borrowers listed on **Schedule “A”** attached hereto

(hereinafter referred to collectively as the “**Borrowers**”, and each a “**Borrower**”)

- and -

**HORIZON TECHNOLOGY FINANCE CORPORATION,** as collateral agent  
(hereinafter referred to as the “**Collateral Agent**”)

**RECITALS:**

**WHEREAS** the Borrowers, the Lenders and the Collateral Agent are parties to that certain Amended and Restated Venture Loan and Security Agreement dated as of June 8, 2022 (as amended, the “**A&R Agreement**”);

**AND WHEREAS** pursuant to the terms of the A&R Agreement, the Lenders extended the following loans to the Borrowers to date:

- a. PC LP provided: (a) a loan to the Borrowers as evidenced by that certain Amended and Restated Secured Promissory Note (Loan A) executed by the Borrowers in favor of Powerscourt, as assignee of PC LP, amended and restated as of July 21, 2023, in the original principal amount of Seven Million Five Hundred Thousand Dollars (\$7,500,000) (the “**Loan A Note**”) and (b) a loan to the Borrowers as evidenced by that certain Amended and Restated Secured Promissory Note (Loan F) executed by the Borrowers in favor of Powerscourt, as assignee of PC LP, amended and restated as of July 21, 2023, in the original principal amount of Five Million Dollars (\$5,000,000) (the “**Loan F Note**”);

- b. Horizon provided (a) a loan to the Borrowers as evidenced by that certain Amended and Restated Secured Promissory Note (Loan B) executed by the Borrowers in favor of Trust, as assignee of Horizon, amended and restated as of July 21, 2023, in the original principal amount of Seven Million Five Hundred Thousand Dollars (\$7,500,000) (the “**Loan B Note**”), (b) a loan to the Borrowers as evidenced by that certain Amended and Restated Secured Promissory Note (Loan C) executed by the Borrowers in favor of HCII, as assignee of Horizon, amended and restated as of July 21, 2023, in the original principal amount of Seven Million Five Hundred Thousand Dollars (\$7,500,000) (the “**Loan C Note**”), (c) a loan to the Borrowers as evidenced by that certain Amended and Restated Secured Promissory Note (Loan D) executed by the Borrowers in favor of HFI, as assignee of Horizon, amended and restated as of July 21, 2023, in the original principal amount of Seven Million Five Hundred Thousand Dollars (\$7,500,000) (the “**Loan D Note**”), (d) a loan to the Borrowers as evidenced by that certain Amended and Restated Secured Promissory Note (Loan H) executed by the Borrowers in favor of HFI, as assignee of Horizon, amended and restated as of July 21, 2023, in the original principal amount of Five Million Dollars (\$5,000,000) (the “**Loan H Note**”) and (e) a loan to the Borrowers as evidenced by that certain Amended and Restated Secured Promissory Note (Loan I) executed by the Borrowers in favor of HFI, as assignee of Horizon, amended and restated as of July 21, 2023, in the original principal amount of Five Million Dollars (\$5,000,000) (the “**Loan I Note**”); and
- c. Trinity provided (a) a loan to the Borrowers as evidenced by that certain Amended and Restated Secured Promissory Note (Loan E) executed by the Borrowers in favor of Trinity, amended and restated as of July 21, 2023, in the original principal amount of Ten Million Dollars (\$10,000,000) (the “**Loan E Note**”) and (b) a loan to the Borrowers as evidenced by that certain Amended and Restated Secured Promissory Note (Loan G) executed by the Borrowers in favor of Trinity, amended and restated as of July 21, 2023, in the original principal amount of Five Million Dollars (\$5,000,000) (the “**Loan G Note**” and collectively with the Loan A Note, the Loan B Note, the Loan C Note, the Loan D Note, the Loan E Note, the Loan F Note, the Loan H Note and the Loan I Note, the “**Original Notes**”);

**AND WHEREAS** the Borrowers, the Lenders and the Collateral Agent are parties to that certain Accommodation Agreement dated as of June 21, 2023 (as amended, the “**Accommodation Agreement**” and collectively with the A&R Agreement, the “**Loan Agreement**”);

**AND WHEREAS** pursuant to the terms of the Accommodation Agreement, the Lenders extended the following loans to the Borrowers to date:

- a. Horizon provided (a) a loan to the Borrowers as evidenced by that certain Secured Promissory Note (Loan AL-1) executed by the Borrowers in favor of Horizon, dated as of June 21, 2023, in the original principal amount of Six Hundred Seventy-Seven Thousand Eighty-Three and 25/100 Dollars (\$677,083.25) (the “**AL-1 Note**”), (b) a loan to the Borrowers as evidenced by that certain Secured Promissory Note (Loan AL-4) executed by the Borrowers in favor of Horizon, dated as of June 30, 2023, in the original principal amount of Five Hundred Forty-One Thousand Six Hundred Sixty-Six and 67/100 Dollars (\$541,666.67) (the “**AL-4 Note**”), (c) a loan to the Borrowers as evidenced by that certain

Secured Promissory Note (Loan AL-7) executed by the Borrowers in favor of Horizon, dated as of July 6, 2023, in the original principal amount of Two Hundred Seventy Thousand Eight Hundred Thirty-Three and 33/100 Dollars (\$270,833.33) (the “**AL-7 Note**”), (d) a loan to the Borrowers as evidenced by that certain Secured Promissory Note (Loan AL-10) executed by the Borrowers in favor of Horizon, dated as of July 25, 2023, in the original principal amount of Two Hundred Seventy Thousand Eight Hundred Thirty-Three and 33/100 Dollars (\$270,833.33) (the “**AL-10 Note**”), (e) a loan to the Borrowers as evidenced by that certain Secured Promissory Note (Loan AL-13) executed by the Borrowers in favor of Horizon, dated as of July 27, 2023, in the original principal amount of One Hundred Sixty-Two Thousand Five Hundred Dollars (\$162,500) (the “**AL-13 Note**”) and (f) a loan to the Borrowers as evidenced by that certain Secured Promissory Note (Loan AL-16) executed by the Borrowers in favor of Horizon, dated as of November 14, 2023, in the original principal amount of Seven Hundred Eighty-Five Thousand Four Hundred Sixteen and 67/100 Dollars (\$785,416.67) (the “**AL-16 Note**”); and

- b. PC LP provided: (a) a loan to the Borrowers as evidenced by that certain Secured Promissory Note (Loan AL-2) executed by the Borrowers in favor of PC LP, dated as of June 21, 2023, in the original principal amount of Two Hundred Sixty Thousand Four Hundred Sixteen and 75/100 Dollars (\$260,416.75) (the “**AL-2 Note**”), (b) a loan to the Borrowers as evidenced by that certain Secured Promissory Note (Loan AL-5) executed by the Borrowers in favor of PC LP, dated as of June 30, 2023, in the original principal amount of Two Hundred Eight Thousand Three Hundred Thirty-Three and 33/100 Dollars (\$208,333.33) (the “**AL-5 Note**”), (c) a loan to the Borrowers as evidenced by that certain Secured Promissory Note (Loan AL-8) executed by the Borrowers in favor of PC LP, dated as of July 6, 2023, in the original principal amount of One Hundred Four Thousand One Hundred Sixty-Six and 67/100 Dollars (\$104,166.67) (the “**AL-8 Note**”), (d) a loan to the Borrowers as evidenced by that certain Secured Promissory Note (Loan AL-11) executed by the Borrowers in favor of PC LP, dated as of July 25, 2023, in the original principal amount of One Hundred Four Thousand One Hundred Sixty-Six and 67/100 Dollars (\$104,166.67) (the “**AL-11 Note**”), (e) a loan to the Borrowers as evidenced by that certain Secured Promissory Note (Loan AL-14) executed by the Borrowers in favor of PC LP, dated as of July 27, 2023, in the original principal amount of Sixty-Two Thousand Five Hundred Dollars (\$62,500) (the “**AL-14 Note**”) and (f) a loan to the Borrowers as evidenced by that certain Secured Promissory Note (Loan AL-17) executed by the Borrowers in favor of PC LP, dated as of November 14, 2023, in the original principal amount of Three Hundred Two Thousand Eighty-Three and 33/100 Dollars (\$302,083.33) (the “**AL-17 Note**”);
- c. Trinity provided (a) a loan to the Borrowers as evidenced by that certain Secured Promissory Note (Loan AL-3) executed by the Borrowers in favor of Trinity, dated as of June 21, 2023, in the original principal amount of Three Hundred Twelve Thousand Five Hundred Dollars (\$312,500) (the “**AL-3 Note**”), (b) a loan to the Borrowers as evidenced by that certain Secured Promissory Note (Loan AL-6) executed by the Borrowers in favor of Trinity, dated as of June 30, 2023, in the original principal amount of Two Hundred Fifty Thousand Dollars (\$250,000) (the “**AL-6 Note**”), (c) a loan to the Borrowers as evidenced by that certain Secured Promissory Note (Loan AL-9) executed by the Borrowers in favor of Trinity, dated as of July 6, 2023, in the original principal amount of

One Hundred Twenty-Five Thousand Dollars (\$125,000) (the “**AL-9 Note**”), (d) a loan to the Borrowers as evidenced by that certain Secured Promissory Note (Loan AL-12) executed by the Borrowers in favor of Trinity, dated as of July 25, 2023, in the original principal amount of One Hundred Twenty-Five Thousand Dollars (\$125,000) (the “**AL-12 Note**”), (e) a loan to the Borrowers as evidenced by that certain Secured Promissory Note (Loan AL-15) executed by the Borrowers in favor of Trinity, dated as of July 27, 2023, in the original principal amount of Seventy-Five Thousand Dollars (\$75,000) (the “**AL-15 Note**”) and (f) a loan to the Borrowers as evidenced by that certain Secured Promissory Note (Loan AL-18) executed by the Borrowers in favor of Trinity, dated as of November 14, 2023, in the original principal amount of Three Hundred Sixty-Two Thousand Five Hundred Dollars (\$362,500.00) (the “**AL-18 Note**”, and collectively with the AL-1 Note, the AL-2 Note, the AL-3 Note, the AL-4 Note, the AL-5 Note, the AL-6 Note, the AL-7 Note, the AL-8 Note, the AL-9 Note, the AL-10 Note, the AL-11 Note, the AL-12 Note, the AL-13 Note, the AL-14 Note, the AL-15 Note, the AL-16 Note and the AL-17 Note, the “**AL Notes**”);

**AND WHEREAS** to secure the obligations of the Borrowers to the Lenders, including, without limitation, those arising under the Loan Agreement, the Borrowers have provided certain security in favour of the Collateral Agent (collectively, as amended, restated, supplemented, replaced or otherwise altered from time to time being the “**Security**”) including, without limitation, the security set out in **Schedule “B”** hereto;

**AND WHEREAS** the Borrowers have acknowledged that certain Existing Defaults (as defined in the Accommodation Agreement) (the “**Original Existing Defaults**”) have occurred under the A&R Agreement;

**AND WHEREAS** the Borrowers have acknowledged that additional Defaults, Events of Default and Intervening Events have occurred under the A&R Agreement and the Accommodation Agreement (collectively with the Original Existing Defaults and any and all such other defaults as may be existing and known to the Lenders as of the date hereof being referred to as the “**Existing Defaults**”), which Existing Defaults entitled the Lenders to issue demand for immediate repayment of the Loans under the Loan Agreement;

**AND WHEREAS** the Collateral Agent, for and on behalf of the Lenders, has made formal demand for repayment of the Loans issued to the Borrowers by letters each dated June 21, 2023 (the “**Demand**”), and on the same date delivered a notice of intention to enforce security pursuant to section 244(1) of the *Bankruptcy and Insolvency Act* (the “**BIA**”) to each of the Borrowers (collectively, the “**Notices**”);

**AND WHEREAS** in consideration of the provision of the Accommodation Loan, subject to the terms of this Agreement, the Borrowers hereby waive the ten (10) day notice period required to enforce any security interest that may be required pursuant to section 244(1) of the BIA in respect of the Security and that, subject only to the terms of this Agreement, there are no further steps required by the Lenders in order to enforce the Security;

**AND WHEREAS** as of December 11, 2023, the total amount of the Obligations secured by the Security in respect of the Loan Agreement was \$76,737,629.95, in principal, interest, fees,

expenses and other sums due under the Loan Agreement, plus accruing interest and other fees and expenses of the Lenders, including without limitation, the Lenders' legal fees, which amounts remain outstanding;

**AND WHEREAS** the Borrowers have notified the Lenders of significant liquidity constraints and the inability to continue operations without additional financing;

**AND WHEREAS** the Borrowers, in consultant with the Lenders, believe it is in the best interests of the Borrowers and their respective stakeholders to commence restructuring proceeds under under the *Companies' Creditors Arrangement Act*, R.S.C. 1985, c.C-36, as amended (the "**CCAA**", and the Borrowers' proceedings thereunder, the "**CCAA Proceedings**"), which will include the sale, refinancing or restructuring of the business and/or assets of the Borrowers (the "**Restructuring**") under a court supervised sale and investment solicitation process ("**SISP**");

**AND WHEREAS** to bridge the Borrowers until the commencement of the CCAA Proceedings, the Borrowers have requested and the Lenders have agreed (i) to amend and restate the Accommodation Agreement to, among other things, provide the Borrowers with additional loans on the terms and conditions set out herein and secured by the Security, (ii) to forbear from taking certain actions under the Loan Agreement and the Security in connection with the Existing Defaults of the Borrowers, and (iii) to continue to extend the Loans to the Borrowers, all solely on the terms and conditions and subject to the limitations as specified in this Agreement, so that the Borrowers may remain in business until the commencement of the CCAA Proceedings;

**NOW THEREFORE**, in consideration of the respective covenants of the parties hereto as herein contained, and other good and valuable consideration (the receipt and sufficiency of which are hereby acknowledged), the parties hereby agree as follows:

## **ARTICLE 1 INTERPRETATION**

### **1.1 Definitions**

In this Agreement, unless the context otherwise requires, all terms defined in the Loan Agreement, but not otherwise defined herein, shall have the respective meanings ascribed to them in the Loan Agreement. In addition to the terms defined in the preamble and recitals to this Agreement above, the following capitalized terms used in this Agreement have the meanings set out below:

- (a) "**Accommodation Fee**" has the meaning given to such term in Section 4.4 of this Agreement.
- (b) "**Accommodation Loan**" has the meaning given to such term in Section 6.2 of this Agreement.
- (c) "**Accommodation Note**" means each promissory note executed in connection with an Accommodation Loan in substantially the form of **Schedule "C"** hereto. For the avoidance of doubt, each Accommodation Note shall be a "*Note*" under the Loan Agreement.

- (d) “**AL Note Maturity Date**” means the earlier of (i) March 31, 2024, (ii) the date of consummation of the Restructuring through the CCAA Proceedings, (iii) the date of acceleration of the Accommodation Loan following an Event of Default or an Intervening Event, or (iv) the date of prepayment, whichever is applicable.
- (e) “**Code**” means (a) with respect to any assets located in the United States, the Uniform Commercial Code, as the same may, from time to time, be enacted and in effect in the State of Connecticut; provided, that, to the extent that the Code is used to define any term herein or in any Financing Document and such term is defined differently in different Articles or Divisions of the Code, the definition of such term contained in Article or Division 9 shall govern; provided further, that in the event that, by reason of mandatory provisions of law, any or all of the attachment, perfection, or priority of, or remedies with respect to, the Lenders’ lien any Collateral is governed by the Uniform Commercial Code in effect in a jurisdiction other than the State of Connecticut, the term “**Code**” shall mean the Uniform Commercial Code as enacted and in effect in such other jurisdiction solely for purposes of the provisions thereof relating to such attachment, perfection, priority, or remedies and for purposes of definitions relating to such provisions, and (b) with respect to any assets located in Canada, the PPSA.
- (f) “**Financing Agreements**” means, collectively, the Loan Agreement, this Agreement, the Security and the other Loan Documents (excluding the Warrants) or any other agreement, document or instrument executed by one or more of the Borrowers in connection therewith, all as amended, restated, supplemented, replaced or otherwise altered from time to time.
- (g) “**PPSA**” means the Personal Property Security Act (British Columbia) and all regulations made thereunder, as amended from time to time, and any other applicable legislation governing security interests in personal property.

## 1.2 Gender and Number

Words importing the singular include the plural and vice versa and words importing gender include all genders.

## 1.3 Severability

Each of the provisions contained in this Agreement is distinct and severable, and a declaration of invalidity, illegality or unenforceability of any such provision or part thereof by a court of competent jurisdiction shall not affect the validity or enforceability of any other provision of this Agreement.

## 1.4 Headings

The division of this Agreement into articles, sections and clauses, and the insertion of headings are for convenience of reference only and shall not affect the construction or interpretation of this Agreement.



### **1.5 Entire Agreement**

Except for the other Financing Agreements (as defined herein) and the additional documents provided for herein, this Agreement constitutes the entire agreement of the parties and supersedes all prior agreements, representations, warranties, statements, promises, information, arrangements and understandings, whether oral or written, express or implied, relating to the subject matter hereof. This Agreement may not be amended or modified except by written consent executed by all the parties. No provision of this Agreement will be deemed waived by any course of conduct unless such waiver is in writing and signed by all the parties, specifically stating that it is intended to modify this Agreement.

### **1.6 Currency**

All dollars or other monetary amounts referred to in this Agreement shall refer to United States dollars.

### **1.7 Governing Law**

This Agreement, other than the provisions of Article 6 of this Agreement, shall be governed by and construed in accordance with the laws of the Province of British Columbia and the federal laws of Canada applicable therein, without regard to any conflicts of law or principles of comity. The provisions of Article 6 of this Agreement, shall be governed by and construed and enforced in accordance with the laws of the State of Connecticut.

### **1.8 Attornment**

Each party hereto irrevocably attorns to the non-exclusive jurisdiction of the courts sitting in the City of Vancouver in the Province of British Columbia for all matters arising out of or in connection with this Agreement. Without limiting the foregoing and with respect to the provisions of Article 6 of this Agreement, each of the Borrowers, the Collateral Agent, and the Lenders hereby submit to the non-exclusive jurisdiction of the state and federal courts located in the State of Connecticut; and the Borrowers, the Collateral Agent and the Lenders hereby waive their respective rights to a jury trial of any claim or cause of action based upon or arising out of any of the Financing Documents or any of the transactions contemplated therein, including contract claims, tort claims, breach of duty claims, and all other common law or statutory claims.

### **1.9 Conflicts**

If there is any inconsistency or conflict between the terms of this Agreement and the terms of the other Financing Agreements or any other agreement executed in connection therewith, the provisions of this Agreement shall prevail to the extent of the inconsistency, but the foregoing shall not apply to limit or restrict in any way the rights and remedies of the Lenders under the other Financing Agreements or this Agreement other than as may be specifically contemplated herein.



## ARTICLE 2 ACKNOWLEDGEMENT AND CONFIRMATION

### 2.1 Acknowledgement of Obligations

- (a) Each of the Borrowers hereby acknowledges, confirms and agrees that, as of December 11, 2023, the total amount of the Obligations was \$76,737,629.95 and owing to the Lenders, which is exclusive of amounts accruing for subsequent interest or for subsequent fees and expenses owing to the Lenders under the Loan Agreement or due under this Agreement, including principal and interest due and payable with respect to the Accommodation Loan, and is unconditionally payable by the Borrowers to the Lenders under the Financing Agreements.
- (b) Each of the Borrowers hereby acknowledges, confirms and agrees that the Obligations set out herein and any other amounts now properly payable by the Borrowers to the Lenders under the Financing Agreements are unconditionally owing to the Lenders, without any right of set-off, defence, counterclaim or reduction of any kind, nature or description whatsoever, and the Borrowers are estopped from disputing such Obligations.
- (a) A certificate as to the amount of the Obligations delivered to the Borrowers by the Lenders shall be conclusive absent manifest error.

### 2.2 Acknowledgement of Security Interests

- (a) Each of the Borrowers hereby acknowledges, confirms and agrees that the Security has not been discharged, waived or varied, that it is binding upon the Borrowers and that the Security is enforceable in accordance with its written terms until such time as the obligations of the Borrowers to the Lenders have been indefeasibly paid and satisfied in full.

### 2.3 Acknowledgement of Certain Events of Default

- (a) Each of the Borrowers hereby acknowledges, confirms and agrees that the Existing Defaults have occurred and are continuing pursuant to the provisions of the Financing Agreements.
- (b) Each of the Borrowers further acknowledges, confirms and agrees that, as of the date hereof, except as expressly provided for in this Agreement including, without limitation Section 4.1 hereof, the Lenders have made no promises and have not waived, and do not intend to waive such Existing Defaults herein, and nothing contained herein or the transactions contemplated hereby shall be deemed to constitute any such waiver.

### 2.4 Acknowledgement of Demands and Notice of Intention to Enforce Security

Each of the Borrowers hereby acknowledges, confirms and agrees that each of the Borrowers has, prior to the execution and delivery of the Accommodation Agreement, received

from the Lenders validly issued and delivered Demand. Each of the Borrowers further acknowledges, confirms and agrees that each of them has, as of the date of the Accommodation Agreement, received from the Lenders a validly issued and delivered Notice in respect of the Security and that by execution of the Accommodation Agreement, each of the Borrowers waived the ten (10) day notice period required to enforce any security interest that may be required pursuant to section 244(1) of the BIA in respect of the Security and that, subject only to the terms of the Accommodation Agreement, as amended by this Agreement, there is no further step required by the Lenders in order to enforce the Security. Each of the Borrowers further acknowledges that nothing in this Agreement shall constitute a waiver or revocation of the Demand or the Notices.

## 2.5 Acknowledgement of Rights

Each of the Borrowers hereby acknowledges, confirms and agrees that the Lenders are entitled to exercise their rights and remedies under the Financing Agreements, the Code, the PPSA and other applicable law.

## 2.6 Additional Acknowledgements

Each of the Borrowers hereby acknowledges, confirms and agrees that:

- (a) the facts set out in the recitals to this Agreement are true and accurate;
- (b) except as hereby amended, the Financing Agreements will remain in full force and effect, unamended, except as provided for herein;
- (c) except as provided for in this Agreement including, without limitation in Section 4.1, the Lenders (either by themselves or through their employees or agents) have made no promises, nor have they taken any action or omitted to take any action, that would constitute a waiver of their rights to enforce the Security and pursue their remedies in respect of the obligations of the Borrowers to the Lenders, or that would stop it from doing so;
- (d) the Lenders have received an executed consent from each of the Borrowers, in the form set out in **Schedule "D"** attached to the Accommodation Agreement (the "**Consents**"), to the immediate private or court-appointment of an interim receiver, receiver or receiver and manager in respect of all the assets, properties and undertakings of the Borrowers, which are being held in escrow by the Lenders' Canadian counsel, Aird & Berlis LLP, and may be used by Lenders (in Lenders' sole discretion) in the event of the termination, expiration or non-commencement of the Accommodation Period if the Lenders are not indefeasibly repaid in full; and
- (e) to the date hereof, the Lenders have acted in a commercially reasonable manner and in good faith, and each of the Borrowers are estopped from disputing same.

**ARTICLE 3**  
**CONDITIONS PRECEDENT**

**3.1 Conditions Precedent to the Effectiveness of this Agreement**

The forbearance obligations of the Lenders under this Agreement shall not be effective unless and until the Collateral Agent shall be in receipt of each of the following, all in form and substance satisfactory to the Collateral Agent:

- (a) a copy of this Agreement, fully executed by all of the Borrowers;
- (b) copies of the A&R AL Notes, fully executed by all of the Borrowers;
- (c) the Lenders shall have received an accurate and complete summary of the nature and the amounts of any outstanding and owing Priority Payables (as defined below), by any of the Borrowers, including the most recent statement of accounts issued by Canada Revenue Agency (“CRA”) for each of the Borrowers;
- (d) the Lenders shall have received a 6 week cash flow report (the “**Interim Cash Flow Report**”) for the Borrowers, on a consolidated basis, illustrating the amount required to fund the Borrowers’ business and operations from the date hereof until the commencement of the CCAA Proceedings and any variances from any previously delivered cash flow report, acceptable to Lenders in their sole discretion;
- (e) the Lenders shall have received evidence satisfactory to the Lenders that the Equifaria engagement and related contracts have been terminated;
- (f) compiled officer certificates from each of the Borrowers with copies of the following documents attached: (i) the certificate of incorporation, articles and bylaws, notice of articles or other equivalent documents certified by an officer of such Borrower as being complete and in full force and effect on the date hereof, (ii) incumbency and representative signatures and (iii) resolutions authorizing the execution and delivery of this Agreement and any other agreement, document or instrument executed in connection therewith and the Accommodation Loan being extended hereunder; and
- (g) good standing certificates from each Borrower’s state or province of organization and the state or province in which such Borrower’s principal place of business is located.

### 3.2 [Reserved.]

## ARTICLE 4 ACCOMMODATION CONDITIONS

### 4.1 Forbearance

Unless an Intervening Event (as hereinafter defined and pursuant to Section 7.1 of this Agreement), other than an Existing Default, occurs under this Agreement, and in reliance upon the acknowledgements, representations, warranties and covenants of the Borrowers contained in this Agreement and subject to the terms and conditions of this Agreement, and any documents executed in connection herewith, the Lenders agree to forbear from exercising their rights and remedies under the Financing Documents, the Code and other applicable law, until the earlier of:

- (a) March 31, 2024;
- (b) the consummation of the Restructuring through the CCAA Proceeding; and
- (c) the occurrence of an Intervening Event, other than an Existing Default, which results in the Lenders terminating this Agreement

(the “**Accommodation Period**”).

### 4.2 Expiration or Termination of the Accommodation Period

Upon the expiration or termination of the Accommodation Period, the agreement of the Lenders to forbear shall automatically and without further action terminate and be of no further force and effect, it being expressly agreed that the effect of such expiration or termination will be to permit the Lenders to exercise their rights and remedies under this Agreement, the other Financing Agreements, the Consents and any other agreement or documents executed in connection herewith immediately, including, without limitation: (i) the exercise of all remedies available pursuant to the Financing Agreements; (ii) the acceleration of all the obligations of the Borrowers to the Lenders without any further notice, passage of time or forbearance of any kind; (iii) the appointment of a private or court-appointed receiver (at the Lenders’ option) under the Security and the Consents; and (iv) the making of an application to a court of competent jurisdiction, in accordance with Section 1.8 of this Agreement, to enforce any private or other remedies available to the Lenders, or to seek the appointment by such court of a trustee in bankruptcy of any of the Borrowers.

### 4.3 Tolling

- (a) As of the date hereof and continuing until the expiration or termination of the Accommodation Period, as applicable, and thereafter until the termination of the tolling arrangements in the manner provided for at Section 4.3(b) herein, the Lenders and the Borrowers hereby agree to toll and suspend the running of the applicable statutes of limitations, laches and other doctrines related to the passage of time in relation to the Obligations, the Security and any entitlements arising from the Obligations or the Security and any other related matters, and each of the parties

confirms that this Agreement is intended to be an agreement to suspend or extend the basic limitation period, provided under the *Limitation Act* (British Columbia) (the “**Limitation Act**”) as well as with any ultimate limitation period provided under the Limitation Act and as a security agreement in accordance with the provisions of the Limitation Act and any contractual time limitations on the commencement of proceedings, any claims or defences based upon such application statute of limitations, contractual limitations or any time related doctrine including waiver, estoppel or laches.

- (b) The tolling provisions of this Agreement will terminate upon either of its parties providing the other with sixty (60) days’ written notice of an intention to terminate the tolling provisions hereof, and upon the expiry of such sixty (60) days’ notice, any time provided for under the statute of limitations, laches or any other doctrine related to the passage of time in relation to the Obligations, the Security or any claims arising thereunder, will recommence running as of such date, and for greater certainty the time during which the parties agree to the suspension of the limitation period pursuant to the tolling provisions of this Agreement shall not be included in the computation of any limitation period.

