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Clerk's Stamp

COURT/ESTATE FILE NUMBER 24-2878531

COURT COURT OF KING'S BENCH OF ALBERTA
JUDICIAL CENTRE EDMONTON

IN THE MATTER OF THE NOTICE OF
INTENTION TO MAKE A PROPOSAL
UNDER SECTION 50.4(1) OF THE
BANKRUPTCY AND INSOLVENCY ACT,
RSC 1985, c B-3, AS AMENDED

APPLICANT NILEX INC.

DOCUMENT **AFFIDAVIT OF JEFF ALLEN**

ADDRESS FOR SERVICE AND
CONTACT INFORMATION OF PARTY
FILING THIS DOCUMENT BLAKE, CASSELS & GRAYDON LLP
3500, 855 – 2nd Street S.W.
Calgary, Alberta T2P 4J8

Attention: Kelly Bourassa / James Reid
Telephone: 403-260-9697 / 403-260-9731
Facsimile: 403-260-9700
E-mail: kelly.bourassa@blakes.com /
james.reid@blakes.com

File Ref.: 99580/8

AFFIDAVIT OF Jeff Allen
Sworn October 31, 2022

I, Jeff Allen, of the City of Edmonton, in the Province of Alberta. **MAKE OATH AND SWEAR THAT:**

INTRODUCTION

1. I am the Vice President, Finance of the Applicant, Nilex Inc. (the "**Company**" or the "**Applicant**"). In this capacity, I am responsible for overseeing the financial operations of the Company and its liquidity management. I have also been assisting in a sale process (the "**Sale Process**") (as discussed below) and preparing for the NOI Proceeding (each as defined herein).



2. I have personal knowledge of the matters in this Affidavit, except where I state that my knowledge is based on information and belief, in which case I believe my statements to be true.
3. In preparing this Affidavit, I have consulted with members of the Applicant's board of directors, senior management team, and financial and legal advisors.
4. On October 27, 2022, the Company filed a notice of intention to make a proposal (the "**NOI**") under section 50.4(1) of the *Bankruptcy and Insolvency Act* (Canada) (the "**BIA**"). The NOI was filed in consultation with the Company's professional advisors in order to try and restructure or sell the Company as a going concern for the benefit of its stakeholders and after identifying no viable alternative process due to the Company's insolvency (the "**NOI Proceeding**").
5. On October 27, 2022, KSV Restructuring Inc. ("**KSV**") was appointed as the proposal trustee of the Applicant (the "**Proposal Trustee**") in the NOI Proceeding. Attached as Exhibit "**A**" is a copy of the certificate of filing issued by the official receiver.
6. All references to monetary amounts in this Affidavit are in Canadian dollars, unless noted otherwise.

NATURE OF APPLICATION AND OVERVIEW OF RELIEF SOUGHT

7. This Affidavit is sworn in support of the Company's application returnable on November 9, 2022 (the "**Application**") before the Court of King's Bench of Alberta (the "**Court**") for an order, among other things:
 - (a) extending the time by which the Company may file a proposal to its creditors pursuant to section 50.4(9) the BIA for a 45-day period from the date following the current deadline to do so, such that the Company may file a proposal up to and including 11:59 pm (local Calgary time) on January 10, 2023 or such other date as this Honourable Court may order;
 - (b) granting an Administration Charge (as defined below) in the amount of \$350,000 as security for the payment of professional fees and disbursements incurred and to be incurred by counsel for the Company, the Proposal Trustee and the Proposal Trustee's counsel;

- (c) approving the Company's ability to continue to use the Central Cash Management system currently in place (as defined below) or any similar alternative cash management system, and granting the Lender Priority Charge (defined below) in the principal amount of \$20,000,000 plus interest, fees and expenses, in respect of the same;
- (d) granting the D&O Charge (defined below) in the amount of \$925,000 as security for the Company's obligations to indemnify its directors and officers for obligations and liabilities they may be subject to in carrying out their duties in the NOI Proceedings;
- (e) approving the key employee retention plan (the "**KERP**") as described in the First Report of the Proposal Trustee dated October 31, 2022 (the "**First Report**") and granting the KERP Charge (defined below) in the amount of \$800,000 in respect of the same;
- (f) approving the Company's ongoing Sale Process, and authorizing and directing the Company to continue implementing and performing the Sale Process;
- (g) directing the release to the Company of the Garnished Funds (defined below) held by the Court of King's Bench of Alberta in Court file number 1903-07838; and
- (h) sealing confidential appendix "1" (the "**Confidential Appendix**") to the First Report.

(collectively, the "**Relief Sought**").

BACKGROUND

Operations and Organization

8. Nilex Inc. is a private company incorporated pursuant to the *Business Corporations Act*, RSA 2000, c B-9.
9. The Company's registered office is located at 855-2 Street SW, Suite 3500, Calgary, Alberta. An Alberta Corporate Profile Report for the Company is attached as Exhibit "**B**".
10. Nilex USA Inc. ("**Nilex USA**") is a wholly owned subsidiary of the Company, incorporated in Colorado, United States. Nilex USA is a much smaller business than the Company and



is not subject to the NOI Proceeding. A Corporate Profile Report for Nilex USA is attached as Exhibit "C".

- 11. The Company has been operating in the geosynthetics industry providing civil environmental products and technologies since 1977. The Company provides environmental solutions that are used in road building, erosion and sediment control, water management and containment. The Company also offers conversion and fabrication options, customization of standards products to site, and project-specific requirements.
- 12. The Company holds exclusive rights to several premium brand suppliers and works closely with these suppliers for significant periods of time.
- 13. The Company leases and organizes its operations into seven branches spread out across four Canadian provinces. Nilex USA operates from two American states. The Company's workforce consists of approximately 70 full-time employees and 44 seasonal employees, which does not include Nilex USA.
- 14. The Company leases facilities in Calgary, Edmonton, Saskatoon, Surrey and Toronto. Nilex USA leases facilities in Salt Lake City and Denver.

Directors and Officers

15. The officers of the Company are as follows:

Name	Title
Trevor Derksen	President and CEO
Jeff Allen	Vice President, Finance

16. The directors of the Company are:

Name
Trevor Derksen
Graham Flater
David LeMay
Larry Maker

Financial Circumstances

17. The Company's revenues have exhibited a consistent seasonal pattern over time. Due to the nature of the Company's operations, winter is usually the slowest season, with revenues gradually increasing in the later months of spring and peaking in the summer months.

- 18. Factors outside of the Company's control have caused liquidity challenges for the Company. In particular, consistent winter cash flow deficits, rising storage costs, rising inventory costs, high operating expenses, increasing low cost competition, decreased customer capital spending due to the COVID-19 pandemic, and increased debt servicing costs have resulted in the Company facing serious liquidity challenges.
- 19. To combat its liquidity challenges, the Company is actively reducing slow-moving inventory to mitigate the effects of the Company's seasonality. The Company has also explored new opportunities to support operations in the winter months to help mitigate the effects of revenue seasonality but has not been in a position to implement any such opportunities.
- 20. From 2016 to 2019, the Company has reduced its operating expenses through numerous cost reduction initiatives. These have resulted in cost savings ranging from \$2,000,000 to \$4,000,000 annually for the Company. Notwithstanding these cost saving initiatives, the Company has continued to incur significant financial losses.

ASSETS

- 21. As of July 31, 2022, inventory was the Company's largest asset, followed by accounts receivable. Other long-term assets are made up of intangible assets, which include brand customer relationships, supplier relationships, proprietary technology and royalty contracts.
- 22. The Company's fixed assets represent approximately 2.8% of the Company's total assets. The Company's business model is capital light. The book value of the Company's assets as at August 31, 2022 is as set out in the chart below:

Description	Book Value (\$000s)
Accounts receivable	12,853
Inventory	10,863
Other assets	300
Fixed assets	851
Intercompany receivable – Nilex USA	5,201
Goodwill and intangible assets	3,393
Total	33,461

- 23. Further details in respect of the Company's assets and financial position are set out in the First Report.




LIABILITIES

The Credit Agreement

24. The Company and Nilex USA, as borrowers, and Canadian Imperial Bank of Commerce ("**CIBC**"), as lender, entered into a credit agreement dated June 1, 2018, whereby CIBC made available to the Company a revolving credit facility and term loan (as amended, collectively, the "**Credit Agreement**"). A copy of the Credit Agreement is attached as Exhibit "**D**".
25. The Company's primary account bank is CIBC. The Company manages a centralized cash management system wherein accounts receivable are paid into blocked accounts and applied to the CIBC loan facilities (the "**Cash Management System**"). The Company anticipates continuing to use the existing Cash Management System, including the existing bank accounts and arrangements in place with CIBC throughout the NOI Proceedings. This approach will minimize disruption to business operations as the Company seeks to restructure.
26. The Company's obligations under the Credit Agreement are secured pursuant to, among other things, a general security agreement among the Company, Nilex USA, and CIBC dated June 1, 2018 (the "**GSA**"). The GSA grants CIBC security over all present and after-acquired personal property of the Company. A copy of the GSA is attached as Exhibit "**E**".
27. CIBC has registered its security interests against the personal property of the Company in the Alberta personal property security registry. A copy of an Alberta personal property registry search on the Company from September 27, 2022, is attached as Exhibit "**F**".
28. As of October 17, 2022, the Company owes CIBC \$17,846,493.07 in principal and interest, plus costs and expenses pursuant to the Credit Agreement.

The Fulcrum Loan

29. In addition to the Credit Agreement, the Company and its predecessor, 1739349 Alberta Ltd., have granted certain subordinated promissory notes to PEF 2010 Nilex Investment Limited Partnership ("**Fulcrum**"), in the aggregate principal amount of \$28,183,150 (the "**Fulcrum Promissory Notes**"). A copy of a corporate search for 1739349 Alberta Ltd. is attached as Exhibit "**G**". Copies of the Fulcrum Promissory Notes are attached as Exhibits "**H**" and "**I**".
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30. Predecessors to the Company by way of amalgamation have granted general security agreements in favour of Fulcrum giving Fulcrum security over all present and after-acquired personal property of the Company. Copies of those general security agreements granted to Fulcrum are attached as Exhibits "J", "K" and "L".
31. As of September 30, 2022, the amounts owing by Nilex to Fulcrum under the Fulcrum Promissory Notes was approximately \$44,981,769 plus interest and costs which continue to accrue.
32. The Company, Nilex USA, CIBC, and Fulcrum have entered into a subordination and postponement agreement dated June 1, 2018 (the "**Subordination Agreement**"), whereby, among other things, Fulcrum has agreed to subordinate the priority of its secured indebtedness owing to it by the Company and Nilex USA to the indebtedness owing to CIBC by the Company and Nilex USA. A copy of the Subordination Agreement is attached as Exhibit "**M**".

Other Secured Interests

33. As of September 27, 2022, the Company has 20 registrations against it at the Alberta personal property registry by 7 parties.
34. Other than the CIBC and Fulcrum registrations, these other registrations primarily relate to serial numbered goods used by the Company, with the exceptions of the writs registered in respect of the Watt Action and Wilson Action (each defined and discussed below).

EVENTS LEADING TO THE FILING OF THE NOI

The CIBC Demand and Forbearance Agreement

35. On September 15, 2022, CIBC served the Company with a demand for payment (the "**Demand Letter**") and a notice of intention to enforce its security pursuant to section 244 of the BIA (the "**Enforcement Notice**"). Copies of the Demand Letter and Enforcement Notice are collectively attached hereto as Exhibit "**N**".
36. The Demand Letter provided notice that the Company had engaged in various events of default under the Credit Agreement (the "**Events of Default**"). The Events of Default include, but are not limited to, certain financial covenant breaches and judgments issued by the Court in respect of the Watt Action and the Wilson Action.



37. The Demand Letter required that the Company pay all amounts due and owing to CIBC pursuant to the Credit Agreement.
38. The Company is unable to satisfy the obligations owing to CIBC pursuant to the Credit Agreement as required by the Demand Letter.
39. On October 17, 2022, CIBC and the Company entered into a forbearance agreement (the "**Forbearance Agreement**"). A copy of the Forbearance Agreement is attached as Exhibit "O".
40. Pursuant to the Forbearance Agreement, CIBC has agreed, subject to the terms and conditions of the Forbearance Agreement, to allow the Company to continue to access the credit facilities under the Credit Agreement and to continue to use the Cash Management System to meet its working capital requirements while the Company carries out the Sale Process and the NOI Proceeding. CIBC has also agreed to temporarily forbear from enforcing on its rights, including pursuant to the Demand Letter and Enforcement Notice.

Civil Enforcement Steps Taken Against the Company

41. The Company is a judgment debtor in certain civil actions, including in Court File Nos. 1903-07838 (the "**Watt Action**") and 2203-04447 (the "**Wilson Action**").
42. The judgment creditor in the Watt Action has taken certain steps to enforce on his judgment by issuing garnishee summons to CIBC and to certain customers of the Company to garnish accounts receivable owing to the Company.
43. As a result of these enforcement steps, the Court is holding certain funds and may have additional funds paid into Court (the "**Garnished Funds**") which belong to the Company and are subject to the CIBC security.
44. On August 11, 2022, counsel to CIBC wrote to the Court advising of CIBC's priority secured claim over the Garnished Funds. A copy the August 11, 2022, letter is attached as Exhibit "P".
45. On September 30, 2022, October 7, 2022 and October 21, 2022 the Clerk of the Court sent out notices of proposed distributions of certain of the Garnished Funds, advising that the Court intended to make such distributions to, among others, the judgment creditors in



the Watt Action and Wilson Action. Copies of the Court's distribution notices are attached as Exhibits "Q", "R" and "S".

46. On October 13, 2022, and October 18, 2022, counsel to CIBC provided the Court with notices of objection to the proposed distributions of the Garnished Funds pursuant to section 101(1)(d) of the *Civil Enforcement Act*, RSA 2000, c C-15. The grounds for the notices of objection were on account of the Garnished Funds being subject to CIBC's priority security interest (the "**CIBC Objections**"). Copies of the notices of objection are attached as Exhibits "T" and "U".
47. On October 26, 2022, CIBC filed an application in the Watt Action returnable November 18, 2022, in respect of the CIBC Objections. A copy of the application is attached as Exhibit "V".

The Sale Process

48. On October 11, 2021, the Company retained Valitas Capital Partners ("**Valitas**") to conduct the Sale Process. On December 20, 2021, the Company retained KSV Advisory Inc. ("**KSV Advisory**") to provide financial advisory services, including consulting with the Company's investment banker, Valitas, to oversee a going-concern Sale Process. The Sale Process was commenced by the Company in January 2022.
49. The Sale Process is designed be flexible, such that any proposed transaction structure will be considered, whether it be for shares, or assets of the Company, or any combination of these transactions.
50. Interested parties were initially requested to submit non-binding letters of intent in March 2022; however, none of the offers received by that deadline were acceptable to the Company.
51. Based on the Company's expectation of improved financial results in the spring and summer of 2022, Valitas re-engaged interested parties in respect of the Sale Process.
52. The Sale Process has since resulted in several letters of intent from potential purchasers or investors in the Company. It is clear from the letters of intent that any transaction with the Company will need to be completed through a Court process.



53. As a result, the Company, with the assistance of the Proposal Trustee and Valitas, seeks to complete the Sale Process in these proceedings, and to later return to this Court for approval of a transaction or transactions pursuant to the Sale Process. Key milestones in the Sale Process are set out below:

Milestone	Date
Selection of Successful Bidder/Bid Deadline	November 8, 2022
Execution of Asset Purchase Agreement	November 15, 2022
Court Application to Approve Sale	November 25, 2022
Closing	November 30, 2022

The Company's Insolvency and the NOI Proceeding

- 54. While the Company has significant business operations and assets, a combination of factors outside of the Company's control have caused liquidity challenges. As a result, the Company is in default in respect of certain loans, including the Credit Agreement, and the Company is generally unable to meet its obligations as they come due.
- 55. Although the Company is currently in a challenging financial position, it continues to benefit from a strong market reputation, an excellent track record of performance on large-scale projects across Canada, and a valuable project portfolio.
- 56. Given a reasonable period of time to reorganize its financial affairs and continue with the Sale Process with the protections afforded by the BIA, the Company's management is optimistic that the overall value of the Company's business will likely be enhanced to the benefit of all of its stakeholders.
- 57. The Company is of the view that preserving the going concern value of the Company's business through the NOI Proceeding will likely achieve a better long-term result for the Company's stakeholders as compared to a forced liquidation of the Company's assets.

RELIEF REQUESTED

Extension of Time to File a Proposal



58. An extension of the time for the Company to file a proposal is a material component of the NOI Proceeding to allow the Company to restructure its affairs, including completing the Sale Process.
59. Since filing the NOI, the Company has been diligently complying with various requirements under the BIA including:
- (a) preparing and analyzing the list of creditors;
 - (b) providing the Proposal Trustee with access to the Company's senior employees and books and records;
 - (c) completing a cash flow forecast to the week ending January 13, 2023; and
 - (d) working with the Proposal Trustee and Valitas to review and analyse the letters of intent submitted in the Sale Process and to otherwise advance the Sale Process.
60. The Company is working in good faith in pursuing the Sale Process to maximize value for the Company's creditors and other stakeholders.
61. I understand that in order to continue to work toward the formulation and filing of a proposal, the Company requires an extension of the time period within which it may file a proposal to its creditors. In this regard:
- (a) the Company has acted and is acting in good faith and with due diligence both in the period prior to and since the filing of the NOI; and
 - (b) an extension will enhance the Company's ability to make a viable proposal following the completion of the Sale Process.