#### **4.4 Accommodation Fee**

In consideration of the Lenders entering into this Agreement, the Borrowers shall pay to the Lenders an accommodation fee in the amount of One Hundred Thousand Dollars (\$100,000) (the “**Accommodation Fee**”), which fee is fully earned upon execution of this Agreement, and payable upon the earlier of (A) expiry or termination of the Accommodation Period, and (B) repayment in full of the Accommodation Loan. The Accommodation Fee amends and restates the accommodation fee set forth in Section 4.4 of the Accommodation Agreement and is in addition to all other fees, interest, costs and expenses payable in connection with the Financing Agreements or this Agreement. The Accommodation Fee shall be added to the Obligations and shall be secured by the Security.

#### **4.5 No Other Waivers; Reservation of Rights**

Subject to Section 4.1 of this Agreement, the Collateral Agent and the Lenders reserve the right, in their sole and absolute discretion, to exercise any or all of their rights or remedies under any one or more of the Financing Agreements, the Code, the PPSA or other applicable law, and the Lenders have not waived any such rights or remedies, and nothing in this Agreement and no delay on the part of the Lenders in exercising any such rights or remedies, shall be construed as a waiver of any such rights or remedies.

#### **4.6 Engagement of Advisor**

The Borrowers acknowledge that the Lenders have engaged KSV Advisory Inc. as of October 12, 2023 as the Lenders’ financial advisor (the “**Advisor**”) to assist the Lenders including for the purposes of reviewing the business of the Borrowers, overseeing any investment or sale process, assisting with cost cutting initiatives to be implemented by the Borrowers, valuing the assets subject to the Security, assessing any Priority Payables (as defined below) and with respect

to any other matter or thing relating to the Restructuring or the CCAA Proceedings. The Borrowers agree to cooperate fully with the Advisor, to provide unfettered access to the Advisor to the business premises of the Borrowers as well as to the books and records of the Borrowers as and when required by the Advisor, and acknowledge that the fees of the Advisor are for the account of the Borrowers under the Loan Agreement. The Borrowers further agree that the Advisor shall be authorized to act as agent for the Lenders in discussions with investment banks, financial institutions and potential other sources of funding in connection with carrying out the SISP.

## **ARTICLE 5 REPORTING**

### **5.1 Reporting Requirements**

- (a) The Borrowers hereby agree to cooperate with the Advisor and shall execute such further agreements and consents as requested by the Lenders and the Advisor in order for the Advisor to fulfil its mandate to monitor the business and operations of the Borrowers, including the cash flows, through the pendency of the Accommodation Period.
- (b) During the Accommodation Period, the Borrowers agree to continue to honour the reporting requirements as previously agreed with the Lenders in the Financing Agreements, or as amended herein, and shall continue to do so until such time as the obligations of the Borrowers to the Lenders have been indefeasibly repaid in full. Without limiting the generality of the foregoing, the Borrowers, with oversight from the Advisor, shall provide the Lenders with the following additional reporting or information, independently of any other reporting obligations until the Borrowers receive written notice from the Lenders that it is no longer required:
  - (i) rolling 13 week cash flow reports (collectively with the Interim Cash Flow Report, the “**Cash Flow Reports**”) for each of (i) Borrower Representative, NBS IP Inc., Nexii Construction Inc. and Nexii Holdings Inc., on a consolidated basis, and (ii) Omicron Canada Inc., Omicron Construction Ltd., Omicron Construction Management Ltd., Omicron Consulting Ltd., Omicron Interiors Ltd. and Grant & Sinclair Architects Ltd., on a consolidated basis, illustrating any variances from any previously delivered Cash Flow Reports, which Cash Flow Reports shall be delivered no later than the close of business on the Monday of the subsequent week;
  - (ii) monthly management prepared financial statements, including a balance sheet and income statements, for the Borrowers, on a consolidated basis, which financial statements shall be delivered no later than the close of business on the fourth Friday of the subsequent month;
  - (iii) bi-monthly aging accounts payable and aging accounts receivable the Borrowers, which aging lists shall be delivered no later than the close of business of the second Friday and fourth Friday of each month;

- (iv) monthly written updates on the status of Priority Payables, which updates shall be delivered no later than the close of business on the third Friday of the subsequent month; and
- (v) weekly written updates or calls with respect to the CCAA Proceedings and the SISP.

**ARTICLE 6**  
**ACCOMMODATION LOAN AND OBLIGATIONS OF THE BORROWERS DURING**  
**THE ACCOMMODATION PERIOD**

**6.1 Financing Agreements**

During the Accommodation Period, the Borrowers shall strictly adhere to all the terms, conditions and covenants of the Loan Agreement, this Agreement and the other Financing Agreements, including, without limitation, terms requiring prompt payment of principal, interest, fees and other amounts when due, except to the extent that such terms, conditions and covenants are otherwise specifically amended by this Agreement.

**6.2 Extension of Accommodation Loan**

Horizon, PC LP and Trinity, as Lenders, have agreed to make available additional Loans to the Borrowers during the Accommodation Period, all subject to the terms and conditions outlined below:

- (a) The Facility. Lenders agree, upon the request of the Borrowers, to make one or more secured term loans (the “**Accommodation Loan**” and for greater certainty a “*Loan*” under the Loan Agreement) in an aggregate principal amount not to exceed \$7,000,000 to the Borrowers prior to December 22, 2023. The Accommodation Loan shall be made available to the Borrowers in one or more tranches, (i) the first tranche to be advanced on June 21, 2023 in the aggregate principal amount of \$1,250,000 (the “**Initial Accommodation Loan**”), subject to satisfaction of the conditions set forth in Section 6.2(i), and (ii) each subsequent tranche to be advanced once per calendar week, at the Lenders’ sole discretion, in the aggregate principal amount of \$500,000 or such other amount as the Lenders may agree in their sole discretion, subject to satisfaction of the conditions set forth in Section 6.2(j). The Accommodation Loan, including without limitation, all related interest, fees and expenses shall form a part of the “**Obligations**” as such term is defined in the A&R Agreement.
- (b) Accommodation Notes. The obligation of each Borrower to repay the unpaid principal amount of and interest on each Accommodation Loan shall be evidenced by an Accommodation Note issued to the applicable Lender.
- (c) Use of Proceeds. The proceeds of each Accommodation Loan shall be used solely to provide short term interim funding to support (i) payments to critical vendors, operating expenses and working capital requirements, including payments to Borrowers’ legal counsel, as set forth in the Cash Flow Reports or as otherwise



consented to Lenders, and (ii) the payment of the engagement fee of the Investment Bank engaged to assist in carrying out the SISP as set forth in Section 6.3(a) (the “**Permitted Purposes**”).

- (d) Scheduled Payments. Accrued interest on the then outstanding principal amount of such Accommodation Loan shall be capitalized and added to the outstanding principal amount of such Accommodation Loan (such interest, “**PIK Interest**”) on the Payment Dates as set forth in the Accommodation Note applicable to such Accommodation Loan (each a “**PIK Interest Payment Date**”). On the AL Note Maturity Date (collectively with each PIK Interest Payment Date, the “**Scheduled Payments**”), Borrower shall make to such applicable Lender one payment of principal in an amount equal to the then outstanding principal amount of such Accommodation Loan, plus all accrued but unpaid interest, including PIK Interest, plus all other outstanding amounts due thereunder and under the Loan Agreement with respect to the Accommodation Loan. Borrower shall make such Scheduled Payments commencing on the date set forth in the Accommodation Note applicable to such Accommodation Loan and continuing thereafter on the first Business Day of each calendar month (each a “Payment Date”) through the AL Note Maturity Date. In any event, all unpaid principal and accrued interest, including PIK Interest, shall be due and payable in full on the AL Note Maturity Date.
- (e) Procedure for Making the Accommodation Loan. Each request for an Accommodation Loan shall be made in accordance with Section 2.5 of the A&R Agreement.
- (f) Payment of Interest. The Borrowers shall pay interest on each Accommodation Loan at the Loan Rate as set forth in Section 2.2(c) of the A&R Agreement.
- (g) Payment of the Accommodation Loan. All interest payable on each Accommodation Loan shall accrue on the first day of each calendar month on the then outstanding principal amount of such Accommodation Loan and shall be capitalized and added to the outstanding principal amount of such Accommodation Loan, and shall be payable upon termination or expiration, as the case may be, of the Accommodation Period as set forth in the Accommodation Note applicable to such Accommodation Loan.
- (h) Security. The Accommodation Loan shall be secured by the Security, including over all Intellectual Property. The existing Security shall secure all Obligations under the Accommodation Loan and this Agreement.
- (i) A&R Agreement. Unless otherwise provided herein, all the terms and conditions (including all defined terms) included in the A&R Agreement will apply to the Accommodation Loan as though it were a “Loan” thereunder.
- (j) Conditions Precedent to the Making of the Initial Accommodation Loan.
  - (i) [reserved].



- (k) Conditions Precedent to the Making of Each Subsequent Accommodation Loan. In addition to the conditions set out in this Agreement, including Section 3.1 of this Agreement, the obligation of each applicable Lender to make each subsequent Accommodation Loan is further subject to satisfaction of the following conditions as of such Funding Date:
- (i) No Default, Event of Default or Intervening Event, other than the Existing Defaults, shall have occurred and be continuing.
  - (ii) The Lenders shall have received, in form and substance satisfactory to the Lenders, an updated Cash Flow Report from the previous week approved by the Advisor illustrating any variances from any previously delivered cash flow reports and supporting the Permitted Purposes.
  - (iii) The Lenders shall have received, in form and substance satisfactory to the Lenders, confirmation or evidence that all applicable “milestones” set out in Section 6.3 of this Agreement have been satisfied at the time of the request for such Accommodation Loan.
  - (iv) The Borrowers shall have executed and delivered an Accommodation Note to the applicable Lender in the amount of the Accommodation Loan being advanced by such Lender.
  - (v) The Borrowers shall have executed and delivered to the Lenders a Funding Certificate for such Accommodation Loan being advanced substantially in the form of Exhibit B to the A&R Agreement, qualified in relation to the Existing Defaults.
  - (vi) The representations and warranties made by the Borrowers in Section 5 of the A&R Agreement and in any other Financing Agreement shall be true and correct (other than arising out of or in connection with the Existing Defaults) as of such Funding Date.

### 6.3 Restructuring and Sale and Investment Solicitation Process Covenants

In connection with the Accommodation Loan and during the pending of the Accommodation Period, each of the Borrowers hereby covenants and agrees with the Collateral Agent and the Lenders as follows:

- (a) On or before December 20, 2023, the Borrowers shall have engaged an investment bank (the “**Investment Bank**”), satisfactory to Lenders in their sole discretion, on terms satisfactory to Lenders in their sole discretion, to assist the Borrowers and the monitor appointed in connection with the CCAA Proceedings (the “**Monitor**”) with carrying out the SISP in connection with the Restructuring. The Borrowers agree to cooperate fully with the Investment Bank and the Monitor in the SISP, including providing financial and other information, assisting with the preparation of a teaser

and confidential information memorandum, generating a list of potential interested parties, and participating in meetings with interested parties.

(b) On or before December 20, 2023, the Borrowers shall have executed and delivered to the Lenders the restructuring term sheet, in form and substance satisfactory to the Lenders.

(c) On or before January 9, 2024, the Borrowers shall have commenced the CCAA Proceedings.

#### **6.4 Amended and Restated AL Notes**

The AL Notes shall be amended and restated substantially in the form of **Schedule “D”** hereto (the “**A&R AL Notes**”).

#### **6.5 Full Co-Operation**

During the Accommodation Period, the Borrowers shall cooperate fully with the Lenders and with the Advisor, by promptly providing all the information requested by the Lenders and the Advisor, and by providing to the Lenders, and the Advisor, full access to the books, records, property, assets and personnel of the Borrowers wherever they may be situated and in whatever medium they may be recorded, at the request of and at times convenient to the Lenders and the Advisor, which right of access shall include the right to inspect and appraise any property and assets of the Borrowers.

#### **6.6 Payment and Other Obligations**

Each of the Borrowers hereby covenants and agrees with the Lenders to reimburse the Lenders for all reasonable expenses, including, without limitation, actual legal and other professional expenses that the Lenders have incurred or will incur arising out of its dealings with any of the Borrowers and in the protection, preservation and enforcement of the Security, including, without limitation, the actual fees and expenses of the Lenders’ solicitors, Aird & Berlis LLP, the Advisor and the Investment Bank (collectively, the “**Professional Expenses**”), and that the Professional Expenses shall be for the account of the Borrowers and that payment may be made by the Lenders for later repayment by the Borrowers or debit the account of the Borrowers held at the Lenders. Nothing in this Agreement shall derogate from the Borrowers’ obligation to pay for all the Professional Expenses or shall constitute a cap on Professional Expenses.

#### **6.7 Accommodation Loan Availability Not a Waiver**

To the extent that the Lenders make any advance of funds or credit available to any of the Borrowers during the Accommodation Period, including the Accommodation Loan, such advance of funds shall not constitute a waiver of any Existing Default or any additional defaults of any of the Borrowers.

## 6.8 Additional Covenants

During the Accommodation Period, the Borrowers agree (i) to continue to abide by the covenants as previously agreed with the Lenders in the Financing Agreements, including but not limited to Sections 6 and 7 of the A&R Agreement, except as may be amended herein, and (ii) in addition to the other covenants contained herein, each of the Borrowers hereby covenants and agrees with the Lenders as follows:

- (a) each of the Borrowers shall maintain its corporate existence as a valid and subsisting entity and shall not merge, amalgamate or consolidate with any other entity(ies), except with the Lenders' prior written consent;
- (b) each of the Borrowers shall comply with the covenants and deliverables in Section 6.3 above;
- (c) except as specifically provided for in this Agreement including, without limitation Section 4.1, each of the Borrowers shall comply in all respects with all terms and provisions of the Financing Agreements and this Agreement and nothing herein derogates therefrom. For greater certainty, except as provided for herein, the Borrowers shall continue to remit all payments when due under the Financing Agreements and shall operate all facilities within the terms and the limits prescribed therein, except as amended by this Agreement;
- (d) each of the Borrowers shall comply with any and all cash management obligations, and provide full disclosure of all account activities with respect to any accounts maintained with financial institutions, and obligations to maintain insurance in accordance with the Financing Agreements;
- (e) the Borrowers shall not open or maintain any other deposit or securities accounts with any institutions other than its current financial institutions without the Lenders' prior written consent;
- (f) the Borrowers shall not, without the prior written consent of the Lenders, make any distribution or payment to any secured or unsecured creditor subordinate in interest to the Lenders, including but not limited to any payments or distributions of dividends, interest or other payments to preferred shareholders, management fees, administration fees or charges or payment to any person, corporation or other entity who does not deal with the Borrowers at arm's length (as such term is determined in the *Income Tax Act* (Canada)), except for the Permitted Purposes, payments to contractors, suppliers, vendors and other payees as set forth in the Cash Flow Reports or as otherwise consented to Lenders;
- (g) the Borrowers shall not, without the prior written consent of the Lenders, make any loans or advance money or property to any other party (including, without limitation, any subsidiary or affiliate of any of the Borrowers) or invest in (by capital contribution, dividend or otherwise) or purchase or repurchase the shares or indebtedness or all or a substantial part of the assets or property of any other party (including, without limitation, any subsidiary or affiliate of any of the Borrowers),

or guarantee, assume, endorse, or otherwise become responsible (directly or indirectly) for the indebtedness, performance, obligations or dividends of any other party (including, without limitation, any subsidiary or affiliate of any of the Borrowers) or agree to do any of the foregoing, other than as required by the Financing Agreements;

- (h) the Borrowers shall not encumber, mortgage, hypothec, pledge or otherwise cause any form of lien or charge on any of their property or assets, including intangible and contingent assets, without the prior written consent of the Lenders;
- (i) the Borrowers shall not repay any principal or interest which may be owing or become owing in connection with any shareholder or related party loan or any loan made by any party subordinate to the Lenders, without the prior written consent of the Lenders;
- (j) the Borrowers shall not make any distribution (whether by dividend or otherwise) or effect any return of capital on any investment made by any shareholder, or any party related to any shareholder, of the Borrowers, without the prior written consent of the Lenders;
- (k) none of the Borrowers shall, in any case, make any payment to any party if the financial position of such Borrowers after making such payment would put such Borrowers in a position of breach or default of its obligations under the Financing Agreements or this Agreement (other than the Existing Defaults) or constitute an Intervening Event;
- (l) each of the Borrowers shall keep current at all times all obligations that constitute priority obligations, meaning those obligations payable in priority to the obligations owed to the Lenders (“**Priority Payables**”), including wages and remittances required to be made for taxes and other liabilities owed to federal, provincial and municipal governments, including, without limitation, property taxes and money owed in respect of employee source deductions pursuant to the *Canada Pension Plan Act* (Canada), *Employment Insurance Act* (Canada) and *Income Tax Act* (Canada), and in respect of HST, but excluding property taxes owed to the district of Squamish in an amount not to exceed Two Hundred Fifty Thousand Dollars (\$250,000), and the Borrowers shall provide on a regular basis evidence of such payments satisfactory to the Lenders;
- (m) the Borrowers shall give to the Lenders prompt notice of any litigation, arbitration or administrative proceeding before or of any court, arbitration, tribunal or governmental authority adversely and materially affecting any of the assets, property or undertakings of the Borrowers;
- (n) each of the Borrowers shall take all steps required to cure any deficiencies, if any, in the Security;

- (o) unless otherwise agreed to herein, the Borrowers shall not do any act or thing which may have the effect of defeating or delaying the enforcement of the Lenders' rights and remedies under any of the Security; and
- (p) no later than ten (10) days after the date hereof, (i) the Borrowers, the Lenders and the Collateral Agent shall enter into an amendment to the A&R Agreement to amend Section 2.2(a) of the A&R Agreement and to make such other amendments as Lenders deem necessary in connection therewith and (ii) the Borrowers shall execute and deliver to the Lenders amendments and restatements of the Original Notes.

Each of the Borrowers represents and warrants to the Lenders that all its obligations with respect to employee wages and vacation pay are or will be current as of the date of the execution by the Borrowers of this Agreement and shall remain current throughout the Accommodation Period.

## ARTICLE 7 INTERVENING EVENTS

### 7.1 Intervening Events

Upon the happening of any one of the following events from and after the date of this Agreement (each an "**Intervening Event**"), this Agreement and the Accommodation Period shall forthwith terminate:

- (a) any representation, warranty or statement made by any of the Borrowers in this Agreement, any Financing Agreement or any other agreement with the Lenders was untrue or incorrect when made or becomes untrue or incorrect in any material respect (other than arising out of or in connection with the Existing Defaults);
- (b) any Default or Event of Default occurs under the Loan Agreement or any of the Borrowers defaults in the performance of any obligation under any of the other Financing Agreements after the date hereof, other than any of the Existing Defaults;
- (c) the Borrowers fail to meet any of the "milestones" outlined in Section 6.3 above;
- (d) Other than any event arising in connection with an Existing Default, the occurrence of any other event which, in the opinion of the Lenders, acting reasonably, may materially and adversely impact the priority or enforceability of the Security granted by the Borrowers, or the realizable value of the collateral subject to such Security;
- (e) any of the Borrowers fails to maintain and keep current payments of Priority Payables, which may result in any claim ranking in priority or *pari passu* to the claim of the Lenders;
- (f) the Security ceases to constitute a first-ranking, valid and perfected security interest against all assets of each of the Borrowers, as applicable;

- (g) the loss, damage, destruction or confiscation of the Security or any part thereof, unless upon such event, the Borrowers pay to the Lenders forthwith such amount as the Lenders, acting reasonably, determine is satisfactory;
- (h) any person takes possession of any property of any of the Borrowers by way of or in contemplation of enforcement of security, or a distress or execution or similar process levied or enforced against any property of any of the Borrowers;
- (i) any change of control in the ownership, or management of any of the Borrowers, as applicable, without the Lenders' prior written consent;
- (j) the Borrowers fail to maintain current insurance;
- (k) in the Lenders' sole opinion, a material adverse change occurs in the business, affairs, financial condition, operation or ownership of any of the Borrowers arising for any reason whatsoever;
- (l) without the Lenders' prior written consent, any of the Borrowers ceases to carry on business in the normal course in the same manner as such business has previously been carried on or as specifically amended by this Agreement or commits or threatens to commit an act of bankruptcy;
- (m) without the prior written consent of the Lenders, any action or proceeding is taken or commenced by another person or persons against any of the Borrowers, which the Borrowers are not contesting, relating to the reorganization, readjustment, compromise or settlement of the debts owed by any of the Borrowers to its creditors where such reorganization, readjustment, compromise or settlement shall affect a substantial portion of any of the Borrowers' assets and property, including, without limitation, the filing of a Notice of Intention to Make a Proposal under the BIA, the making of an order under the *Companies' Creditors Arrangement Act* (Canada) or the commencement of any similar action or proceeding by any party other than the Lenders;
- (n) without the prior written consent of the Lenders, the filing of an application for a bankruptcy order against any of the Borrowers pursuant to the provisions of the BIA by any party other than the Lenders;
- (o) any of the Borrowers fails to meet its payroll obligations or does not have sufficient funds available to fund its payroll obligations;
- (p) any of the Borrowers fails to make one or more of the payments to the Lenders, in full or in part, in accordance with the Financing Agreements, as amended only by this Agreement and which become due and payable after the date hereof;
- (q) any of the Borrowers fails to meet one or more of the reporting requirements required to be met after the date hereof in accordance with Section 5.1 of this Agreement and not cured within five (5) days of the earlier of (A) the Borrowers

becoming aware of such failure to meet such reporting requirement(s) or (B) the Collateral Agent or the Lenders giving notice thereof;

- (r) at any time any of the Borrowers fails to operate and maintain sufficient funds to cover any and all items attempting to clear any of their bank accounts;
- (s) the Borrowers fail to repay the Accommodation Loan in full on or before the termination or expiration of the Accommodation Period; or
- (t) the expiration or termination of the Accommodation Period, unless extended by the agreement of the parties.

## **ARTICLE 8 GENERAL PROVISIONS**

### **8.1 Effect of this Agreement**

Except as modified pursuant hereto, no other changes or modifications to the terms of the Financing Agreements are intended or implied and in all other respects, the terms of the Financing Agreements are confirmed.

### **8.2 Further Assurances**

The parties hereto shall execute and deliver such supplemental documents and take such supplemental action as may be necessary or desirable to give effect to the provisions and purposes of this Agreement, all at the sole expense of the Borrowers.

### **8.3 Binding Effect**

This Agreement shall be binding upon and enure to the benefit of each of the parties hereto and its respective successors and permitted assigns.

### **8.4 Survival of Representations and Warranties**

All representations and warranties made in this Agreement or any other document furnished in connection herewith shall survive the execution and delivery of this Agreement and such other document delivered in connection herewith, and no investigation by the Lenders or any closing shall affect the representations and warranties or the rights of the Lenders to rely upon such representations and warranties.

### **8.5 Confidentiality**

Each of the Borrowers acknowledges and agrees that the Lenders and their professional advisors shall be at liberty, in their sole discretion, to disclose any information obtained from the Borrowers to any party or parties in order to recover amounts owed to the Lenders by the Borrowers.



## 8.6 Release

In consideration of the agreements of the Lenders contained herein and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, each of the Borrowers, on its behalf and on behalf of its successors, assigns, and other legal representatives, hereby absolutely, unconditionally and irrevocably release, remise and forever discharge the Lenders and each of their successors and assigns, participants, affiliates, subsidiaries, branches, divisions, predecessors, directors, officers, attorneys, employees, lenders and other representatives and advisors (the Lenders and all such other persons being hereinafter referred to collectively as the “**Releasees**” and individually as a “**Releasee**”), of and from all demands, actions, causes of action, suits, covenants, contracts, controversies, agreements, promises, sums of money, accounts, bills, reckonings, damages and any and all other claims, counterclaims, defences, rights of set-off, demands and liabilities whatsoever (individually, a “**Claim**” and collectively, “**Claims**”) of every name and nature, known, both arising at law and in equity, which each of the Borrowers or any of its successors, assigns or other legal representatives may now own, hold, have or claim to have against the Releasees or any of them for, upon or by reason of any circumstance, action, cause or thing whatsoever which arises at any time on or prior to the date of this Agreement, on account of, or in relation to or in any way in connection with, any of the Financing Agreements or transactions thereunder or related thereto.

## 8.7 No Novation

This Agreement will not discharge or constitute novation of any debt, obligation, covenant or agreement contained in any of the Financing Agreements but the same shall remain in full force and effect save to the extent amended by this Agreement.

## 8.8 Notice

Without prejudice to any other method of giving notice, any notice required or permitted to be given to a party pursuant to this Agreement will be conclusively deemed to have been received by such party on the day of the sending of the notice by prepaid private courier to such party at its, his or her address noted below or by email at its, his or her email address noted below. Any party may change its, his or her address for service or address by notice given in the foregoing manner.

Notice to the Borrowers shall be sent to:

c/o Nexii Building Solutions Inc.  
200-1455 West Georgia Street  
Vancouver, BC, V6G 2T3  
Attention: Bill Tucker  
Email: btucker@nexii.com

with a copy to:

Norton Rose Fulbright Canada LLP  
510 West Georgia Street, Suite 1800,



Vancouver, BC V6B 0M3  
Attention: Christopher Horte  
Email: Christopher.Horte@nortonrosefulbright.com

- and -

Fasken Martineau DuMoulin LLP  
550 Burrard Street, Suite 2900  
Vancouver, BC V6C 0A3  
Attention: Kibben Jackson  
Email: kjackson@fasken.com

Notice to the Lenders or Collateral Agent shall be sent to:

If to Horizon, HCII, HFI or Trust:

c/o Horizon Technology Finance Corporation  
312 Farmington Avenue  
Farmington, CT 06032  
Attention: Legal Department  
Fax: (860) 676-8655  
Ph: (860) 676-8654  
Email: legal@horizontechfinance.com

If to PC LP or Powerscourt:

Powerscourt Investments XXV Trust  
c/o Waterfall Asset Management, LLC  
1251 Avenue of the Americas, 50<sup>th</sup> Floor  
New York, NY 10020  
Attention: General Counsel  
Ph: (212) 257-4600  
Email: notices@waterfallam.com

If to Trinity:

Trinity Capital Inc.  
1 N 1st Street, Floor 3  
Phoenix, AZ 85004  
Email: legal@trincapinvestment.com  
Fax: (480) 546-5349  
Phone: (480) 374-5350

with a copy to:

Aird & Berlis LLP  
181 Bay Street, Suite 1800

Toronto, ON M5J 2T9  
Attention: Kyle Plunkett and Graham Topa  
Email: kplunkett@airdberlis.com and gtopa@airdberlis.com

### **8.9 Binding and Enforceable Agreement**

In order for this Agreement to be binding and enforceable, it shall be signed by the Borrowers and delivered to Lenders by no later than 4:00 P.M. (ET time) on December 13, 2023.

### **8.10 Execution in Counterparts**

This Agreement may be executed in counterparts, each of which shall be deemed to be an original and which taken together will be deemed to constitute one and the same instrument. Counterparts may be executed either in original or portable document format (“PDF”) form and the parties adopt any signatures received by emailed PDF as original signatures of the parties, provided, however, that any party providing its signature in such manner will promptly forward to the other party an original of the signed copy of the Agreement which was so emailed.

### **8.11 No Set Off, etc.**

Each of the Borrowers reaffirms that the Financing Agreements remain in full force and effect as amended hereby and acknowledge and agree that, as of the date hereof, there is no defence, set off or counterclaim of any kind, nature or description to its obligations arising under the Financing Agreements as a result of the execution of this Agreement or otherwise.

### **8.12 Independent Legal Advice, etc.**

Each of the Borrowers acknowledges and declares that: (a) it has had an adequate opportunity to read and consider this Agreement and to obtain such advice in regard to it as it considers advisable, including, without limitation, independent legal advice; (b) it fully understands the nature and effect of this Agreement; and (c) this Agreement has been duly executed voluntarily.

*[This remainder of this page is intentionally left blank.]*

IN WITNESS WHEREOF, the parties hereto have entered into this Agreement as of the date first above mentioned.

LENDERS:

TRINITY CAPITAL INC.

By:   
Name: Sarah Stanton  
Title: General Counsel & Chief Compliance Officer

HORIZON FUNDING I, LLC  
By: Horizon Secured Loan Fund I LLC, its sole member

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

POWERSCOURT INVESTMENTS XXV, LP

By: Powerscourt Investments GP, LLC, its general partner  
By: Maples Fiduciary Services (Delaware) Inc., its managing member

HORIZON FUNDING TRUST 2022-1  
By: Horizon Technology Finance Corporation, its agent

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

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

POWERSCOURT INVESTMENTS XXV TRUST

By: 1485 Management, LLC, as Trust's Agent

LENDER and COLLATERAL AGENT:

HORIZON TECHNOLOGY FINANCE CORPORATION

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

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

HORIZON CREDIT II LLC

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

IN WITNESS WHEREOF, the parties hereto have entered into this Agreement as of the date first above mentioned.

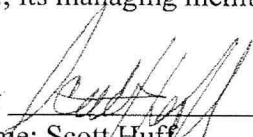
LENDERS:

TRINITY CAPITAL INC.

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

POWERSCOURT INVESTMENTS XXV,  
LP

By: Powerscourt Investments GP, LLC, its  
general partner  
By: Maples Fiduciary Services (Delaware)  
Inc., its managing member

By:  \_\_\_\_\_  
Name: Scott Huff  
Title: Authorized Signatory

POWERSCOURT INVESTMENTS XXV  
TRUST

By: 1485 Management, LLC, as Trust's  
Agent

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

HORIZON CREDIT II LLC

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

HORIZON FUNDING I, LLC

By: Horizon Secured Loan Fund I LLC, its  
sole member

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

HORIZON FUNDING TRUST 2022-1

By: Horizon Technology Finance  
Corporation, its agent

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

LENDER and COLLATERAL AGENT:

HORIZON TECHNOLOGY FINANCE  
CORPORATION

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

IN WITNESS WHEREOF, the parties hereto have entered into this Agreement as of the date first above mentioned.

LENDERS:

TRINITY CAPITAL INC.

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

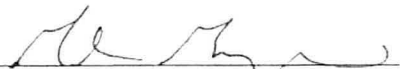
POWERSCOURT INVESTMENTS XXV,  
LP

By: Powerscourt Investments GP, LLC, its  
general partner  
By: Maples Fiduciary Services (Delaware)  
Inc., its managing member

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

POWERSCOURT INVESTMENTS XXV  
TRUST

By: 1485 Management, LLC, as Trust's  
Agent

By:   
Name: Glenn Guskowski  
Title: Authorized Person

HORIZON CREDIT II LLC

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

HORIZON FUNDING I, LLC

By: Horizon Secured Loan Fund I LLC, its  
sole member

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

HORIZON FUNDING TRUST 2022-1

By: Horizon Technology Finance  
Corporation, its agent

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

LENDER and COLLATERAL AGENT:

HORIZON TECHNOLOGY FINANCE  
CORPORATION

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

IN WITNESS WHEREOF, the parties hereto have entered into this Agreement as of the date first above mentioned.

LENDERS:

TRINITY CAPITAL INC.

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

POWERSCOURT INVESTMENTS XXV,  
LP

By: Powerscourt Investments GP, LLC, its  
general partner  
By: Maples Fiduciary Services (Delaware)  
Inc., its managing member

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

POWERSCOURT INVESTMENTS XXV  
TRUST

By: 1485 Management, LLC, as Trust's  
Agent

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

HORIZON CREDIT II LLC

By: Gerald A. Michaud  
Name: Gerald A. Michaud  
Title: President

HORIZON FUNDING I, LLC

By: Horizon Secured Loan Fund I LLC, its  
sole member

By: Gerald A. Michaud  
Name: Gerald A. Michaud  
Title: Manager

HORIZON FUNDING TRUST 2022-1

By: Horizon Technology Finance  
Corporation, its agent

By: Gerald A. Michaud  
Name: Gerald A. Michaud  
Title: President


LENDER and COLLATERAL AGENT:

HORIZON TECHNOLOGY FINANCE  
CORPORATION

By: Gerald A. Michaud  
Name: Gerald A. Michaud  
Title: President

BORROWERS:

NEXII BUILDING SOLUTIONS INC.

By:   
Name: Gregor Robertson  
Title: EVP, Strategy & Partnerships .

OMICRON CANADA INC.

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

GRANT & SINCLAIR ARCHITECTS LTD.

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

OMICRON CONSTRUCTION LTD.

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

NBS IP INC.

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

OMICRON CONSTRUCTION  
MANAGEMENT LTD.

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

NEXII CONSTRUCTION INC.

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

OMICRON CONSULTING LTD.

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

NEXII HOLDINGS INC.

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

OMICRON INTERIORS LTD.

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

BORROWERS:

NEXII BUILDING SOLUTIONS INC.

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

OMICRON CANADA INC.

By:  \_\_\_\_\_  
Name: Bonnie Dawe  
Title: Director

GRANT & SINCLAIR ARCHITECTS LTD.

By:  \_\_\_\_\_  
Name: Bonnie Dawe  
Title: Director

OMICRON CONSTRUCTION LTD.

By:  \_\_\_\_\_  
Name: Bonnie Dawe  
Title: Director

NBS IP INC.

By:  \_\_\_\_\_  
Name: Bonnie Dawe  
Title: Director

OMICRON CONSTRUCTION  
MANAGEMENT LTD.

By:  \_\_\_\_\_  
Name: Bonnie Dawe  
Title: Director

NEXII CONSTRUCTION INC.

By:  \_\_\_\_\_  
Name: Bonnie Dawe  
Title: Director

OMICRON CONSULTING LTD.

By:  \_\_\_\_\_  
Name: Bonnie Dawe  
Title: Director

NEXII HOLDINGS INC.

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

OMICRON INTERIORS LTD.

By:  \_\_\_\_\_  
Name: Bonnie Dawe  
Title: Director



BORROWERS:

NEXII BUILDING SOLUTIONS INC.

OMICRON CANADA INC.

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

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

GRANT & SINCLAIR ARCHITECTS LTD.

OMICRON CONSTRUCTION LTD.

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

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

NBS IP INC.

OMICRON CONSTRUCTION  
MANAGEMENT LTD.

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

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

NEXII CONSTRUCTION INC.


OMICRON CONSULTING LTD.

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

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

NEXII HOLDINGS INC.

OMICRON INTERIORS LTD.

By:  \_\_\_\_\_  
Name: David Bryant  
Title: Director

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

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**SCHEDULE "A"****BORROWERS**

1. Grant & Sinclair Architects Ltd.
2. NBS IP Inc.
3. Nexii Construction Inc.
4. Nexii Holdings Inc.
5. Omicron Canada Inc.
6. Omicron Construction Ltd.
7. Omicron Consulting Ltd.
8. Omicron Interiors Ltd.
9. Omicron Construction Management Ltd.

**SCHEDULE "B"****SECURITY**

1. Amended and Restated Venture Loan and Security Agreement dated as of June 8, 2022.
2. General Security Agreement dated as of August 27, 2021 by the Borrowers in favour of the Collateral Agent.
3. Confirmation of Grant of Security re United States Patents dated as of August 27, 2021 by Nexii Building Solutions Inc. in favour of the Collateral Agent.
4. Confirmation of Grant of Security re United States Patents dated as of August 27, 2021 by Nexii Holdings Inc. in favour of the Collateral Agent.
5. Confirmation of Grant of Security re United States Trademarks dated as of August 27, 2021 by Nexii Building Solutions Inc. in favour of the Collateral Agent.
6. Confirmation of Grant of Security Interest re Canadian Intellectual Property dated as of August 27, 2021 by Nexii Building Solutions Inc. in favour of the Collateral Agent.
7. Securities Account Control Agreement dated August 27, 2021 among the Collateral Agent, Nexii Building Solutions Inc. and Canaccord Genuity Corp.
8. Deposit Account Control Agreement dated as of August 26, 2021 among the Collateral Agent, Nexii Holdings Inc. and BMO Harris Bank N.A.
9. Accommodation Agreement dated as of June 21, 2023.

**SCHEDULE "C"**

**Form of Accommodation Note**

**SECURED PROMISSORY NOTE**

**(Loan AL-[\_\_])**

\$[\_\_\_\_\_]

Dated: [\_\_\_\_], 2023

FOR VALUE RECEIVED, the undersigned, being each entity comprising the Borrower (as defined in the Loan Agreement (as defined below)), HEREBY JOINTLY AND SEVERALLY PROMISE TO PAY to [HORIZON TECHNOLOGY FINANCE CORPORATION, a Delaware corporation / POWERSCOURT INVESTMENTS XXV, LP, a Delaware limited partnership / TRINITY CAPITAL INC., a Maryland corporation] ("Lender"), the principal amount of [\_\_\_\_\_] and 00/100 United States Dollars (\$[\_\_\_\_]) or such lesser amount as shall equal the outstanding principal balance of Loan AL-[\_\_] (the "Loan") made to Borrower by Lender pursuant to the Loan Agreement, and to pay all other amounts due with respect to the Loan on the dates and in the amounts set forth in the Loan Agreement. Capitalized terms used but not defined herein shall have the meaning ascribed thereto in the Loan Agreement.

Interest on the principal amount of this Note from the date of this Note shall accrue at the Loan Rate or, if applicable, the Default Rate, each as established in accordance with the Loan Agreement (as defined below). Interest shall be computed on the basis of a 360-day year for the actual number of days elapsed. If the Funding Date is not the first day of the month, interim interest accruing from the Funding Date through the last day of that month shall be paid on the first calendar day of the next calendar month.

Commencing on [\_\_\_\_], 2024, and continuing on the first day of each month thereafter until the payment in full of the Loan (each an "Interest Payment Date"), accrued interest on the then outstanding principal amount of the Loan shall be capitalized and added to the outstanding principal amount of the Loan (such interest, "PIK Interest"). On the AL Note Maturity Date (the "Principal Payment Date" and, collectively with each Interest Payment Date, each a "Payment Date"), Borrower shall make to Lender one payment of principal in the amount of [\_\_\_\_] and [\_\_\_\_]/100 United States Dollars (\$[\_\_\_\_]), plus all accrued but unpaid interest, including PIK Interest, plus all other outstanding amounts due hereunder and under the Loan Agreement with respect to the Loan. If not sooner paid, all outstanding amounts hereunder and under the Loan Agreement with respect to the Loan shall become due and payable on the AL Note Maturity Date.

Principal, interest and all other amounts due with respect to the Loan, are payable in lawful money of the United States of America to Lender as set forth in the Loan Agreement. The principal amount of this Note and the interest rate applicable thereto, and all payments made with respect thereto, shall be recorded by Lender and, prior to any transfer hereof, endorsed on the grid attached hereto which is part of this Note.

This Note is referred to in, and is entitled to the benefits of, (a) the Amended and Restated Venture Loan and Security Agreement, dated as of June 8, 2022 (as amended, the "A&R Agreement"), among Borrower, Horizon Credit II LLC ("HCII"), Horizon Funding I, LLC

(“HFI”), Horizon Funding Trust 2022-1 (“Trust”), Horizon Technology Finance Corporation (“Horizon”), Powerscourt Investments XXV, LP (“PC LP”), Powerscourt Investments XXV Trust (“Powerscourt”) and Trinity Capital Inc. (“Trinity”) and (b) the Amended and Restated Accommodation Agreement, dated as of December 15, 2023 (collectively with the A&R Agreement, the “Loan Agreement”), among Borrower, HCII, HFI, Trust, Horizon, PC LP, Powerscourt and Trinity. The Loan Agreement, among other things, (a) provides for the making of a secured Loan to Borrower, and (b) contains provisions for acceleration of the maturity hereof upon the happening of certain stated events.

This Note may not be prepaid, except as set forth in Section 2.3 of the A&R Agreement.

This Note and the obligation of Borrower to repay the unpaid principal amount of the Loan, interest on the Loan and all other amounts due Lender under the Loan Agreement is secured under the Loan Agreement.

This Note is guaranteed pursuant to Section 16 of the A&R Agreement and reference is hereby made to such guarantee.

Presentment for payment, demand, notice of protest and all other demands and notices of any kind in connection with the execution, delivery, performance and enforcement of this Note are hereby waived.

Borrower shall pay all fees and expenses, including attorneys’ fees and costs, incurred by Lender in the enforcement or attempt to enforce any of Borrower’s obligations hereunder not performed when due.

Any reference herein to Lender shall be deemed to include and apply to every subsequent holder of this Note. Reference is made to the Loan Agreement for provisions concerning optional and mandatory prepayments, Collateral, acceleration and other material terms affecting this Note.

[Signature Page Follows]

**This Note shall be governed by and construed under the laws of the State of Connecticut. Borrower agrees that any action or proceeding brought to enforce or arising out of this Note may be commenced in the state or federal courts located within the State of Connecticut.**

IN WITNESS WHEREOF, Borrower has caused this Note to be duly executed by one of its officers thereunto duly authorized on the date hereof.

BORROWERS:

NEXII BUILDING SOLUTIONS INC.

NEXII HOLDINGS INC.

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

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

GRANT & SINCLAIR ARCHITECTS LTD.

OMICRON CANADA INC.

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

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

NBS IP INC.

OMICRON CONSTRUCTION LTD.

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

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

NEXII CONSTRUCTION INC.

OMICRON CONSTRUCTION  
MANAGEMENT LTD.

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

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

OMICRON CONSULTING LTD.

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

OMICRON INTERIORS LTD.

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

**SCHEDULE “C”**

**Form of Amended and Restated Accommodation Note**

**AMENDED AND RESTATED  
SECURED PROMISSORY NOTE**

**(Loan AL-[ ])**

\$[ ]

Originally dated as of [ ], 2023

Amended and restated as of [ ], 2023

FOR VALUE RECEIVED, the undersigned, being each entity comprising the Borrower (as defined in the Loan Agreement (as defined below)), HEREBY JOINTLY AND SEVERALLY PROMISE TO PAY to [HORIZON TECHNOLOGY FINANCE CORPORATION, a Delaware corporation / POWERSCOURT INVESTMENTS XXV, LP, a Delaware limited partnership / TRINITY CAPITAL INC., a Maryland corporation] (“Lender”), the principal amount of [ ] and 00/100 United States Dollars (\$[ ]) or such lesser amount as shall equal the outstanding principal balance of Loan AL-[ ] (the “Loan”) made to Borrower by Lender pursuant to the Loan Agreement, and to pay all other amounts due with respect to the Loan on the dates and in the amounts set forth in the Loan Agreement. Capitalized terms used but not defined herein shall have the meaning ascribed thereto in the Loan Agreement. This Amended and Restated Secured Promissory Note (Loan AL-[ ]) (this “Note”) amends and restates, in its entirety, that certain Secured Promissory Note (Loan AL-[ ]) issued by Borrower to [Horizon Technology Finance Corporation / Powerscourt Investments XXV, LP / Trinity Capital Inc.] on [ ], 2023 (the “Original Note”). Nothing contained herein shall be deemed to be a repayment or novation of the Original Note.

Interest on the principal amount of this Note from the date of this Note shall accrue at the Loan Rate or, if applicable, the Default Rate, each as established in accordance with the Loan Agreement (as defined below). Interest shall be computed on the basis of a 360-day year for the actual number of days elapsed. If the Funding Date is not the first day of the month, interim interest accruing from the Funding Date through the last day of that month shall be paid on the first calendar day of the next calendar month.

Commencing on [ ], 2023, and continuing on the first day of each month thereafter until the payment in full of the Loan (each an “Interest Payment Date”), accrued interest on the then outstanding principal amount of the Loan shall be capitalized and added to the outstanding principal amount of the Loan (such interest, “PIK Interest”). On the AL Note Maturity Date (the “Principal Payment Date” and, collectively with each Interest Payment Date, each a “Payment Date”), Borrower shall make to Lender one payment of principal in the amount of [ ] and [ ]/100 United States Dollars (\$[ ]), plus all accrued but unpaid interest, including PIK Interest, plus all other outstanding amounts due hereunder and under the Loan Agreement with respect to the Loan. If not sooner paid, all outstanding amounts hereunder and under the Loan Agreement with respect to the Loan shall become due and payable on the AL Note Maturity Date.



Principal, interest and all other amounts due with respect to the Loan, are payable in lawful money of the United States of America to Lender as set forth in the Loan Agreement. The principal amount of this Note and the interest rate applicable thereto, and all payments made with respect thereto, shall be recorded by Lender and, prior to any transfer hereof, endorsed on the grid attached hereto which is part of this Note.

This Note is referred to in, and is entitled to the benefits of, (a) the Amended and Restated Venture Loan and Security Agreement, dated as of June 8, 2022 (as amended, the “A&R Agreement”), among Borrower, Horizon Credit II LLC (“HCII”), Horizon Funding I, LLC (“HFI”), Horizon Funding Trust 2022-1 (“Trust”), Horizon Technology Finance Corporation (“Horizon”), Powerscourt Investments XXV, LP (“PC LP”), Powerscourt Investments XXV Trust (“Powerscourt”) and Trinity Capital Inc. (“Trinity”) and (b) the Amended and Restated Accommodation Agreement, dated as of December 15, 2023 (collectively with the A&R Agreement, the “Loan Agreement”), among Borrower, HCII, HFI, Trust, Horizon, PC LP, Powerscourt and Trinity. The Loan Agreement, among other things, (a) provides for the making of a secured Loan to Borrower, and (b) contains provisions for acceleration of the maturity hereof upon the happening of certain stated events.

This Note may not be prepaid, except as set forth in Section 2.3 of the A&R Agreement.

This Note and the obligation of Borrower to repay the unpaid principal amount of the Loan, interest on the Loan and all other amounts due Lender under the Loan Agreement is secured under the Loan Agreement.

This Note is guaranteed pursuant to Section 16 of the A&R Agreement and reference is hereby made to such guarantee.

Presentment for payment, demand, notice of protest and all other demands and notices of any kind in connection with the execution, delivery, performance and enforcement of this Note are hereby waived.

Borrower shall pay all fees and expenses, including attorneys’ fees and costs, incurred by Lender in the enforcement or attempt to enforce any of Borrower’s obligations hereunder not performed when due.

Any reference herein to Lender shall be deemed to include and apply to every subsequent holder of this Note. Reference is made to the Loan Agreement for provisions concerning optional and mandatory prepayments, Collateral, acceleration and other material terms affecting this Note.

[Signature Page Follows]

**This Note shall be governed by and construed under the laws of the State of Connecticut. Borrower agrees that any action or proceeding brought to enforce or arising out of this Note may be commenced in the state or federal courts located within the State of Connecticut.**

IN WITNESS WHEREOF, Borrower has caused this Note to be duly executed by one of its officers thereunto duly authorized on the date hereof.

BORROWERS:

NEXII BUILDING SOLUTIONS INC.

NEXII HOLDINGS INC.

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

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

GRANT & SINCLAIR ARCHITECTS LTD.

OMICRON CANADA INC.

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

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

NBS IP INC.

OMICRON CONSTRUCTION LTD.

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

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

NEXII CONSTRUCTION INC.

OMICRON CONSTRUCTION  
MANAGEMENT LTD.

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

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

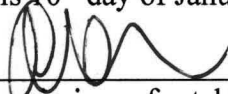
OMICRON CONSULTING LTD.

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

OMICRON INTERIORS LTD.

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

This is Exhibit “ D ” referred to in the  
Affidavit of William Tucker  
sworn before me at Vancouver  
this 10<sup>th</sup> day of January, 2024

A handwritten signature in black ink, consisting of several loops and a long horizontal stroke, positioned above a horizontal line.

---

A Commissioner for taking Affidavits  
for British Columbia

---

**NEXII BUILDING SOLUTIONS INC.**

**NEXII CONSTRUCTION INC.**

**NBS IP INC.**

**OMICRON CANADA INC.**

**OMICRON CONSTRUCTION MANAGEMENT LTD.**

**OMICRON CONSTRUCTION LTD.**

**OMICRON CONSULTING LTD.**

**OMICRON INTERIORS LTD.**

**GRANT & SINCLAIR ARCHITECTS LTD.**

**GENERAL SECURITY AGREEMENT**

---

**GENERAL SECURITY AGREEMENT**

**TO:** Horizon Technology Finance Corporation, as Collateral Agent  
312 Farmington Avenue  
Farmington, CT 06032

**Recitals:**

A. **NEXII BUILDING SOLUTIONS INC.** a corporation existing under the laws of the Province of British Columbia ("**Nexii Building**"), **NEXII CONSTRUCTION INC.** a corporation existing under the laws of the Province of British Columbia ("**Nexii Construction**"), **NBS IP INC.** a corporation existing under the laws of the Province of British Columbia ("**NBS IP**"), **OMICRON CANADA INC.** a corporation existing under the laws of Canada ("**Omicron Canada**"), **OMICRON CONSTRUCTION MANAGEMENT LTD.** a corporation existing under the laws of the Province of British Columbia ("**Omicron Management**") **OMICRON CONSTRUCTION LTD.** a corporation existing under the laws of the Province of British Columbia ("**Omicron Construction**"), **OMICRON CONSULTING LTD.** a corporation existing under the laws of the Province of British Columbia ("**Omicron Consulting**"), **OMICRON INTERIORS LTD.** a corporation existing under the laws of the Province of British Columbia ("**Omicron Interiors**") and **GRANT & SINCLAIR ARCHITECTS LTD.** a corporation existing under the laws of the Province of British Columbia ("**G&S Architects**" and together with Nexii Building, Nexii Construction, NBS IP, Omicron Canada, Omicron Construction, Omicron Consulting and Omicron Interiors, jointly and severally, individually and collectively, the "**Grantor**"), is indebted or liable or may become indebted or liable to **HORIZON TECHNOLOGY FINANCE CORPORATION**, as collateral agent (together with its successors, in such capacity, the "**Collateral Agent**") for the Lenders (as defined in the Credit Agreement, as hereinafter defined), and indebted or liable to the Lenders pursuant to that certain Venture Loan and Security Agreement dated on or about the date hereof (as amended, restated, supplemented or otherwise modified from time to time, the "**Credit Agreement**").

B. To secure the payment and performance of the Liabilities (this term, and other capitalized terms used in this Agreement, have the meanings set forth in Section 1), the Grantor has agreed to grant to the Collateral Agent security interests over the Collateral in accordance with the terms of this Agreement.

C. All capitalized terms not otherwise defined herein shall have the meanings ascribed thereto in the Credit Agreement.

For good and valuable consideration, the receipt and adequacy of which are hereby acknowledged by the Grantor, the Grantor agrees with the Collateral Agent as follows:

1. **Definitions.** In this Agreement:

“**Accessions**”, “**Accounts**”, “**Chattel Paper**”, “**Consumer Goods**”, “**Document of Title**”, “**Goods**”, “**Instrument**”, “**Intangible**”, “**Inventory**”, “**Proceeds**” and “**Securities**” shall have the meanings given to them in the PPSA.

“**Agreement**” means this general security agreement.

“**Books and Records**” means all books, records, files, papers, disks, documents and other repositories of data recording in any form or medium, evidencing or relating to the Collateral which are at any time owned by the Grantor or to which the Grantor (or any Person on the Grantor’s behalf) has access.

“**Business Day**” means a “Business Day” as defined in the Credit Agreement.

“**Collateral**” means, all of the present and future undertaking, Personal Property (including without limitation, any specific Personal Property or Securities that may be described in **Schedule “A”** to this Agreement or any schedules, documents or listings that the Grantor may from time to time sign and provide to the Collateral Agent in connection with this Agreement) including all right, title and interest of the Grantor in such property at any time owned, leased, licensed, possessed or acquired by the Grantor, or in which the Grantor at any time has any interest or to which the Grantor is or may at any time become entitled and all Accessions thereto, and all Proceeds thereof, in any such case wherever located.

“**Contracts**” means all contracts, licenses and agreements to which the Grantor is at any time a party or pursuant to which the Grantor has at any time acquired rights, as such contracts, licenses and agreements may from time to time be amended or restated and includes (i) all rights of the Grantor to receive money due and to become due to it in connection with a contract, licence or agreement, (ii) all rights of the Grantor to damages arising out of, or for breach or default in respect of, a contract, licence or agreement and (iii) all rights of the Grantor to perform and exercise all remedies in connection with a contract, licence or agreement.

“**Default**” means the occurrence of an “Event of Default” as defined in the Credit Agreement that has not been waived by the Lenders.

“**Intellectual Property**” means the collective reference to all rights, priorities and privileges relating to intellectual property, whether arising under United States, Canadian, multinational or foreign laws or otherwise, including copyrights, copyright licences, industrial designs, patents, patent licenses, trademarks, trademark licenses, technology, source code, know-how and processes, and all rights to sue at law or in equity for any infringement or other impairment thereof including the right to receive all Proceeds therefrom.

“**Liabilities**” means the obligations of the Grantor to the Collateral Agent and the Lenders pursuant to the Credit Agreement and the other Loan Documents (other than the Warrants).

“**Money**” means a medium of exchange authorized or adopted by the government referred to in the “Governing Law” section of this agreement as part of its currency.

“**Person**” means and includes any individual, any partnership, any corporation, any business trust, any joint stock company, any limited liability company, any unincorporated association or any other entity and any domestic or foreign national, state, provincial or local government, any political subdivision thereof, and any department, agency, authority or bureau of any of the foregoing.

“**Permits**” means all permits, licenses, authorizations, approvals, franchises, rights-of-way, easements and entitlements that the Grantor has, requires or is required to have, to own, possess or operate any of its property or to operate and carry on any part of its business.

“**Personal Property**” means personal property and includes Accounts (including all present and future tax credits, tax refunds and other sums of a similar nature due to the Grantor by any fiscal authority), Inventory, equipment, Books and Records, Chattel Paper, Goods, documents of title, Instruments, general intangibles (including Intellectual Property and Permits) and Securities, and includes all Accessions to any of the foregoing.

“**PPSA**” means the *Personal Property Security Act* (British Columbia), as such legislation may be amended, renamed or replaced from time to time (and includes all regulations from time to time made pursuant thereto).

“**Receiver**” means a receiver, a manager, a receiver and manager or an interim receiver.

“**Security Interest**” means any mortgage, charge, pledge, hypothecation, lien (statutory or otherwise), assignment, finance lease, title retention agreement or arrangement, security interest or other encumbrance or adverse claim of any nature, or any other security agreement or arrangement created in favour of any creditor a right in respect of a particular property.

2. **Grant of Security.** As general and continuing collateral security for the due payment and performance of the Liabilities, the Grantor mortgages, charges and grants to the Collateral Agent a continuing security interest in the Collateral.
3. **Limitations on Grant of Security.** If the grant of any Security Interest in any Contract, Intellectual Property or Permit under Section 2 would result in the termination or breach of such Contract, Intellectual Property or Permit or is otherwise prohibited or ineffective (whether by the terms thereof or under applicable law), then the applicable Contract or Permit will not be subject to any Security Interest under Section 2 but will be held in trust by the Grantor for the benefit of the Collateral Agent. The Security Interests created by this Agreement do not extend to the last day of the term of any lease or agreement for lease of real property. Such last day will be held by the Grantor in trust for the Collateral Agent and, on the exercise by the Collateral Agent of any of its rights under this Agreement following a Default, will be assigned by the Grantor as directed by the Collateral Agent.
4. **Attachment.** The Grantor confirms that value has been given by the Collateral Agent to the Grantor, that the Grantor has rights in the Collateral and that the Grantor and the



Collateral Agent have not agreed to postpone the time for attachment of the Security Interests created by this Agreement to any of the Collateral. The Security Interests created by this Agreement will have effect and be deemed to be effective whether or not the Liabilities or any part thereof are owing or in existence before or after or upon the date of this Agreement, and the execution of this Agreement shall not oblige the Collateral Agent to advance any funds or any additional funds.

5. **Representations and Warranties.**

The Grantor represents and warrants to the Collateral Agent that:

- (a) Places of Business, Name, Location of Collateral. The Grantor's principal place of business and chief executive office, and the place where it keeps its Books and Records, is at the address specified in the Disclosure Schedule, and its full legal name, and any other name under which it conducts its business, is specified on the in the Disclosure Schedule. The location of all other existing places where the Grantor carries on business or keeps tangible Personal Property included in the Collateral and the location of all real property owned by the Grantor, are set out in the Disclosure Schedule.
- (b) No Consumer Goods. The Grantor does not own any Consumer Goods which are material in value or which are material to the business, operations, property, condition or prospects (financial or otherwise) of the Grantor.