Administration Charge

62. The Company requests that this Honourable Court grant a charge in favour of the Proposal Trustee, counsel to the Proposal Trustee, and counsel to the Company (collectively, the "**Administrative Professionals**") to secure payment of their reasonable fees and disbursements, in each case, incurred by the Company at their standard rates and charges as part of the costs of these proceedings.



63. I understand that given the insolvency of the Company, providing such professionals with security for payment of their services will be necessary to effect the completion of the Sale Process and the restructuring of the Company as a going concern.
64. Accordingly, the Company seeks to ensure that the Administrative Professionals are entitled to the benefit of and granted a charge (the "**Administration Charge**") on all of the Company's present and future assets, undertakings and property of every nature and kind whatsoever and wherever situate, including all proceeds thereof (collectively, the "**Property**"), which charge shall not exceed an aggregate amount of \$350,000, as security for payment of their respective professional fees and disbursements incurred in respect of the NOI Proceeding.
65. The Company requests that the Administration Charge form a first priority charge on the Property in priority to all security interests, trusts, deemed trusts, liens, charges and encumbrances, claims of secured creditors statutory or otherwise, in favour of any Person (collectively the "**Encumbrances**").
66. The Company has sought and obtained guidance from the Proposal Trustee on the proposed amount of the Administration Charge and I the Proposal Trustee has indicated it is supportive.

Cash Management System and Lender Priority Charge

67. As described above, CIBC has agreed to allow the Company to use the Cash Management System to continue to fund its ongoing operations without the need for the Company to obtain other interim financing.
68. The Company seeks approval from the Court to continue to utilize the Cash Management System.
69. In addition, the Company is seeking a charge on the Property in favour of CIBC, which charge shall not exceed an aggregate principal amount of \$20,000,000, as security for any advances made under the Credit Agreement, plus interest, fees and expenses, from and after the commencement of the NOI Proceeding (the "**Lender Priority Charge**").
70. CIBC has indicated that, absent the approval of the Lender Priority Charge and confirmation that it will be an unaffected creditor in the NOI Proceeding and unaffected by any stay of proceedings that may be granted, it is not willing to permit the Company



continued advances under the Credit Agreement and access to the Cash Management System for its liquidity needs.

71. The Company requests that the Lender Priority Charge form a second ranking charge on the Property in priority to all Encumbrances except the Administration Charge.
72. The Company has sought and obtained guidance from the Proposal Trustee on the proposed amount of the Lender Priority Charge and the Proposal Trustee is supportive.

D&O Charge

73. The Company is seeking a charge on the Property in favour of the Company's directors and officers, which charge shall not exceed an aggregate amount of \$925,000 (the "**D&O Charge**").
74. The D&O Charge is required to ensure that the directors and officers of the Company will continue to serve in such capacity and have assurance that they will have indemnification for liabilities which they may incur in the fulfillment of their duties in these NOI proceedings. The directors and officers have significant knowledge of the restructuring efforts of the Company that cannot be easily replicated or replaced.
75. The directors and officers have the benefit of insurance policies (the "**D&O Policies**") in respect of their potential liability. Although, the D&O Policies insure the directors and officers for certain claims that may arise against them in their capacity as directors and/or officers of the Company, coverage is subject to several exclusions and limitations and there is a potential for insufficient coverage in respect of potential director and officer liabilities. The directors and officers have expressed their desire for certainty with respect to potential personal liability if they continue in their current capacities in the context of the NOI Proceeding.
76. The D&O Charge would only be in respect of amounts not covered by the Company's directors and officers insurance policy.
77. The Company requests that the D&O Charge form a third ranking charge on the Property in priority to all Encumbrances except the Administration Charge and Lender Priority Charge.



78. The Company has sought and obtained guidance from the Proposal Trustee on the proposed amount of the D&O Charge and I believe the Proposal Trustee is supportive.

KERP and KERP Charge

79. The Company is also seeking approval of a key employee retention plan ("**KERP**") for certain of the Company's key employees. The KERP is described in the First Report and Confidential Appendix.
80. The Company believes the terms of the KERP, which have been developed in consultation with KSV Advisory, are reasonable and critical to ensuring that certain of the Company's key employees continue in their employment with the Company and to incentivize executives as they continue with the Sale Process and a restructuring in the NOI Proceeding.
81. The Company is seeking a charge over Property in an amount not to exceed \$800,000 for the Company's obligations pursuant to the KERP (the "**KERP Charge**").
82. The Company requests that the KERP Charge form a fourth ranking charge on the Property in priority to all Encumbrances except the Administration Charge, Interim Lender Charge, and the D&O Charge.

The Sale Process

83. As noted above, the Company, with the assistance of Valitas and under the oversight of KSV Advisory (as more fully described in the First Report), has been carrying out the Sale Process since January 2022.
84. The Sale Process has since resulted in several letters of intent from potential purchasers or investors in the Company.
85. The Company, with the assistance of of the Proposal Trustee and Valitas, seeks to complete the Sale Process in these proceedings, and to later return to this Court for approval of a transaction or transactions pursuant to the Sale Process.

Funds Paid Out of Court

86. As noted above, the Court is holding the Garnished Funds pursuant to civil enforcement remedies in the Watt Action.



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87. The Garnished Funds are subject to the security granted in favour of CIBC and Fulcrum, in priority to the judgment creditors in the Watt Action and Wilson Action.
88. The Company is seeking a direction that the Clerk of the Court distribute any present or future Garnished Funds to it to be applied in accordance with the provisions of the Credit Agreement and the Cash Management System.
89. This will reduce the amounts outstanding to CIBC as first priority secured creditor and in turn will reduce the overall interest charges payable by the Company to CIBC for the benefit of all stakeholders.
90. The Company is also seeking a direction in respect of any person who has received a garnishee summons directing them to pay funds to the Clerk of the Court to pay any such funds directly to the Company to be applied in accordance with the provisions of the Credit Agreement and the Cash Management System.
91. CIBC has scheduled its application filed in the Watt Action for a date later than the return date of this Application.
92. CIBC and Fulcrum have agreed to support the distribution of the Garnished Funds to the Company to be applied as set out above.

Conclusion

93. I swear this Affidavit in support of the Application and for any other proper purpose in connection with the NOI Proceeding.

SWORN BEFORE ME on the 31st day of
October, 2022 at the City of Calgary,
Alberta.



A Commissioner for Oaths in and for
Alberta

Luke Bendkowski
Barrister & Solicitor



Jeff Allen

This is Exhibit "A" referred to in the Affidavit of Jeff Allen sworn before me this 31st day of October, 2022.



A Commissioner for Oaths in and for Alberta

Luke Bendkowski
Barrister & Solicitor





Industry Canada
**Office of the Superintendent
of Bankruptcy Canada**

Industrie Canada
**Bureau du surintendant
des faillites Canada**

District of Alberta
Division No. 01 - Edmonton
Court No. 24-2878531
Estate No. 24-2878531

In the Matter of the Notice of Intention to make a proposal of:

Nilex Inc.

Insolvent Person

KSV RESTRUCTURING INC.

Licensed Insolvency Trustee

Date of the Notice of Intention:

October 27, 2022

CERTIFICATE OF FILING OF A NOTICE OF INTENTION TO MAKE A PROPOSAL
Subsection 50.4 (1)

I, the undersigned, Official Receiver in and for this bankruptcy district, do hereby certify that the aforementioned insolvent person filed a Notice of Intention to Make a Proposal under subsection 50.4 (1) of the Bankruptcy and Insolvency Act;

Pursuant to subsection 69. (1) of the Act, all proceedings against the aforementioned insolvent person are stayed as of the date of filing of the Notice of Intention.

Date: October 27, 2022, 10:45

E-File/Dépôt Electronique

Official Receiver

Canada Place Building, 9700 Jasper Avenue NW, Suite 725, Edmonton, Alberta, Canada, T5J4C3, (877)376-9902

Canada

This is Exhibit "B" referred to in the Affidavit of Jeff Allen sworn before me this 31st day of October, 2022.



A Commissioner for Oaths in and for Alberta

Luke Bendkowski
Barrister & Solicitor



Government of Alberta Corporation/Non-Profit Search Corporate Registration System

Date of Search: 2022/09/27
 Time of Search: 12:48 PM
 Search provided by: BLAKE CASSELS & GRAYDON LLP
 Service Request Number: 38356334
 Customer Reference Number: 99580/8 JMRD

Corporate Access Number: 2019907027
Business Number: 103886032
Legal Entity Name: NILEX INC.

Legal Entity Status: Active
Alberta Corporation Type: Named Alberta Corporation
Method of Registration: Amalgamation
Registration Date: 2016/09/01 YYYY/MM/DD

Registered Office:

Street: 855 - 2 STREET SW, SUITE 3500
City: CALGARY
Province: ALBERTA
Postal Code: T2P4J8

Records Address:

Street: 855 - 2 STREET SW, SUITE 3500
City: CALGARY
Province: ALBERTA
Postal Code: T2P4J8

Email Address: ANNUALRETURNS@BLAKES.COM

Primary Agent for Service:

Last Name	First Name	Middle Name	Firm Name	Street	City	Province	Postal Code	Email
MCLEOD	DANIEL	J.	BLAKE, CASSELS & GRAYDON	855 - 2 STREET SW, SUITE	CALGARY	ALBERTA	T2P4J8	AGENTFORSE

		LLP	3500			
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Directors:

Last Name: DERKSEN
First Name: TREVOR
Street/Box Number: 91 CORMACK CRESCENT NW
City: EDMONTON
Province: ALBERTA
Postal Code: T6R2E5

Last Name: FLATER
First Name: GRAHAM
Street/Box Number: 885 WEST GEORGIA STREET, SUITE 1020
City: VANCOUVER
Province: BRITISH COLUMBIA
Postal Code: V6C3E8

Last Name: LEMAY
First Name: DAVID
Street/Box Number: 7 TIMBERLINE GATE SW
City: CALGARY
Province: ALBERTA
Postal Code: T3H0W3

Last Name: MAKER
First Name: LAWRENCE
Street/Box Number: 72 LAURELEAF ROAD
City: THORNHILL
Province: ONTARIO
Postal Code: L3T2T1

Voting Shareholders:

Last Name: LEMAY
First Name: DAVID
Street: 7 TIMBERLINE GATE SW
City: CALGARY
Province: ALBERTA
Postal Code: T3H0W3
Percent Of Voting Shares: .62

Last Name: PEF 2010 NILEX INVESTMENT LIMITED PARTNERSHIP
Street: 925 WEST GEORGIA STREET, SUITE 1600
City: VANCOUVER
Province: BRITISH COLUMBIA
Postal Code: V6C3L2
Percent Of Voting Shares: 93.48

Last Name: SEKHON
First Name: GURCHATE
Street: 7383 - 147A STREET
City: SURREY
Province: BRITISH COLUMBIA
Postal Code: V3S9L7
Percent Of Voting Shares: 5.9

Details From Current Articles:

The information in this legal entity table supersedes equivalent electronic attachments

Share Structure: SEE ATTACHED SCHEDULE "A"
Share Transfers Restrictions: SEE ATTACHED SCHEDULE "B"
Min Number Of Directors: 1
Max Number Of Directors: 15
Business Restricted To: NONE
Business Restricted From: NONE
Other Provisions: SEE ATTACHED SCHEDULE "C"

Associated Registrations under the Partnership Act:

Trade Partner Name	Registration Number
NILEX CIVIL ENVIRONMENTAL GROUP	TN20013116

Other Information:

Amalgamation Predecessors:

Corporate Access Number	Legal Entity Name
206832966	NILEX CONSTRUCTION INC.

2017455896	NILEX INC.
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Last Annual Return Filed:

File Year	Date Filed (YYYY/MM/DD)
2022	2022/09/22

Filing History:

List Date (YYYY/MM/DD)	Type of Filing
2016/09/01	Amalgamate Alberta Corporation
2020/02/22	Update BN
2020/03/05	Change Address
2021/06/25	Change Director / Shareholder
2021/11/29	Change Agent for Service
2022/09/22	Enter Annual Returns for Alberta and Extra-Provincial Corp.

Attachments:

Attachment Type	Microfilm Bar Code	Date Recorded (YYYY/MM/DD)
Share Structure	ELECTRONIC	2016/09/01
Restrictions on Share Transfers	ELECTRONIC	2016/09/01
Other Rules or Provisions	ELECTRONIC	2016/09/01
Statutory Declaration	10000007114945504	2016/09/01

The Registrar of Corporations certifies that, as of the date of this search, the above information is an accurate reproduction of data contained in the official public records of Corporate Registry.



SCHEDULE "A"

ARTICLES OF AMALGAMATION

OF NILEX INC.

(the "Corporation")

1. AUTHORIZED CAPITAL

The Corporation is authorized to issue:

(a) an unlimited number of Class A Common Shares;

(b) an unlimited number of Class B Common Shares;

(with the shares in (a) and (b) above being the "Common Shares")

(c) an unlimited number of Class A Preferred Shares;

(d) an unlimited number of Class B Preferred Shares; and

(e) an unlimited number of Class C Preferred Shares

(with the shares in (c), (d) and (e) above being the "Preferred Shares")

all of which shares shall have the following rights, restrictions, privileges and conditions, and all such rights, restrictions, privileges and conditions attaching to the shares of any class shall be subject to the rights, restrictions, privileges and conditions attaching to any other class of shares now existing or hereafter created or amended.

2. COMMON SHARE RIGHTS AND RESTRICTIONS

The Common Shares shall have the following rights, restrictions, privileges and conditions attached thereto:

2.1 Voting

The holders of the Common Shares shall be entitled to notice of and to attend at meetings of the shareholders of the Corporation (the "Shareholders"), and shall be entitled to one (1) vote in respect of each such share so held and the holder shall also be entitled to consent to and sign a resolution in writing to be signed by the Shareholders of the Corporation.

2.2 Dividends

(a) Subject to the rights of the holders of the Preferred Shares to receive dividends, the holders of the Common Shares shall be entitled to receive, equally on a share for share basis among all issued and outstanding Common Shares, a dividend when, as, and if declared by the directors of the Corporation (the "Directors").

(b) Notwithstanding anything to the contrary herein contained, no dividends or other payment or distribution of assets or property of the Corporation shall be made to the holders, as

such, of shares of the Corporation, if (i) prohibited by the Business Corporations Act (Alberta) (the "Act") or other applicable law, or (ii) the payment thereof would result in the fair market value of the Corporation's assets, net of liabilities owed by the Corporation and the stated capital of all the classes of shares of the Corporation (except the stated capital of the Preferred Shares) being less than the aggregate of the Redemption Price of all of the classes of Preferred Shares then outstanding and all unpaid dividends, whether declared or not, accrued thereon.

2.3 Dissolution

In the event of a liquidation, dissolution, or winding up of the Corporation or other distribution of assets of the Corporation among its shareholders for the purposes of winding-up its affairs, the holders of Common Shares, subject to the prior rights of the holders of the Preferred Shares, shall be entitled to share, equally on a share for share basis, in the distribution of any remaining property or assets of the Corporation.

2.4 Amendment

(a) The special rights and restrictions attached to the Class A Common Shares shall not be modified, abrogated or amended unless consented to by the holders of the Class A Common Shares in a separate resolution, with such consent to be obtained by (i) a resolution in writing signed by holders of all the issued and outstanding Class A Common Shares or (ii) a resolution passed by at least 75 percent of the votes cast at a separate meeting of the holders of the Class A Common Shares who are present in person or represented by proxy.

(b) The special rights and restrictions attached to the Class B Common Shares shall not be modified, abrogated or amended unless consented to by the holders of the Class B Common Shares in a separate resolution, with such consent to be obtained by (i) a resolution in writing signed by holders of all the issued and outstanding Class B Common Shares or (ii) a resolution passed by at least 80 percent of the votes cast at a separate meeting of the holders of the Class B Common Shares who are present in person or represented by proxy.

3. PREFERRED SHARE RIGHTS AND RESTRICTIONS

The Preferred Shares shall have the following rights, restrictions, privileges and conditions attached thereto:

3.1 Voting

Except as provided in the Act as amended from time to time, the holders of the Preferred Shares shall not, as such, be entitled to vote at, nor to receive notice of or attend Shareholders meetings nor shall the holders be entitled to consent to or sign a resolution in writing to be signed by the shareholders of the Corporation.

3.2 Dividends

(a) The holders of the Preferred Shares shall be entitled to receive as and when declared by the Directors out of funds or assets of the Corporation properly available for the payment of dividends, in preference and priority to any dividends being declared and paid on any other classes of shares in the Corporation, a cumulative, non-compounding dividend at a rate of 15.830 percent per annum on the Redemption Price of each such share. Dividends on the Preferred Shares shall be deemed to accrue on a daily basis, whether or not declared, from and including the date of issuance of each such share until such dividends are declared and paid in full.

(b) Any dividends declared and paid on any Preferred Shares must be declared and paid proportionately on the Class A Preferred Shares, the Class B Preferred Shares and the Class C Preferred Shares based on the aggregate accrued and unpaid dividends attributable to each such Class A Preferred Share, Class B Preferred Share or Class C Preferred Share as compared to the aggregate accrued and unpaid dividends attributable to all of the Preferred Shares at the time of such declaration.