6. **Rights Upon a Default.** Upon a Default, the security constituted by this Agreement will become enforceable, and the Collateral Agent may, personally or by agent at such time or times as the Collateral Agent, in its discretion may determine, do any one or more of the following:

- (a) Rights under PPSA, etc. Exercise all of the rights and remedies granted to secured parties under the PPSA and any other applicable statute, or otherwise available to the Collateral Agent at law or in equity.
- (b) Demand Possession. Demand possession of any or all of the Collateral in which event the Grantor will, at its own expense, immediately cause the Collateral designated by the Collateral Agent to be made available and/or delivered to the Collateral Agent at any place designated by the Collateral Agent.
- (c) Take Possession. Enter any premises where any Collateral is located and take possession of, disable or remove such Collateral.
- (d) Use of Collateral. Hold, store and keep idle, or operate, lease or otherwise use or permit the use of any or all of the Collateral for such time and on such terms as the Collateral Agent may determine, and demand, collect and retain all earnings and other sums due or to become due from any Person in respect of any of the Collateral.
- (e) Carry on Business. Carry on, or concur in the carrying on of, any or all of the business or undertaking of the Grantor and enter on, occupy and use (without

charge by the Grantor) any of the premises, buildings, plant and undertaking of, or occupied or used by, the Grantor.

- (f) Deal with Collateral. Seize, collect, receive, enforce or otherwise deal with any Collateral in such manner, on such terms and conditions and at such times as the Collateral Agent deems advisable.
- (g) Dispose of Collateral. Realize on any or all of the Collateral and sell, lease, assign, give options to purchase, or otherwise dispose of and deliver any or all of the Collateral (or contract to do any of the above), in one or more parcels at any public or private sale, at any exchange, broker's board or office of the Collateral Agent or elsewhere, on such terms and conditions as the Collateral Agent may deem advisable and at such prices as it may deem best, for cash or on credit or for future delivery.
- (h) Court-Approved Disposition of Collateral. Apply to a court of competent jurisdiction for the sale or foreclosure of any or all of the Collateral.
- (i) Purchase by Collateral Agent. At any public sale, and to the extent permitted by law on any private sale, bid for and purchase any or all of the Collateral offered for sale and, upon compliance with the terms of such sale, hold, retain and dispose of such Collateral without any further accountability to the Grantor or any other Person with respect to such holding, retention or disposition, except as required by law. In any such sale to the Collateral Agent, the Collateral Agent may, for the purpose of making payment for all or any part of the Collateral so purchased, use any claim for Liabilities then due and payable to it as a credit against the purchase price.
- (j) Collect Accounts. Notify the account debtors or obligors under any Accounts of the assignment of such Accounts to the Collateral Agent and direct such account debtors or obligors to make payment of all amounts due or to become due to the Grantor in respect of such Accounts directly to the Collateral Agent and, upon such notification and at the expense of the Grantor, enforce collection of any such Accounts, and adjust, settle or compromise the amount or payment of such Accounts, in such manner and to such extent as the Collateral Agent deems appropriate in the circumstances.
- (k) Transfer of Securities. Transfer any Securities forming part of the Collateral into the name of the Collateral Agent or its nominee, with or without disclosing that the Securities are subject to the Security Interests.
- (l) Exercise of Rights. Exercise any and all rights, privileges, entitlements and options pertaining to any Securities forming part of the Collateral as if the Collateral Agent were the absolute owner of such Securities.

- (m) Payment of Liabilities. Pay any liability secured by any Security Interest against any Collateral. The Grantor will immediately on demand reimburse the Collateral Agent for all such payments.
- (n) Appoint Receiver. Appoint by instrument in writing one or more Receivers over property, assets and undertaking of the Grantor or any or all of the Collateral with such rights, powers and authority (including any or all of the rights, powers and authority of the Collateral Agent under this Agreement and the Credit Agreement) as may be provided for in the instrument of appointment or any supplemental instrument, and remove and replace any such Receiver from time to time. To the extent permitted by applicable law, any Receiver appointed by the Collateral Agent will (for purposes relating to responsibility for the Receiver's acts or omissions) be considered to be the agent of the Grantor and not of the Collateral Agent.
- (o) Court-Appointed Receiver. Apply to a court of competent jurisdiction for the appointment of a Receiver of the Grantor or of any or all of the Collateral.

The Collateral Agent may exercise any or all of the foregoing rights and remedies without demand of performance or other demand, presentment, protest, advertisement or notice of any kind (except as required by applicable law) to or on the Grantor or any other Person, and the Grantor by this Agreement waives each such demand, presentment, protest, advertisement and notice to the extent permitted by applicable law. None of the above rights or remedies will be exclusive of or dependent on or merge in any other right or remedy, and one or more of such rights and remedies may be exercised independently or in combination from time to time. Without prejudice to the ability of the Collateral Agent to dispose of the Collateral in any manner which is commercially reasonable, the Grantor acknowledges that a disposition of Collateral by the Collateral Agent which takes place substantially in accordance with the following provisions will be deemed to be commercially reasonable:

- (i) Collateral may be disposed of in whole or in part;
  - (ii) Collateral may be disposed of by public auction, public tender or private contract, with or without advertising and without any other formality;
  - (iii) any purchaser or lessee of Collateral may be a customer of the Collateral Agent;
  - (iv) a disposition of Collateral may be on such terms and conditions as to credit or otherwise as the Collateral Agent may determine to be commercially reasonable; and
  - (v) the Collateral Agent may establish an upset or reserve bid or price in respect of Collateral.
7. Intellectual Property License. For the purpose of enabling the Collateral Agent to exercise its rights and remedies under Section 6 when the Collateral Agent is entitled to

exercise such rights and remedies, and for no other purpose, and in consideration of the Collateral Agent entering into the Credit Agreement with the Grantor, the Grantor by this Agreement grants to the Collateral Agent an irrevocable, non-exclusive licence (exercisable without payment of royalty or other compensation to the Grantor) during the existence of a Default to use, assign or sublicense any or all of the Intellectual Property, including in such licence reasonable access to all media in which any of the licensed items may be recorded or stored and to all computer programs used for the compilation or printout of the same.

8. **Sale of Securities.** The Collateral Agent is authorized, in connection with any offer or sale of any Securities forming part of the Collateral during the existence of a Default, to comply with any limitation or restriction as it may be advised by counsel is necessary to comply with applicable securities laws, including compliance with procedures that may restrict the number of prospective bidders and purchasers, requiring that prospective bidders and purchasers have certain qualifications, and restricting prospective bidders and purchasers to Persons who will represent and agree that they are purchasing for their own account or investment and not with a view to the distribution or resale of such Securities. The Grantor further agrees that compliance with any such limitation or restriction will not result in a sale being considered or deemed not to have been made in a commercially reasonable manner, and the Collateral Agent will not be liable or accountable to the Grantor for any discount allowed by reason of the fact that such Securities are sold in compliance with any such limitation or restriction.
9. **Application of Proceeds.** All Proceeds of Collateral received by the Collateral Agent or a Receiver may be applied to discharge or satisfy any expenses (including the Receiver's remuneration and other expenses of enforcing the Collateral Agent's rights under this Agreement), Security Interests in favour of Persons other than the Collateral Agent, borrowings, taxes and other outgoings affecting the Collateral or which are considered advisable by the Collateral Agent or the Receiver to protect, preserve, repair, process, maintain or enhance the Collateral or prepare it for sale, lease or other disposition, or to keep in good standing any Security Interests, if any, on the Collateral ranking in priority to any of the Security Interests created by this Agreement, or to sell, lease or otherwise dispose of the Collateral. The balance of such Proceeds may, at the sole discretion of the Collateral Agent, be held as collateral security for the Liabilities or be applied to such of the Liabilities (whether or not the same are due and payable) in accordance with Section 9.7 of the Credit Agreement.
10. **Continuing Liability of Grantor.** The Grantor will remain liable for any Liabilities that are outstanding following realization of all or any part of the Collateral and the application of the Proceeds thereof.
11. **Collateral Agent's Appointment as Attorney-in-Fact.** The Grantor constitutes and appoints the Collateral Agent and any officer or agent of the Collateral Agent, with full power of substitution, as the Grantor's true and lawful attorney-in-fact with full power and authority in the place of the Grantor and in the name of the Grantor or in its own name, from time to time in the Collateral Agent's discretion after a Default, to take any and all appropriate action and to execute any and all documents and Instruments as, in the opinion

of such attorney acting reasonably, may be necessary or desirable to accomplish the purposes of this Agreement. These powers are coupled with an interest and are irrevocable until this Agreement is terminated and the Security Interests created by this Agreement are released. Nothing in this Section affects the right of the Collateral Agent or any other Person, to sign and file or deliver (as applicable) all such financing statements, financing change statements, notices, verification agreements and other documents relating to the Collateral and this Agreement as the Collateral Agent or such other Person considers appropriate.

12. **Performance by Collateral Agent of Grantor's Obligations.** If the Grantor fails to perform or comply with any of its obligations under this Agreement, the Collateral Agent may, but need not, perform or otherwise cause the performance or compliance of such obligation, provided that such performance or compliance will not constitute a waiver, remedy or satisfaction of such failure. The expenses of the Collateral Agent incurred in connection with any such performance or compliance will be payable by the Grantor to the Collateral Agent on demand, and until paid, any such expenses will form part of the Liabilities and will be secured by the Security Interests created by this Agreement.
13. **Interest.** If any amount payable to the Collateral Agent under this Agreement is not paid when due, the Grantor will pay to the Collateral Agent, immediately on demand, interest on such amount from the date due until paid, at the rate specified in the Credit Agreement. All amounts payable by the Grantor to the Collateral Agent under this Agreement, and all interest on all such amounts, compounded in the manner applicable (if any) specified in the Credit Agreement, will form part of the Liabilities and will be secured by the Security Interests created by this Agreement.
14. **Severability.** Any provision of this Agreement that is prohibited or unenforceable in any jurisdiction will, as to that jurisdiction, be ineffective to the extent of such prohibition or unenforceability and will be severed from the balance of this Agreement, all without affecting the remaining provisions of this Agreement or affecting the validity or enforceability of such provision in any other jurisdiction.
15. **Rights of Collateral Agent and Limitation on Collateral Agent's Obligations.**
  - (a) **Limitations on Collateral Agent's Liability.** The Collateral Agent will not be liable to the Grantor or any other Person for any failure or delay in exercising any of its rights under this Agreement (including any failure to take possession of, collect, sell, lease or otherwise dispose of any Collateral, or to preserve rights against prior parties). Neither the Collateral Agent, a Receiver nor any agent of the foregoing is required to take, or will have any liability for any failure to take or delay in taking, any steps necessary or advisable to preserve rights against other Persons under any Collateral in its possession. Neither the Collateral Agent nor any Receiver will be liable for any, and the Grantor will bear the full risk of all, loss or damage to any and all of the Collateral (including any Collateral in the possession of the Collateral Agent or any Receiver) caused for any reason other than the gross negligence or wilful misconduct of the Collateral Agent or such Receiver.

- (b) Grantor Remains Liable under Accounts and Contracts. Notwithstanding any provision of this Agreement, the Grantor will remain liable under each of the Accounts and Contracts to observe and perform all the conditions and obligations to be observed and performed by the Grantor thereunder, all in accordance with the terms of any agreement giving rise to each such Account or in accordance with and pursuant to the terms and provisions of each such Contract. The Collateral Agent will have no obligation or liability under any Account (or any agreement giving rise thereto) or Contract by reason of or arising out of this Agreement or the receipt by the Collateral Agent of any payment relating to such account or contract pursuant hereto, and in particular (but without limitation), the Collateral Agent will not be obligated in any manner to perform any of the obligations of the Grantor under or pursuant to any account (or any agreement giving rise thereto) or under or pursuant to any Contract, to make any payment, to make any inquiry as to the nature or the sufficiency of any payment received by it or as to the sufficiency of any performance by any party under any account (or any agreement giving rise thereto) or under any Contract, to present or file any claim, to take any action to enforce any performance or to collect the payment of any amounts which may have been assigned to it or to which it may be entitled at any time.
- (c) Notice to Account Debtors and Contracting Parties. At any time an Event of Default exists, the Collateral Agent may (i) notify account debtors on the Accounts and parties to the Contracts that the Accounts and the Contracts have been assigned to the Collateral Agent and that payments in respect thereof will be made directly to the Collateral Agent and (ii) in its own name or in the name of others (including the Grantor) communicate with account debtors on the Accounts and parties to the Contracts to verify with them to its satisfaction the existence, status, amount and terms of any account or any Contract.
- (d) Analysis of Accounts. At any time a Default exists, the Collateral Agent may in its own name or in the name of others (including the Grantor) communicate with account debtors on the Accounts and parties to the Contracts to verify with them to its satisfaction the existence, status, amount and terms of any account or any Contract.
16. **Dealings by Collateral Agent.** The Collateral Agent will not be obliged to exhaust its recourse against the Grantor or any other Person or against any other security it may hold in respect of the Liabilities before realizing upon or otherwise dealing with the Collateral in such manner as the Collateral Agent may consider desirable. The Collateral Agent may grant extensions of time and other indulgences, take and give up security, accept compositions, grant releases and discharges and otherwise deal with the Grantor and any other Person, and with any or all of the Collateral, and with other security and sureties, as the Collateral Agent may see fit, all without prejudice to the Liabilities or to the rights and remedies of the Collateral Agent under this Agreement. The powers conferred on the Collateral Agent under this Agreement are solely to protect the interests of the Collateral Agent in the Collateral and will not impose any duty upon the Collateral Agent to exercise any such powers.



17. **Communication.** Any notice or communication required or permitted to be given under this Agreement will be effectively made and given if made and given in the manner specified in the Credit Agreement.
18. **Release of Information.** The Grantor authorizes the Collateral Agent to provide a copy of this Agreement and such other information as may be requested of the Collateral Agent by Persons entitled thereto pursuant to any applicable legislation, and otherwise with the consent of the Grantor.
19. **Waivers and Indemnity.** None of the terms or provisions of this Agreement may be waived, amended, supplemented or otherwise modified except by a written instrument executed by the Collateral Agent. The Collateral Agent will not, by any act or delay, be deemed to have waived any right or remedy hereunder or to have acquiesced in any Default or in any breach of any of the terms and conditions hereof. No failure to exercise, nor any delay in exercising, on the part of the Collateral Agent, any right, power or privilege hereunder shall operate as a waiver thereof. No single or partial exercise of any right, power or privilege hereunder will preclude any other or further exercise thereof or the exercise of any other right, power or privilege. A waiver by the Collateral Agent of any right or remedy hereunder on any one occasion will not be construed as a bar to any right or remedy which the Collateral Agent would otherwise have on any future occasion. Neither the taking of any judgment nor the exercise of any power of seizure or sale will extinguish the liability of the Grantor to pay the Liabilities, nor will the same operate as a merger or any covenant contained in this Agreement or of any other liability, nor will the acceptance of any payment or other security constitute or create any novation. The Grantor agrees to indemnify the Collateral Agent from and against any and all liabilities, obligations, losses, damages, penalties, actions, judgments, suits, costs, expenses or disbursements of any kind or nature whatsoever (except by reason of the gross negligence or willful misconduct of the Collateral Agent or breach in bad faith of its obligations under this Agreement) which may be imposed on, incurred by, or asserted against the Collateral Agent and arising by reason of any action (including any action referred to in this Agreement) or inaction or omission to do any act legally required by the Grantor, in each of the foregoing cases to the extent the Grantor would be required to do so pursuant to Section 10.3 of the Credit Agreement. This indemnification will survive until the satisfaction, release or extinguishment of the Liabilities and the Security Interests created by this Agreement.
20. **Merger/Amalgamation.** The Grantor acknowledges that if it merges, amalgamates or consolidates with any other corporation with the prior written consent of the Collateral Agent, then (i) the Collateral and the Security Interests created by this Agreement will extend to and include all of the property and assets of each of the merging, amalgamating or consolidating corporations and the merged, amalgamated or consolidated corporation and any property or assets of the merged, amalgamated or consolidated corporation thereafter owned or acquired, (ii) the term "Grantor", where used in its Agreement, will extend to and include each of the merging, amalgamating or consolidating corporations and the merged, amalgamated or consolidated corporation; and (iii) the term "Liabilities", where used in this Agreement, will extend to and include the Liabilities of each of the merging, amalgamating or consolidating corporations and the merged, amalgamated or

consolidated corporation. Nothing contained herein shall constitute a waiver of any Default resulting from such merger, amalgamation or consolidation to the extent it was not permitted under the Credit Agreement.

21. **Governing Law.** This Agreement shall be governed by and construed in accordance with the laws of the Province of British Columbia without regard to principles of conflicts of laws and will be treated, in all respects, as a contract made and entered into in British Columbia. To the extent permitted by applicable law, the Grantor irrevocably waives any objection (including any claim of inconvenient forum) that it may now or hereafter have to the venue of any legal proceeding arising out of or relating to this Agreement in the courts of the Province of British Columbia.
22. **Conflict.** In the event that there is any conflict or inconsistency between the provisions contained in this Agreement and the provisions contained in the Credit Agreement, then the provisions of the Credit Agreement, shall have priority over and shall govern to the extent of such conflict or inconsistency.
23. **Interpretation.** The division of this Agreement into sections and paragraphs, and the insertion of headings, is for convenience of reference only and will not affect the construction or interpretation of this Agreement. Unless the context otherwise requires, words importing the singular include the plural and vice versa, and words importing gender include all genders. When used in this Agreement, the word “including” (or includes) means “including (or includes) without limitation”. Any reference in this Agreement to a “Section” means the relevant Section of this Agreement.
24. **Successors and Assigns.** This Agreement shall be binding upon the successors and assigns of the Grantor and shall enure to the benefit of the Collateral Agent and each other Lender and their respective permitted successors and assigns; provided that the Grantor may not assign, transfer or delegate any of its rights or obligations under this Agreement without the prior written consent of the Collateral Agent.
25. **Acknowledgement of Receipt/Waiver.** The Grantor acknowledges receipt of an executed copy of this Agreement and, to the extent permitted by applicable law, waives the right to receive a copy of any financing statement, financing change statement or verification statement in respect of any registered financing statement or financing change statement prepared, registered or issued in connection with this Agreement.

*[Signature Page Follows]*



**DATED** this 27th day of August, 2021.

**NEXII BUILDING SOLUTIONS INC.**

Per: DocuSigned by:  
Stephen Sidwell  
00490A2F88E1429  
Name: Stephen Sidwell  
Title: CEO

I have the authority to bind the corporation.

**Address: 200 – 1455 West Georgia St.  
Vancouver, British Columbia  
Canada V6G2T3**

**NEXII CONSTRUCTION INC.**

Per: DocuSigned by:  
Patricia van de Sande  
113EAD88EFD14E5  
Name: Patricia van de Sande  
Title: Director

I have the authority to bind the corporation.

**Address: 200 – 1455 West Georgia St.  
Vancouver, British Columbia  
Canada V6G2T3**

**NBS IP INC.**

Per: DocuSigned by:  
Patricia van de Sande  
113EAD88EFD14E5  
Name: Patricia van de Sande  
Title: Director

I have the authority to bind the corporation.

**Address: 200 – 1455 West Georgia St.  
Vancouver, British Columbia  
Canada V6G2T3**

**NEXII HOLDINGS INC.**

Per: DocuSigned by:  
Patricia van de Sande  
113EAD88EFD14E5...  
Name: Stephen Sidwell  
Title: Director

I have the authority to bind the corporation.

**Address:** 3411 Silverside Road  
Tatnall Building #104  
Wilmington, Delaware, 19810

**OMICRON CANADA INC.**

Per: DocuSigned by:  
Patricia van de Sande  
113EAD88EFD14E5...  
Name: Patricia van de Sande  
Title: Director

I have the authority to bind the corporation.

**Address:** Fifth Floor Three Bentall Centre  
595 Burrard Street  
PO Box 49369  
Vancouver, BC, V7X 1L4

**OMICRON CONSULTING LTD.**

Per: DocuSigned by:  
Patricia van de Sande  
113EAD88EFD14E5...  
Name: Patricia van de Sande  
Title: Director

I have the authority to bind the corporation.

**Address:** Fifth Floor Three Bentall Centre  
595 Burrard Street  
PO Box 49369  
Vancouver, BC, V7X 1L4

**GRANT & SINCLAIR ARCHITECTS LTD.**

Per: DocuSigned by:  
*Patricia van de Sande*  
Name: Patricia van de Sande  
Title: Director

I have the authority to bind the corporation.

**Address:** Fifth Floor Three Bentall Centre  
595 Burrard Street  
PO Box 49369  
Vancouver, BC, V7X 1L4

**OMICRON CONSTRUCTION LTD.**

Per: DocuSigned by:  
*Patricia van de Sande*  
Name: Patricia van de Sande  
Title: Director

I have the authority to bind the corporation.

**Address:** Fifth Floor Three Bentall Centre  
595 Burrard Street  
PO Box 49369  
Vancouver, BC, V7X 1L4

**OMICRON INTERIORS LTD.**


Per: DocuSigned by:  
*Patricia van de Sande*  
Name: Patricia van de Sande  
Title: Director

I have the authority to bind the corporation.

**Address:** Fifth Floor Three Bentall Centre  
595 Burrard Street  
PO Box 49369  
Vancouver, BC, V7X 1L4

**SCHEDULE "A" TO GENERAL SECURITY AGREEMENT**

This is Exhibit " E " referred to in the  
Affidavit of William Tucker  
sworn before me at Vancouver  
this 10<sup>th</sup> day of January, 2024



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A Commissioner for taking Affidavits  
for British Columbia

GRANT OF SECURITY INTEREST  
PATENTS

THIS GRANT OF SECURITY INTEREST, dated as of August 27, 2021, is executed by NEXII BUILDING SOLUTIONS INC., a corporation existing under the laws of the Province of British Columbia with an address of 200 – 1455 West Georgia St. Vancouver, V6G 2T3 (“Debtor”), in favor of HORIZON TECHNOLOGY FINANCE CORPORATION, a Delaware corporation with an address of 312 Farmington Avenue, Farmington, Connecticut 06032, as Collateral Agent, on behalf of the Lenders (as defined in the Agreement) (“Secured Party”).

A. Pursuant to a certain Venture Loan and Security Agreement, dated on or about the date hereof (the “Agreement”) by and between, *inter alia*, Debtor, Secured Party and Lenders party thereto, the Lenders have agreed to extend credit to Debtor and the other Borrowers (as defined in the Agreement) upon the terms and subject to the conditions set forth therein;

B. Debtor owns the patents and/or applications for patents, more particularly described on Schedules 1-A and 1-B annexed hereto as part hereof (collectively, the “Patents”);

C. Pursuant to the Agreement, Debtor has granted to Secured Party a security interest in all right, title and interest of Debtor in and to the Patents, together with any reissue, continuation, continuation-in-part or extension thereof, and all proceeds thereof, including any and all causes of action which may exist by reason of infringement thereof for the full term of the Patents (the “Collateral”), to secure the prompt payment, performance and observance of the Obligations (as defined in the Agreement);

NOW, THEREFORE, for good and valuable consideration, receipt of which is hereby acknowledged, Debtor does hereby further grant to Secured Party a security interest in the Collateral to secure the prompt payment, performance and observance of the Obligations.

Debtor does hereby further acknowledge and affirm that the rights and remedies of Secured Party with respect to the security interest in the Collateral granted hereby are more fully set forth in the Agreement, the terms and provisions of which are hereby incorporated herein by reference as if fully set forth herein.

[signature page follows]

IN WITNESS WHEREOF, Debtor has caused this instrument to be executed as of the day and year first written above.

NEXII BUILDING SOLUTIONS INC.

By: DocuSigned by:  
  
00490A2F8BE1429...  
Name: Stephen Sidwell  
Title: CEO

## Schedule 1 (1-A and 1-B)

Owner Family	Country Case Type	Status	Appln. No. Appln. Date	Patent. No. Patent Date	Priority. No. Priority Date	Expiration Date
NEXII BUILDING SOLUTIONS INC. Z120 0007	United States Provisional	Pending				
<b>SYSTEMS AND METHODS FOR THERMAL BREAKING OF A PREFABRICATED PANEL</b>						
NEXII BUILDING SOLUTIONS INC. Z120 0009	United States Provisional	Pending				
<b>SYSTEMS AND METHODS FOR SEALING A PREFABRICATED PANEL</b>						
NEXII BUILDING SOLUTIONS INC. Z120 0012	United States Provisional	Pending				
<b>SYSTEMS AND METHODS FOR CONSTRUCTING A MULTI-STOREY BUILDING</b>						
NEXII BUILDING SOLUTIONS INC. Z120 0013	United States Provisional	Pending				
<b>SYSTEMS AND METHODS FOR RETROFITTING AN EXISTING BUILDING</b>						
NEXII BUILDING SOLUTIONS INC. Z120 0014	United States Provisional	Pending				
<b>SYSTEMS AND METHODS FOR PROVIDING SEALS BETWEEN ADJACENT BUILDING PANELS</b>						



Owner Family	Country Case Type	Status	Appln. No. Appln. Date	Patent. No. Patent Date	Priority. No. Priority Date	Expiration Date
NEXII BUILDING SOLUTIONS INC. Z120 0016	United States Provisional	Pending				
ENCAPSULATED PREFABRICATED PANEL						
Nexii Building Solutions Inc. Z120 0017	Canada Ordinary Filing	Granted	2994868 13-Feb-2018	2994868 02-Apr-2019		13-Feb-2038
PREFABRICATED INSULATED BUILDING PANEL WITH CURED CEMENTITIOUS LAYER BONDED TO INSULATION						
Nexii Building Solutions Inc. Z120 0017	United States Ordinary Filing	Granted	16/274460 13-Feb-2019	10961708 30-Mar-2021	2994868 13-Feb-2018	13-Feb-2039
PREFABRICATED INSULATED BUILDING PANEL WITH CURED CEMENTITIOUS LAYER BONDED TO INSULATION						
NEXII Building Solutions Inc. Z120 0017	Patent Cooperation Treaty Ordinary Filing	Natl Phase	PCT/CA2019/050179 13-Feb-2019		2994868 13-Feb-2018	
PREFABRICATED INSULATED BUILDING PANEL WITH AT LEAST ONE CURED CEMENTITIOUS LAYER BONDED TO INSULATION						
Nexii Building Solutions Inc. Z120 0017	Canada Divisional Filing	Pending	3033991 13-Feb-2018			
PREFABRICATED INSULATED BUILDING PANEL WITH OPPOSITE CURED CEMENTITIOUS LAYERS BONDED TO INSULATION						
Nexii Building Solutions Inc. Z120 0022	United States Ordinary Filing	Pending				
REINFORCED STRUCTURAL INSULATION PANEL WITH CORNER BLOCKS						
Nexii Building Solutions Inc.	United States Ordinary Filing	Pending				
HORIZONTAL BUILDING PANEL WITH CONNECTOR BLOCK ASSEMBLY						

Owner Family	Country Case Type	Status	Appln. No. Appln. Date	Patent. No. Patent Date	Priority. No. Priority Date	Expiration Date
Nexii Building Solutions Inc.	United States Design	Pending				
WALL CONNECTOR BLOCK						
NEXII BUILDING SOLUTIONS INC.	Canada Design	Pending				
WALL CONNECTOR BLOCK						
Nexii Building Solutions Inc.	United States Design	Pending				
CONNECTOR BLOCK FOR HORIZONTAL BUILDING PANEL						
NEXII BUILDING SOLUTIONS INC.	Canada Design	Pending				
CONNECTOR BLOCK FOR HORIZONTAL BUILDING PANEL						
NEXII BUILDING SOLUTIONS INC. Z120 0022	United States Continuation In Part					
FINISHED WALL PANEL WITH CORNER CONNECTOR BLOCK						
Nexii Building Solutions Inc. Z120 0022	Patent Cooperation Treaty Ordinary Filing	Pending				
REINFORCED STRUCTURAL INSULATION PANEL WITH CORNER BLOCKS						

NEXII Building Solutions Inc. Z120 0017	China Patent Cooperation Treaty	Pending	201980020145.9 13-Feb-2019	2994868 13-Feb-2018
PREFABRICATED INSULATED BUILDING PANEL WITH AT LEAST ONE CURED CEMENTITIOUS LAYER BONDED TO INSULATION				
NEXII Building Solutions Inc. Z120 0017	Japan Patent Cooperation Treaty	Pending	2020-564979 13-Feb-2019	2994868 13-Feb-2018
PREFABRICATED INSULATED BUILDING PANEL WITH AT LEAST ONE CURED CEMENTITIOUS LAYER BONDED TO INSULATION				
NEXII Building Solutions Inc. Z120 0017	Mexico Patent Cooperation Treaty	Pending	MX/a/2020/008520 13-Feb-2019	2994868 13-Feb-2018
PREFABRICATED INSULATED BUILDING PANEL WITH AT LEAST ONE CURED CEMENTITIOUS LAYER BONDED TO INSULATION				
NEXII Building Solutions Inc. Z120 0017	Brazil Patent Cooperation Treaty	Pending	BR 11 2020 016422 4 13-Feb-2019	2994868 13-Feb-2018
PREFABRICATED INSULATED BUILDING PANEL WITH AT LEAST ONE CURED CEMENTITIOUS LAYER BONDED TO INSULATION				
NEXII Building Solutions Inc. Z120 0017	Israel Patent Cooperation Treaty	Pending	276615 13-Feb-2019	2994868 13-Feb-2018
PREFABRICATED INSULATED BUILDING PANEL WITH AT LEAST ONE CURED CEMENTITIOUS LAYER BONDED TO INSULATION				
NEXII Building Solutions Inc. Z120 0017	United Arab Emirates Patent Cooperation Treaty	Pending	P6001169/2020 13-Feb-2019	2994868 13-Feb-2018
PREFABRICATED INSULATED BUILDING PANEL WITH AT LEAST ONE CURED CEMENTITIOUS LAYER BONDED TO INSULATION				



Owner Family	Country Case Type	Status	Appl. No. Appln. Date	Patent. No. Patent Date	Priority. No. Priority Date	Expiration Date
NEXII Building Solutions Inc. Z120 0017	Egypt Patent Cooperation Treaty	Pending	PCT 1180/2020 13-Feb-2019		2994868 13-Feb-2018	
PREFABRICATED INSULATED BUILDING PANEL WITH AT LEAST ONE CURED CEMENTITIOUS LAYER BONDED TO INSULATION						
NEXII Building Solutions Inc. Z120 0017	Saudi Arabia Patent Cooperation Treaty	Pending	520412648 13-Feb-2019		2994868 13-Feb-2018	
PREFABRICATED INSULATED BUILDING PANEL WITH AT LEAST ONE CURED CEMENTITIOUS LAYER BONDED TO INSULATION						
NEXII Building Solutions Inc. Z120 0017	European Patent Office Patent Cooperation Treaty	Pending	19754672.4 13-Feb-2019		2994868 13-Feb-2018	
PREFABRICATED INSULATED BUILDING PANEL WITH AT LEAST ONE CURED CEMENTITIOUS LAYER BONDED TO INSULATION						
NEXII Building Solutions Inc. Z120 0017	India Patent Cooperation Treaty	Pending	202027039296 13-Feb-2019		2994868 13-Feb-2018	
PREFABRICATED INSULATED BUILDING PANEL WITH AT LEAST ONE CURED CEMENTITIOUS LAYER BONDED TO INSULATION						
NEXII Building Solutions Inc. Z120 0017	Australia Patent Cooperation Treaty	Pending	2019220933 13-Feb-2019		2994868 13-Feb-2018	
PREFABRICATED INSULATED BUILDING PANEL WITH AT LEAST ONE CURED CEMENTITIOUS LAYER BONDED TO INSULATION						
NEXII Building Solutions Inc. Z120 0017	New Zealand Patent Cooperation Treaty	Pending	767690 13-Feb-2019		2994868 13-Feb-2018	
PREFABRICATED INSULATED BUILDING PANEL WITH AT LEAST ONE CURED CEMENTITIOUS LAYER BONDED TO INSULATION						
NEXII Building Solutions Inc. Z120 0017	Republic of Korea Patent Cooperation Treaty	Pending	10-2020-7026297 13-Feb-2019		2994868 13-Feb-2018	
PREFABRICATED INSULATED BUILDING PANEL WITH AT LEAST ONE CURED CEMENTITIOUS LAYER BONDED TO INSULATION						

Owner Family	Country Case Type	Status	Appln. No. Appln. Date	Patent. No. Patent Date	Priority. No. Priority Date	Expiration Date
NEXII Building Solutions Inc. Z120 0017	South Africa Patent Cooperation Treaty	Pending	2020/05631 13-Feb-2019		2994868 13-Feb-2018	
PREFABRICATED INSULATED BUILDING PANEL WITH AT LEAST ONE CURED CEMENTITIOUS LAYER BONDED TO INSULATION						
NEXII Building Solutions Inc. Z120 0017	Russian Federation Patent Cooperation Treaty	Pending	2020129960 13-Feb-2019		2994868 13-Feb-2018	
PREFABRICATED INSULATED BUILDING PANEL WITH AT LEAST ONE CURED CEMENTITIOUS LAYER BONDED TO INSULATION						
Nexii Building Solutions Inc. Z120 0059	United States Provisional	Pending				
SYSTEMS AND METHODS FOR COUPLING PREFABRICATED PANELS TOGETHER AND REINFORCING FRAME STRUCTURE						
NEXII BUILDING SOLUTIONS INC. Z120 0008	Patent Cooperation Treaty Ordinary Filing	Pending				
PREFABRICATED PANEL WITH MULTI-LAYER CEMENTITIOUS COVERINGS						
NEXII BUILDING SOLUTIONS INC. Z120 0011	Patent Cooperation Treaty Ordinary Filing	Pending				
SYSTEMS AND METHODS FOR CONSTRUCTING A SINGLE-STORY BUILDING						
NEXII BUILDING SOLUTIONS INC. Z120 0015	Patent Cooperation Treaty Ordinary Filing	Pending				
SYSTEMS AND METHODS FOR ADHERING CLADDING						
NEXII BUILDING SOLUTIONS INC. Z120 0010	Patent Cooperation Treaty Ordinary Filing	Pending				
SYSTEMS AND METHODS FOR COUPLING PREFABRICATED PANELS TOGETHER AND REINFORCING FRAME STRUCTURE						



Owner Family	Country Case Type	Status	Appln. No. Appln. Date	Patent. No. Patent Date	Priority. No. Priority Date	Expiration Date
NEXII BUILDING SOLUTIONS INC. Z120 0008	United States Ordinary Filing	Pending				
PREFABRICATED PANEL WITH MULTI-LAYER CEMENTITIOUS COVERINGS						
NEXII BUILDING SOLUTIONS INC. Z120 0011	United States Ordinary Filing	Pending				
SYSTEMS AND METHODS FOR CONSTRUCTING A SINGLE-STORY BUILDING						
NEXII BUILDING SOLUTIONS INC. Z120 0015	United States Ordinary Filing	Pending				
SYSTEMS AND METHODS FOR ADHERING CLADDING						
NEXII BUILDING SOLUTIONS INC. Z120 0010	United States Ordinary Filing	Pending				
SYSTEMS AND METHODS FOR COUPLING PREFABRICATED PANELS TOGETHER AND REINFORCING FRAME STRUCTURE						
Nexii Building Solutions Inc. Z120 0017	United States Continuation	Pending				
PREFABRICATED INSULATED BUILDING PANEL WITH CURED CEMENTITIOUS LAYER BONDED TO INSULATION						
NEXII Building Solutions Inc. Z120 0071	United States Provisional	Pending				
PREFABRICATED BUILDING PANELS AND METHODS FOR CONSTRUCTING BUILDINGS						

This is Exhibit “ F ” referred to in the  
Affidavit of William Tucker  
sworn before me at Vancouver  
this 10<sup>th</sup> day of January, 2024



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A Commissioner for taking Affidavits  
for British Columbia

GRANT OF SECURITY INTEREST  
PATENTS

THIS GRANT OF SECURITY INTEREST, dated as of August 27, 2021, is executed by NEXII HOLDINGS INC., a Delaware Corporation with an address of 200 – 1455 West Georgia St. Vancouver, V6G 2T3 (“Debtor”), in favor of HORIZON TECHNOLOGY FINANCE CORPORATION, a Delaware corporation with an address of 312 Farmington Avenue, Farmington, Connecticut 06032, as Collateral Agent, on behalf of the Lenders (as defined in the Agreement) (“Secured Party”).

A. Pursuant to a certain Venture Loan and Security Agreement, dated on or about the date hereof (the “Agreement”) by and between, *inter alia*, Debtor, Secured Party and Lenders party thereto, the Lenders have agreed to extend credit to Debtor and the other Borrowers (as defined in the Agreement) upon the terms and subject to the conditions set forth therein;

B. Debtor owns the patents and/or applications for patents, more particularly described on Schedules 1-A and 1-B annexed hereto as part hereof (collectively, the “Patents”);

C. Pursuant to the Agreement, Debtor has granted to Secured Party a security interest in all right, title and interest of Debtor in and to the Patents, together with any reissue, continuation, continuation-in-part or extension thereof, and all proceeds thereof, including any and all causes of action which may exist by reason of infringement thereof for the full term of the Patents (the “Collateral”), to secure the prompt payment, performance and observance of the Obligations (as defined in the Agreement);

NOW, THEREFORE, for good and valuable consideration, receipt of which is hereby acknowledged, Debtor does hereby further grant to Secured Party a security interest in the Collateral to secure the prompt payment, performance and observance of the Obligations.

Debtor does hereby further acknowledge and affirm that the rights and remedies of Secured Party with respect to the security interest in the Collateral granted hereby are more fully set forth in the Agreement, the terms and provisions of which are hereby incorporated herein by reference as if fully set forth herein.

[signature page follows]



IN WITNESS WHEREOF, Debtor has caused this instrument to be executed as of the day and year first written above.

NEXII HOLDINGS INC.

By: DocuSigned by: Stephen Sidwell  
0049042F6BBE1429  
Name: Stephen Sidwell  
Title: President

### Schedule 1 (1-A and 1-B)

Your File	Owner Family	Country Case Type	Status	Appln. No. Appln. Date	Patent. No. Patent Date	Priority. No. Priority Date	Expiration Date
	NBS IP Inc.	United States Ordinary Filing	Granted	13/964391 12-Aug-2013	9649662 16-May-2017	61/729300 21-Nov-2012	12-Aug-2033
SEAMLESS REINFORCED CONCRETE STRUCTURAL INSULATED PANEL							
	NBS IP Inc.	United States Ordinary Filing	Granted	13/964798 12-Aug-2013	9649663 16-May-2017	61/729300 21-Nov-2012	26-Jul-2035
SEAMLESS REINFORCED CONCRETE STRUCTURAL INSULATED PANEL							



This is Exhibit “ G ” referred to in the  
Affidavit of William Tucker  
sworn before me at Vancouver  
this 10<sup>th</sup> day of January, 2024



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A Commissioner for taking Affidavits  
for British Columbia

GRANT OF SECURITY INTEREST  
TRADEMARKS

THIS GRANT OF SECURITY INTEREST, dated as of August 27, 2021, is executed by NEXII BUILDING SOLUTIONS INC., a corporation existing under the laws of the Province of British Columbia with an address of 200 – 1455 West Georgia St. Vancouver, V6G 2T3 (“Debtor”), in favor of HORIZON TECHNOLOGY FINANCE CORPORATION, a Delaware corporation with an address of 312 Farmington Avenue, Farmington, Connecticut 06032, as Collateral Agent, on behalf of Lenders (as defined in the Agreement) (“Secured Party”).

A. Pursuant to a certain Venture Loan and Security Agreement, dated as of the date hereof (the “Agreement”) by and between, *inter alia*, Debtor, Secured Party and Lenders party thereto, the Lenders have agreed to extend certain credit facilities to Debtor and the other Borrowers (as defined in the Agreement) upon the terms and subject to the conditions set forth therein;

B. Debtor owns the registered trademarks, service marks (and applications and registrations therefor), of the United States, more particularly described on Schedules 1-A and 1-B annexed hereto as part hereof (collectively, the “Trademarks”);

C. Pursuant to the Agreement, Debtor has granted to Secured Party a security interest in all right, title and interest of Debtor in and to the Trademarks, together with associated goodwill, and all proceeds thereof, including any and all causes of action which may exist by reason of infringement thereof for the full term of the Trademarks (the “Collateral”), to secure the prompt payment, performance and observance of the Obligations (as defined in the Agreement);

NOW, THEREFORE, for good and valuable consideration, receipt of which is hereby acknowledged, Debtor does hereby further grant to Secured Party a security interest in the Collateral to secure the prompt payment, performance and observance of the Obligations.

Debtor does hereby further acknowledge and affirm that the rights and remedies of Secured Party with respect to the security interest in the Collateral granted hereby are more fully set forth in the Agreement, the terms and provisions of which are hereby incorporated herein by reference as if fully set forth herein.

[signature page follows]

IN WITNESS WHEREOF, Debtor has caused this instrument to be executed as of the day and year first written above.

NEXII BUILDING SOLUTIONS INC.

By: DocuSigned by:  
Stephen Sidwell  
00490A2F8BE1429  
Name: Stephen Sidwell  
Title: CEO

**Schedule 1 (1-A and 1-B)**

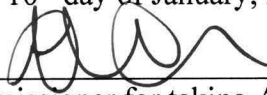
Country	Trademark	Status	Appln. No.	Appln. Date	Regn. No.	Regn. Date
United States	NEXII	Registered	88/462491	06-Jun-2019	6049448	05-May-2020
			Owner: NEXII Building Solutions Inc.			
United States	NEXII	Pending	88/631986	26-Sep-2019	Owner: NEXII Building Solutions Inc.	
United States	NEXII Design	Registered	88/462500	06-Jun-2019	6076377	09-Jun-2020
			Owner: NEXII Building Solutions Inc.			

Allowance Date:

**NEXII**

United States	CHANGE THE BLUEPRINT. CHANGE THE PLANET.	Published	90/343021	25-Nov-2020		
			Owner: NEXII BUILDING SOLUTIONS INC.			
			Allowance Date: 26-May-2021			
United States	NEXIITE	Published	90/343047	25-Nov-2020		
			Owner: NEXII BUILDING SOLUTIONS INC.			
			Allowance Date: 26-May-2021			

This is Exhibit “ H ” referred to in the  
Affidavit of William Tucker  
sworn before me at Vancouver  
this 10<sup>th</sup> day of January, 2024



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A Commissioner for taking Affidavits  
for British Columbia

Kyle Plunkett  
Direct: 416.865.3406  
E-mail: [kplunkett@airdberlis.com](mailto:kplunkett@airdberlis.com)

**PRIVATE & CONFIDENTIAL**

June 21, 2023

**DELIVERED BY REGISTERED MAIL, COURIER AND EMAIL**

**Attention:** Nexii Building Solutions Inc.  
Grant & Sinclair Architects Ltd.  
NBS IP Inc.  
Nexii Construction Inc.  
Nexii Holdings Inc.  
Omicron Canada Inc.  
Omicron Construction Ltd.  
Omicron Consulting Ltd.  
Omicron Interiors Ltd. and  
Omicron Construction Management Ltd.

(collectively, the "Borrowers")

c/o Nexii Building Solutions Inc.  
200-1455 West Georgia Street  
Vancouver, BC, V6G 2T3  
**Attention: Stephen Sidwell**  
**email: [ssidwell@nexii.com](mailto:ssidwell@nexii.com)**

Dear Sirs/Madams:

**Re: Indebtedness of the Borrowers to each of POWERSCOURT INVESTMENTS XXV TRUST, as assignee of POWERSCOURT INVESTMENTS XXV, LP, TRINITY CAPITAL INC., HORIZON CREDIT II LLC, as assignee of HORIZON TECHNOLOGY FINANCE CORPORATION, HORIZON FUNDING I, LLC (hereinafter referred to collectively as the "Lenders" and each a "Lender") – Demand for Payment**

We are the lawyers for the Lenders and the Collateral Agent (as defined below) in connection with its lending arrangement with the Borrowers.

The Borrowers are indebted to the Lenders with respect to certain credit facilities made available by the Lenders to the Borrowers pursuant to and under the terms of, amongst other things, an Amended and Restated Venture Loan and Security Agreement dated as of June 8, 2022 (as amended, the "**Loan Agreement**") entered into between Horizon Technology Finance Corporation, as collateral agent for and



on behalf of the Lenders (“**Collateral Agent**”), and each the Lenders and the Borrowers. Under the terms of the Loan Agreement, the Borrowers granted a security interest in all their assets, including Borrowers’ Intellectual Property (as defined in the Loan Agreement), in favour of the Collateral Agent. Capitalized terms used but not defined herein shall have the meanings ascribed to them in the Loan Agreement.

As additional security for the Borrowers’ obligations arising under the Loan Agreement and related loan documents, the following security documents were executed in favour of the Lenders (collectively with the security provisions of the Loan Agreement, the “**Security**”):

1. A General Security Agreement dated August 27, 2021 (as amended, restated, supplemented or otherwise modified from time to time) granted by, *inter alia*, the Borrowers in favour of the Collateral Agent;
2. A Grant of Security Interest – Patents dated August 27, 2021, executed by each of Nexii Building Solutions Inc. and Nexii Holdings Inc. in favour of the Collateral Agent; and
3. A Grant of Security Interest – Trademarks dated August 27, 2021, executed by Nexii Building Solutions Inc. in favour of the Collateral Agent.

One or more Events of Default, as defined in the Loan Agreement, have occurred and/or are continuing, and none of which have been waived by the Collateral Agent or the Lenders. Accordingly, the Borrowers are in default of their obligations under the Loan Agreement and the Lenders are entitled to demand immediate payment of the Indebtedness (as defined below).

As of June 13, 2023, the following amounts are owing to the Lenders by each Borrower, joint and severally, for principal and interest pursuant to the Loan Agreement:

	<b>Principal (USD)</b>	<b>Interest (USD)</b>	<b>Final Payments (USD)</b>	<b>Fees and Expenses (USD)</b>	<b>Total (USD)</b>
Loan A	\$7,500,000.00	\$322,968.75	\$187,500.00	\$242,268.75	<b>\$8,252,737.50</b>
Loan B	\$7,500,000.00	\$322,968.75	\$187,500.00	\$242,268.75	<b>\$8,252,737.50</b>
Loan C	\$7,500,000.00	\$322,968.75	\$187,500.00	\$263,758.83	<b>\$8,274,227.58</b>
Loan D	\$7,500,000.00	\$322,968.75	\$187,500.00	\$242,268.75	<b>\$8,252,737.50</b>
Loan E	\$10,000,000.00	\$430,625.01	\$250,000.00	\$315,366.67	<b>\$10,995,991.68</b>
Loan F	\$5,000,000.00	\$215,312.50	\$125,000.00	\$161,512.50	<b>\$5,501,825.00</b>
Loan G	\$5,000,000.00	\$215,312.50	\$125,000.00	\$157,683.33	<b>\$5,497,995.83</b>
Loan H	\$5,000,000.00	\$215,312.50	\$125,000.00	\$161,512.50	<b>\$5,501,825.00</b>
Loan I	\$5,000,000.00	\$215,312.50	\$125,000.00	\$161,512.50	<b>\$5,501,825.00</b>
<b>Total (USD)</b>	<b>\$60,000,000.00</b>	<b>\$2,583,750.01</b>	<b>\$1,500,000.00</b>	<b>\$1,948,152.58</b>	<b>\$66,031,902.59</b>

On behalf of the Lenders, we hereby make formal demand for payment of **\$66,031,902.59 USD**, together with accruing interest and any and all costs and expenses (including, without limitation, any and all legal and other professional fees incurred by the Collateral Agent and/or the Lenders) incurred by the Lenders (collectively, the “**Indebtedness**”). Interest continues to accrue on the Indebtedness at the rates established by the Loan Agreement.

If payment of the Indebtedness is not received immediately, in accordance with section 9 of the Loan Agreement, the Lenders and the Collateral Agent shall take whatever steps considered necessary or appropriate to collect and recover the amounts owing to them, including, without limitation, the

commencement of proceedings and/or steps to appoint a receiver or receivers. Should enforcement be required, the Collateral Agent will also be seeking all costs incurred in so doing.

On behalf of the Collateral Agent, we hereby enclose copies of Notices of Intention to Enforce Security delivered pursuant to subsection 244(1) of the *Bankruptcy and Insolvency Act* (Canada) (the “**BIA Notices**”) in respect of each of the Borrowers.

In the interim, the Lenders hereby reserve all of their rights and remedies, including to initiate proceedings within the ten (10) day period set out in the BIA Notices, if circumstances warrant such proceedings.

Yours truly,

AIRD & BERLIS LLP



Kyle Plunkett

Encl., with copy to Client.

Cc:

Norton Rose Fulbright Canada LLP  
510 West Georgia Street, Suite 1800,  
Vancouver, BC V6B 0M3  
Attention: Christopher Horte  
Email: [Christopher.Horte@nortonrosefulbright.com](mailto:Christopher.Horte@nortonrosefulbright.com)

- and -

Fasken Martineau DuMoulin LLP  
550 Burrard Street, Suite 2900  
Vancouver, BC V6C 0A3  
Attention: Kibben Jackson  
Email: [kjackson@fasken.com](mailto:kjackson@fasken.com)

NOTICE OF INTENTION TO ENFORCE SECURITY  
(*Bankruptcy and Insolvency Act*, Subsection 244(1))

**DELIVERED BY REGISTERED MAIL, COURIER AND EMAIL**

**TO: Nexii Building Solutions Inc.**  
200-1455 West Georgia Street  
Vancouver, BC, V6G 2T3  
**Attention: Stephen Sidwell**  
**email: ssidwell@nexii.com**

***Insolvent company / person***

**TAKE NOTICE** that:

1. Horizon Technology Finance Corporation, a secured creditor acting in its capacity as collateral agent on behalf of the lenders (the "**Collateral Agent**"), intends to enforce its security on the property, assets and undertakings of **Nexii Building Solutions Inc.** (the "**Debtor**") for the obligations of the Debtor to the lenders, including, without limiting the generality of the foregoing, all the equipment, accounts, proceeds, books and records, inventory, leaseholds and all other personal and real property of the Debtor, in the:
  - a. Amended and Restated Venture Loan and Security Agreement dated June 8, 2022, executed by, among other parties, the Debtor in favour of the lenders and the Collateral Agent;
  - b. General Security Agreement dated August 27, 2021 (as amended, restated, supplemented or otherwise modified from time to time) granted by, among other parties, the Debtor in favour of the Collateral Agent as agent for the lenders;
  - c. Grant of Security Interest – Patents dated August 27, 2021, executed by, among other parties, the Debtor in favour of the Collateral Agent as agent for the lenders;
  - d. Grant of Security Interest – Trademarks dated August 27, 2021, executed by, among other parties, the Debtor in favour of the Collateral Agent as agent for the lenders;
2. The security that is to be enforced (the "**Security**") is in the form of the security listed in paragraph 1 above.
3. As of June 13, 2023, the total amount of indebtedness secured by the Security is the sum of \$66,031,902.59 USD in principal and interest, plus accruing interest, costs and expenses.
4. The Collateral Agent will not have the right to enforce the Security until after the expiry of the ten day period following the date on which this notice is sent, unless the Debtor consents to an earlier enforcement.

**DATED** at Toronto this 21<sup>st</sup> day of June, 2023.

**HORIZON TECHNOLOGY FINANCE  
CORPORATION**  
by its lawyers, **Aird & Berlis LLP**

Per:




---

Kyle Plunkett  
Brookfield Place, Suite 1800  
181 Bay Street, Toronto, ON M5J 2T9  
Tel: 416-863-1500/Fax: 416-863-1515

**Note:** This Notice is given for precautionary purposes only and there is no acknowledgement that any person to whom this Notice is delivered is insolvent, or that the provisions of the *Bankruptcy and Insolvency Act* apply to the enforcement of this security.

NOTICE OF INTENTION TO ENFORCE SECURITY  
(*Bankruptcy and Insolvency Act*, Subsection 244(1))

**DELIVERED BY REGISTERED MAIL, COURIER AND EMAIL**

**TO: Grant & Sinclair Architects Ltd., c/o Nexii Building Solutions Inc.**  
200-1455 West Georgia Street  
Vancouver, BC, V6G 2T3  
**Attention: Stephen Sidwell**  
**email: ssidwell@nexii.com**

***Insolvent company / person***

**TAKE NOTICE** that:

1. Horizon Technology Finance Corporation, a secured creditor acting in its capacity as collateral agent on behalf of the lenders (the "**Collateral Agent**"), intends to enforce its security on the property, assets and undertakings of **Grant & Sinclair Architects Ltd.** (the "**Debtor**") for the obligations of the Debtor to the lenders, including, without limiting the generality of the foregoing, all the equipment, accounts, proceeds, books and records, inventory, leaseholds and all other personal and real property of the Debtor, in the:
  - a. Amended and Restated Venture Loan and Security Agreement dated June 8, 2022, executed by, among other parties, the Debtor in favour of the lenders and the Collateral Agent;
  - b. General Security Agreement dated August 27, 2021 (as amended, restated, supplemented or otherwise modified from time to time) granted by, among other parties, the Debtor in favour of the Collateral Agent as agent for the lenders;
2. The security that is to be enforced (the "**Security**") is in the form of the security listed in paragraph 1 above.
3. As of June 13, 2023, the total amount of indebtedness secured by the Security is the sum of \$66,031,902.59 USD in principal and interest, plus accruing interest, costs and expenses.
4. The Collateral Agent will not have the right to enforce the Security until after the expiry of the ten day period following the date on which this notice is sent, unless the Debtor consents to an earlier enforcement.

**DATED** at Toronto this 21<sup>st</sup> day of June, 2023.

**HORIZON TECHNOLOGY FINANCE CORPORATION**

by its lawyers, **Aird & Berlis LLP**

Per:



\_\_\_\_\_  
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NOTICE OF INTENTION TO ENFORCE SECURITY  
(Bankruptcy and Insolvency Act, Subsection 244(1))

DELIVERED BY REGISTERED MAIL, COURIER AND EMAIL

**TO: NBS IP Inc., c/o Nexii Building Solutions Inc.**  
200-1455 West Georgia Street  
Vancouver, BC, V6G 2T3  
**Attention: Stephen Sidwell**  
**email: ssidwell@nexii.com**

*Insolvent company / person*

TAKE NOTICE that:

1. Horizon Technology Finance Corporation, a secured creditor acting in its capacity as collateral agent on behalf of the lenders (the "**Collateral Agent**"), intends to enforce its security on the property, assets and undertakings of **NBS IP Inc.** (the "**Debtor**") for the obligations of the Debtor to the lenders, including, without limiting the generality of the foregoing, all the equipment, accounts, proceeds, books and records, inventory, leaseholds and all other personal and real property of the Debtor, in the:
  - a. Amended and Restated Venture Loan and Security Agreement dated June 8, 2022, executed by, among other parties, the Debtor in favour of the lenders and the Collateral Agent;
  - b. General Security Agreement dated August 27, 2021 (as amended, restated, supplemented or otherwise modified from time to time) granted by, among other parties, the Debtor in favour of the Collateral Agent as agent for the lenders;
2. The security that is to be enforced (the "**Security**") is in the form of the security listed in paragraph 1 above.
3. As of June 13, 2023, the total amount of indebtedness secured by the Security is the sum of \$66,031,902.59 USD in principal and interest, plus accruing interest, costs and expenses.
4. The Collateral Agent will not have the right to enforce the Security until after the expiry of the ten day period following the date on which this notice is sent, unless the Debtor consents to an earlier enforcement.

DATED at Toronto this 21<sup>st</sup> day of June, 2023.