(c) The Directors shall be entitled to declare part of such cumulative dividends at anytime and from time to time notwithstanding that such cumulative dividend may not be declared in full. The holders of the Preferred Shares shall not, as such, be entitled to receive any dividends other than or in excess of the dividends herein provided.

(d) No dividends shall be declared and paid at any time on any other class of shares in any fiscal year of the Corporation unless and until all unpaid dividends, whether declared or not, that have accrued to the holders of the Preferred Shares have been declared and paid.

3.3 Dissolution

In the event of a liquidation, dissolution, or winding up of the Corporation or other distribution of assets of the Corporation among its shareholders for the purposes of winding-up its affairs:

(a) the holders of the Class A Preferred Shares shall be entitled to receive an aggregate amount of CDN\$1.00 distributed pro rata among the holders of the Class A Preferred Shares (or as nearly thereto as the Directors may in good faith determine) before any amount shall be paid or any property or assets of the Corporation distributed to the holders of any other class of shares;

(b) the holders of the Class B Preferred Shares shall be entitled to receive an aggregate amount of CDN\$1.00 distributed pro rata among the holders of the Class B Preferred Shares (or as nearly thereto as the Directors may in good faith determine) before any amount shall be paid or any property or assets of the Corporation distributed to the holders of any other class of shares, other than the payment to the holders of the Class A Preferred Shares as provided in subsection (a) above;

(c) the holders of the Class C Preferred Shares shall be entitled to receive an aggregate amount of CDN\$1.00 distributed

pro rata among the holders of the Class C Preferred Shares (or as nearly thereto as the Directors may in good faith determine) before any amount shall be paid or any property or assets of the Corporation distributed to the holders of any other class of shares, other than the payments to the holders of the Class A Preferred Shares and the Class B Preferred Shares as provided in subsection (a) and (b) above.

(d) subject to the prior rights of the holders of the Preferred Shares to receive distributions pursuant to subsections (a), (b) and (c) above, the holders of the Preferred Shares shall be entitled to receive, before any amount is paid or any property or assets of the Corporation is distributed to the holders of any other class of shares of the Corporation:

(i) firstly, an amount equal to the Redemption Price of each share; and

(ii) secondly, an amount equal to all unpaid dividends, whether declared or not, which shall have accrued thereon.

If the amount of remaining property or assets of the Corporation is less than the aggregate of the Redemption Price of all issued Preferred Shares, then the remaining property or assets of the Corporation shall be distributed to the holders of those shares equally on a share for share basis. If the amount of remaining property or assets of the Corporation is greater than the aggregate of the Redemption Price of all issued Preferred Shares but less than the amount required to satisfy all unpaid dividends, whether declared or not, which have accrued thereon, then the amount of the Corporation's remaining property or assets in excess of the aggregate Redemption Price of those shares shall be distributed to the holders of those shares proportionately, based on the amount of unpaid dividends, whether declared or not, accrued on the shares held by each particular holder as compared to the aggregate of all unpaid dividends, whether declared or not, which shall have accrued on all the issued Preferred Shares. For greater certainty, upon payment of the Redemption Price in respect of all issued Preferred Shares and all unpaid dividends, whether declared or not, which have accrued thereon, the holders of the Preferred Shares shall not, as such, have any other right to participate or share in the remaining property of the Corporation whether in a liquidation, dissolution, winding up or a reduction, redemption, or purchase by the Corporation of its shares.

3.4 Redemption of Preferred Shares

(a) The redemption price for each Preferred Share shall be the sum of CDN\$1.00 (the "Redemption Price").

(b) Subject to the provisions of the Act, the Corporation may, by resolution of the Directors and upon giving notice as hereinafter provided, from time to time redeem or purchase the whole or any part of any of the Preferred Shares of any one or more holders, without redeeming or purchasing the whole or any part of the Preferred Shares of any other holder or holders of the same or any other class, by paying for each share to be redeemed or purchased the Redemption Price thereof, together with all unpaid dividends, whether declared or not, accrued

thereon. Not less than ten (10) clear days' notice in writing, signed by any Director or officer of the Corporation, of such redemption or purchase (each a "Redemption Notice") shall be given by personal delivery or by mailing such notice to the registered holder(s) of the shares to be redeemed at the last address as they appear in the records of the Corporation or its transfer agent, provided that accidental failure to give a Redemption Notice to one or more of such holders shall not affect the validity of such redemption. In the case of each Redemption Notice so delivered or mailed, delivery thereof shall be deemed to have been received on the day of delivery if delivered and on the fifth business day following the day of mailing if mailed.

(c) The Redemption Notice shall specify the number of Preferred Shares to be redeemed, the aggregate Redemption Price and the amount of all unpaid dividends, whether declared or not, accrued on each share to be redeemed and the date and place of redemption or purchase which may be a Canadian Chartered Bank or a trust company. On or after the date so specified in the Redemption Notice, the Corporation shall pay to the order of each holder of the Preferred Shares to be redeemed, by way of certified cheque, bank draft or wire transfer or direct deposit of immediately available funds at the place of redemption or to an account specified by each holder of shares to be redeemed on or before the date fixed for redemption or purchase, an amount sufficient to redeem or purchase such shares thereof on presentation and surrender of the certificate or certificates representing such shares to be redeemed and such shares shall thereupon, without any further action on the part of the Corporation or the holder of such shares, be redeemed. Surrender of the certificate or certificates for such shares to be redeemed or purchased is sufficient only if such certificate or certificates are duly and properly endorsed in blank for transfer or accompanied by a form of transfer acceptable to the Corporation and duly executed in blank.

(d) If share certificates representing any or all of the Preferred Shares to be redeemed have not been surrendered to the Corporation as required in the foregoing provisions on or before the time specified in the Redemption Notice for doing so, the Corporation may, at its option, at any time on or after such time, deposit the amount required to redeem or purchase such shares to a special account with any chartered bank or any trust company in Canada, with such amount to be paid without interest to or to the order of the holders of the Preferred Shares for which such deposit is being made, and such holders' rights shall be limited to receiving without interest their proportionate part of the total amount required to redeem such shares so deposited against presentation and surrender of the said certificates held by them respectively. Any interest accrued on such amounts shall belong to the Corporation.

(e) From and after the date specified in any Redemption Notice, the holders of the Preferred Shares to be redeemed shall not be entitled to exercise any of the rights of shareholders in respect thereof unless payment of the amount required to redeem the shares has not been made upon presentation of the certificates in accordance with the foregoing provisions, in which case the rights of the holders shall remain unaffected.

Unless otherwise determined by the Directors, all Preferred Shares redeemed by the Corporation in accordance with the provisions hereof shall be cancelled and returned to the status of authorized but unissued shares in the capital of the Corporation.

3.5 Liquidity

Notwithstanding anything to the contrary herein contained, no dividends, redemptions, share purchases, capital reductions or other payments or distributions of assets or property of the Corporation shall be made or paid on or with respect to shares of the Corporation which rank subordinate to any of the Preferred Shares on a liquidation, dissolution or winding up, if the payment in respect thereof would result in the fair market value of the Corporation's assets, net of liabilities owed by the Corporation, being less than the aggregate of the Redemption Price for all of the then outstanding Preferred Shares and all unpaid dividends, whether declared or not, accrued thereon, and the Redemption Price or amount payable on redemption or purchase for all other shares then outstanding which rank equal to or in priority to the Preferred Shares on a liquidation, dissolution or winding up, or would otherwise be a breach of the Act.

3.6 Specified Amount

For the purposes of subsection 191(4) of the Income Tax Act (Canada), the specified amount for each Preferred Share shall be equal to CDN\$1.00.

SCHEDULE "B"

ARTICLES OF AMALGAMATION

OF NILEX INC. (the "Corporation")

Restrictions on Share Transfers

The right to transfer shares of the Corporation is restricted in that no shareholder shall be entitled to transfer any share or shares in the capital of the Corporation unless the transfer has been approved by the directors of the Corporation, such approval to be signified by a resolution of the Board of Directors of the Corporation.



SCHEDULE "C"

ARTICLES OF AMALGAMATION

OF NILEX INC.

(the "Corporation")

Other Rules or Provisions)

1. The number of shareholders of the Corporation, exclusive of persons who are in its employment and are shareholders of the Corporation and exclusive of persons who, having been formerly in the employment of the Corporation, were, while in that employment, shareholders of the Corporation, and have continued to be shareholders of the Corporation after termination of that employment, is limited to not more than fifty persons, two or more persons who are the joint registered owners of one or more shares being counted as one shareholder.

2. Any invitation to the public to subscribe for securities of the Corporation is prohibited.

3. The Corporation has a lien on the shares of a shareholder or his legal representative for a debt of that shareholder to the Corporation, provided that such lien shall be released in respect of shares transferred by such shareholder (or his legal representative) as permitted pursuant to the terms of these Articles or any unanimous shareholders agreement in respect of the Corporation.

4. The directors may, between annual general meetings, appoint one or more additional directors of the Corporation to serve until the next annual meeting, but the number of additional directors shall not at any time exceed one-third of the number of directors who held office at the expiration of the last annual meeting of the Corporation.

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This is Exhibit "C" referred to in the Affidavit of Jeff Allen sworn before me this 31st day of October, 2022.



A Commissioner for Oaths in and for Alberta

Luke Bendkowski
Barrister & Solicitor





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FAQs, Glossary and Information

Summary

Details			
Name	Nilex USA Inc.		
Status	Good Standing	Formation date	03/28/2013
ID number	20131201335	Form	Corporation
Periodic report month	March	Jurisdiction	Colorado
Principal office street address	15354 E Hinsdale Circle, Centennial, CO 80112, United States		
Principal office mailing address	15354 E Hinsdale Circle, Centennial, CO 80112, United States		

Registered Agent	
Name	Jeff Allen
Street address	15354 E Hinsdale Circle, Centennial, CO 80112, United States
Mailing address	15354 E Hinsdale Circle, Centennial, CO 80112, United States

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This is Exhibit "D" referred to in the Affidavit of Jeff Allen sworn before me this 31st day of October, 2022.



A Commissioner for Oaths in and for Alberta

Luke Bendkowski
Barrister & Solicitor



CREDIT AGREEMENT

dated as of

June 1, 2018

among

NILEX INC. and NILEX USA INC.

as Borrowers

and

THE GUARANTORS FROM TIME TO TIME PARTY HERETO

and

CANADIAN IMPERIAL BANK OF COMMERCE

as Lender



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CREDIT AGREEMENT

THIS CREDIT AGREEMENT is dated as of June 1, 2018 and is entered into among Nilex Inc. and Nilex USA Inc., as borrowers (each, a “**Borrower**” and collectively, the “**Borrowers**”), and Canadian Imperial Bank of Commerce, as Lender.

RECITALS

- A. The Lender has agreed to provide certain credit facilities to the Borrowers.
- B. The Guarantors have agreed to guarantee the obligations of the Borrowers in connection herewith.

NOW THEREFORE, in consideration of the mutual conditions and agreements set forth in this Agreement and for good and valuable consideration, the receipt of which is hereby acknowledged, the parties hereto agree as follows:

ARTICLE 1 DEFINITIONS

1.1 Defined Terms.

As used in this Agreement, the following terms have the meanings specified below:

“**Acceptable Bailee Letter**” means, in respect of each bailee, a bailee letter, substantially in the form of Exhibit D or otherwise satisfactory to the Lender in its reasonable discretion, executed by the relevant bailee.

“**Acceptable Credit Support**” means, with respect to any Account, either, (a) export/import insurance provided by EDC (or such other provider of letters of credit or import/export insurance as shall be agreed to in writing by the Lender and with security provided to the Lender in respect thereof (all to the satisfaction of the Lender), or (b) a letter of credit issued by a financial institution acceptable to the Lender and otherwise on terms acceptable to Lender in its sole discretion, each on terms and in a manner reasonably satisfactory to the Lender;

“**Acceptable Landlord Waiver**” means, in respect of each premises, a landlord waiver, substantially in the form of Exhibit C or otherwise satisfactory to the Lender in its reasonable discretion, executed by the landlord of the relevant premises.

“**Acceptance Fee**” means a fee payable by a Borrower to the Lender in Canadian Dollars with respect to the acceptance of a Bankers Acceptance or the making of a BA Equivalent Loan, calculated on the face amount of the Bankers Acceptance or the BA Equivalent Loan at a rate per annum equal to the Applicable Margin from time to time in effect on the basis of the actual number of days in the applicable Contract Period (including the date of acceptance and excluding the date of maturity) and a year of 365 days, (it being agreed that the Applicable Margin in respect of a BA Equivalent Loan is equivalent to the Applicable Margin otherwise applicable to the BA Borrowing which has been replaced by the making of such BA Equivalent Loan pursuant to Section 2.11 (h)).

“**Accounts**” means, in respect of each Credit Party, all of such Credit Party’s now existing and future: (a) claims, accounts (including as defined in the PPSA or the UCC, as applicable), and any and all other receivables (whether or not specifically listed on schedules furnished to the

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Lender), including all claims or accounts created by, or arising from, all of such Credit Party's sales, leases, loans, rentals of goods or renditions of services to its customers, including those accounts arising under any of such Credit Party's trade names or styles, or through any of such Credit Party's divisions; (b) any and all instruments, documents, bills of exchange, notes or any other writing that evidences a monetary obligation and chattel paper (including electronic chattel paper) (all as defined in the PPSA or the UCC, as applicable); (c) unpaid seller's or lessor's rights (including rescission, replevin, reclamation, repossession and stoppage in transit) relating to the foregoing or arising therefrom; (d) rights to any goods represented by any of the foregoing, including rights to returned, reclaimed or repossessed goods; (e) reserves and credit balances arising in connection with or pursuant hereto; (f) guarantees, indemnification rights, supporting obligations, payment intangibles, tax refunds and letter of credit rights; (g) insurance policies or rights relating to any of the foregoing; (h) intangibles pertaining to any and all of the foregoing (including all rights to payment, including those arising in connection with bank and non-bank credit cards), and including books and records and any electronic media and software relating thereto; (i) notes, deposits or property of borrowers or other account debtors securing the obligations of any such borrowers or other account debtors to such Credit Party; (j) cash and non-cash proceeds (including as defined in the PPSA or the UCC, as applicable) of any and all of the foregoing; and (k) all monies and claims for monies now or hereafter due and payable in connection with any and all of the foregoing or otherwise.

"Acquisition" means any transaction, or any series of related transactions, consummated after the Effective Date, by which any Credit Party, directly or indirectly, by means of a take-over bid, tender offer, amalgamation, consolidation, merger, purchase of assets or otherwise (a) acquires any business or all or substantially all of the assets of any Person engaged in any business, (b) acquires control of securities of a Person engaged in a business representing more than 50% of the ordinary voting power for the election of directors or other governing position if the business affairs of such Person are managed by a board of directors or other governing body, (c) acquires control of more than 50% of the ownership interest in any Person engaged in any business that is not managed by a board of directors or other governing body, or (d) otherwise acquires Control of a Person engaged in a business.

"Action Request" means any request received by any Credit Party or any of its Subsidiaries from any Governmental Authority under any Environmental Law whereby such Governmental Authority requests that it take action or steps or do acts or things in respect of any property or assets in the charge, management or control of such Credit Party to remediate a matter which is not or is alleged not to be in compliance with all Environmental Laws.

"Affiliate" means, (a) any Person which, directly or indirectly, Controls, is Controlled by or is under common Control with any other Person; (b) any Person which beneficially owns or holds, directly or indirectly, 10% or more of any class of voting stock or equity interest (including partnership interests) of any other Person; (c) any Person, 10% or more of any class of the voting stock (or if such Person is not a corporation, 10% or more of the equity interest, including partnership interests) of which is beneficially owned or held, directly or indirectly, by any other Person; or (d) any Person related within the meaning of the ITA to any such Person and includes any "Affiliate" within the meaning specified in the *Canada Business Corporations Act* on the date hereof.

"Agreement" means this credit agreement and the schedules and exhibits hereto and any amendments, restatements, supplements or other modifications to this credit agreement or the schedules or exhibits made at any time and from time to time.

"Applicable Law" means all federal, state, provincial, municipal, foreign and international statutes, acts, codes, ordinances, decrees, treaties, rules, regulations, municipal by-laws, judicial or arbitral or administrative or ministerial or departmental or regulatory judgments, orders, decisions,



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rulings or awards or any provisions of the foregoing, including general principles of common and civil law and equity, and all policies, practices and guidelines of any Governmental Authority binding on or affecting the Person referred to in the context in which such word is used (including, in the case of tax matters, any accepted practice or application or official interpretation of any relevant taxation authority).

“Applicable Margin” means, with respect to any Loan, the applicable rate per annum, expressed as a percentage, set forth in the relevant column of the table below:

Revolving Loan BA Borrowing or Revolving Loan LIBO Rate Loan Applicable Margin	Revolving Loan Canadian Prime Loan or Revolving Loan Base Rate Loan Applicable Margin	Term Loan Canadian Prime Loan or Term Loan Base Rate Loan Applicable Margin	Term Loan BA Borrowing or Term Loan LIBO Rate Loan Applicable Margin
1.75%	0.25%	3.75%	5.25%

“Assignment and Assumption” means an assignment and assumption entered into by the Lender and an assignee (with the consent of any party whose consent is required by Section 9.4), and accepted by the Lender, in the form of Exhibit I or any other form approved by the Lender.

“Authorization” means, with respect to any Person, any authorization, order, permit, approval, grant, licence, consent, right, franchise, privilege, certificate, judgment, writ, injunction, award, determination, direction, decree, by-law, rule or regulation of any Governmental Authority having jurisdiction over such Person, whether or not having the force of Law.

“Availability Reserves” means, as of any date of determination and without duplication, such amounts as the Lender may from time to time establish and revise in its sole discretion reducing the Borrowing Base which would otherwise be available to the Borrowers under the lending formulas provided for herein (a) to reflect criteria, events, conditions, contingencies or risks which, as determined by the Lender in its sole discretion, do or may affect either (i) any component of the Borrowing Base or its value (including with respect to dilution), (ii) the assets, business, operations, industry, financial performance, financial condition or prospects of the Credit Parties, or (iii) the security interests and other rights of the Lender in the Collateral (including the enforceability, perfection and priority thereof, or the realization thereon), or (b) to reflect the Lender’s reasonable belief that any collateral report or financial information furnished by or on behalf of the Borrowers to the Lender is or may have been incomplete, inaccurate or misleading, or (c) in respect of any state of facts which the Lender determines constitutes a Default or an Event of Default. Without limiting the foregoing, the Lender, in its sole discretion, may establish and/or increase Availability Reserves (but without duplication) in respect of: (a) (i) rental payments or similar charges for any of the leased premises of any Credit Party or other collateral locations for which the relevant Credit Party has not delivered to the Lender a landlord’s waiver or bailee’s letter substantially in the form attached hereto as Exhibits G and H, respectively, plus (ii) Rent Reserves for each leased premises at which Collateral is located, unless an Acceptable Landlord Waiver has been obtained for the relevant leased premises, plus (iii) any other fees or charges owing by any Credit Party to any applicable warehousemen or third party processor (all as determined by the Lender in its reasonable business judgement), (b) any reserve established by the Lender on account of statutory claims, deemed trusts, or inventory subject to rights of suppliers under Section 81.1 of the BIA (generally known as the “30-day goods” rule) or similar rights of reclamation under Section 81.2 of the BIA, or under any other Applicable Law, (c) liabilities of any Credit Party under any Blocked Account Agreement, (d) employee or employee benefit related liabilities and any other claims which may have priority

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over the claims of the Lender, including Priority Payables, (e) liabilities arising under or in respect of any Pension Plan which, if not paid, could result in a Lien on any of the assets of any Credit Party, or liabilities arising under or in respect of ad valorem, excise, sales, or other taxes which, if not paid, could result in a Lien on any of the assets of any Credit Party, (f) claims by Her Majesty in Right of Canada made pursuant to Section 224(1.2) or 224(1.3) of the ITA, (g) claims pursuant to any provision of the *Canada Pension Plan* or the *Employment Insurance Act* (Canada) that refers to subsection 224(1.2) of the ITA and provides for the collection of a contribution (as defined in the *Canada Pension Plan*), or employee's premium or employer's premium (as defined in the *Employment Insurance Act* (Canada)), or a premium under Part VII.1 of that Act, and of any related interest, penalties or other amounts, (h) claims pursuant to any provision of provincial legislation that has a similar purpose to subsection 224(1.2) of the ITA, or that refers to that subsection, to the extent that it provides for the collection of a sum, and of any related interest, penalties or other amounts, where the sum has been withheld or deducted by a person from a payment to another person and is in respect of a tax similar in nature to the income tax imposed on individuals under the ITA or is of the same nature as a contribution under the *Canada Pension Plan* if the province is a "province providing a comprehensive pension plan" as defined in subsection 3(1) of the *Canada Pension Plan* and the provincial legislation establishes a "provincial pension plan" as defined in that subsection, (i) Cash Management Reserves, (j) Bank Product Reserves, (k) royalties payable to Persons who are not Credit Parties in respect of licensed merchandise forming part of the Collateral, (l) F/X Exposure and (m) and such other reserves as the Lender may at any time or times deem necessary in its sole discretion as a result of (x) negative forecasts and/or trends in the Borrowers' business, operations, industry, prospects, profits, operations or financial condition or assets or (y) other issues, circumstances or facts that could otherwise negatively impact the Credit Parties, their business, operations, industry, prospects, profits, operations or financial condition or assets.

"BA Borrowing" means a Borrowing comprised of one or more Bankers Acceptances or BA Equivalent Loans. For greater certainty, unless the context requires otherwise, all provisions of this Agreement which are applicable to Bankers Acceptances are also applicable, *mutatis mutandis*, to BA Equivalent Loans.

"BA Equivalent Loan" is defined in Section 2.11(h).

"Bankers Acceptance" and **"B/A"** mean an instrument denominated in Canadian Dollars, drawn by a Borrower and accepted by the Lender in accordance with this Agreement, and includes a "depository note" within the meaning of the *Depository Bills and Notes Act* (Canada) and a bill of exchange within the meaning of the *Bills of Exchange Act* (Canada).

"Bank Products" means any services or facilities provided to any Credit Party by the Lender or any of its Affiliates on account of (a) each Swap Transaction that is entered into after the Effective Date with any counterparty that is a Credit Party at the time such Swap Transaction is entered into, (b) leasing (but only to the extent that the relevant Borrower and the Credit Party furnishing such lease notify the Lender in writing that such leases are to be deemed Bank Products hereunder), and (c) factoring arrangements, but excluding Cash Management Services.

"Bank Product Reserves" means such reserves as the Lender may from time to time determine in its sole discretion as being appropriate to reflect the liabilities and obligations of the Credit Parties with respect to Bank Products then provided or outstanding; provided that in the event that any counterparty to a Swap Transaction requires that the Credit Parties provide cash collateral to secure such Swap Transaction, the amount of the Bank Product Reserve imposed by the Lender with respect to such Swap Transaction shall take into consideration the amount of such cash collateral.

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“Base Rate” means, on any day, the annual rate of interest equal to the greater of (i) the annual rate of interest announced from time to time by CIBC and in effect as its base rate at its principal office in Toronto, Ontario on such day for determining interest rates on U.S. Dollar-denominated commercial loans made in Canada, and (ii) the Federal Funds Effective Rate plus 1.00%. The Base Rate is a rate set by CIBC based upon various factors including CIBC’s cost and desired return, general economic conditions and other factors, and is used as a reference point for pricing some loans; however, CIBC may price loans at, above or below such announced rate.

“Base Rate Borrowing” means a Borrowing comprised of one or more Base Rate Loans.

“Base Rate Loan” means a Loan denominated in U.S. Dollars made by the Lender to a Borrower hereunder pursuant to a drawdown, rollover or conversion of a Loan on which interest is payable upon the Base Rate.

“BIA” means the *Bankruptcy and Insolvency Act* (Canada), as amended from time to time (or any successor statute).

“Blocked Account Agreement” has the meaning set out in Section 2.17(c).

“Blocked Accounts” has the meaning set out in Section 2.17(c).

“Borrower” means, collectively, Nilex Inc., an Alberta corporation and Nilex USA Inc., a Colorado corporation.

“Borrowing” means any availing of the Credit, which includes a Loan and the issuance of a Letter of Credit in accordance with Section 2.18, the entry into an F/X Contract in accordance with Section 2.19, and a Borrowing includes a rollover or conversion of any outstanding Loan and the provision of any Loan as required for the Lender to honour any obligations pursuant to any Letter of Credit or F/X Contract.

“Borrowing Base” means, at any time, an amount (which may not be less than zero) equal to the sum of:

- (i) 85% of the aggregate amount of all Eligible Accounts provided that such percentage shall be increased to 90% in the case of (A) any Investment Grade Account, or (B) that portion of any Eligible Account subject to Acceptable Credit Support,
- (ii) plus, the lesser of (A) 70% of the lower of cost or fair market value of all Eligible Inventory, and (B) 85% of the appraised Net Orderly Liquidation Value of all Eligible Inventory (or for the months of January to March 2019, inclusive, the average of the appraised low season and high season Net Orderly Liquidation Values as disclosed in the most recent appraisal at the time of determination),
- (iii) minus, an amount equal to all Priority Payables, and
- (iv) minus, an amount equal to all other Availability Reserves;

“Borrowing Base Report” means the report of the Borrowers concerning the amount of the Borrowing Base, to be delivered pursuant to Section 5.1, substantially in the form attached as Exhibit A.

“Borrowing Request” means a request by a Borrower for a Borrowing substantially in the form of Exhibit B.

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

"Canadian Dollars", "Dollars", Cdn.\$" and "\$" refer to lawful currency of Canada.

"Canadian \$ Equivalent" means, on any day, the amount of Canadian Dollars that the Lender could purchase, in accordance with its normal practice, with a specified amount of another currency based on the spot rate at which Canadian Dollars are offered at the start of such day by CIBC in Toronto, Ontario.

"Canadian Prime Borrowing" means a Borrowing comprised of one or more Canadian Prime Loans.

"Canadian Prime Loan" means a Loan denominated in Canadian Dollars made by the Lender to a Borrower hereunder pursuant to a drawdown, rollover or conversion of a Loan which bears interest at a rate based upon the Canadian Prime Rate.

"Canadian Prime Rate" means, the rate of interest equal to the greater of (i) the annual rate of interest publicly announced from time to time by CIBC as its reference rate of interest for loans made in Canadian Dollars to Canadian customers and designated as its "prime" rate, and (ii) the 30-day CDOR Rate plus 1.00%. The Canadian Prime Rate is a rate set by CIBC based upon various factors including CIBC's costs and desired return, general economic conditions and other factors and is used as a reference point for pricing some loans. However, CIBC may price loans at, above or below such announced rate.

"Capital Expenditures" means all payments due or accruing due (whether or not paid) during a Fiscal Year in respect of the cost (including expenditures on materials, contract labour and direct labour, but excluding expenditures properly chargeable to repairs and maintenance in accordance with GAAP) of any fixed asset or improvement, or replacement, substitution, or addition thereto, which have a useful life of more than one (1) year, including, without limitation, those arising in connection with the direct or indirect acquisition of such assets by way of increased product or service charges or offset items or in connection with Capital Leases.

"Capital Lease" means any lease of Property that, in accordance with GAAP, is required to be capitalized on the consolidated balance sheet of the Credit Parties.

"Capital Lease Obligations" of any Person means the obligations of such Person to pay rent or other amounts under any lease of (or other arrangement conveying the right to use) real or personal property, or a combination thereof, which obligations are required to be classified and accounted for as Capital Leases on a balance sheet of such Person under GAAP, and the amount of such obligations shall be the capitalized amount thereof determined in accordance with GAAP.

"Cash Management Obligations" means obligations of any Credit Party to the Lender or any Affiliate of the Lender in respect of any Cash Management Services.

"Cash Management Reserves" means such reserves as the Lender, from time to time, determines in its sole discretion as being appropriate to reflect the reasonably anticipated liabilities and obligations of the Credit Parties with respect to Cash Management Services then provided or outstanding.

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“Cash Management Services” means any one or more of the following types of services or facilities provided to any Credit Party by the Lender or any of its Affiliates: (a) automated clearing house processing or electronic funds transfer transactions, (b) cash management services, including controlled disbursement services, treasury, depository, overdraft, and electronic funds transfer services, (c) foreign exchange facilities, (d) credit card processing services, (e) credit or debit cards, including credit support for third party credit card providers, and (f) purchase cards (but only to the extent that, prior to the occurrence and continuance of any Default or Event of Default, the Borrowers and the Credit Party issuing such purchase cards notify the Lender in writing that such purchase cards are to be deemed Cash Management Services hereunder).

“CCAA Plan” has the meaning set out in Section 5.20.

“CDOR Rate” means, on any day and for any period, an annual rate of interest equal to the average rate applicable to Canadian Dollar bankers’ acceptances for the applicable period appearing on the “Reuters Screen CDOR Page” (as defined in the International Swaps and Derivatives Association, Inc. 2000 definitions, as modified and amended from time to time), rounded to the nearest 1/100th of 1% (with .005% being rounded up), at approximately 10:00 a.m., Toronto time, on such day, or if such day is not a Business Day, then on the immediately preceding Business Day, provided that if such rate does not appear on the Reuters Screen CDOR Page on such day as contemplated, then the CDOR Rate on such day shall be calculated as the rate for such period applicable to Canadian Dollar bankers’ acceptances quoted by CIBC as of 10:00 a.m., Toronto time, on such day or, if such day is not a Business Day, then on the immediately preceding Business Day, and provided further that, in the event such rate is less than zero, such rate shall be deemed to be zero for the purposes hereof.

“CFC” means a “controlled foreign corporation” within the meaning of Section 957 of the Code.

“Change in Control” means (a) the acquisition of ownership, directly or indirectly, beneficially or of record, by any Person or group of Persons acting jointly or otherwise in concert, other than the Permitted Holders, of Equity Securities representing more than 50% of the aggregate ordinary voting power represented by the issued and outstanding Equity Securities of a Borrower; (b) with respect to any Credit Party that is, at any time, a wholly owned direct or indirect Subsidiary of a Borrower, when any such Credit Party ceases to be a wholly owned direct or indirect Subsidiary of a Borrower, (c) the occupation of a majority of the seats (other than vacant seats) on the board of directors of a Borrower by Persons who were neither (i) nominated by the board of directors of such Borrower nor (ii) appointed by directors so nominated; or (d) the acquisition of direct or indirect Control of a Borrower by any Person or group of Persons acting jointly or otherwise in concert, other than the Permitted Holders.

“Change in Law” means (i) the adoption of any new Applicable Law after the date of this Agreement, (ii) any change in any existing Applicable Law or in the interpretation or application thereof by any Governmental Authority after the date of this Agreement, or (iii) compliance by the Lender or the Issuing Bank (or, for purposes of Section 2.12(b), by any lending office of the Lender or Issuing Bank) with any request, guideline or directive (whether or not having the force of law, but in the case of a request, guideline or directive not having the force of law, being a request, guideline or directive with which persons customarily comply) of any Governmental Authority made or issued after the date of this Agreement.

“CIBC” means Canadian Imperial Bank of Commerce and its successors.

“Code” means the United States Internal Revenue Code of 1986, as amended.



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“Collateral” means the property described in and subject to the Liens, privileges, priorities and security interests purported to be created by any Security Document, which shall include all assets and undertakings of each Credit Party.

“Commitment” means, with respect to the Lender, the commitment of the Lender to make Loans hereunder as such commitment may be reduced from time to time pursuant to Section 2.6. The initial amount of the Lender’s Commitment is set forth on Schedule A. The Effective Date amount of the Commitment for the Term Loan is Cdn.\$4,000,000 and the aggregate amount of the Commitment for Revolving Loans is Cdn.\$20,000,000.

“Commodity Exchange Act” means the *Commodity Exchange Act* (7 U.S.C. § 1 et seq.), as amended from time to time, and any successor statute.

“Consolidated Net Income” means, for any period, the net income on a consolidated basis of the Borrowers and their consolidated Subsidiaries; provided, however, that Consolidated Net Income shall not include or take into account:

- (i) any net income (or loss) of any Subsidiary that is not a Credit Party, except that (subject to the exclusions contained in clauses (iii) and (iv) below), the Borrowers’ equity in the net income of any such Person for such period shall be included in such Consolidated Net Income up to the aggregate amount of cash actually distributed by such Person during such period to the Borrowers or a Subsidiary as a dividend or other distribution (subject, in the case of a dividend or other distribution paid to a Subsidiary, to the limitations contained in clause (ii) below);
- (ii) any net income of any Subsidiary which is subject to restrictions, directly or indirectly, on the payment of dividends or the making of distributions, directly or indirectly, to the Borrowers, except that (A) subject to the exclusion contained in clauses (iii) and (iv) below, the Borrowers’ equity in the net income of any such Subsidiary for such period shall be included in such Consolidated Net Income up to the aggregate amount of cash that could have been distributed by such Subsidiary consistent with such restriction during such period to the Borrowers or another Subsidiary as a dividend or other distribution (subject, in the case of a dividend or other distribution paid to another Subsidiary, to the limitation contained in this clause), and (B) the Borrowers’ equity in a net loss of any such Subsidiary for such period shall be included in determining such Consolidated Net Income;
- (iii) any gain (or loss) realized upon the sale or other disposition of any assets of the Borrowers or any Subsidiary (including pursuant to any sale-and-leaseback arrangement) which is not sold or otherwise disposed of in the ordinary course of business and any gain (or loss) realized upon the sale or other disposition of any capital stock of any Person;
- (iv) extraordinary or nonrecurring gains;
- (v) extraordinary or nonrecurring losses excluded with the prior written consent of the Lender; and
- (vi) the effect of a change in GAAP.

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“Contract Period” means the term of any BA Borrowing selected by a Borrower in accordance with Section 2.3 (a)(iv) commencing on the date of such BA Borrowing and expiring on a Business Day which shall be either one month, two months, or three months thereafter (or such other terms as may be requested by a Borrower and approved by the Lender); provided that (i) subject to clause (ii) below, each such period shall be subject to such extensions or reductions as may be determined by the Lender to ensure that each Contract Period will expire on a Business Day, and (ii) no Contract Period shall extend beyond the Maturity Date.

“Control” means, in respect of a particular Person, the possession, directly or indirectly, of the power to direct or cause the direction of the management or policies of such Person, whether through the ability to exercise voting power, by contract or otherwise. **“Controlling”** and **“Controlled”** have meanings correlative thereto.