**HORIZON TECHNOLOGY FINANCE CORPORATION**

by its lawyers, **Aird & Berlis LLP**

Per:



\_\_\_\_\_  
Kyle Plunkett

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NOTICE OF INTENTION TO ENFORCE SECURITY  
(Bankruptcy and Insolvency Act, Subsection 244(1))

**DELIVERED BY REGISTERED MAIL, COURIER AND EMAIL**

**TO: Nexii Construction Inc., c/o Nexii Building Solutions Inc.**  
200-1455 West Georgia Street  
Vancouver, BC, V6G 2T3  
**Attention: Stephen Sidwell**  
**email: ssidwell@nexii.com**

***Insolvent company / person***

**TAKE NOTICE** that:

1. Horizon Technology Finance Corporation, a secured creditor acting in its capacity as collateral agent on behalf of the lenders (the "**Collateral Agent**"), intends to enforce its security on the property, assets and undertakings of **Nexii Construction Inc.** (the "**Debtor**") for the obligations of the Debtor to the lenders, including, without limiting the generality of the foregoing, all the equipment, accounts, proceeds, books and records, inventory, leaseholds and all other personal and real property of the Debtor, in the:
  - a. Amended and Restated Venture Loan and Security Agreement dated June 8, 2022, executed by, among other parties, the Debtor in favour of the lenders and the Collateral Agent;
  - b. General Security Agreement dated August 27, 2021 (as amended, restated, supplemented or otherwise modified from time to time) granted by, among other parties, the Debtor in favour of the Collateral Agent as agent for the lenders;
2. The security that is to be enforced (the "**Security**") is in the form of the security listed in paragraph 1 above.
3. As of June 13, 2023, the total amount of indebtedness secured by the Security is the sum of \$66,031,902.59 USD in principal and interest, plus accruing interest, costs and expenses.
4. The Collateral Agent will not have the right to enforce the Security until after the expiry of the ten day period following the date on which this notice is sent, unless the Debtor consents to an earlier enforcement.

**DATED** at Toronto this 21<sup>st</sup> day of June, 2023.

**HORIZON TECHNOLOGY FINANCE CORPORATION**

by its lawyers, **Aird & Berlis LLP**

Per:



\_\_\_\_\_  
Kyle Plunkett

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Tel: 416-863-1500/Fax: 416-863-1515

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NOTICE OF INTENTION TO ENFORCE SECURITY  
(Bankruptcy and Insolvency Act, Subsection 244(1))

**DELIVERED BY REGISTERED MAIL, COURIER AND EMAIL**

**TO: Nexii Holdings Inc., c/o Nexii Building Solutions Inc.**  
200-1455 West Georgia Street  
Vancouver, BC, V6G 2T3  
**Attention: Stephen Sidwell**  
**email: ssidwell@nexii.com**

***Insolvent company / person***

**TAKE NOTICE** that:

1. Horizon Technology Finance Corporation, a secured creditor acting in its capacity as collateral agent on behalf of the lenders (the "**Collateral Agent**"), intends to enforce its security on the property, assets and undertakings of **Nexii Holdings Inc.** (the "**Debtor**") for the obligations of the Debtor to the lenders, including, without limiting the generality of the foregoing, all the equipment, accounts, proceeds, books and records, inventory, leaseholds and all other personal and real property of the Debtor, in the:
  - a. Amended and Restated Venture Loan and Security Agreement dated June 8, 2022, executed by, among other parties, the Debtor in favour of the lenders and the Collateral Agent;
  - b. Grant of Security Interest – Patents dated August 27, 2021, executed by, among other parties, the Debtor in favour of the Collateral Agent as agent for the lenders;
2. The security that is to be enforced (the "**Security**") is in the form of the security listed in paragraph 1 above.
3. As of June 13, 2023, the total amount of indebtedness secured by the Security is the sum of \$66,031,902.59 USD in principal and interest, plus accruing interest, costs and expenses.
4. The Collateral Agent will not have the right to enforce the Security until after the expiry of the ten day period following the date on which this notice is sent, unless the Debtor consents to an earlier enforcement.

**DATED** at Toronto this 21<sup>st</sup> day of June, 2023.

**HORIZON TECHNOLOGY FINANCE CORPORATION**

by its lawyers, **Aird & Berlis LLP**

Per:



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NOTICE OF INTENTION TO ENFORCE SECURITY  
(Bankruptcy and Insolvency Act, Subsection 244(1))

**DELIVERED BY REGISTERED MAIL, COURIER AND EMAIL**

**TO: Omicron Canada Inc., c/o Nexii Building Solutions Inc.**  
200-1455 West Georgia Street  
Vancouver, BC, V6G 2T3  
**Attention: Stephen Sidwell**  
**email: ssidwell@nexii.com**

***Insolvent company / person***

**TAKE NOTICE** that:

1. Horizon Technology Finance Corporation, a secured creditor acting in its capacity as collateral agent on behalf of the lenders (the "**Collateral Agent**"), intends to enforce its security on the property, assets and undertakings of **Omicron Canada Inc.** (the "**Debtor**") for the obligations of the Debtor to the lenders, including, without limiting the generality of the foregoing, all the equipment, accounts, proceeds, books and records, inventory, leaseholds and all other personal and real property of the Debtor, in the:
  - a. Amended and Restated Venture Loan and Security Agreement dated June 8, 2022, executed by, among other parties, the Debtor in favour of the lenders and the Collateral Agent;
  - b. General Security Agreement dated August 27, 2021 (as amended, restated, supplemented or otherwise modified from time to time) granted by, among other parties, the Debtor in favour of the Collateral Agent as agent for the lenders;
2. The security that is to be enforced (the "**Security**") is in the form of the security listed in paragraph 1 above.
3. As of June 13, 2023, the total amount of indebtedness secured by the Security is the sum of \$66,031,902.59 USD in principal and interest, plus accruing interest, costs and expenses.
4. The Collateral Agent will not have the right to enforce the Security until after the expiry of the ten day period following the date on which this notice is sent, unless the Debtor consents to an earlier enforcement.

**DATED** at Toronto this 21<sup>st</sup> day of June, 2023.

**HORIZON TECHNOLOGY FINANCE CORPORATION**

by its lawyers, **Aird & Berlis LLP**

Per:



\_\_\_\_\_  
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NOTICE OF INTENTION TO ENFORCE SECURITY  
(Bankruptcy and Insolvency Act, Subsection 244(1))

DELIVERED BY REGISTERED MAIL, COURIER AND EMAIL

TO: **Omicron Construction Ltd., c/o Nexii Building Solutions Inc.**  
200-1455 West Georgia Street  
Vancouver, BC, V6G 2T3  
**Attention: Stephen Sidwell**  
email: ssidwell@nexii.com

*Insolvent company / person*

TAKE NOTICE that:

1. Horizon Technology Finance Corporation, a secured creditor acting in its capacity as collateral agent on behalf of the lenders (the "**Collateral Agent**"), intends to enforce its security on the property, assets and undertakings of **Omicron Construction Ltd.** (the "**Debtor**") for the obligations of the Debtor to the lenders, including, without limiting the generality of the foregoing, all the equipment, accounts, proceeds, books and records, inventory, leaseholds and all other personal and real property of the Debtor, in the:
  - a. Amended and Restated Venture Loan and Security Agreement dated June 8, 2022, executed by, among other parties, the Debtor in favour of the lenders and the Collateral Agent;
  - b. General Security Agreement dated August 27, 2021 (as amended, restated, supplemented or otherwise modified from time to time) granted by, among other parties, the Debtor in favour of the Collateral Agent as agent for the lenders;
2. The security that is to be enforced (the "**Security**") is in the form of the security listed in paragraph 1 above.
3. As of June 13, 2023, the total amount of indebtedness secured by the Security is the sum of \$66,031,902.59 USD in principal and interest, plus accruing interest, costs and expenses.
4. The Collateral Agent will not have the right to enforce the Security until after the expiry of the ten day period following the date on which this notice is sent, unless the Debtor consents to an earlier enforcement.

DATED at Toronto this 21<sup>st</sup> day of June, 2023.

**HORIZON TECHNOLOGY FINANCE CORPORATION**

by its lawyers, **Aird & Berlis LLP**

Per:



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NOTICE OF INTENTION TO ENFORCE SECURITY  
(Bankruptcy and Insolvency Act, Subsection 244(1))

**DELIVERED BY REGISTERED MAIL, COURIER AND EMAIL**

**TO: Omicron Consulting Ltd., c/o Nexii Building Solutions Inc.**  
200-1455 West Georgia Street  
Vancouver, BC, V6G 2T3  
**Attention: Stephen Sidwell**  
**email: ssidwell@nexii.com**

***Insolvent company / person***

**TAKE NOTICE** that:

1. Horizon Technology Finance Corporation, a secured creditor acting in its capacity as collateral agent on behalf of the lenders (the "**Collateral Agent**"), intends to enforce its security on the property, assets and undertakings of **Omicron Consulting Ltd.** (the "**Debtor**") for the obligations of the Debtor to the lenders, including, without limiting the generality of the foregoing, all the equipment, accounts, proceeds, books and records, inventory, leaseholds and all other personal and real property of the Debtor, in the:
  - a. Amended and Restated Venture Loan and Security Agreement dated June 8, 2022, executed by, among other parties, the Debtor in favour of the lenders and the Collateral Agent;
  - b. General Security Agreement dated August 27, 2021 (as amended, restated, supplemented or otherwise modified from time to time) granted by, among other parties, the Debtor in favour of the Collateral Agent as agent for the lenders;
2. The security that is to be enforced (the "**Security**") is in the form of the security listed in paragraph 1 above.
3. As of June 13, 2023, the total amount of indebtedness secured by the Security is the sum of \$66,031,902.59 USD in principal and interest, plus accruing interest, costs and expenses
4. The Collateral Agent will not have the right to enforce the Security until after the expiry of the ten day period following the date on which this notice is sent, unless the Debtor consents to an earlier enforcement.

**DATED** at Toronto this 21<sup>st</sup> day of June, 2023.

**HORIZON TECHNOLOGY FINANCE CORPORATION**  
by its lawyers, **Aird & Berlis LLP**

Per:



\_\_\_\_\_  
Kyle Plunkett

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NOTICE OF INTENTION TO ENFORCE SECURITY  
(*Bankruptcy and Insolvency Act*, Subsection 244(1))

**DELIVERED BY REGISTERED MAIL, COURIER AND EMAIL**

**TO: Omicron Interiors Ltd., c/o Nexii Building Solutions Inc.**  
200-1455 West Georgia Street  
Vancouver, BC, V6G 2T3  
**Attention: Stephen Sidwell**  
**email: ssidwell@nexii.com**

*Insolvent company / person*

**TAKE NOTICE** that:

5. Horizon Technology Finance Corporation, a secured creditor acting in its capacity as collateral agent on behalf of the lenders (the "**Collateral Agent**"), intends to enforce its security on the property, assets and undertakings of **Omicron Interiors Ltd.** (the "**Debtor**") for the obligations of the Debtor to the lenders, including, without limiting the generality of the foregoing, all the equipment, accounts, proceeds, books and records, inventory, leaseholds and all other personal and real property of the Debtor, in the:
  - a. Amended and Restated Venture Loan and Security Agreement dated June 8, 2022, executed by, among other parties, the Debtor in favour of the lenders and the Collateral Agent;
  - b. General Security Agreement dated August 27, 2021 (as amended, restated, supplemented or otherwise modified from time to time) granted by, among other parties, the Debtor in favour of the Collateral Agent as agent for the lenders;
6. The security that is to be enforced (the "**Security**") is in the form of the security listed in paragraph 1 above.
7. As of June 13, 2023, the total amount of indebtedness secured by the Security is the sum of \$66,031,902.59 USD in principal and interest, plus accruing interest, costs and expenses.
8. The Collateral Agent will not have the right to enforce the Security until after the expiry of the ten day period following the date on which this notice is sent, unless the Debtor consents to an earlier enforcement.

**DATED** at Toronto this 21<sup>st</sup> day of June, 2023.

**HORIZON TECHNOLOGY FINANCE CORPORATION**

by its lawyers, **Aird & Berlis LLP**

Per:

  
\_\_\_\_\_  
Kyle Plunkett

Brookfield Place, Suite 1800  
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Tel: 416-863-1500/Fax: 416-863-1515

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NOTICE OF INTENTION TO ENFORCE SECURITY  
(*Bankruptcy and Insolvency Act*, Subsection 244(1))

**DELIVERED BY REGISTERED MAIL, COURIER AND EMAIL**

**TO: Omicron Construction Management Ltd., c/o Nexii Building Solutions Inc.**  
200-1455 West Georgia Street  
Vancouver, BC, V6G 2T3  
**Attention: Stephen Sidwell**  
**email: ssidwell@nexii.com**

***Insolvent company / person***

**TAKE NOTICE** that:

9. Horizon Technology Finance Corporation, a secured creditor acting in its capacity as collateral agent on behalf of the lenders (the "**Collateral Agent**"), intends to enforce its security on the property, assets and undertakings of **Omicron Construction Management Ltd.** (the "**Debtor**") for the obligations of the Debtor to the lenders, including, without limiting the generality of the foregoing, all the equipment, accounts, proceeds, books and records, inventory, leaseholds and all other personal and real property of the Debtor, in the:
  - a. Amended and Restated Venture Loan and Security Agreement dated June 8, 2022, executed by, among other parties, the Debtor in favour of the lenders and the Collateral Agent;
  - b. General Security Agreement dated August 27, 2021 (as amended, restated, supplemented or otherwise modified from time to time) granted by, among other parties, the Debtor in favour of the Collateral Agent as agent for the lenders;
10. The security that is to be enforced (the "**Security**") is in the form of the security listed in paragraph 1 above.
11. As of June 13, 2023, the total amount of indebtedness secured by the Security is the sum of \$66,031,902.59 USD in principal and interest, plus accruing interest, costs and expenses.
12. The Collateral Agent will not have the right to enforce the Security until after the expiry of the ten day period following the date on which this notice is sent, unless the Debtor consents to an earlier enforcement.

**DATED** at Toronto this 21<sup>st</sup> day of June, 2023.

**HORIZON TECHNOLOGY FINANCE CORPORATION**

by its lawyers, **Aird & Berlis LLP**

Per:




---

Kyle Plunkett

Brookfield Place, Suite 1800  
181 Bay Street, Toronto, ON M5J 2T9  
Tel: 416-863-1500/Fax: 416-863-1515

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**REGISTERED  
DOMESTIC**

CUSTOMER RECEIPT

**RECOMMANDÉ  
RÉGIME INTÉRIEUR**

REÇU DU CLIENT



**Nexii Building Solutions Inc.**  
200-1455 West Georgia Street  
Vancouver, BC, V6G 2T3  
**Attention: Stephen Sidwell**



Tracking Number Numéro de repérage de la SCP

Value déclarée \$

**RN 118 415 690 CA**

33-086-584 (14-06)

**REGISTERED**

Fragile and perishable articles are not indemnified against damage. Indemnity and fees information is available on request at your postal outlet.

**Instructions**

- 1) Complete any declared value on receipt, tear on perforated line, date stamp on reverse and give receipt to customer.
- 2) Remove label from backing (except area marked X) and apply the label to front of item adjacent to address.

Apply label here  
Veuillez placer l'étiquette ici

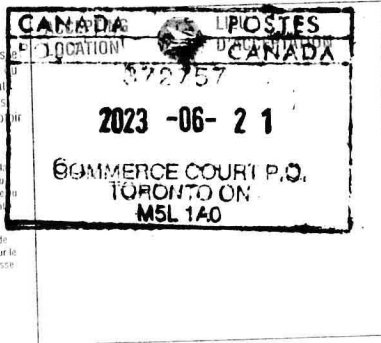


**RECOMMANDE**

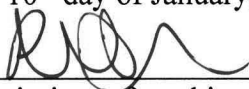
Aucune indemnité ne sera versée pour l'avarie d'un objet fragile ou périssable. Des renseignements sur les indemnités et les droits sont disponibles à votre comptoir postal.

**Instructions**

- 1) Indiquez la valeur déclarée dans la section Reçu, détachez le long du pointillé, apposez le timbre à date au verso et remettez le reçu au client.
- 2) Décollez la pellicule protectrice (sauf la partie marquée d'un X) de l'étiquette. Apposez l'étiquette sur le dessus de l'enveloppe, près de l'adresse.



This is Exhibit “ I ” referred to in the  
Affidavit of William Tucker  
sworn before me at Vancouver  
this 10<sup>th</sup> day of January, 2024



---

A Commissioner for taking Affidavits  
for British Columbia

**Nexii Building Solutions Inc. (Nexii Only)**  
Condensed Consolidated Statements of Financial Position  
As at Nov 30, 2023 and Dec 31, 2022

<b>(CAD, \$000s)</b>	<b>Nov 30, 2023</b>	<b>Dec 31, 2022</b>
Cash	3,163	22,758
Accounts receivable	4,579	2,098
Inventory	2,595	1,862
Prepaid expenses and deposits	2,406	1,205
Due from related parties	0	1,488
Property, plant and equipment	25,372	27,997
Intangible assets	894	974
Investment	30,663	30,663
Other assets	321	322
<b>Total Assets</b>	<b>69,992</b>	<b>89,365</b>
Accounts payable and accrued liabilities	15,416	12,209
Contract liabilities, refundable deposits and provisions	4,031	6,509
Lease obligations	13,298	13,659
Long-term debt	96,173	75,899
Net Due to Intercompany	1,462	0
Preferred shares and subscription deposits	12,930	0
Derivative liabilities	4,921	4,702
Due to related parties	4,408	414
<b>Total Liabilities</b>	<b>152,639</b>	<b>113,392</b>
<b>Equity</b>	<b>-82,647</b>	<b>-24,027</b>
<b>Total Liabilities &amp; Equity</b>	<b>69,992</b>	<b>89,365</b>



**Nexii Building Solutions Inc. (Nexii Only)**

Condensed Consolidated Statements of Loss and Comprehensive Loss  
For the eleven months ended Nov 30, 2023 and year ended Dec 31, 2022

<b>(CAD, \$000s)</b>	<b>Eleven months ended Nov 30, 2023</b>	<b>Year ended Dec 31, 2022</b>
Sales	14,028	6,888
Cost of sales	26,768	29,964
Gross margin	-12,740	-23,076
Gross margin %	-91%	-335%
Ordinary expenses	46,967	83,068
Other expenses (income)	4,884	-538
<b>Net Loss</b>	<b>-64,591</b>	<b>-105,606</b>

This is Exhibit " J " referred to in the  
Affidavit of William Tucker  
sworn before me at Vancouver  
this 10<sup>th</sup> day of January, 2024



---

A Commissioner for taking Affidavits  
for British Columbia

**RESTRUCTURING SUPPORT TERM SHEET  
NEXII BUILDING SOLUTIONS INC. and SUBSIDIARIES<sup>1</sup>  
(the "TERM SHEET")**

**December 14, 2023**

Reference is made to that: (i) Amended and Restated Venture Loan and Security Agreement, amended and restated as of June 8, 2022 (as amended, the "**A&R Agreement**"); and (ii) Amended and Restated Accommodation Agreement dated as of December 14, 2023 (as amended, and together with the A&R Agreement, the "**Senior Credit Agreement**") between Nexii Building Solutions Inc., Grant & Sinclair Architects Ltd., NBS IP Inc., Nexii Construction Inc., Nexii Holdings Inc., Omicron Canada Inc., Omicron Construction Ltd., Omicron Consulting Ltd., Omicron Interiors Ltd. and Omicron Construction Management Ltd (collectively, the "**Companies**") as borrowers, and Powerscourt Investments XXV, LP ("**PC LP**") as lender, Powerscourt Investments XXV Trust as assignee of PC LP as lender, Trinity Capital Inc. as lender, Horizon Technology Finance Corporation ("**Horizon**") as lender, Horizon Credit II LLC as assignee of Horizon as lender, Horizon Funding I, LLC as assignee of Horizon as lender, and Horizon Funding Trust 2022-1 as assignee of Horizon as lender (collectively, the "**Lenders**") and Horizon, as Collateral Agent.

The Companies have acknowledged that they are in default under the Senior Credit Agreement and that they have significant liquidity constraints, such that they are no longer able to continue operations without additional financing. In consultation with the Lenders, the Companies believe that it is in best interest of the Companies and their respective stakeholders that the Companies commence restructuring proceedings under the *Companies' Creditors Arrangement Act*, R.S.C. 1985, c.C-36, as amended (the "**CCAA**"), and the Companies' proceedings thereunder, the "**CCAA Proceedings**"), which will include the sale, refinancing or restructuring of the business and/or assets of the Companies (the "**Restructuring**") under a court supervised sale process ("**Sale Process**").

For consideration received, the receipt and sufficiency of which are hereby acknowledged by the Companies, the Lenders are prepared to continue to forbear from enforcing on their security and to support the Restructuring, subject to the following terms and conditions:

**1. KEY TERMS OF  
RESTRUCTURING**

The Companies hereby agree to the following, as part of the Restructuring:

- The Companies, with the assistance of KSV Restructuring Inc. ("**KSV**"), the proposed Monitor in the CCAA Proceedings (in such capacity, the "**Monitor**"), shall prepare and deliver to the Lenders an interim cash flow forecast in form and substance satisfactory to the Lenders in their sole discretion (the "**Interim Cash Flow Forecast**"), pursuant to which the Lenders will agree to extend additional loans to the Companies, as needed, to fund the period to the commencement of the CCAA Proceedings (the "**Interim Period**").
- During the Interim Period, no payments shall be made by the Companies other than those contemplated by the Interim Cash Flow Forecast as confirmed by KSV, on behalf of the Lenders, and only as are necessary to preserve the enterprise value of the Companies.
- The Companies shall have engaged an investment bank (the "**IB**") satisfactory to Lenders, on terms satisfactory to the Lenders, by no later than **December 22, 2023**, to assist the Companies and the Monitor with carrying out the Sale Process. The Companies' management shall cooperate in all respects with the IB and the Monitor, including providing financial and other information, assisting with the

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<sup>1</sup> Corporate organizational chart setting out the Companies is attached at Schedule A hereto.

preparation of a teaser and confidential information memorandum, generating a list of potential interested parties, and participating in meetings with interested parties.

- The Companies shall take immediate steps to terminate the Equifaira engagement and related contracts, and provide evidence of same to the Lenders.
- The Companies shall immediately cease all discussions, negotiations and efforts to pursue a commercial transaction of any kind whatsoever with AMG, outside of the Sale Process or without the prior consent of the Monitor.
- The Companies shall engage Fasken Martineau DuMoulin LLP ("**Fasken**") to prepare the application materials for the CCAA initial order and comeback order, in consultation with the Lenders, KSV and their respective legal counsel. Drafts of all application materials, orders and other materials to be filed or sought by the Companies shall be shared with the Lenders, KSV and their respective counsel on no less than (3) three business days' notice, and all such materials shall be in form and substance satisfactory to the Lenders and KSV. Fasken has provided a fee estimate of CAD\$125,000 to prepare these materials.
- The Companies shall commence the CCAA Proceedings by no later than **January 9, 2024** or, if the Supreme Court of British Columbia (the "**Court**") is not available to hear the Companies' application on that date, the next available date, and shall seek the appointment of KSV to act as Monitor of the Companies in the CCAA Proceedings. The Initial Order shall provide for enhanced powers for the Monitor, which powers will be acceptable to the Lenders and KSV in their sole discretion.
- The Companies, with the assistance of KSV, shall prepare and deliver to the Lenders a rolling 13-week cash flow forecast (the "**CCAA Cash Flow Forecast**") in connection with the CCAA Proceedings, which shall be satisfactory to the Lenders in their sole discretion.
- The Lenders shall provide an interim financing facility on terms satisfactory to the Lenders in their sole discretion (the "**DIP Facility**"), to fund the working capital needs of the Companies and the Restructuring during the CCAA Proceedings. The DIP Facility shall be secured by a super priority Court-approved charge (subordinate only to Court-approved charges in favour of administrative professionals in the CCAA Proceedings and the Companies' directors and officers, each in an amount acceptable to the Lenders in their sole discretion). The quantum of the DIP Facility shall depend on the Companies' funding requirements under the CCAA Cash Flow Forecast.
- Bill Tucker shall remain in place as CEO of the Companies for the pendency of the CCAA Proceedings, on terms acceptable to the Lenders, including standard employment terms addressing termination and performance.

## 2. KEY EMPLOYEES

The Lenders shall consent to the establishment of key employee retention plan ("**KERP**") which will provide retention payments Bill Tucker and/or such other selected management that the Lenders deem critical to the Sale Process and a successful Restructuring. The KERP will be satisfactory to the Lenders in all respects.

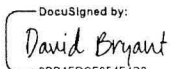
3. **CONFIDENTIALITY** Each party to this Term Sheet shall treat this Term Sheet and details of the Restructuring confidentially and will not disclose the existence or contents of same to any other person or entity without the consent of the other Parties except as may be required to its shareholders, partners, and/or professional advisors, or to enforce the terms of this Term Sheet.
4. **BINDING AGREEMENT** This Term Sheet reflects the intention of the parties hereto and, upon acceptance, shall give rise to legally binding and enforceable obligations in accordance with its terms.
5. **JURISDICTION & ATTORNTMENT** This Term Sheet shall be interpreted and construed in accordance with the laws of the Province of British Columbia and the federal law of Canada applicable therein. The parties hereto attorn to the non-exclusive jurisdiction of the courts of the Province of British Columbia in Vancouver and agree to be bound to any suit, action or proceeding commenced in such courts and by any order or judgment resulting from such suit, action or proceeding.
6. **TERMINATION** This Term Sheet and the obligations of the Lenders contained herein shall automatically cease and terminate if the Companies breach any term or condition of this Term Sheet, except for the obligations contained in sections 3 and 5, which shall continue indefinitely.
7. **CURRENCY** All references to currency noted in this Term Sheet refer to the currency of United States of America unless otherwise stated.
8. **COUNTERPARTS** The parties agree that this Term Sheet may be executed in any number of counterparts and delivered by PDF or other reliable electronic means.

*[Signature page follows]*

IN WITNESS WHEREOF, Borrower, Lender and Collateral Agent have caused this Agreement to be executed as of the day and year first above written.

COMPANIES:


NEXII BUILDING SOLUTIONS INC.

By:   
Name: David Bryant  
Title: Secretary and Treasurer

OMICRON CONSTRUCTION LTD.

By:   
Name: Bill Tucker  
Title: Chief Executive Officer


GRANT & SINCLAIR ARCHITECTS LTD.

By:   
Name: Bill Tucker  
Title: Chief Executive Officer


OMICRON CONSTRUCTION MANAGEMENT LTD.

By:   
Name: Bill Tucker  
Title: Chief Executive Officer

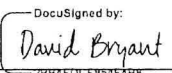
NBS IP INC.

By:   
Name: Bill Tucker  
Title: Chief Executive Officer

OMICRON CONSULTING LTD.

By:   
Name: Bill Tucker  
Title: Chief Executive Officer

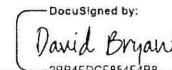
NEXII CONSTRUCTION INC.

By:   
Name: David Bryant  
Title: Secretary and Treasurer

OMICRON INTERIORS LTD.

By:   
Name: Bill Tucker  
Title: Chief Executive Officer

NEXII HOLDINGS INC.


By:   
Name: David Bryant  
Title: Secretary and Treasurer

OMICRON CANADA INC.

By:   
Name: Bill Tucker  
Title: Chief Executive Officer

LENDERS:

TRINITY CAPITAL INC.

By:   
Name: Sarah Stanton  
Title: General Counsel

POWERSCOURT INVESTMENTS XXV, LP

By: Powerscourt Investments GP, LLC, its general partner  
By: Maples Fiduciary Services (Delaware) Inc., its managing member

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

POWERSCOURT INVESTMENTS XXV TRUST

By: 1485 Management, LLC, as Trust's Agent

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

HORIZON CREDIT II LLC

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

HORIZON FUNDING I, LLC

By: Horizon Secured Loan Fund I LLC, its sole member

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

LENDERS:


TRINITY CAPITAL INC.

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

POWERSCOURT INVESTMENTS XXV, LP

By: Powerscourt Investments GP, LLC, its general partner

By: Maples Fiduciary Services (Delaware) Inc., its managing member

By:  \_\_\_\_\_  
Name: Scott Huff  
Title: Authorized Signatory

POWERSCOURT INVESTMENTS XXV TRUST

By: 1485 Management, LLC, as Trust's Agent

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

HORIZON CREDIT II LLC

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

HORIZON FUNDING I, LLC

By: Horizon Secured Loan Fund I LLC, its sole member

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



LENDERS:

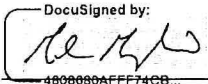
TRINITY CAPITAL INC.