“Cover” means, at any time, an amount equal to the amount of Bankers Acceptances plus 105% of the aggregate amount of Letter of Credit Exposure and F/X Exposure at such time and required to be paid by the Borrowers to the Lender in accordance with Section 2.9 and retained by the Lender in a collateral account maintained by the Lender at its Payment Office and collaterally assigned to the Lender as security until such time as the applicable Bankers Acceptances, Letters of Credit or F/X Contracts shall have expired or matured and Reimbursement Obligations, if any, with respect thereto shall have been fully satisfied; provided that if any such Reimbursement Obligations are not satisfied when due hereunder, the Lender may apply any or all amounts in such collateral account in satisfaction of any or all such Reimbursement Obligations.

“Credit Party” means each Borrower, each Guarantor and any other Person which is a party to a Loan Document (other than the Lender).

“Credit” means the Cdn.\$20,000,000 revolving credit facility and the Cdn.\$4,000,000 Term Loan established pursuant to the Commitment of the Lender.

“DBRS” shall mean Dominion Bond Rating Service Limited, or its successor.

“Default” means any event or condition which constitutes an Event of Default or which, upon notice, lapse of time or both, would, unless cured or waived, become an Event of Default.

“Defined Benefit Plan” has the meaning set out in Section 3.11.

“Discount Proceeds” means, for any Bankers Acceptance (or, as applicable, any BA Equivalent Loan), an amount (rounded to the nearest whole cent, and with one-half of one cent being rounded up) calculated on the applicable date of Borrowing by multiplying:

- (vii) the face amount of the Bankers Acceptance (or, as applicable, the undiscounted amount of the BA Equivalent Loan); by
- (viii) the quotient of one divided by the sum of one plus the product of:
 - (A) the Discount Rate (expressed as a decimal) applicable to such Bankers Acceptance (or as applicable, such BA Equivalent Loan), multiplied by
 - (B) a fraction, the numerator of which is the Contract Period of the Bankers Acceptance (or, as applicable, the BA Equivalent Loan) and the denominator of which is 365 or 366, as applicable,

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with such quotient being rounded up or down to the nearest fifth decimal place, and with .000005 being rounded up.

"Discount Rate" means, with respect to either a Bankers Acceptance for a particular Contract Period being purchased by the Lender on any day or a BA Equivalent Loan being made by the Lender on any day, (i) for the Lender which is a Schedule I chartered bank under the *Bank Act* (Canada), the CDOR Rate on such day for such Contract Period; and (ii) for any other Lender, the lesser of

(b) the CDOR Rate on such day for such Contract Period, plus 0.10%, and

(c) the percentage discount rate quoted by the Lender as the percentage discount rate at which the Lender would, in accordance with its normal practices, at or about 10:00 a.m. on such date, be prepared to purchase bankers' acceptances or make BA Equivalent Loans having a face amount and term comparable to the face amount and term of such Bankers Acceptance or a BA Equivalent Loan, as applicable.

"Disclosed Matters" means the actions, suits and proceedings and the environmental matters disclosed in Schedule 3.19.

"EBITDA" means, for the Credit Parties on a consolidated basis and for any period, without duplication, an amount equal to the Consolidated Net Income for such period less any non-cash income included in Consolidated Net Income, plus to the extent deducted from Consolidated Net Income, Interest Expense, depreciation, depletion and impairment, amortization expense and income tax expenses. For greater certainty, EBITDA for any period shall be determined after the payment of all management and employee bonuses and non-arm's length consulting fees for such period.

"EDC " means Export Development Corporation (Canada) and its successors and assigns.

"Effective Date" means the date on which all of the conditions specified in Section 4.1 are satisfied or waived in accordance with Section 9.2, as confirmed by the making of the first Loans under this Agreement.

"Eligible Account" means, at any time, the invoice amount (which shall be the Canadian \$ Equivalent at such time of any amount denominated in U.S.\$) owing on each Account of a Borrower (net of any credit balance, returns, trade discounts, contras, unapplied cash, unbilled amounts, tax refunds that have not yet been received or retention or finance charges or any other dilutive factors) which meet such standards of eligibility as the Lender shall establish from time to time in its sole and absolute discretion; provided that, in any event, no account shall be deemed an Eligible Account unless each of the following statements is accurate and complete (and by including such Account in any computation of the applicable Borrowing Base, the Borrowers shall be deemed to represent and warrant to the Lender the accuracy and completeness of such statements and the compliance of each such Account with each such other eligibility standard established by the Lender):

(1) Such Account is a binding and valid obligation of the obligor thereon and is in full force and effect;

(2) Such Account is evidenced by an invoice and is payable in either Canadian Dollars or U.S. Dollars;

(3) Such Account is genuine as appearing on its face or as represented in the books and records of the Borrowers;

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(4) Such Account is free from claims regarding rescission, cancellation or avoidance, whether by operation of Applicable Law or otherwise;

(5) Payment of such Account is less than 120 days past the original invoice date thereof and less than 90 days past the original due date thereof, provided that, Accounts outstanding between 91 to 120 days past the original invoice date shall only be deemed Eligible Accounts up to a maximum aggregate amount of (a) \$2,500,000 during the months of October to March, and (b) \$1,000,000 at all other times;

(6) Such Account is net of concessions, offset, deduction, contras, returns, chargebacks or understandings with the obligor thereon that in any way could reasonably be expected to adversely affect the payment of, or the amount of, such Account;

(7) The Lender has a first-priority perfected Lien covering such Account and such Account is, and at all times will be, free and clear of all other Liens or claims (including any claim by the issuer of any performance bond, surety bond, appeal bond, completion guarantee or like instrument arising as a result of any failure of performance by a Borrower);

(8) The obligor on such Account is not an Affiliate or a director, officer or employee of any Credit Party;

(9) Such Account arose in the ordinary course of business of a Borrower out of the sale of goods or services by such Borrower;

(10) Such Account is not payable by an obligor in respect of which 50% or more (by amount) of the total aggregate Accounts owed to the Borrowers by such obligor or any of its Affiliates are ineligible by reason of clause (5) of this definition;

(11) All consents, licenses, approvals or authorizations of, or registrations or declarations with, any Governmental Authority required to be obtained, effected or given in connection with the execution, delivery and performance of such Account by each party obligated thereunder, or in connection with the enforcement and collection thereof by the Borrowers, have been duly obtained, effected or given and are in full force and effect;

(12) The obligor on such Account is not an individual, and is not the subject of any bankruptcy or insolvency proceeding, does not have a trustee, receiver or interim receiver appointed for all or a substantial part of its property, has not made an assignment for the benefit of creditors, admitted its inability to pay its debts as they mature, suspended its business or initiated negotiations regarding a compromise of its debt with its creditors, and the Lender, in its reasonable discretion, is otherwise satisfied with the credit standing of such obligor;

(13) The chief executive office of the obligor of such Account is located in the United States of America or Canada and the obligor of such Account is organized and existing under the laws of the United States of America or a state thereof or the federal laws of Canada, or a province or territory thereof, or if the obligor is not so organized and existing, such Account is covered by Acceptable Credit Support;

(14) The obligor of such Account is not a Governmental Authority, if the enforceability or effectiveness against such Governmental Authority of an assignment of such Account is subject to any precondition which has not been fulfilled;

(15) In respect of an Account arising from the sale of goods, the subject goods have been completed, sold and shipped, on a true sale basis on open account, or subject to contract, and not

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on consignment, on approval, on a "sale or return" basis, or on a "bill and hold" or "pre-sale" basis or subject to any other repurchase or return agreement; no material part of the subject goods has been returned, rejected, lost or damaged; and such Account is not evidenced by chattel paper or a promissory note or an instrument of any kind, unless such chattel paper, promissory note or other instrument has been delivered to the Lender and is subject to a Lien under the Security Documents;

(16) Each of the representations and warranties set forth herein and in the Loan Documents with respect to such Account is true and correct on such date;

(17) Such Account is not in respect of a volume rebate;

(18) Such Account is not a pre-billed account;

(19) Such Account is not an account arising from progress billing, provided that, Accounts arising from progress billing shall be deemed Eligible Accounts up to a maximum aggregate amount of \$2,000,000 so long as they are in respect of projects to be completed within 60 days of the date of such progress billing;

(20) The assignment (whether absolutely or by way of security) of such Account is not limited or restricted by the terms of the contract evidencing or relating to such Account or, if assignment of such Account is so restricted, such limitation or restriction has been complied with and the laws of the jurisdiction(s) governing the validity of such assignment do not provide that such limitation or restriction is ineffective as against the secured creditor with a security interest therein; and

(21) Such Account is not an Account which the Lender, in the exercise of its good faith credit discretion, has determined to be ineligible for any other reason, including the Lender's determination that the prospect of the collection of such Account is impaired or that the Account may not be paid because of the account debtor's inability to pay or any other reason as may be customary either in the asset based lending industry or in the asset based lending practices of the Lender.

provided that, if at any time the aggregate amount of all Eligible Accounts owed to the Borrowers by a particular obligor or its Affiliates exceeds 20% of the aggregate amount of all Eligible Accounts at such time owed to the Borrowers (determined without giving effect to any reduction in Eligible Accounts pursuant to this proviso), then, unless the Accounts of such obligors and its Affiliates are insured pursuant to credit insurance acceptable to the Lender which has been assigned to the Lender in form acceptable to the Lender, the amount of such Accounts in excess of 20% of such aggregate amount of all Eligible Accounts shall be excluded in determining the aggregate amount of all Eligible Accounts at such time.

"Eligible Inventory" means, at any time with respect to a Borrower, all Inventory of such Borrower valued in Canadian Dollars or U.S. Dollars, in either case on a lower of Standard Cost or market basis in accordance with GAAP, with detailed calculations of lower of cost or market to occur on at least a monthly basis, which meets such standards of eligibility as the Lender shall establish from time to time in its sole and absolute discretion; provided that, in any event, no Inventory shall be deemed Eligible Inventory unless each of the following statements is accurate and complete (and by including such Inventory in any computation of the applicable Borrowing Base, the Borrowers shall be deemed to represent and warrant to the Lender and each Issuing Bank the accuracy and completeness of such statements and the compliance of such Inventory with each such other eligibility standard established by the Lender):

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(1) Such Inventory is in good condition, merchantable, meets all standards imposed by any Governmental Authority having regulatory authority over it or its use and/or sale and is not obsolete and is either currently usable or currently saleable in the normal course of business the Borrowers;

(2) Such Inventory is

(a) in the possession of the Borrowers and located on real property owned or leased by a Borrower within Canada or the United States of America (provided that if such Inventory is located on real property leased by a Borrower, the Lender shall have been so advised and the landlord of such real property shall have executed and delivered to the Lender an Acceptable Landlord Waiver, or the Lender shall have been given the opportunity to establish Availability Reserves in respect thereof), or

(b) in the possession of a bailee within Canada or the United States of America and such bailee shall have executed and delivered to the Lender, an Acceptable Bailee Letter, or the Lender shall have been advised that such Inventory is in the possession of a bailee and been given the opportunity to establish Availability Reserves in respect thereof;

(3) Each of the representations and warranties set forth in the Loan Documents with respect to such Inventory is true and correct on such date;

(4) The Lender has a first-priority perfected Lien covering such Inventory, and such Inventory is, and at all times will be, free and clear of all Liens other than Permitted Liens;

(5) Such Inventory does not include goods (i) that are not owned by a Borrower, (ii) that are held by a Borrower pursuant to a consignment agreement, (iii) that a Borrower has delivered to customers on consignment terms, or (iv) that are special order goods or discontinued goods;

(6) Such Inventory does not include goods that are subject to licensing agreements that restrict the sale of such goods;

(7) Such Inventory is not subject to repossession under the BIA except to the extent the applicable vendor has entered into an agreement with the Lender, in form and substance reasonably satisfactory to the Lender, waiving its right to repossession;

(8) Such Inventory does not consist of store room materials, supplies, parts, samples, prototypes, or packing and shipping materials;

(9) Such Inventory does not consist of goods that are work in process, discontinued, obsolete, expired, slow-moving or returned, rejected or repossessed or used goods taken in trade;

(10) Such Inventory is not evidenced by negotiable documents of title unless delivered to the Lender with endorsements and insurance, as applicable, on all terms and conditions satisfactory to the Lender;

(11) Such Inventory does not constitute Hazardous Materials;

(12) Such Inventory is covered by property insurance in accordance with Section 5.9, subject to applicable deductibles;

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(13) Such Inventory is located on real or immovable property where there is Inventory of a Borrower in the aggregate amount of at least Cdn.\$25,000;

(14) Such Inventory is not Inventory which the Lender has determined in the exercise of its reasonable discretion that the Lender may not sell or otherwise dispose of in accordance with the terms of the applicable Security Documents without infringing upon the rights of another Person or violating any contract with any other;

(15) Such Inventory is not covered by a negotiable document of title, unless such document has been delivered to the Lender with all necessary endorsements, free and clear of all Liens except those in favour of the Lender; and

(16) Such Inventory is not Inventory which the Lender, in the exercise of its good faith credit discretion, determines to be not acceptable for any other reasons, including those which are customary either in the asset based lending industry or in the asset based lending practices of the Lender.

"Employee Benefit Plan" means an "employee benefit plan" within the meaning of Section 3(3) of ERISA which covers employees of any Credit Party or with respect to which any Credit Party has an obligation to make contributions, including as the result of being an ERISA Affiliate, other than a Multiemployer Plan or any plan that is exclusively governed by the laws of Canada.

"Environmental Laws" means all Applicable Laws relating in any way to the environment, preservation or reclamation of natural resources, the generation, use, handling, collection, treatment, storage, transportation, recovery, recycling, release, threatened release or disposal of any Hazardous Material, or to health and safety matters.

"Environmental Liability" means any liability, contingent or otherwise (including any liability for damages, costs of environmental remediation, fines, penalties or indemnities), of any Credit Party directly or indirectly resulting from or based upon (a) violation of any Environmental Laws, (b) the generation, use, handling, collection, treatment, storage, transportation, recovery, recycling or disposal of any Hazardous Materials, (c) exposure to any Hazardous Materials, (d) the Release or threatened Release of any Hazardous Materials into the environment, or (e) any contract, agreement or other consensual arrangement pursuant to which liability is assumed or imposed with respect to any of the foregoing.

"Equity Securities" means, with respect to any Person, any and all shares, interests, participations, rights in, or other equivalents (however designated and whether voting and non-voting) of, such Person's capital, whether outstanding on the date hereof or issued after the date hereof, including any interest in a partnership, limited partnership or other similar Person and any beneficial interest in a trust, and any and all rights, warrants, debt securities, options or other rights exchangeable for or convertible into any of the foregoing.

"ERISA" means the United States Employee Retirement Income Security Act of 1974, as amended from time to time, and any regulations promulgated thereunder.

"ERISA Affiliate" means, with respect to any Credit Party, any trade or business (whether or not incorporated) that, together with such Credit Party, are treated as a single employer within the meaning of Sections 414(b), (c), (m) or (o) of the Code.

"ERISA Event" means, with respect to any Credit Party or any ERISA Affiliate, (a) any event described in Section 4043(c) of ERISA with respect to a Pension Plan; (b) the withdrawal of any Credit Party or ERISA Affiliate from a Pension Plan subject to Section 4063 of ERISA during a plan



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year in which it was a substantial employer, as defined in Section 4001(a)(2) of ERISA; (c) the complete or partial withdrawal of any Credit Party or any ERISA Affiliate from any Multiemployer Plan; (d) the filing of a notice of intent to terminate a Pension Plan or the treatment of a plan amendment as a termination under Section 4041 of ERISA; (e) the institution of proceedings to terminate a Pension Plan or Multiemployer Plan by the Pension Benefit Guaranty Corporation; (f) the failure by any Credit Party or ERISA Affiliate to make when due required contributions to a Multiemployer Plan or Pension Plan unless such failure is cured within thirty (30) days and such failure could not give rise to the imposition of a Lien under Section 303(k) of ERISA or Section 430(k) of the Code; (g) any other event or condition that might reasonably be expected to constitute grounds under Section 4042 of ERISA for the termination of, or the appointment of a trustee to administer, any Pension Plan or Multiemployer Plan or for the imposition of liability under Section 4069 or 4212(c) of ERISA; (h) the termination of a Multiemployer Plan under Section 4041A of ERISA or the insolvency of a Multiemployer Plan under ERISA; or (i) the loss of the tax exempt status of Employee Benefit Plan intended by a Credit Party to be qualified under Section 401 of the Code.

“**ETA**” means Part IX of the *Excise Tax Act* (Canada) as amended from time to time (or any successor statute).

“**Event of Default**” has the meaning set out in Section 7.1.

“**Excess Availability**” means, as of any date, the remainder of (a) the Borrowing Base as of such date, less (b) the aggregate Exposure as of such date. Excess Availability shall always be determined on the basis that all debts and obligations shall be current, and all accounts payable shall be handled in the normal course of the Credit Parties’ business consistent with their past practices, it being acknowledged that the Credit Parties’ past practice has been to pay accounts payable due on 30 day terms within 45 days of the invoice date.

“**Excess Availability Trigger**” means Excess Availability at any time is in an amount equal to less than 15% of the Borrowing Base for three (3) consecutive Business Days.

“**Excess Cash Flow**” unadjusted consolidated EBITDA for the applicable Fiscal Year, less the aggregate for such fiscal year of (a) unfunded capital expenditures; (b) cash income taxes; (c) cash interest payments; (d) scheduled or voluntary principal payments (excluding mandatory excess cash flow payments required under Section 2.9(b) of this Agreement) on any term loan, and (e) capital lease payments.