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

POWERSCOURT INVESTMENTS XXV, LP  
By: Powerscourt Investments GP, LLC, its general partner  
By: Maples Fiduciary Services (Delaware) Inc., its managing member

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

POWERSCOURT INVESTMENTS XXV TRUST  
By: 1485 Management, LLC, as Trust's Agent

By:  \_\_\_\_\_  
Name: Glenn Guszowski  
Title: Authorized Person

HORIZON CREDIT II LLC

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

HORIZON FUNDING I, LLC  
By: Horizon Secured Loan Fund I LLC, its sole member

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

LENDERS:

TRINITY CAPITAL INC.

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

Name:

Title:

POWERSCOURT INVESTMENTS XXV, LP

By: Powerscourt Investments GP, LLC, its general partner

By: Maples Fiduciary Services (Delaware) Inc., its managing member

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

Name:

Title:

POWERSCOURT INVESTMENTS XXV TRUST

By: 1485 Management, LLC, as Trust's Agent

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

Name:

Title:

HORIZON CREDIT II LLC

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

Name: Gerald A. Michaud

Title: President

HORIZON FUNDING I, LLC

By: Horizon Secured Loan Fund I LLC, its sole member

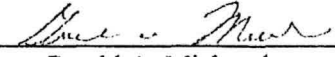
By:  \_\_\_\_\_

Name: Gerald A. Michaud

Title: Manager

HORIZON FUNDING TRUST 2022-1

By: Horizon Technology Finance Corporation, its agent

By: 

Name: Gerald A. Michaud

Title: President

LENDER and COLLATERAL AGENT:

HORIZON TECHNOLOGY FINANCE CORPORATION

By: 

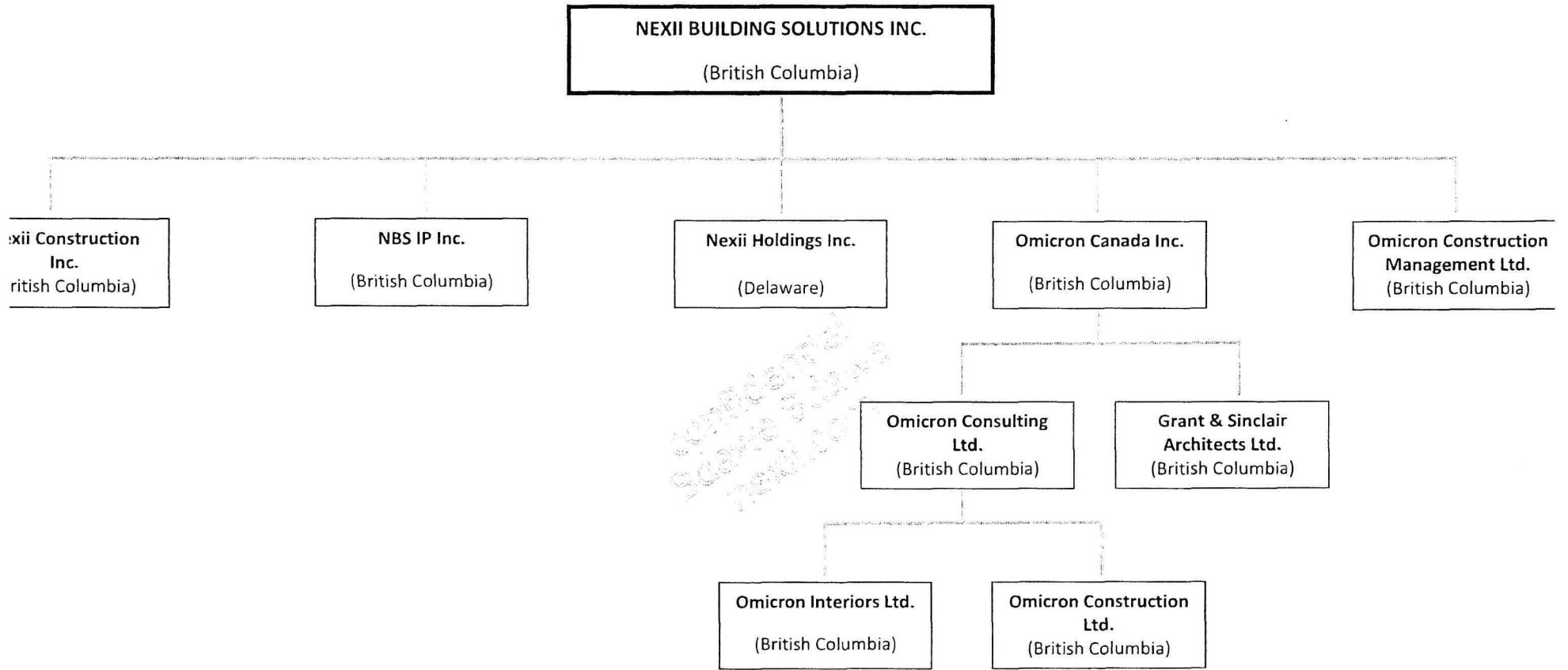
Name: Gerald A. Michaud

Title: President

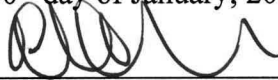
SCHEDULE A  
CORPORATE ORGANIZATION CHART

[See attached]

55250175.1  
55250175.5



This is Exhibit " K " referred to in the  
Affidavit of William Tucker  
sworn before me at Vancouver  
this 10<sup>th</sup> day of January, 2024



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A Commissioner for taking Affidavits  
for British Columbia

## DIP FACILITY TERM SHEET

**Dated: January 9, 2024**

**WHEREAS** the Borrowers (as defined below) and each of Omicron Entities (as defined herein), as borrowers, and the DIP Lenders (as defined below), as lenders, are parties to that: (i) Amended and Restated Venture Loan and Security Agreement, amended and restated as of June 8, 2022 (as amended, the “**A&R Agreement**”); and (ii) Amended and Restated Accommodation Agreement dated as of December 15, 2023 (as amended, and together with the A&R Agreement, the “**Senior Credit Agreement**”);

**AND WHEREAS** the obligations under the Senior Credit Agreement are secured by certain security granted in connection therewith;

**AND WHEREAS** the Borrowers have requested that the DIP Lenders provide them with further loans to fund the Borrowers’ restructuring efforts pursuant to a debtor-in-possession financing in the context of insolvency proceedings under the *Companies’ Creditors Arrangement Act* (Canada) (the “**CCAA**” and the Borrowers’ proceedings thereunder, the “**CCAA Proceedings**”) under the jurisdiction of the Supreme Court of British Columbia (the “**Court**”);

**AND WHEREAS** it is intended that the Omicron Entities shall not be Petitioners under the CCAA Proceedings or participate under the DIP Facility but shall receive the benefit of any stay of proceedings granted to the Borrowers under the CCAA Proceedings as non-Petitioner stay parties;

**AND WHEREAS**, subject to the terms and conditions contained herein (this “**Agreement**”), the DIP Lenders are prepared to establish the DIP Facility (as defined below) in favour of the Borrowers on the terms and conditions set out in this Agreement;

**NOW THEREFORE**, the parties hereto, in consideration of the foregoing and the mutual agreements contained herein (the receipt and sufficiency of which are hereby acknowledged), agree as follows:

### **DEFINITIONS**

Capitalized terms used (including the recitals above) but not otherwise defined herein shall have the meanings given to them on **Schedule “A”** hereto.

### **DIP LENDERS:**

Powerscourt Investments XXV, LP, Trinity Capital Inc. and Horizon Technology Finance Corporation (collectively, the “**DIP Lenders**”).

### **BORROWERS**

Nexii Building Solutions Inc., NBS IP Inc., Nexii Construction Inc. and Nexii Holdings Inc., (collectively, and on a joint and several basis, the “**Borrowers**”, and each a “**Borrower**”).

### **JOINT AND SEVERAL**

Each of the Borrowers agrees, acknowledges and confirms that at the Borrowers' request, the DIP Facility has been made available to all of them, and, in each case, that each individual Borrower's ability to drawdown the full amount available for each DIP Loan (as defined below) under the DIP Facility is not restricted except as specifically provided for in this Agreement. All covenants, agreements and obligations of the Borrowers

contained in this Agreement relating to or in connection with the DIP Facility shall be on a joint and several basis, and each of the Borrowers shall be jointly and severally liable for and obligated to repay all Obligations under the DIP Facility. Such joint and several liability is independent of the duties, obligations and liabilities of each other Borrower. Each of the Borrowers waives all benefits of discussion and division among the Borrowers, and each of the Borrowers acknowledges and confirms that the DIP Lenders shall have no obligation to pursue any other Borrower, as the case may be, for all or any part of the Obligations under the DIP Facility before it can recover all such Obligations from it. Each Borrower acknowledges and confirms that it is fully responsible for all such Obligations even though it may not have requested a single DIP Loan.

Each of the Borrower's liability for payment of the DIP Facility shall be a primary obligation, shall be absolute and unconditional, and shall constitute full recourse obligations of each of the Borrowers, enforceable against each of them to the full extent of their respective assets and properties. Each of the Borrowers expressly waives any right to require the DIP Lenders to marshal assets in favour of any Borrower or any other Person or to proceed against any other Borrower or any collateral provided by any Person, and agrees that the DIP Lenders may proceed against any Borrower or any collateral in such order as they shall determine in their sole and absolute discretion. To the extent permitted by law, any release or discharge, by operation of law, of any Borrower from the performance or observance of any obligation, covenant or agreement contained in this Agreement shall not diminish or impair the liability of any other Borrower in any respect. Each of the Borrowers unconditionally and irrevocably waives each and every defense, right to discharge, compensation and setoff of any nature which, by statute or under principles of suretyship, guaranty or otherwise, would operate to impair or diminish in any way the obligation of any Borrower under this Agreement, and acknowledges that such waiver is by this reference incorporated into each security agreement, collateral assignment, pledge and/or other document from each Borrower now or later securing the DIP Facility, and acknowledges that as of the date of this Agreement no such defense or setoff exists. Each of the Borrowers waives any and all rights (whether by subrogation, indemnity, reimbursement, or otherwise) to recover from any other Borrower any amounts paid or the value of any Property given by such Borrower pursuant to this Agreement or otherwise until the Obligations are irrevocably paid in full in cash.

#### **BORROWER'S GUARANTEE**

To the maximum extent permitted by Applicable Law and to the extent that a Borrower is deemed a guarantor, each Borrower unconditionally and absolutely, guarantees payment when due, whether by stated maturity, demand, acceleration



or otherwise, of the Obligations and all existing and future indebtedness owing hereunder or in connection with the DIP Facility owed by each other Borrower and expressly waives any and all defenses now or hereafter arising or asserted by reason of (a) any extension, modification, forbearance, compromise, settlement or variation of any of the terms of the Obligations and the said indebtedness, (b) the discharge or release of any liability of any other Borrower or any other Person now or hereafter liable on the Obligations and the said indebtedness, by reason of bankruptcy or insolvency laws or otherwise, (c) the acceptance or release by the DIP Lenders of any collateral, security or other guaranty from any Borrower or any other Person, or any settlement, compromise or extension with respect to any such collateral, security or other guaranty, (d) the avoidance, invalidity or unenforceability of any collateral, security or other guaranty from any Borrower or any other Person, (e) any failure to give any notice, demand, notice of dishonor, protest, presentment or non-payment, or any other notice, (f) any failure to comply with any Applicable Law in connection with any enforcement of any right or remedy against any collateral, security or other guaranty from any Borrower or any other Person, or (g) any action or inaction of the DIP Lenders in any insolvency proceeding involving any Borrower or any other Person.

**DIP FACILITY**

A non-revolving loan (the "**DIP Facility**") up to the maximum principal amount of \$4,300,000 (the "**Maximum Amount**") including an initial loan in an amount of \$750,000 (the "**Initial Loan**").

**CURRENCY**

Unless otherwise noted, the currency of the DIP Facility shall be USD.

**MATURITY DATE**

The DIP Facility shall be paid in full in cash on the date (the "**Maturity Date**") which is the earliest of:

(a) April 30, 2024 (or such later date as the DIP Lenders in their sole discretion may agree to in writing with the Borrowers);

(b) the date on which (i) the stay of proceedings under the CCAA Proceedings is lifted without the consent of the DIP Lenders, or (ii) the CCAA Proceedings are terminated for any reason;

(c) the closing of a sale or similar transaction for all or substantially all of the assets and business of the Borrowers pursuant to the Sale Process, which has been approved by an order entered by the Court;

(d) the implementation of a Plan approved by an order entered by the Court; or

(f) the occurrence of an Event of Default. The DIP Lenders' commitment in respect of the DIP Facility shall expire on the Maturity Date and all amounts outstanding under the DIP Facility including accrued Interest and Legal Fees (collectively, the "**Obligations**") shall be repaid in full on the Maturity Date without the DIP Lenders being required to make demand upon the Borrowers or to give notice that the DIP Facility has expired and the Obligations are due and payable.

## AVAILABILITY

Subject to the terms and conditions set forth in this Agreement, the Initial Order and the Amended and Restated Initial Order (as defined below), the DIP Lenders will, on a several basis, make loans (the "**DIP Loans**") to the Borrowers under the DIP Facility in an aggregate principal amount not to exceed the Maximum Amount, as follows:

(a) Initial Loan: subject to the provisions hereunder under the heading **CONDITIONS PRECEDENT TO THE DISBURSEMENT OF INITIAL LOAN**, upon the issuance of the Initial Order by the Court, the amount of the Initial Loan, or such other lesser amount as may be approved by the Initial Order, will be made available to the Borrowers by the DIP Lenders to finance the Borrowers' working capital and operating requirements in accordance with the Initial Cash Flow Projections. The Initial Loan shall be evidenced by DIP Notes executed by the Borrowers in favour of each DIP Lender's proportionate share of the Initial Loan.

(b) Subsequent Loans: subject to the provisions hereunder under the heading **CONDITIONS PRECEDENT TO THE DISBURSEMENT OF DIP LOANS (OTHER THAN THE INITIAL LOAN)**, and except as may be otherwise agreed in writing by the Borrowers and the DIP Lenders, any further DIP Loans under the DIP Facility (each an "**Additional Loan**") shall be made available to the Borrowers by the DIP Lenders until the Maturity Date in accordance with the then applicable Cash Flow Projections approved by the DIP Lenders in their sole discretion, from time to time, subject to duly issued orders of the Court. Each Additional Loan shall be evidenced by DIP Notes executed by the Borrowers in favour of each DIP Lender's proportionate share of any Additional Loan.

Each DIP Lender shall fund a portion of each DIP Loan equal to its Applicable Percentage of such DIP Loan.

The DIP Lenders shall, jointly and severally, backstop the DIP Facility commitment of each other DIP Lender (each, a "**Backstop Commitment**"), such that if any DIP Lender shall fail to (x) fund its Applicable Percentage of any DIP Loan or (y) fund on a *pro rata* basis a Backstop Advance (collectively, a "**Defaulting Lender Funding Obligation**") (each such defaulting DIP Lender, a "**Defaulting Lender**"), each other DIP Lender which is not a Defaulting Lender shall, within three

(3) Business Days of receiving written notice thereof from the Borrowers, fund on a *pro rata* basis by way of a Backstop Loan each such Defaulting Lender Funding Obligation in accordance with this Agreement.

Unless otherwise agreed to in writing in advance by the DIP Lenders, in their sole direction, each Additional Loan shall be made by the DIP Lenders to the Borrowers as soon as practicable (and in any event within five (5) Business Days) after written notice to the DIP Lenders of the date on which the Borrowers desire to the DIP Lenders to make such Additional Loan and the amount of such Additional Loan.

The full amount of the Initial Loan shall be made available to the Borrowers by the DIP Lenders immediately upon the satisfaction of the conditions precedent listed under the heading **CONDITIONS PRECEDENT TO THE DISBURSEMENT OF INITIAL LOAN** hereunder being satisfied by the Borrowers or otherwise waived by the DIP Lenders in their sole discretion.

#### **ACCOUNT**

All DIP Loans shall be deposited into an account acceptable to the Borrowers, the Monitor and the DIP Lenders and withdrawn to pay contemplated expenses under the then applicable Cash Flow Projections and otherwise in accordance with the terms hereof.

#### **USE OF PROCEEDS AND CASH FLOW PROJECTIONS**

The Initial Loan under the DIP Facility shall be used in accordance with the cash flow projections attached herewith as **Schedule "B"** (the "**Initial Cash Flow Projections**"), which have been prepared by the Borrowers in consultation with the Monitor. Any Additional Loan shall be used in accordance with the Updated Cash Flow Projections (collectively with the Initial Cash Flow Projections, the "**Cash Flow Projections**"), in each case, to fund working capital and general corporate needs of the Borrowers during, and costs and expenses incurred by the Borrowers in connection with, the CCAA Proceedings.

No proceeds of the DIP Loans may be used for any purpose other than in accordance with the Cash Flow Projections, except with the prior written consent of the DIP Lenders and the Monitor.

#### **INTEREST RATE**

Interest ("**Interest**") on the principal outstanding amount of the DIP Loans (including the compounded interest referenced below) from the date each such DIP Loan is made (or, in the case of the compounded interest referenced below, the date that such interest is compounded), both before and after maturity, demand, default, or judgment until payment in full at a rate of 15.5% per annum (the "**Interest Rate**"), compounded and calculated monthly shall accrue and be added to the

principal amount of the DIP Loans on the first day of each month.

All interest shall be computed on the basis of a 360-day year for the actual number of days elapsed.

All payments under or in respect of the DIP Facility shall be made free and clear of any withholding, set-off or other deduction.

If any provision hereof or the DIP Credit Documentation would obligate the Borrowers to make any payment of interest or other amount payable to the DIP Lenders in an amount or calculated at a rate which would be prohibited by law or would result in receipt by the DIP Lenders of interest at a criminal rate (as construed under the *Criminal Code* (Canada)) then, notwithstanding that provision, such amount or rate shall be deemed to have been adjusted with retroactive effect to the maximum amount or rate of interest, as the case may be, as would not be so prohibited by law or result in a receipt by the DIP Lenders of interest at a criminal rate.

## FEES

The Borrower shall pay a commitment fee in the amount of \$86,000 (the "**Fee**"), representing 2% of the Maximum Amount, \$15,000 of which shall be fully earned upon the execution of this Agreement and shall be paid from the Initial Loan and the balance of which shall be fully earned upon the issuance of the Amended and Restated Initial Order and paid from the first Additional Loan following the date of the Amended and Restated Initial Order. For certainty, the Fee shall be secured by the DIP Lenders' Charge.

## COSTS AND EXPENSES

The Borrowers shall pay all reasonable and documented costs and expenses of the DIP Lenders, and all reasonable and documented fees, expenses and disbursements of outside counsel, appraisers, field auditors, and any financial consultant, related to or in connection with the CCAA Proceedings, including, without limitation, reasonable and documented costs and expenses incurred by the DIP Lenders in connection with the enforcement of any of the rights and remedies available hereunder.

## DIP SECURITY

All of the Obligations shall be secured by a Court-ordered charge (the "**DIP Lenders' Charge**") over all present and after-acquired property, assets and undertakings of the Borrowers (including for greater certainty and without limitation, insurance proceeds, intellectual property, goods, documents of title, investment property, securities now owned or hereafter owned or acquired by or on behalf of the Borrowers and those assets set forth on the financial statements of the Borrowers), including all proceeds therefrom and all causes of action of the Borrowers.

The DIP Lenders' Charge shall be a super-priority charge which shall rank ahead of all existing, liens, claims, trusts and charges, but shall be subject to and shall rank behind: (i) an administration charge (the "**Administration Charge**") in the maximum amount of CAD\$1,500,000 to secure payment of the fees, expenses and disbursements of: (a) the Borrowers' Canadian counsel; and (b) the Monitor and its legal counsel; (ii) the Directors' Charge to secure the customary obligations and liabilities of the directors and officers of the Borrowers that they may incur in such capacity from and after the commencement of the CCAA Proceedings as a backstop to any available directors' and officers' insurance and to the extent that any funds in trust for such persons are not sufficient to satisfy such claims; (iii) the IB Charge; and (iv) the KERP Charge.

**CONDITIONS PRECEDENT TO  
THE DISBURSEMENT OF INITIAL  
LOAN**

The DIP Lenders' obligation to make the Initial Loan hereunder is subject to, and conditional upon, the satisfaction of all of the following conditions precedent:

1. the Borrowers' application materials in connection with their application for the issuance of an initial order under the CCAA (in form and substance satisfactory to the DIP Lenders, the "**Initial Order**") shall have been shared with the DIP Lenders, and such application shall have been brought before the Court no later than January 11, 2024, on notice to such parties as are acceptable to the DIP Lenders;
2. KSV Restructuring Inc. shall have been appointed as the Monitor pursuant to the Initial Order with such powers as are acceptable to the DIP Lenders in their sole discretion;
3. Origin Merchant Partners ("**IB**") shall have been engaged as the Borrowers' investment banker prior to the issuance of the Initial Order, on terms satisfactory to the DIP Lenders, to assist the Borrowers and the Monitor with carrying out the Sale Process;
4. the Initial Order (i) shall have been issued by the Court authorizing and approving the Initial Loan under the DIP Facility and granting the DIP Lenders' Charge in respect of the Initial Loan, and (ii) shall be in full force and effect and shall have not been stayed, reversed, vacated, rescinded, modified or amended in any respect adversely affecting the DIP Lenders, unless otherwise agreed by the DIP Lenders;
5. except to the extent not permitted by the CCAA, the DIP Lenders' Charge shall have priority over all Liens granted by the Borrowers against any of the undertakings, property or assets of the Borrowers

(collectively, the “**Property**”), except for the Administration Charge and the Directors’ Charge;

6. the Initial Cash Flow Projections shall be acceptable to the DIP Lenders;
7. the Borrowers shall have executed and delivered a DIP Note to the applicable DIP Lender in the amount of the DIP Loan being advanced by such DIP Lender; and
8. the Borrowers shall have executed and delivered to the DIP Lenders a Funding Certificate for the DIP Loan being advanced by the DIP Lenders.

**CONDITIONS PRECEDENT TO THE DISBURSEMENT OF DIP LOANS (OTHER THAN THE INITIAL LOAN)**

The DIP Lenders’ obligation to make any Additional Loans hereunder is subject to, and conditional upon, the satisfaction of all of the following conditions precedent:

1. the Borrowers’ application materials in connection with their application for the Amended and Restated Initial Order shall be satisfactory to the DIP Lenders, and such application shall be brought before the Court on or before January 22, 2024, on notice to such parties as are acceptable to the DIP Lenders;
2. an order amending and restating the Initial Order, in form and substance acceptable to the DIP Lenders, shall have been issued by the Court authorizing and approving an increase to the DIP Facility and corresponding increase to the DIP Lenders’ Charge (the “**Amended and Restated Initial Order**”) and the Amended and Restated Initial Order shall be in full force and effect and shall have not been stayed, reversed, vacated, rescinded, modified or amended in any respect adversely affecting the DIP Lenders, unless otherwise agreed by the DIP Lenders;
3. the DIP Lenders’ Charge shall have priority over all Liens granted by the Borrowers against any of the undertaking, property or assets of the Borrowers, except for the other Court Ordered Charges;
4. all amounts requested for a particular Additional Loan shall be consistent with the Updated Cash Flow Projections for the applicable period, or otherwise expressly agreed by the DIP Lenders in advance;
5. the terms and conditions of the Sale Process, including the milestones of such Sale Process (the “**Sale Milestones**”), shall be approved by the Court pursuant to the Sale Process Order, all of which shall be in a



form and substance satisfactory to the Monitor and the DIP Lenders;

6. the Borrowers shall have executed and delivered a DIP Note to the applicable DIP Lender in the amount of the DIP Loan being advanced by such DIP Lender;
7. the Borrowers shall have executed and delivered to the DIP Lenders a Funding Certificate for the DIP Loan being advanced by the DIP Lenders;
8. the representations and warranties contained herein shall be true and correct;
9. no Default or Event of Default shall have occurred and be continuing; and
10. the DIP Lenders shall have received copies of the Borrowers' filed motion or application materials and evidence and/or confirmation from the Borrowers that the Chapter 15 recognition hearing to recognize, among other things, the Amended and Restated Initial Order, the Sale Process Order and the CCAA proceedings, appointing Nexii Building Solutions Inc. as foreign representative, is set before an American court of competent jurisdiction pursuant to the requisite provisions of the American Bankruptcy Code, 11 U.S.C. § 101 by no later than February 2, 2024.

Each of the Borrowers agrees to indemnify and hold harmless the DIP Lenders, their respective officers, directors, employees, representatives, advisors, solicitors and agents (collectively, the "**Indemnified Persons**") from and against any and all actions, lawsuits, proceedings (including any investigations or inquiries), claims, losses, damages, liabilities or expenses of any kind or nature whatsoever which may be incurred by or suited against or involve any of the Indemnified Persons as a result of, in connection with or in any way related to the DIP Facility, this Agreement, or the DIP Credit Documentation, except to the extent that such actions, lawsuits, proceedings, claims, losses, damages, liabilities or expenses result from the gross negligence or willful misconduct of such Indemnified Persons.

## REPRESENTATIONS AND WARRANTIES

Each of the Borrowers represents and warrants to the DIP Lenders, upon which the DIP Lenders rely in entering into this Agreement and the DIP Credit Documentation, that:

1. The transactions contemplated by this Agreement and the other DIP Credit Documentation:

- a. upon the granting of either the Initial Order or the Amended and Restated Initial Order, are within the powers of the Borrowers;
  - b. have been duly authorized, executed and delivered by or on behalf of the Borrowers;
  - c. upon the granting of either the Initial Order or the Amended Restated Initial Order, constitute legal, valid and binding obligations of the Borrowers;
  - d. upon the granting of the Initial Order and the Amended and Restated Initial Order, as applicable, do not require the consent or approval of, registration or filing with, or any other action by, any governmental authority, other than filings which may be made to register or otherwise record the DIP Lenders' Charge or any DIP Security granted pursuant to the DIP Credit Documentation;
2. the business operations of the Borrowers have been and will continue to be conducted in material compliance with all Applicable Laws of each jurisdiction in which each such business has been or is being carried on;
  3. the Borrowers obtained all material licenses and permits required for the operation of their business, which licenses and permits remain, and after the date of the Initial Loan will remain, in full force and effect. No proceedings have been commenced to revoke or amend any of such licenses or permits and no notices advising of a breach or potential breach of the conditions of such licenses has been received;
  4. except as reflected in the Cash Flow Projections and as disclosed in **Schedule "C"** hereto, and than those amounts the Borrowers have made known to the DIP Lenders to date, the Borrowers have paid where due their obligations for payroll, employee source deductions, sales taxes, value added taxes and are not in arrears in respect of these obligations;
  5. the Borrowers do not have any defined benefit pension plans or similar plans; and
  6. all factual information provided by or on behalf of the Borrowers to the DIP Lenders for the purposes of or in connection with this Agreement and the DIP Credit Documentation is, to the best of the Borrowers' knowledge, true and accurate in all material respects on the date as of which such information is dated or certified and is not incomplete by omitting to state any



fact necessary to make such information (taken as a whole) not materially misleading at such time in light of the circumstances under which such information was provided. In particular, and without limiting the generality of the foregoing, to the best of the Borrowers' knowledge, all information regarding the Borrowers' corporate structure is true and complete, and all public filings and financial reports are complete and true in all material respects as of the date thereof.

#### **AFFIRMATIVE COVENANTS**

Each of the Borrowers covenants and agrees to do the following:

1. comply in all material respects with the Cash Flow Projections, including making payments when scheduled to be made in accordance with the Cash Flow Projections, and their reporting and other obligations to deliver financial information to the DIP Lenders hereunder; provided that, such reporting and financial information shall be prepared and delivered under the supervision of the Monitor;
2. cooperate in all respects with the IB and the Monitor, including providing financial and other information, assisting with the preparation of a teaser and confidential information memorandum, generating a list of potential interested parties, and participating in meetings with interested parties in connection with the Sale Process or otherwise;
3. allow the DIP Lenders, the Monitor and their designated representatives and financial advisors full access to the books and records of the Borrowers and cause management thereof to fully cooperate with any advisors to the DIP Lenders and the Monitor;
4. use the proceeds of the DIP Facility only for the purposes set out herein;
5. comply with the provisions of orders made by the Court in the CCAA Proceedings;
6. obtain the Sale Process Order by no later than January 22, 2024, unless extended with the DIP Lenders' written consent;
7. comply with the Sale Process and Sale Milestones following approval of the Sale Process Order;
8. provide the DIP Lenders with draft copies of all motions, applications, proposed orders or other material or documents that any of them intend to file within the CCAA Proceedings at least three (3) days

prior to service of such materials or, where it is not practically possible to do so at least three (3) days prior to any such service, as soon as possible prior to such service;

9. maintain all licenses required for the operation of their business in good standing;
10. subject to the terms of the Sale Process, any Court ordered limitations and appropriate confidentiality restrictions, to keep the DIP Lenders apprised on a timely basis of all developments with respect to the business and affairs of the Borrowers and with respect to the Sale Process;
11. deliver to the DIP Lenders, on a monthly basis, within five (5) days after the end of each calendar month: (i) bank statements of the Borrowers, and (ii) a cash reconciliation, reconciling all purchases, repayments, chargebacks, write-offs and any other transactions covering the prior calendar month;
12. deliver to the DIP Lenders by no later than 5:00 p.m. (Toronto time) on Tuesday of each week (or, if Tuesday is not a Business Day, the following Business Day), updated 13-week cash flow projections, in form and substance satisfactory to the DIP Lenders, in their discretion, reflecting the projected cash requirements of the Borrowers on a rolling-basis (the "**Updated Cash Flow Projections**");
13. concurrently with the weekly delivery of Updated Cash Flow Projections, provide a comparison to the previously delivered Updated Cash Flow Projections (or to the Initial Cash Flow Projections, if applicable) including applicable bank reconciliations;
14. maintain all insurance with respect to the Property in existence as of the date hereof;
15. forthwith notify the DIP Lenders of any event or circumstance that, with the passage of time, may constitute a Default or an Event of Default;
16. forthwith notify the DIP Lenders of the occurrence of any Default or Event of Default, or of any event or circumstance that may constitute a material adverse change from the Cash Flow Projections;
17. duly and punctually pay or cause to be paid to the DIP Lenders all principal and interest payable by it under this Agreement and under any other DIP Credit

Documentation on the dates, at the places and in the amounts and manner set forth herein;

18. comply in all respects with all Applicable Laws;
19. comply in all material respects with their obligations under the DIP Credit Documentation; and
20. obtain the consent of the Monitor prior to disclaiming any agreement pursuant to section 32 of the CCAA.

## **NEGATIVE COVENANTS**

Each of the Borrowers covenants and agrees not to do the following, other than with the prior written consent of the DIP Lenders and the Monitor:

1. sell, assign, transfer, lease or otherwise dispose of all or any part of its assets, tangible or intangible, outside the ordinary course of business, except for the disposition of any obsolete equipment or other assets or as permitted under the Initial Order or the Amended and Restated Initial Order, or pursuant to the Sale Process Order;
2. make any payment of principal or interest in respect of existing (pre-filing date) indebtedness, except as contemplated by the Cash Flow Projections, or declare or pay any dividends;
3. transfer, distribute, lend or otherwise use any advances or funds from the DIP Facility to fund any other entity other than the Borrowers. For greater certainty, the DIP Facility shall not be used to fund any funding requirements of the Omicron Entities;
4. create or permit to exist indebtedness for borrowed money other than existing (pre-filing date) debt, debt contemplated by this DIP Facility and post-filing trade payables incurred in the ordinary course of business or authorized by the Court;
5. create or permit to exist any Liens on any of the Property other than Permitted Liens;
6. enter into or agree to enter into any investments (other than cash equivalents) or acquisitions of any kind, direct or indirect, in any business;
7. assume or otherwise agree to be bound by any contingent liabilities or provide any guarantee or financial assistance to any Person;
8. enter into any amalgamation, reorganization, liquidation, dissolution, winding-up, merger or other

transaction or series of transactions whereby, directly or indirectly, all or any significant portion of the undertaking, property or assets of any Borrower would become the property of any other Person or Persons unless authorized by the DIP Lenders;

9. other than the Court Ordered Charges, seek or support a motion by another party to provide to a third party a charge upon any Property (including, without limitation, a critical supplier's charge) without the prior consent of the DIP Lenders;
10. amend or seek to amend the Initial Order or the Amended and Restated Initial Order, or without the prior approval of the Monitor, the Sale Process;
11. terminate or repudiate any agreement with the DIP Lenders, solely in their capacity as lender under the DIP Facility; and
12. seek or obtain any order from the Court that materially adversely affects the interests of the DIP Lenders, except with the prior written consent of the DIP Lenders.

## EVENTS OF DEFAULT

The occurrence of any one or more of the following events shall constitute an event of default ("**Event of Default**") under this Agreement:

1. failure of the Borrowers to pay principal or interest when due under this Agreement or any other DIP Credit Documentation;
2. any other breach by any Borrower in the observance or performance of any provision, covenant (affirmative or negative) or agreement contained in this Agreement, provided, that, in the case of a breach of any affirmative covenant, such breach remains unremedied for longer than three (3) Business Days following receipt of notice thereof;
3. the Sale Process Order has not been issued by the Court by January 22, 2024;
4. Bill Tucker resigning as CEO of the Borrowers prior to the Maturity Date;
5. if the total cumulative disbursements and receipts pursuant to the Cash Flow Projections are at any time during the CCAA Proceedings, greater than 15% of the cumulative budget confirmed in the applicable Cash Flow Projections, measured on a weekly basis;

6. (i) any order shall be entered or judgment rendered by the Court (or any other court of competent jurisdiction) that has a materially adverse effect on the interest of the DIP Lenders, (ii) either the Initial Order or the Amended and Restated Initial Order shall cease to be in full force and effect in a manner that has a material adverse effect on the interests of the DIP Lenders, or (iii) any Borrower shall fail to comply in any material respect that has an adverse effect on the interests of the DIP Lenders with any order granted by the Court in the CCAA Proceedings;
7. this Agreement or any other DIP Credit Documentation shall cease to be effective or shall be contested by a Borrower;
8. the CCAA Proceedings are terminated or converted to proceedings under the *Bankruptcy and Insolvency Act* (Canada) or any order is granted by the Court (or any court of competent jurisdiction) granting relief from the stay of proceedings during the CCAA Proceedings (as extended from time to time until the Maturity Date), unless agreed to by the DIP Lenders;
9. any Plan is filed or sanctioned by the Court in a form and in substance that is not acceptable to the DIP Lenders if such Plan does not either provide for the repayment of the Obligations, in their entirety including compounded interest added to the principal, under the DIP Facility in full by the Maturity Date;
10. if any of the Borrower's material licenses or permits are revoked or any Borrower fails to comply with a material condition required to keep such licenses or permits in good standing and such license or permit is not reinstated or such Borrower's failure to comply with such material condition continues for a period of five (5) Business Days;
11. any of the Borrowers makes any material payments of any kind not permitted by this Agreement, the Cash Flow Projections or any order of the Court;
12. the Borrowers make any distributions or payments to the Omicron Entities; or
13. borrowings under the DIP Facility exceed the Maximum Amount.

## REMEDIES

Upon the occurrence and continuance of an Event of Default, subject to the DIP Credit Documentation, the DIP Lenders may, upon written notice to the Borrower and the Monitor:

1. terminate the DIP Facility;
2. on prior written notice to the Borrowers and the service list of no less than three (3) Business Days;
  - a. apply to the Court for the appointment of an interim receiver or a receiver and manager of the Property or for the appointment of a trustee in bankruptcy of the Borrowers;
  - b. exercise the powers and rights of a secured party under any legislation; and
  - c. exercise all such other rights and remedies under the DIP Credit Documentation and orders of the Court in the CCAA Proceedings.

**DIP LENDERS' APPROVALS**

All consents of the DIP Lenders hereunder shall be in writing. Any consent, approval, instruction or other expression of the DIP Lenders to be delivered by Aird & Berlis LLP, counsel for the DIP Lenders, on behalf of the DIP Lenders, in writing may be delivered by any written instrument, including by way of electronic mail.

**FURTHER ASSURANCES**

The Borrowers shall at their expense, from time to time do, execute and deliver, or will cause to be done, executed and delivered, all such further acts, documents (including, without limitation, certificates, declarations, affidavits, reports and opinions) and things as the DIP Lenders may reasonably request for the purpose of giving effect to this Agreement and the DIP Lenders' Charge, perfecting, protecting and maintaining the Liens created by the DIP Lenders' Charge or establishing compliance with the representations, warranties and conditions of this Agreement or any other DIP Credit Documentation.

**ENTIRE AGREEMENT**

This Agreement, including all schedules hereto and the DIP Credit Documentation, constitute the entire agreement between the parties relating to the subject matter hereof. To the extent that there is any inconsistency between this Agreement and the DIP Credit Documentation, this Agreement shall govern. Neither this Agreement nor any other DIP Credit Documentation, nor any terms hereof or thereof, may be amended, unless such amendment is in writing signed by the Borrowers and the DIP Lenders, and approved by the Monitor.

**AMENDMENTS, WAIVERS, ETC.**

No waiver or delay on the part of the DIP Lenders in exercising any right or privilege hereunder or under any other DIP Credit Documentation will operate as a waiver hereof or thereof unless made in writing and signed by an authorized officer of the DIP Lenders. Any consent to be provided by the DIP Lenders shall be granted or withheld solely in their respective

capacities, and having regard to their interests, as DIP Lenders.

## **ASSIGNMENT**

This Agreement shall be binding upon and inure to the benefit of the parties hereto and their respective successors and permitted assigns.

The Borrowers may not assign their rights and obligations under this Agreement without the written consent of the DIP Lenders.

The DIP Lenders may assign this Agreement and their rights and obligations hereunder, in whole or in part, with the prior written consent of the Borrowers, not to be unreasonably withheld (provided that no such consent of the Borrowers shall be required upon the occurrence of an Event of Default which is continuing) and, provided that the Monitor shall have provided its prior written consent based solely on the Monitor being satisfied that the proposed assignee has the financial capacity to act as a DIP Lender and that the assignment will not have a material adverse impact on the Sale Process or the CCAA Proceedings.

Notwithstanding the foregoing, a DIP Lender shall be entitled to assign its rights and obligations hereunder to an Affiliate with the consent of the Monitor.

Each of the Borrowers hereby consents to the disclosure of any confidential information in respect of the Borrowers to any potential assignee provided such potential assignee agrees in writing to keep such information confidential. A copy of all notices delivered pursuant to this section shall be delivered promptly to the Monitor.

## **SEVERABILITY**

Any provision in this Agreement or any DIP Credit Documentation which is prohibited or unenforceable in any jurisdiction shall, as to such jurisdiction, be ineffective to the extent of such prohibition or unenforceability without invalidating the remaining provisions hereof and thereof or affecting the validity or enforceability of such provision in any other jurisdiction.

## **PRESS RELEASES**

The Borrowers shall not issue any press releases or other public disclosure, without the prior approval of the DIP Lenders, acting reasonably, unless the Borrowers are required to do so by applicable securities laws or other Applicable Law.

## **COUNTERPARTS AND FACSIMILE SIGNATURES**

This Agreement may be executed in any number of counterparts and by facsimile or e-mail transmission, each of which when executed and delivered shall be deemed to be an original, and all of which when taken together shall constitute

one and the same instrument. Any party may execute this Agreement by signing any counterpart of it.

## NOTICES

Any notice, request or other communication hereunder to any of the parties shall be in writing and be well and sufficiently given if delivered personally or sent by electronic mail to the attention of the person as set forth below:

In the case of the DIP Lenders:

With a copy to:

Aird & Berlis LLP  
Brookfield Place, 181 Bay Street, Suite 1800  
Toronto, Canada  
M5J 2T9

Attention: Kyle Plunkett  
Email: [kplunkett@airdberlis.com](mailto:kplunkett@airdberlis.com)

In the case of the Borrowers:

With a copy to:

Fasken Martineau DuMoulin LLP  
500 Burrard Street, Suite 2900  
Vancouver, British Columbia  
V6C 0A3

Attention: Kibben Jackson and Lisa Hiebert  
Email: [kjackson@fasken.com](mailto:kjackson@fasken.com) / [lhiebert@fasken.com](mailto:lhiebert@fasken.com)

In either case, with a copy to the Monitor:

KSV Restructuring Inc.  
222 Bay Street, 13th Floor  
Toronto ON M5J 2W4

Attention: Noah Goldstein  
Email: [ngoldstein@ksvadvisory.com](mailto:ngoldstein@ksvadvisory.com)

In either case, with a copy to the Monitor's counsel:

Bennett Jones LLP  
666 Burrard Street, Suite 2500  
Vancouver, British Columbia  
V6C 2X8 Canada

Attention: Sean Zweig and Mike Shakra  
Email: [zweigs@bennettjones.com](mailto:zweigs@bennettjones.com) /  
[shakram@bennettjones.com](mailto:shakram@bennettjones.com)



**GOVERNING LAW AND  
JURISDICTION**

This Agreement shall be governed by, and construed in accordance with, the laws of the Province of British Columbia and the federal laws of Canada applicable therein. Each of the Borrowers irrevocably submits to the exclusive courts of the Province of British Columbia, waives any objections on the ground of venue or forum *non conveniens* or any similar grounds, and consents to service of process by mail or in any other manner permitted by relevant law.

**[REMAINDER OF PAGE INTENTIONALLY BLANK]**

**IN WITNESS HEREOF**, the parties hereby execute this Agreement as of the date first written above.

BORROWERS:

NEXII BUILDING SOLUTIONS INC.

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

NBS IP INC.

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

NEXII CONSTRUCTION INC.

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

NEXII HOLDINGS INC.

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

**IN WITNESS HEREOF**, the parties hereby execute this Agreement as of the date first written above.

DIP LENDERS:

TRINITY CAPITAL INC.

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

POWERSCOURT INVESTMENTS XXV, LP  
By: Powerscourt Investments GP, LLC, its general partner  
By: Maples Fiduciary Services (Delaware) Inc., its managing member

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

LENDER and COLLATERAL AGENT:

HORIZON TECHNOLOGY FINANCE CORPORATION

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

## SCHEDULE "A"

### Additional Definitions

**"Affiliate"** means, in respect of any Person at any date, (a) any corporation, company, limited liability company, association, joint venture or other business entity of which securities, membership interests or other ownership interests representing fifty percent (50%) or more of the voting power of all equity interests are owned or held, directly or indirectly, by such Person, (b) any partnership, limited liability company or joint venture wherein the general partner, managing partner or operator is, directly or indirectly, such Person, or (c) any other Person that is otherwise directly or indirectly controlled by such Person.

**"Applicable Laws"** means all federal, provincial, municipal and local laws, statutes, regulations, codes, acts, permits, licenses, ordinances, orders, by-laws, guidelines, notices, protocols, policies, directions and rules and regulations, including those of any governmental or other public authority, which may now, or at any time hereafter, govern, be applicable to or enforceable against or in respect of the Borrowers, the operation of their business or their property.

**"Applicable Percentage"** means, in respect of any DIP Lender at any time, with respect to a DIP Loan, the percentage of such DIP Loan which such DIP Lender has agreed to make available to the Borrowers at such time, determined as determined amongst the DIP Lenders.

**"Backstop Loan"** means a loan made by a DIP Lender to the Borrowers in connection with the Backstop Commitment of such DIP Lender.

**"Business Day"** means a day on which banks in both Vancouver, British Columbia and New York, New York are open for business.

**"Court Ordered Charges"** means the Administration Charge, KERP Charge, IB Charge, the Directors' Charge and the DIP Lenders' Charge.

**"Default"** means any Event of Default or any condition or event which, after notice or lapse of time or both, would constitute an Event of Default.

**"DIP Credit Documentation"** means this Agreement, the orders of the Court approving it and any other definitive documentation in respect of the DIP Facility, which must be in form and substance satisfactory to the DIP Lenders.

**"DIP Notes"** means each promissory note executed in connection with such DIP Loan in substantially the form of **Schedule "D"** hereto.

**"DIP Security"** means the contractual security and contractual hypothecary documents granted by the Borrower providing for a security interest/hypothec in and lien on all now- owned and hereafter-acquired assets and property of the Borrower, real and personal, tangible or intangible and all proceeds therefrom, but excluding (i) such assets, if any, as the DIP Lenders in their discretion determines to be immaterial or to be assets for which the cost and other burdens of establishing and perfecting a security interest outweigh the benefits of establishing and perfecting a security interest, and (ii) other exceptions to be mutually agreed.

**"Directors' Charge"** means a super-priority Court-ordered charge against the assets of the Borrowers securing the indemnity granted by the Borrowers to their respective directors and officers in an amount not to exceed CAD\$1,315,000.

“**Funding Certificate**” means a funding certificate for such DIP Loan being made in substantially the form of **Schedule “E”** hereto.

“**IB Charge**” means a charge in an amount acceptable to the DIP Lenders, in their sole discretion, to secure the transaction fees to be incurred by Origin Merchant Partners in connection with its Court-approved engagement agreement dated December 23, 2023.

“**KERP Charge**” means a charge in an amount acceptable to the DIP Lenders, in their sole discretion, to secure a key employee retention plan for certain of the Borrowers' critical employees.

“**Legal Fees**” means all reasonable and documented legal fees that the DIP Lenders will have to pay to their legal counsel in connection with any and all tasks related to this Agreement, the orders of the Court, the DIP Facility or the DIP Credit Documentation.

“**Liens**” means all mortgages, pledges, charges, encumbrances, hypothecs, liens and security interests of any kind or nature whatsoever.

“**Monitor**” means KSV Restructuring Inc.

“**Omicron Entities**” means, collectively, Omicron Canada Inc., Omicron Construction Ltd., Omicron Consulting Ltd., Omicron Interiors Ltd., Grant & Sinclair Architects Ltd. and Omicron Construction Management Ltd.

“**Permitted Liens**” means (i) the Court Ordered Charges; (ii) the liens registered against the Borrowers in the Provinces of Alberta, British Columbia and Saskatchewan and the State of Delaware as more particularly described in the search summaries attached to the Affidavit of Ashley Kumar sworn on January 4, 2024 in connection with the CCAA Proceedings, and (iii) liens, if any, in respect of amounts payable by a Borrower for wages, vacation pay, deductions, sales tax, excise tax, tax payable pursuant to Part IX of the *Excise Tax Act* (Canada), income tax and workers compensation claims.

“**Person**” means an individual, partnership, corporation (including a business trust), joint venture, limited liability company or other entity, or governmental authority.

“**Plan**” means a plan of compromise or arrangement within the CCAA Proceedings which has been approved by the requisite majorities of the Borrower's creditors.

“**Sale Process**” means a Court-supervised sales process to be undertaken by the IB, with the assistance of the Borrowers and under the supervision of the Monitor, pursuant to the Sale Process Order, which must be in form and substance satisfactory to the DIP Lenders.

“**Sale Process Order**” means an order of the Court approving the Sale Process in respect of the assets, undertakings and properties of the Borrowers, satisfactory to the DIP Lenders.

**SCHEDULE "B"**

**Initial Cash Flow Projections**

(see attached)

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**SCHEDULE "C"****Outstanding Obligations for Payroll, Employee Source Deductions, Sales Taxes, Value Added Taxes**

As at December 31, 2023, the Borrowers have approximately CAD\$605,304.30 in provincial sales tax arrears, subject to assessment and contestation. The Borrowers are current on payroll obligations and payroll source deductions.

**SCHEDULE "D"**

**Form of DIP Note**

**SECURED PROMISSORY NOTE**

**(DIP Loan [ ])**

\$[ ]

Dated: [ ], 2024

FOR VALUE RECEIVED, the undersigned, being each entity comprising the Borrower (as defined in the DIP Facility Agreement (as defined below)), HEREBY JOINTLY AND SEVERALLY PROMISE TO PAY to [HORIZON TECHNOLOGY FINANCE CORPORATION, a Delaware corporation / POWERSCOURT INVESTMENTS XXV, LP, a Delaware limited partnership / TRINITY CAPITAL INC., a Maryland corporation] ("Lender"), the principal amount of [ ] and [ ]/100 United States Dollars (\$[ ]) or such lesser amount as shall equal the outstanding principal balance of DIP Loan [ ] (the "Loan") made to Borrower by Lender pursuant to the DIP Facility Agreement, and to pay all other amounts due with respect to the Loan on the dates and in the amounts set forth in the DIP Facility Agreement. Capitalized terms used but not defined herein shall have the meaning ascribed thereto in the DIP Facility Agreement.

Interest on the principal amount of this Note from the date of this Note shall accrue at the Interest Rate as set forth in the DIP Facility Agreement. Interest shall be computed on the basis of a 360-day year for the actual number of days elapsed. If the Funding Date is not the first day of the month, interim interest accruing from the Funding Date through the last day of that month shall be paid on the first calendar day of the next calendar month.

Commencing on [ ], 2024, and continuing on the first day of each month thereafter until the payment in full of the Loan (each an "Interest Payment Date"), accrued interest on the then outstanding principal amount of the Loan shall be capitalized and added to the outstanding principal amount of the Loan (such interest, "PIK Interest"). On the Maturity Date (the "Principal Payment Date") and, collectively with each Interest Payment Date, each a "Payment Date"), Borrower shall make to Lender one payment of principal in the amount of [ ] and [ ]/100 United States Dollars (\$[ ]), plus all accrued but unpaid interest, including PIK Interest, plus all other outstanding amounts due hereunder and under the DIP Facility Agreement with respect to the Loan. If not sooner paid, all outstanding amounts hereunder and under the DIP Facility Agreement with respect to the Loan shall become due and payable on the Maturity Date.

Principal, interest and all other amounts due with respect to the Loan, are payable in lawful money of the United States of America to Lender as set forth in the DIP Facility Agreement. The principal amount of this Note and the interest rate applicable thereto, and all payments made with respect thereto, shall be recorded by Lender and, prior to any transfer hereof, endorsed on the grid attached hereto which is part of this Note.

This Note is referred to in, and is entitled to the benefits of, the DIP Facility Term Sheet, dated as of January [ ], 2024 (the "DIP Facility Agreement"), among Borrower, Horizon Technology Finance Corporation, Powerscourt Investments XXV, LP and Trinity Capital Inc., and (a) provides for the making of a secured Loan to Borrower, and (b) contains provisions for acceleration of the maturity hereof upon the happening of certain stated events.



This Note and the obligation of Borrower to repay the unpaid principal amount of the Loan, interest on the Loan and all other amounts due Lender under the DIP Facility Agreement is secured under the DIP Facility Agreement.

Presentment for payment, demand, notice of protest and all other demands and notices of any kind in connection with the execution, delivery, performance and enforcement of this Note are hereby waived.

Borrower shall pay all fees and expenses, including attorneys' fees and costs, incurred by Lender in the enforcement or attempt to enforce any of Borrower's obligations hereunder not performed when due.

Any reference herein to Lender shall be deemed to include and apply to every subsequent holder of this Note. Reference is made to the DIP Facility Agreement for provisions concerning collateral, acceleration and other material terms affecting this Note.

[Signature Page Follows]

**This Note shall be governed by and construed under the laws of the State of Connecticut. Borrower agrees that any action or proceeding brought to enforce or arising out of this Note may be commenced in the state or federal courts located within the State of Connecticut.**

IN WITNESS WHEREOF, Borrower has caused this Note to be duly executed by one of its officers thereunto duly authorized on the date hereof.

BORROWER:

NEXII BUILDING SOLUTIONS INC.

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

NBS IP INC.

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

NEXII CONSTRUCTION INC.

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

NEXII HOLDINGS INC.

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

**SCHEDULE "E"**

**Form of Funding Certificate**

**FUNDING CERTIFICATE**

Date: [ ]

The undersigned, being duly elected and acting officers of each entity comprising the Borrowers (as defined in the DIP Facility Agreement (as defined below)), does hereby certify to HORIZON TECHNOLOGY FINANCE CORPORATION ("Horizon"), POWERSCOURT INVESTMENTS XXV, LP ("Powerscourt"), and TRINITY CAPITAL INC. ("Trinity", and collectively with Horizon and Powerscourt, "Lenders"), in connection with that certain DIP Facility Term Sheet, dated as of January [ ], 2024, by and among the Borrowers, Lenders and Horizon as Collateral Agent (the "DIP Facility Agreement"; with other capitalized terms used below having the meanings ascribed thereto in the DIP Facility Agreement) that:

1. The representations and warranties made by the Borrowers in DIP Facility Agreement and in the other DIP Credit Documentation are true and correct as of the date hereof.

2. No event or condition has occurred that would constitute a Default or an Event of Default under the DIP Facility Agreement or any other DIP Credit Documentation.

3. Borrower is in compliance with the DIP Facility Agreement, the other DIP Credit Documentation and the Amended and Restated Initial Order.

4. All conditions referred to in the DIP Facility Agreement under the heading "[Conditions Precedent to the Disbursement of Initial Loan / Conditions Precedent to the Disbursement of DIP Loans (Other than the Initial Loan)]" to the making of the DIP Loans to be made on or about the date hereof have been satisfied.

5. The DIP Loans to be made on or about the date hereof correspond with the then applicable Updated Cash Flow Projections for the one-week period commencing the Monday following the date hereof.

6. The proceeds for DIP Loan [ ] shall be disbursed as follows:

Disbursement from Horizon:

DIP Loan [ ] Amount                      \$[ ]

Less:

Commitment Fee:                              \$[ ]

Net Proceeds due from Horizon:              \$[ ]

7. The proceeds for DIP Loan [ ] shall be disbursed as follows:

Disbursement from Powerscourt:

DIP Loan [ ] Amount                      \$[ ]

Less:

Commitment Fee:                              \$[ ]

Net Proceeds due from Powerscourt:        \$[ ]

8. The proceeds for DIP Loan [ ] shall be disbursed as follows:

Disbursement from Trinity:

DIP Loan [ ] Amount \$[ ]

Less:

Commitment Fee: \$[ ]

Net Proceeds due from Trinity: \$[ ]

9. Net Proceeds of DIP Loan [ ] in the amount of \$[ ] shall be transferred by Horizon to the Borrowers' account as follows:

Account Name: Nexii Building Solutions, Inc.  
 Bank Name: Bank of Montreal  
 Bank Address: 595 Burrard St. Vancouver, BC, V7X IL7  
 Account Number: 00044633183  
 SWIFT Code: BOFMCAM2

Intermediary Bank Name: Wells Fargo Bank  
 ABA Number: 026005092  
 SWIFT Code: PNBUS3NNYC

10. Net Proceeds of DIP Loan [ ] in the amount of \$[ ] shall be transferred by Powerscourt to the Borrowers' account as follows:

Account Name: Nexii Building Solutions, Inc.  
 Bank Name: Bank of Montreal  
 Bank Address: 595 Burrard St. Vancouver, BC, V7X IL7  
 Account Number: 00044633183  
 SWIFT Code: BOFMCAM2

Intermediary Bank Name: Wells Fargo Bank  
 ABA Number: 026005092  
 SWIFT Code: PNBUS3NNYC

11. Net Proceeds of DIP Loan [ ] in the amount of \$[ ] shall be transferred by Trinity to the Borrowers' account as follows:

Account Name: Nexii Building Solutions, Inc.  
 Bank Name: Bank of Montreal  
 Bank Address: 595 Burrard St. Vancouver, BC, V7X IL7  
 Account Number: 00044633183  
 SWIFT Code: BOFMCAM2

Intermediary Bank Name: Wells Fargo Bank  
 ABA Number: 026005092  
 SWIFT Code: PNBUS3NNYC

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BORROWERS:

NEXII BUILDING SOLUTIONS INC.

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

NBS IP INC.

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

NEXII CONSTRUCTION INC.

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

NEXII HOLDINGS INC.

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

55322530.9

No. \_\_\_\_\_  
Vancouver Registry

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

AND

IN THE MATTER OF NEXII BUILDING SOLUTIONS  
INC., NEXII CONSTRUCTION INC., NBS IP INC., AND  
NEXII HOLDINGS INC.  
PETITIONERS

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**AFFIDAVIT**

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**FASKEN MARTINEAU DuMOULIN LLP**  
Barristers and Solicitors  
2900 – 550 Burrard Street  
Vancouver BC V6C 0A3  
604-631-3131

Attention: Lisa Hiebert  
Matter No: 320821.00009