“**Excluded Swap Obligation**” means, with respect to any Guarantor, any Swap Obligation if, and solely to the extent that, all or a portion of the Guarantee of such Guarantor of, or the grant by such Guarantor of a security interest to secure, such Swap Obligation (or any Guarantee thereof) is or becomes illegal under the *Commodity Exchange Act* or any rule, regulation or order of the Commodity Futures Trading Commission (or the application or official interpretation of any thereof) by virtue of such Guarantor’s failure for any reason to constitute an “eligible contract participant” as defined in the *Commodity Exchange Act* and the regulations thereunder at the time the Guarantee of such Guarantor or the grant of such security interest becomes effective with respect to such Swap Obligation. If a Swap Obligation arises under a master agreement governing more than one swap, such exclusion shall apply only to the portion of such Swap Obligation that is attributable to swaps for which such Guarantee or security interest is or becomes illegal.

“**Excluded Taxes**” means, with respect to the Lender or any other recipient (in this definition, (a “recipient”) of any payment to be made by or on account of any obligation of the Credit Parties hereunder or any other Loan Document: (a) income or franchise Taxes imposed on (or measured by) such recipient’s taxable income or capital Taxes imposed on (or measured by) such recipient’s

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taxable capital, in each case by Canada, or by the jurisdiction under the Applicable Laws of which such recipient is organized or in which its principal office is located or in which its applicable lending office for the Loans hereunder are made; (b) in the case of a Lender, U.S. federal and Canadian federal withholding Taxes imposed on amounts payable to or for the account of such Lender with respect to an applicable interest in a Loan or Commitment pursuant to the applicable law in effect on the date on which (i) such Lender acquires such interest in the Loan or Commitment (other than pursuant to an assignment request by any Credit Party) or (ii) such Lender changes its lending office (other than a change made at the request of any Credit Party), except in each case to the extent that, pursuant to Section 2.14, amounts with respect to such Taxes were payable either to such Lender's assignor immediately before such Lender became a party hereto or to such Lender immediately before it changed its lending office; (c) U.S. federal withholding Taxes solely attributable to the recipient's failure to comply with Section 2.14(f)(ii); and (d) U.S. federal withholding Taxes imposed under FATCA.

"Exposure" means, with respect to the Lender at any time, the sum of the outstanding principal amount of the Lender's Revolving Loans and, without duplication, its Letter of Credit Exposure, and F/X Exposure at such time.

"FATCA" means Sections 1471 through 1474 of the Code, as of the date of this Agreement (or any amended or successor version that is substantively comparable and not materially more onerous to comply with), any current or future regulations or official interpretations thereof, any agreements entered into pursuant to Section 1471(b)(1) of the Code and any fiscal or regulatory legislation, rules or practices adopted pursuant to any intergovernmental agreement, treaty or convention of the United States and implementing such Sections of the Code.

"Federal Funds Effective Rate" means, for any day, the per annum rate equal to the weighted average of the rates on overnight Federal funds transactions with members of the Federal Reserve System of the United States of America arranged by Federal funds brokers, as published for such day (or, if such day is not a Business Day, for the next preceding Business Day) by the Federal Reserve Board of New York, or, if such rate is not so published for any day which is a Business Day, the average of the quotations for such day on such transactions received by the Lender from three Federal funds brokers of recognized standing selected by it.

"Financial Officer" means the chief financial officer, vice president – finance, director – finance, principal accounting officer, treasurer or controller of a Borrower.

"Fiscal Month" means any fiscal month of a Borrower.

"Fiscal Quarter" means any fiscal quarter of a Borrower.

"Fiscal Year" means any fiscal year of a Borrower.

"Fixed Charge Coverage Ratio" means, as of the last day of any calendar month, the ratio of (a) without duplication, the sum of (i) EBITDA of the Borrowers and their respective Subsidiaries on a consolidated basis for the Rolling Period ended on that date minus non-financed Capital Expenditures (for greater certainty, Capital Expenditures financed by Revolving Loans shall be deemed to be non-financed) made by the Borrowers and their respective Subsidiaries on a consolidated basis during such Rolling Period to (b) the sum of (i) Interest Expense of the Borrowers and their respective Subsidiaries paid in cash or cash equivalents on a consolidated basis for such Rolling Period (provided that from the Effective Date to the 1st Anniversary of the Effective Date, the Interest Expense during such period shall be calculated on an annualized basis from the Effective Date and shall, in any event and for greater certainty, exclude any Interest Expense owed to HSBC Bank under the Borrowers' prior lending arrangements with HSBC Bank) plus (ii) the aggregate of



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all Restricted Payments and regularly scheduled principal payments on Indebtedness (including, without limitation, capital lease obligations, but excluding principal payments on Indebtedness refinanced with the proceeds of Revolving Loans) made by the Borrowers and their respective Subsidiaries on a consolidated basis during such Rolling Period plus (iii) income taxes paid in cash or cash equivalents by the Borrowers and their respective Subsidiaries on a consolidated basis during such Rolling Period.

"F/X Bank" means the Lender.

"F/X Contract" means a currency exchange transaction or agreement or any option with respect to any such transaction now existing or hereafter entered into between a Borrower and the F/X Bank in accordance with Section 2.19.

"F/X Contract Sub-Line" means the amount of the commitment by the Lender hereunder, in an aggregate amount of up to but not exceeding US\$2,000,000 (or the Canadian Dollar Equivalent thereof) to assist a Borrower in obtaining F/X Contracts from the F/X Bank pursuant to Section 2.19.

"F/X Exposure" means, at any time, and subject to the F/X Contract Sub-Line, the sum of: (a) the amount determined by the Lender (acting reasonably with consideration given to any determinations provided to the Lender by the F/X Bank) to be the credit risk associated with all outstanding F/X Contracts, plus (b) the aggregate amount of all Reimbursement Obligations in respect of all F/X Contracts at such time. The F/X Exposure of the Lender shall not exceed the F/X Contract Sub-Line. Any F/X Exposure denominated in any currency other than Canadian Dollars shall be the Canadian Dollar Equivalent thereof.

"GAAP" means at any particular time with respect to any Credit Party, generally accepted accounting principles as in effect at such time in Canada or (as the case may be) International Financial Reporting Standards as applied in Canada, in either case, consistently applied; provided, however, that, if employment of more than one principle shall be permissible at such time in respect of a particular accounting matter, "GAAP" shall refer to the principle which is then employed by the applicable Credit Party with the concurrence of its independent chartered professional accountants, who are acceptable to the Lender provided further that, for the purposes of determining compliance with the financial covenants herein, "GAAP" means GAAP as at the date hereof.

"Governmental Authority" means the Governments of Canada and the United States of America, any other nation or any political subdivision thereof, whether provincial, state, territorial, municipal or local, and any agency, authority, instrumentality, regulatory body, court, central bank, fiscal or monetary authority or other authority regulating financial institutions, and any other entity exercising executive, legislative, judicial, taxing, regulatory or administrative powers or functions or pertaining to any such government, including the Bank Committee on Banking Regulation and Supervisory Practices of the Bank of International Settlements.

"GST" means the goods and services tax and all other amounts payable under the ETA or any similar legislation in any other jurisdiction of Canada, including QST and HST.

"Guarantee" of or by any Person (in this definition, the "guarantor") means any obligation, contingent or otherwise, of the guarantor guaranteeing or having the economic effect of guaranteeing any Indebtedness or other obligation of any other Person (in this definition, the "primary credit party") in any manner, whether directly or indirectly, and including any obligation of the guarantor, direct or indirect, (a) to purchase or pay (or advance or supply funds for the purchase or payment of) such Indebtedness or other obligation or to purchase (or to advance or supply funds for the purchase of) any security for the payment thereof (whether in the form of a loan, advance, stock purchase, capital contribution or otherwise), (b) to purchase or lease property, securities or



services for the purpose of assuring the owner of such Indebtedness or other obligation of the payment thereof, (c) to maintain working capital, equity capital solvency, or any other balance sheet, income statement or other financial statement condition or liquidity of the primary credit party so as to enable the primary credit party to pay such Indebtedness or other obligation, (d) as an account party in respect of any letter of credit or letter of guarantee issued to support such Indebtedness or other obligation, or (e) to purchase, sell or lease (as lessor or lessee) property, or to purchase or sell services, primarily for the purpose of enabling the debtor to make payment of such Indebtedness or to assure the holder of such Indebtedness against loss.

"Guarantor" means each Person which has executed and delivered to the Lender a Guarantee guaranteeing the Obligations of each Borrower and the other Credit Parties.

"Hazardous Materials" means any substance, product, liquid, waste, pollutant, chemical, contaminant, insecticide, pesticide, gaseous or solid matter, organic or inorganic matter, fuel, micro-organism, ray, odour, radiation, energy, vector, plasma, constituent or material which (a) is or becomes listed, regulated or addressed under any Environmental Laws, or (b) is, or is deemed to be, alone or in any combination, hazardous, hazardous waste, toxic, a pollutant, a deleterious substance, a contaminant or a source of pollution or contamination under any Environmental Laws, including, asbestos or asbestos-containing materials, petroleum and polychlorinated biphenyls, including petroleum or petroleum distillates, polychlorinated biphenyls, radon gas, infectious or medical wastes and all other substances or wastes of any nature regulated pursuant to any Environmental Laws.

"HST" means all amounts payable as harmonised sales tax in the Provinces of Ontario, Nova Scotia, Newfoundland and New Brunswick under the ETA.

"Indebtedness" of any Person means, without duplication, (a) all obligations of such Person for borrowed money or with respect to deposits or advances of any kind, (b) all obligations of such Person evidenced by bonds, debentures, notes or similar instruments, (c) all obligations of such Person upon which interest charges are customarily paid, (d) all obligations of such Person under conditional sale or other title retention agreements relating to property acquired by such Person, (e) all obligations of such Person in respect of the deferred purchase price of property or services (excluding accounts payable incurred in the ordinary course of business and not past due more than 30 days), (f) all Indebtedness of others secured by (or for which the holder of such Indebtedness has an existing right, contingent or otherwise, to be secured by) any Lien on property owned or acquired by such Person, whether or not the Indebtedness secured thereby has been assumed, (g) all Guarantees by such Person of Indebtedness of others, (h) all Capital Lease Obligations of such Person, (i) all obligations, contingent or otherwise, of such Person as an account party in respect of letters of credit and letters of guarantee, (j) all obligations, contingent or otherwise, of such Person in respect of bankers' acceptances, (k) the net amount of obligations of such Person (determined on a mark-to-market basis) on account of foreign exchange transactions or interest rate swap transactions, and (l) all obligations of such Person to purchase, redeem, retire, defease or otherwise acquire for value (other than for other Equity Securities) any Equity Securities of such Person, valued, in the case of redeemable Equity Securities, at the greater of voluntary or involuntary liquidation preference, plus accrued and unpaid dividends. The Indebtedness of any Person shall include the Indebtedness of any other entity (including any partnership in which such Person is a general or limited partner) to the extent such Person is liable therefor as a result of such Person's ownership interest in or other relationship with such entity, except to the extent the terms of such Indebtedness provide that such Person is not liable therefor.

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

"Indemnitee" has the meaning set out in Section 9.3(b).



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"Information Certificate" means a certificate executed by each Credit Party containing disclosure relating to each Credit Party in form and substance satisfactory to the Lender.

"Interest Expense" shall mean, for any period, the total interest expense of the Borrowers and their Subsidiaries on a consolidated basis, plus, to the extent not included in such total interest expense, and to the extent incurred by a Borrower or any of their Subsidiaries, (i) interest expense attributable to Capital Lease Obligations of the Borrowers or any of their Subsidiaries, (ii) amortization of debt discount or financing fees, (iii) capitalized interest, (iv) non-cash interest expense, (v) commissions, discounts and other fees and charges owed with respect to letters of credit and bankers' acceptance financing, (vi) net costs associated with Swap Transactions (including amortization of fees), (vii) standby fees, (viii) preferred stock dividends in respect of all preferred stock issued by the Borrowers or their Subsidiaries and held by Persons other than a Borrower or a Subsidiary, and (ix) interest actually paid by the Borrowers or any Subsidiary on any Indebtedness of any other Person.

"Interest Payment Date" means, (a) in the case of any Loan (including the Term Loan) other than LIBO Rate Borrowing, the first Business Day of each month, and (b) in the case of a LIBO Rate Borrowing, the last day of each Interest Period relating to such LIBO Rate Borrowing, provided that if an Interest Period for any LIBO Rate Borrowing is of a duration exceeding 90 days, then "Interest Payment Date" shall also include each date which occurs at each 90-day interval during such Interest Period.

"Interest Period" means, with respect to a LIBO Rate Borrowing, the period commencing on the date of such Borrowing and ending on the numerically corresponding day in the calendar month that is 30, 60 or 90 days thereafter, as the applicable Borrower may elect; provided that (i) if any Interest Period would end on a day other than a Business Day, such Interest Period shall be extended to the immediately succeeding Business Day unless such next succeeding Business Day would fall in the next calendar month, in which case such Interest Period shall end on the next preceding Business Day, (ii) any Interest Period that commences on the last Business Day of a calendar month (or on a day for which there is no numerically corresponding day in the last calendar month of such Interest Period) shall end on the last Business Day of the last calendar month of such Interest Period, (iii) no Interest Period shall extend beyond any date that any principal payment or prepayment is scheduled to be due unless the aggregate principal amount of (A) Canadian Prime Borrowings and Base Rate Borrowings and (B) BA Borrowings and LIBO Rate Borrowings which have Interest Periods or Contract Periods which will expire on or before such date, less the aggregate amount of any other principal payments or prepayments due during such Interest Period, is equal to or in excess of the amount of such principal payment or prepayment, and (iv) no Interest Period shall extend beyond the Maturity Date. For purposes hereof, the date of a Borrowing initially shall be the date on which such Borrowing is made and, in the case of a converted or continued Borrowing, thereafter shall be the effective date of the most recent conversion or continuation of such Borrowing.

"Inventory" means, in respect of each Credit Party, all of such Credit Party's present and hereafter acquired inventory (as defined in the PPSA or the UCC, as applicable) and including all raw materials, merchandise, inventory and goods, and all additions, substitutions and replacements thereof, wherever located, together with all goods and materials used or usable in manufacturing, processing, packaging or shipping same in all stages of production from raw materials through work in process to finished goods, and all "stores" inventory or "operating and maintenance supplies" inventory, and all proceeds of any thereof (of whatever sort).

"Investment" means, as applied to any Person (the "investor"), any direct or indirect purchase or other acquisition by the investor of, or a beneficial interest in, Equity Securities of any other Person, including any exchange of Equity Securities for Indebtedness, or any direct or indirect

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loan, advance (other than advances to employees for moving, entertainment or travel expenses, drawing accounts and similar expenditures in the ordinary course of business) or capital contribution by the investor to any other Person, including all Indebtedness and Accounts owing to the investor from such other Person that did not arise from sales or services rendered to such other Person in the ordinary course of the investor's business, or any direct or indirect purchase or other acquisition of bonds, notes, debentures or other debt securities of, any other Person. The amount of any Investment shall be the original cost of such Investment plus the cost of all additions thereto, without any adjustments for increases or decreases in value, or write-ups, write-downs or write-offs with respect to such Investment minus any amounts (a) realized upon the disposition of assets comprising an Investment (including the value of any liabilities assumed by any Person other than the Borrowers or any Credit Party in connection with such disposition), (b) constituting repayments of Investments that are loans or advances or (c) constituting cash returns of principal or capital thereon (including any dividend, redemption or repurchase of equity that is accounted for, in accordance with GAAP, as a return of principal or capital).

"Investment Grade Account" means an Eligible Account owing to a Borrower by an obligor that is (i) rated an investment grade or higher rating from any of the Recognized Rating Agencies, minimum investment grade rating being (a) BBB- for S&P, (b) BBB(low) for DBRS, and (c) Baa3 for Moody's, or (ii) otherwise designated as "investment grade" by the Lender in writing.

"Issuing Bank" means the Lender, in its capacity as the bank issuing a Letter of Credit for a Borrower in accordance with Section 2.18.

"ITA" means the *Income Tax Act* (Canada) as amended from time to time (or any successor statute).

"Lender" means CIBC (and includes its Affiliates, successors and permitted assigns). Unless the context otherwise requires, the term "Lender" includes the Issuing Bank and F/X Bank.

"Lender Affiliate" means, with respect to the Lender, an Affiliate of the Lender.

"Letter of Credit" means a letter of credit issued by the Issuing Bank for or on behalf of a Borrower in accordance with Section 2.18.

"Letter of Credit Exposure" means, at any time and subject to the Letter of Credit Sub-Line, the aggregate face amount of all outstanding Letters of Credit at such time. The total of all Letter of Credit Exposure of the Lender shall not exceed the Letter of Credit Sub-Line. Any Letter of Credit Exposure denominated in U.S. Dollars shall be the Canadian Dollar Equivalent thereof.

"Letter of Credit Sub-Line" means the amount of the commitment by the Lender in an aggregate amount up to but not exceeding \$2,000,000, to assist the Borrowers in obtaining Letters of Credit.

"LIBO Rate" means, for any Interest Period, the rate for U.S. Dollar borrowings appearing on Page 3750 of the Telerate Service or Page LIBOR01 of the Reuters Service (or on any successor or substitute page of such Service, or any successor to or substitute for such Service providing rate quotations comparable to those currently provided on such page of such Service, as determined by the Lender from time to time for purposes of providing quotations of interest rates applicable to U.S. Dollar deposits in the London interbank market) at approximately 11:00 a.m., London time, two Business Days prior to the commencement of such Interest Period, as the rate for U.S. Dollar deposits with a maturity comparable to such Interest Period, provided that, in the event such rate is less than zero, such rate shall be deemed to be zero for the purposes hereof. In the event that such rate is not available at such time for any reason, then the "LIBO Rate" for such Interest Period shall



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be the rate at which U.S. Dollar deposits of \$5,000,000 and for a maturity comparable to such Interest Period are offered by the principal London office of CIBC in immediately available funds in the London interbank market at approximately 11:00 a.m., London time, two Business Days prior to the commencement of such Interest Period.

"LIBO Rate Borrowing" means a Borrowing comprised of one or more LIBO Rate Loans.

"LIBO Rate Loan" means a Loan denominated in U.S. Dollars made by the Lender to a Borrower hereunder pursuant to a drawdown, rollover or conversion of a Loan which bears interest at a rate based upon the LIBO Rate.

"Lien" means, (a) with respect to any asset, any mortgage, deed of trust, lien, pledge, hypothec, hypothecation, encumbrance, charge, security interest, royalty interest, trust, deemed trust, adverse claim, prior claim, defect of title or right of set off in, on or of such asset, (b) the interest of a vendor or a lessor under any conditional sale agreement, capital lease, title retention agreement or consignment agreement (or any financing lease having substantially the same economic effect as any of the foregoing) relating to any asset, (c) in the case of securities, any purchase option, call or similar right of a third party with respect to such securities, (d) any netting arrangement, defeasance arrangement or reciprocal fee arrangement, and (e) any other arrangement having the effect of providing security.

"Loan" means any loan made by the Lender to a Borrower pursuant to this Agreement.

"Loan Documents" means this Agreement, the Security Documents, the Guarantees, the Blocked Account Agreement, the Borrowing Requests, the Borrowing Base Reports, and any other document, instrument or agreement (other than participation, agency or similar agreements among the Lender or between the Lender and any other bank or creditor with respect to any indebtedness or obligations of any Credit Party hereunder or thereunder) now or hereafter entered into in connection with this Agreement (including any F/X Contracts), as such documents, instruments or agreements may be amended, modified or supplemented from time to time.

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

"Material Adverse Effect" means a material adverse effect on (a) the business, assets, operations, or condition, financial or otherwise, of the Credit Parties, or (b) the validity or enforceability of any of the Loan Documents, the priority of the Liens created thereby or the rights and remedies of the Lender thereunder or (c) any Material Contract, or (d) the amount which the Lender would be likely to receive (after giving effect to delays in payment and costs of enforcement) upon the liquidation of the Collateral.

"Material Contract" means (a) the contracts, licences and agreements listed and described on Schedule 3.18, and (b) any other contract, licence or agreement (i) to which any Credit Party is a party or bound, (ii) which is material to, or necessary in, the operation of the business of any Credit Party, and (iii) which a Credit Party cannot promptly replace by an alternative and comparable contract with reasonably comparable commercial terms.

"Material Indebtedness" means (a) all Shareholder Subordinated Debt (regardless of the amount of such Indebtedness), and (b) any Indebtedness (other than the Loans and the Shareholder Subordinated Debt) of any one or more of the Credit Parties in an aggregate principal amount exceeding Cdn.\$500,000.

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“Maturity Date” means the fourth anniversary of the Effective Date (or, if such fourth anniversary is not a Business Day, the next Business Day thereafter).

“Multiemployer Plan” means a “multiemployer plan” as defined in Section 4001(a)(3) of ERISA, and to which any Credit Party or ERISA Affiliate is making or is obligated to make contributions on behalf of participants who are or were employed by any of them or withdrawal liability payments.

“Moody’s” means Moody’s Investors Service Limited, or its successor.

“Net Orderly Liquidation Value” means the net orderly liquidation value as disclosed in the most recent appraisal conducted by an appraisal firm acceptable to the Lender in its sole discretion and in form and substance satisfactory to the Lender in its sole discretion, factoring in any seasonal variances identified in such appraisal report, including low season and high season averages.

“Obligations” means, with respect to any Credit Party, all obligations, liabilities and Indebtedness of such Credit Party to the Lender with respect to the principal of and interest on the Loans and the payment or performance of all other obligations, liabilities and Indebtedness of such Credit Party to the Lender hereunder or arising under or pursuant to any one or more of the other Loan Documents or with respect to the Loans, including (i) all reimbursement and indemnity obligations of such Credit Party to the Lender hereunder or in connection with any Letter of Credit, F/X Contract or otherwise, (ii) all interest (including all interest that accrues after the commencement of any case or proceeding by or against a Credit Party under any federal, provincial or state bankruptcy, insolvency, receivership or similar law, whether or not allowed in such case or proceeding), and all charges, expenses, fees, legal fees, filing fees and any other sums chargeable to such Credit Party hereunder, under another Loan Document, or under any other agreement or instrument with the Lender, F/X Bank or Issuing Bank, and (iii) Cash Management Obligations, but excluding all Excluded Swap Obligations.

“OFAC” has the meaning set out in Section 3.35.

“Out-of-Pocket Expenses” means all of the Lender’s present and future expenses incurred relative to this Agreement or any other Loan Documents, whether incurred heretofore or hereafter, which expenses shall include, without being limited to: the reasonable cost of retaining external legal counsel, record searches, all costs and expenses incurred by the Lender in opening bank accounts, depositing cheques, receiving and transferring funds, and wire transfer charges, any charges imposed on the Lender due to returned items and “insufficient funds” of deposited cheques and the Lender’s standard fees relating thereto, any amounts paid by, incurred by or charged to, the Lender (including under a Letter of Credit or an F/X Contract) or the reimbursement agreements related thereto, applications for Letters of Credit, F/X Contracts or other like document which pertain either directly or indirectly to such Letters of Credit or F/X Contracts and the Lender’s standard fees relating to the Letters of Credit, F/X Contracts and any drafts thereunder, reasonable travel, lodging and similar expenses of the Lender’s personnel (or any of its agents) in connection with inspecting and monitoring the Collateral from time to time at reasonable intervals hereunder, any applicable reasonable counsel fees and disbursements, fees and taxes relative to the filing of financing statements, and all expenses, costs and fees set forth incurred by or imposed on the Lender by reason of the exercise of any of its rights and remedies under this Agreement or any of the other Loan Documents.

“Payment Conditions” means, at the time of determination with respect to any transaction, payment or distribution specified in this Agreement as being subject to Payment Conditions: (i) the Term Loan shall be repaid in full, (ii) Excess Availability would be at least 15% of the Borrowing Base on a pro forma basis after giving effect to the applicable transaction or payment, on an average



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daily basis for the 30 days immediately prior to the applicable transaction or payment and on a projected average daily basis for the 30 days immediately after the applicable transaction or payment, (iii) the pro forma Fixed Charge Coverage Ratio for the most recently completed Rolling Period after giving effect to any such payment or transaction shall be equal to or greater than 1.00:1.00, and (iv) no Default or Event of Default shall have occurred and be continuing on the date of any such payment or will occur immediately after giving effect thereto.

"Payment Office" means the Lender's office located at 199 Bay Street, 4th Floor, Toronto, Ontario, M5L 1A2, Attention: Senior Director, Portfolio Management, Asset Based Lending Group (or such other office or individual as the Lender may hereafter designate in writing to the other parties hereto).

"Pension Plan" means any pension or other employee benefit plan (including any plan subject to the *Pension Benefits Act* (Ontario), the *Supplemental Pension Plans Act* (Quebec), Title IV of ERISA, or other applicable pension plan minimum standards legislation) which (i) is maintained by any Credit Party or Related Party, (ii) any Credit Party or Related Party makes, has made or is required to make (at any time during the five (5) calendar years preceding the date of this Agreement) contributions in respect of its employees, or (iii) any other pension plan with respect to which any Credit Party or any Related Party has incurred or may incur liability, including contingent liability either to such plan or to any Person, administration or Governmental Authority, but excludes any government sponsored pension plan such as the Canada Pension Plan and the Quebec Pension Plan.

"Permitted Holders" means, (a) with respect to Nilex Inc. and its successors, each of PEF 2010 Nilex Investment Limited Partnership and its Affiliates, Gurchate Sekhon, Hugh Watt, Ian Wilson, David LeMay and their respective successors, heirs and other legal representatives, and (b) with respect to Nilex USA Inc. and its successors, Nilex Inc. and its successors.

"Permitted Investments" means:

- (a) direct obligations of, or obligations the principal of and interest on which are unconditionally guaranteed by, the Governments of Canada, the United States of America or of any Canadian province (or by any agency thereof to the extent such obligations are backed by the full faith and credit of the Governments of Canada, the United States of America or of such Canadian province), in each case maturing within one year from the date of acquisition thereof;
- (b) investments in certificates of deposit, bankers' acceptances and time deposits maturing within 180 days from the date of acquisition thereof issued or guaranteed by or placed with, and money market deposit accounts issued or offered by, any Schedule I bank under the *Bank Act* (Canada);
- (c) obligations insured by the United States Federal Deposit Insurance Corporation; and
- (d) deposits in bank accounts made in the ordinary course of business and otherwise permitted hereunder.

"Permitted Liens" means:

- (a) Liens in favour of the Lender for the obligations of the Borrowers or any other Credit Party under or pursuant to the Loan Documents;
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- (b) Liens granted by a Credit Party (i) in favour of another Credit Party in order to secure any of its indebtedness to such other Credit Party, or (ii) to secure any Shareholder Subordinated Debt of the Credit Parties, in each case, provided that such Liens are subject to assignment, subordination and postponement arrangements satisfactory to the Lender;
- (c) Purchase Money Liens securing Indebtedness and Liens to secure Capital Lease Obligations, in each case only to the extent permitted by Section 6.1(g);
- (d) Liens imposed by any Governmental Authority for Taxes not yet due and delinquent or which are being contested in good faith in compliance with Section 5.3, and, during such period during which such Liens are being so contested, such Liens shall not be executed on or enforced against any of the assets of any Credit Party;
- (e) carrier's, warehousemen's, mechanics', materialmen's, repairmen's, construction and other like Liens arising by operation of Applicable Law, arising in the ordinary course of business, which are not overdue for a period of more than 30 days or which are being contested in good faith and by appropriate proceedings, and, during such period during which such Liens are being so contested, such Liens shall not be executed on or enforced against any of the assets of any Credit Party, provided in each case that the applicable Credit Party shall have set aside on its books reserves deemed adequate therefor and not resulting in qualification by auditors;
- (f) statutory Liens incurred or pledges or deposits made under worker's compensation, unemployment insurance and other social security legislation;
- (g) Liens or deposits to secure the performance of bids, tenders, trade contracts, leases, statutory obligations, surety and appeal bonds, performance bonds and other obligations of a like nature (other than for borrowed money) incurred in the ordinary course of business
- (h) servitudes, easements, rights-of-way, restrictions and other similar encumbrances on real property imposed by Applicable Law or incurred in the ordinary course of business and encumbrances consisting of zoning or building restrictions, easements, licenses, restrictions on the use of property or minor imperfections or minor encroachments in title thereto which, in the aggregate, are not material, and which do not in any case materially detract from the value of the property subject thereto or interfere with the ordinary conduct of the business of the Credit Parties;
- (i) Liens of or resulting from any judgment or award, the time for the appeal or petition for rehearing of which shall not have expired, or in respect of which the Credit Parties shall at any time in good faith be prosecuting an appeal or proceeding for review and in respect of which a stay of execution pending such appeal or proceeding for review shall have been secured;
- (j) undetermined or inchoate Liens and charges arising or potentially arising under statutory provisions which have not at the time been filed or registered in accordance with Applicable Law or of which written notice has not been duly given in accordance with Applicable Law or which although filed or registered, relate to obligations not due or delinquent;
- (k) the rights reserved to or vested in Governmental Authorities by statutory provisions or by the terms of leases, licenses, franchises, grants or permits, which affect any

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land, to terminate the leases, licenses, franchises, grants or permits or to require annual or other periodic payments as a condition of the continuance thereof;

- (l) securities to public utilities or to any municipalities or Governmental Authorities or other public authorities when required by such utilities, municipalities or Governmental Authorities or such other public authorities in connection with the supply of services or utilities to a Credit Party;
- (m) Liens or covenants restricting or prohibiting access to or from lands abutting on controlled access highways or covenants affecting the use to which lands may be put; provided that, in the case of a Credit Party such Liens or covenants do not materially and adversely affect the use of such lands by the Credit Party;
- (n) Liens consisting of royalties payable with respect to any asset or property of a Credit Party existing as of the Effective Date; provided that the existence of any such Lien on any material property or asset of a Credit Party shall have been disclosed in writing to the Lender prior to the Effective Date;
- (o) Liens securing reimbursement obligations relating to letters of credit issued pursuant to this Agreement, provided that the value of the collateral subject to any such Lien does not exceed the amount of the related reimbursement obligation;
- (p) statutory Liens incurred or pledges or deposits made in favour of a Governmental Authority to secure the performance of obligations of a Credit Party under Environmental Laws to which any assets of such Credit Party are subject, provided that no Default or Event of Default shall have occurred and be continuing;
- (q) a Lien granted by a Credit Party to a landlord to secure the payment of arrears of rent in respect of leased properties in the Province of Quebec leased from such landlord, provided that such Lien is limited to the assets located at or about such leased properties;
- (r) any Lien on any property or asset of a Credit Party existing on the date hereof and set forth in Schedule 3.9 or Schedule 3.10; provided that (i) such Lien shall not apply to any other property or asset of such Credit Party, and (ii) such Lien shall secure only those obligations which it secures on the date hereof;
- (s) any Lien existing on any property or asset prior to the acquisition thereof by a Credit Party or existing on any property or asset of any Person that becomes a Credit Party after the date hereof prior to the time such Person becomes a Credit Party; provided that (i) such Lien is not created in contemplation of or in connection with such acquisition or such Person becoming a Credit Party, as the case may be, (ii) such Lien shall not apply to any other property or assets of such Credit Party, and (iii) such Lien shall secure only those obligations which it secures on the date of such acquisition or the date such Person becomes a Credit Party, as the case may be;
- (t) any extension, renewal or replacement of any of the foregoing; provided, however, that the Liens permitted hereunder shall not be extended to cover any additional Indebtedness of the Credit Parties or their property (other than a substitution of like property), except Liens in respect of Capital Lease Obligations and Purchase Money Liens as permitted by (c) above;

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- (u) Liens under applicable Pension Plan legislation that relate to contributions not yet due;
- (v) Liens that relate to the reservations in any original grants from the Crown of any lands or interests therein; and
- (w) Liens existing as of the Effective Date that are registered against title to the real property of the Credit Parties and specifically listed as exceptions under the title insurance policies provided to the Lender.

"Person" includes any natural person, corporation, company, limited liability company, unlimited liability company, trust, joint venture, association, incorporated organization, partnership, Governmental Authority or other entity.

"PPSA" means the *Personal Property Security Act* (Alberta), as amended from time to time (or any successor statute) or similar legislation of any other jurisdiction, including, without limitation, the *Civil Code of Quebec*, the laws of which are required by such legislation to be applied in connection with the issue, perfection, enforcement, validity or effect of security interests.

"Priority Payables" means, with respect to any Person, any amount payable by such Person which is secured by a Lien which ranks or is capable of ranking prior to or *pari passu* with the Liens created by the Security Documents in respect of any Eligible Accounts or Eligible Inventory, including an amount as the Lender reasonably determines reflecting the amounts that may become due under the *Wage Earner Protection Program Act* (Canada) with respect to the employees of the Credit Parties employed in Canada which would give rise to a Lien with priority under Applicable Law over the Liens of the Lender, amounts owing for wages, vacation pay, severance pay, employee deductions, sales tax, excise tax, Tax payable pursuant to the ETA (net of GST input credits), income tax, workers compensation, government royalties, pension fund obligations, Canada Pension Plan, Quebec Pension Plan and other Pension Plan obligations, real property or municipal tax and other statutory or other claims that have or may have priority over, or rank *pari passu* with, such Liens created by the Security Documents.

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

"Purchase Money Lien" means a Lien (including hypothecs of the vendor, rights of a lessor under a lease or leasing contract and the reservation of ownership of a seller under an instalment or conditional sale) taken or reserved in equipment to secure payment of all or part of its purchase price, provided that such Lien (i) secures an amount not exceeding the purchase price of such personal property, (ii) extends only to such personal property and its proceeds, and (iii) is granted prior to or within 30 days after the purchase of such personal property.

"QST" means the Quebec sales tax imposed pursuant to an *Act respecting the Québec sales tax*.

"Qualified ECP Guarantor" means, in respect of any Swap Obligation, each Credit Party that has total assets exceeding \$10,000,000 at the time the relevant Guarantee or grant of the relevant security interest becomes effective with respect to such Swap Obligation or such other Person as constitutes an "eligible contract participant" under the *Commodity Exchange Act* or any regulations promulgated thereunder and can cause another Person to qualify as an "eligible contract participant" at such time by entering into a keepwell under Section 1a(18)(A)(v)(II) of the *Commodity Exchange Act*.

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"Recognized Rating Agencies" means S&P, DBRS and Moody's.

"Reimbursement Obligations" means, at any date, the sum of the outstanding obligations of the Borrowers to reimburse the Lender at such time to the extent that the Lender is obligated to be reimbursed (a) in its capacity as the Issuing Bank at such time pursuant to any Letter of Credit and (b) in its capacity as the F/X Bank at such time pursuant to any F/X Contract.

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

"Release" is to be broadly interpreted and shall include an actual or potential discharge, deposit, spill, leak, pumping, pouring, emission, emptying, injection, escape, leaching, seepage or disposal of any Hazardous Materials which is or may be in breach of any Environmental Laws.

"Rent Reserve" means a reserve up to a maximum of one month (or such longer period as the Lender may determine in its reasonable discretion) of rental payments or similar charges payable under the lease for the applicable leased premises of any Credit Party where Collateral is located and for which the relevant Credit Party has not delivered to the Lender an Acceptable Landlord Waiver, plus an amount representing any then outstanding past due rental payments.

"Repayment Notice" means a notice in the form of Exhibit E;

"Responsible Officer" means, with respect to any Person, the chairman, the president, any vice president, the chief executive officer, chief financial officer or the chief operating officer, and, in respect of financial or accounting matters, any Financial Officer of such Person; unless otherwise specified, all references herein to a Responsible Officer mean a Responsible Officer of a Borrower.

"Restricted Payment" shall mean, with respect to any Person, any payment by such Person (i) of any dividends or distributions on any of its Equity Securities, (ii) on account of, or for the purpose of setting apart any property for a sinking or other analogous fund for, the purchase, redemption, retirement or other acquisition of any of its Equity Securities or any warrants, options or rights to acquire any Equity Securities, or the making by such Person of any other distribution in respect of any of its Equity Securities, (iii) of any principal of or interest or premium on or of any amount in respect of a sinking or analogous fund or defeasance fund for any Indebtedness of such Person ranking in right of payment subordinate to any liability of such Person under the Loan Documents, (iv) of any principal of or interest or premium on or of any amount in respect of a sinking or analogous fund or defeasance fund for any Indebtedness of such Person to a direct or indirect shareholder of such Person or to an Affiliate of a direct or indirect shareholder of such Person, (v) in respect of an Investment, (vi) of any management, consulting or similar fee or any bonus payment or comparable payment, or by way of gift or other gratuity, to any Affiliate of such Person or to any director or officer thereof, or (vii) any payment in respect of Subordinated Indebtedness.

"Revolving Loan" has the meaning set out in Section 2.1.

"Rolling Period" means, as at the end of any calendar month, such calendar month taken together with the eleven immediately preceding calendar months.

"S&P" means Standard & Poor's Financial Services LLC, or its successor.

"Security Documents" means the agreements, documents or instruments described or referred to in Section 4.1 and Section 5.11 (including, to the extent such Section describes an amendment, the agreement, document or instrument amended thereby) and any and all other

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agreements, documents or instruments now or hereafter executed and delivered by any Credit Party or any other Person as security for the payment or performance of all or part of the obligations of the Borrowers (or such Credit Party or other Person) hereunder or under any other Loan Documents, as any of the foregoing may have been, or may hereafter be, amended, modified or supplemented.

"Shareholder Subordinated Debt" means Indebtedness of the Borrowers to PEF 2010 Nilex Investment Limited Partnership pursuant to: (i) a subordinated promissory note dated April 30, 2013 in the original principal amount of Cdn.\$22,683,150 issued by a predecessor of Nilex Inc. in favour of PEF 2010 Nilex Investment Limited Partnership, as amended by a first amendment to subordinated promissory note dated December 15, 2016; and (ii) a subordinated promissory note dated June 14, 2017 in the principal amount of Cdn.\$2,000,000 issued by Nilex Inc. to PEF 2010 Nilex Investment Limited Partnership.

"Standard Cost" means the standard cost of Inventory determined in accordance with the applicable Credit Party's published GAAP compliant inventory policy, consistently applied, and excludes any portion of cost representing intercompany profit or gain in the case of Inventory acquired from an Affiliate of any Credit Party.

"Subsidiary" means, with respect to any Person (in this definition, the "parent") at any date, any other Person the accounts of which would be consolidated with those of the parent in the parent's consolidated financial statements if such financial statements were prepared in accordance with GAAP as of such date, as well as any other Person (a) of which securities or other ownership interests representing more than 50% of the equity or more than 50% of the ordinary voting power or, in the case of a partnership, more than 50% of the general partnership interests are, as of such date, owned, controlled or held, or (b) that is, as of such date, otherwise Controlled, in each case by the parent or one or more Subsidiaries of the parent or by the parent and one or more Subsidiaries of the parent.

"Subordinated Debt" means Indebtedness of the Credit Parties which, by its terms or by the terms of a subordination, postponement and intercreditor agreement between the holder of such indebtedness and the Lender (which terms of such Indebtedness or such agreement shall be in form and substance satisfactory to the Lender, acting reasonably) is fully subordinated and postponed to the Obligations, and any Lien securing such Indebtedness is fully subordinated to the Liens created by the Security Documents; such Indebtedness to include, without limitation, the Shareholder Subordinated Debt.

"Subordinated Debt Documents" means the loan agreements, promissory notes or other evidences of indebtedness, any guarantees, security documents or other related instruments or agreements evidencing, governing or securing Subordinated Debt.

"Swap Obligation" means, with respect to any Guarantor, any obligation to pay or perform under any agreement, contract or transaction that constitutes a "swap" within the meaning of section 1a(47) of the *Commodity Exchange Act*.

"Swap Transaction" means any transaction or agreement entered into between a Borrower and any other counterparty with respect to any swap, forward, future or derivative transaction or agreement or option or similar agreement involving, or settled by reference to, one or more rates, currencies, commodities, equity or debt instruments or securities, or economic, financial or pricing indices or measures of economic, financial or pricing risk or value or any similar transaction or any combination of these transactions.

"Taxes" means all taxes, charges, fees, levies, imposts and other assessments, including all income, sales, use, goods and services, harmonized, value added, capital, capital gains, alternative,



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franchise, net worth, branch transfer, land transfer, profits, withholding, payroll, employer health, excise, stamp, documentary, real property and personal property taxes, and any other taxes, customs duties, fees, assessments, or similar charges in the nature of a tax, including Canada Pension Plan and provincial pension plan contributions, unemployment insurance payments and workers' compensation premiums, together with any instalments with respect thereto, and any interest, fines and penalties with respect thereto, imposed by any Governmental Authority (including federal, state, provincial, territorial, municipal and foreign Governmental Authorities), and whether disputed or not.

"Term Loan" has the meaning set out in Section 2.1(b).

"Transactions" means the execution, delivery and performance by the Borrowers of this Agreement and the other Loan Documents, the borrowing of Loans, the use of the proceeds thereof and the issuance of Letters of Credit and the entering into of F/X Contracts hereunder.

"Type", when used in reference to any Loan or Borrowing, refers to whether the rate of interest on such Loan, or on the Loans comprising such Borrowing, is determined by reference to the Canadian Prime Rate, the CDOR Rate, the Base Rate, the LIBO Rate, or is a Letter of Credit.

"UCC" means the Uniform Commercial Code as in effect from time to time for the applicable State in question.

"U.S. Bank Commercial Card Program" means corporate credit cards issued by U.S. Bank National Association, Canada Branch.

"U.S. Dollars" and **"U.S.\$"** refer to lawful money of the United States of America.

"U.S.\$ Equivalent" means, on any day, the amount of U.S. Dollars that the Lender could purchase, in accordance with its normal practice, with a specified amount of Canadian Dollars based on the spot rate at which U.S. Dollars are offered at the start of such day by CIBC in Toronto, Ontario.

"Violation Notice" means any notice received by any Credit Party from any Governmental Authority under any Environmental Law that the applicable Credit Party or any of its property and assets is not in compliance with the requirements of any Environmental Law.

"Weekly Reporting Trigger Period" means, the period commencing on the day that either (1) an Event of Default occurs, or (2) an Excess Availability Trigger occurs, and continuing until the date that at all times during the preceding thirty (30) consecutive days (1) no Event of Default existed, and (2) there was no Excess Availability Trigger.

1.2 Classification of Loans and Borrowings.

For purposes of this Agreement, Loans may be classified and referred to by Type (e.g., a "Canadian Prime Loan") and Borrowings also may be classified and referred to by Type (e.g., a "Canadian Prime Borrowing").

1.3 Terms Generally.

The definitions of terms herein shall apply equally to the singular and plural forms of the terms defined. Whenever the context may require, any pronoun shall include the corresponding masculine, feminine and neuter forms. The words "include", "includes" and "including" shall be deemed to be followed by the phrase "without limitation". The word "will" shall be construed to have

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the same meaning and effect as the word 'shall'. The word "or" is disjunctive; the word "and" is conjunctive. The word "shall" is mandatory; the word "may" is permissive. The words "to the knowledge of" means, when modifying a representation, warranty or other statement of any Person, that the fact or situation described therein is known by the Person (or, in the case of a Person other than a natural Person, known by the Responsible Officer of that Person) making the representation, warranty or other statement, or with the exercise of reasonable due diligence under the circumstances (in accordance with the standard of what a reasonable Person in similar circumstances would have done) would have been known by the Person (or, in the case of a Person other than a natural Person, would have been known by such Responsible Officer of that Person). Unless the context requires otherwise (a) any definition of or reference to any agreement, instrument or other document herein shall be construed as referring to such agreement, instrument or other document as from time to time amended, supplemented or otherwise modified (subject to any restrictions on such amendments, supplements or modifications set forth herein), (b) any reference herein to any statute or any section thereof shall, unless otherwise expressly stated, be deemed to be a reference to such statute or section as amended, restated or re-enacted from time to time, (c) any reference herein to any Person shall be construed to include such Person's successors and permitted assigns, (d) the words "herein", "hereof" and "hereunder", and words of similar import, shall be construed to refer to this Agreement in its entirety and not to any particular provision hereof, (e) all references herein to Articles, Sections, Exhibits and Schedules shall be construed to refer to Articles and Sections of, and Exhibits and Schedules to, this Agreement, and (f) the words "asset" and "property" shall be construed to have the same meaning and effect and to refer to any and all tangible and intangible assets and properties, including cash, securities, accounts and contract rights.

1.4 Accounting Terms; GAAP.

Except as otherwise expressly provided herein, all terms of an accounting or financial nature shall be construed in accordance with GAAP, as in effect from time to time. All calculations of the components of the financial information for the purposes of determining compliance with the financial ratios and financial covenants contained herein shall be made on a basis consistent with GAAP in existence as at the date of this Agreement and used in the preparation of the consolidated financial statements of the Borrowers and their Subsidiaries referred to in Section 5.1(a), and all calculations with respect to inventory shall use the same method for inventory valuation as used in the preparation of the Borrowers' financial statements on the date hereof. In the event of a change in GAAP, the Borrowers and the Lender shall negotiate in good faith to revise (if appropriate) such ratios and covenants to give effect to the intention of the parties under this Agreement as at the Effective Date, and any new ratio or covenant shall be subject to approval by the Lender. In the event that such negotiation is unsuccessful, all calculations thereafter made for the purpose of determining compliance with the financial ratios and financial covenants contained herein shall be made on a basis consistent with GAAP in existence as at the Effective Date.

1.5 Time.

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

1.6 Permitted Liens.

Any reference in any of the Loan Documents to a Permitted Lien is not intended to subordinate or postpone, and shall not be interpreted as subordinating or postponing, or as any agreement to subordinate or postpone, any Lien created by any of the Loan Documents to any Permitted Lien.

1.7 Joint and Several.

(a) **Joint and Several Liability.** Except as expressly provided otherwise herein, the term "Borrower" as used herein shall include Nilex Inc. and Nilex USA Inc. and each of them or either of them, as the context may require. Each Borrower acknowledges that (i) it is a co-borrower hereunder and shall be jointly and severally, with the other Borrower, directly and primarily liable to the Lender for the Obligations regardless of which Borrower actually receives Loans or other extensions of credit hereunder or the amount of such Loans received or the manner in which the Lender accounts for such Loans or other extensions of credit on its books and records, (ii) each of the Obligations shall be secured by all of the Collateral, (iii) each Borrower shall have the obligations of co-maker and shall be primary obligors with respect to the Loans and the other Obligations, it being agreed that the Loans to each Borrower inure to the benefit of all Borrowers, and (iv) the Lender is relying on such joint and several liability of the Borrowers as co-makers in extending the Loans hereunder. Notwithstanding anything to the contrary contained in this Agreement, the Lender shall be entitled to rely upon any request, notice or other communication received by it from either Borrower on behalf of both Borrowers, and shall be entitled to treat its giving of any notice hereunder pursuant to Section 9.1 hereof as notice to each Borrower.

(b) **Unconditional Liability.** Each Borrower's Obligations arising as a result of the joint and several liability of the Borrowers hereunder with respect to the Loans or any other extensions of credit made to the other Borrower hereunder shall, to the fullest extent permitted by law, be unconditional irrespective of (i) the validity or enforceability, avoidance or subordination of the Obligations of the other Borrower or of any document evidencing all or any part of the Obligations of the other Borrower, (ii) the absence of any attempt to collect the Obligations from the other Borrower, or any other security therefor, or the absence of any other action to enforce the same, (iii) the waiver, consent, extension, forbearance or granting of any indulgence by the Lender with respect to any provision of any instrument evidencing the Obligations of the other Borrower, or any part thereof, or any other agreement now or hereafter executed by the other Borrower and delivered to the Lender, (iv) the failure by the Lender to take any steps to perfect and maintain its security interest in, or to preserve its rights to, any security or Collateral for the Obligations of the other Borrower, or (v) any other circumstances which might constitute a legal or equitable discharge or defense of any other Borrower.

(c) **Waiver of Subordination and Other Rights.** With respect to each Borrower's Obligations arising as a result of the joint and several liability of the Borrowers hereunder with respect to the Loans or other extensions of credit made to any of the other Borrower hereunder, each Borrower waives, until the Obligations shall have been paid in full and this Agreement and the other Loan Documents shall have been terminated, any right to enforce any right of subrogation or any remedy which the Lender now has or may hereafter have against such Borrower, any endorser or any guarantor of all or any part of the Obligations, and any benefit of, and any right to participate in, any security or collateral given to the Lender to secure payment of the Obligations or any other liability of the Borrowers to the Lender.

(d) **No Modification or Release of Obligations.** No payment or payments made by either of the Borrowers or any other Person or received or collected by the Lender from either of the Borrowers or any other Person by virtue of any action or proceeding or any set-off or appropriation or application at any time or from time to time in reduction of or in payment of the Obligations shall be deemed (except to the extent the Obligations are satisfied) to modify, release or otherwise affect the liability of each Borrower under this Agreement, which shall remain liable for the Obligations until the Obligations are paid in full and the Credit is terminated.

1.8 Interpretation Clause (Québec).

For purposes of any assets, liabilities or entities located in the Province of Québec and for all other purposes pursuant to which the interpretation or construction of this Agreement may be subject to the laws of the Province of Québec or a court or tribunal exercising jurisdiction in the Province of Québec, (a) "personal property" shall be deemed to include "movable property", (b) "real property" shall be deemed to include "immovable property", (c) "tangible property" shall be deemed to include "corporeal property", (d) "intangible property" shall be deemed to include "incorporeal property", (e) "security interest", "mortgage" and "lien" shall be deemed to include a "hypothec", "prior claim" and a resolutive clause, (f) all references to filing, registering or recording under the PPSA or UCC shall be deemed to include publication under the Civil Code of Québec, (g) all references to "perfection" of or "perfected" liens or security interest shall be deemed to include a reference to an "opposable" or "set up" lien or security interest as against third parties, (h) any "right of offset", "right of setoff" or similar expression shall be deemed to include a "right of compensation", (i) "goods" shall be deemed to include "corporeal movable property" other than chattel paper, documents of title, instruments, money and securities, (j) an "agent" shall be deemed to include a "mandatary", (k) "construction liens" shall be deemed to include "legal hypothecs"; (l) "joint and several" shall be deemed to include "solidary"; (m) "gross negligence or wilful misconduct" shall be deemed to be "intentional or gross fault"; (n) "beneficial ownership" shall be deemed to include "ownership on behalf of another as mandatary"; (o) "servitude" shall be deemed to include easement; (p) "priority" shall be deemed to include "prior claim"; (q) "survey" shall be deemed to include "certificate of location and plan"; (r) "state" shall be deemed to include "province"; (s) "fee simple title" shall be deemed to include "absolute ownership". The parties hereto confirm that it is their wish that this Agreement and any other document executed in connection with the transactions contemplated herein be drawn up in the English language only and that all other documents contemplated thereunder or relating thereto, including notices, may also be drawn up in the English language only. Les parties aux présentes confirment que c'est leur volonté que cette convention et les autres documents de crédit soient rédigés en langue anglaise seulement et que tous les documents, y compris tous avis, envisages par cette convention et les autres documents peuvent être rédigés en la langue anglaise seulement.

ARTICLE 2 THE CREDITS

2.1 Commitment.

(a) Subject to the terms and conditions set forth herein, the Lender commits to make Loans (each such Loan made under this Section 2.1(a), a "**Revolving Loan**") to the Borrowers from time to time during the period commencing on the Effective Date and ending on the Maturity Date (each such commitment, a "**Commitment**") in an aggregate principal amount up to the amount set forth beside the Lender's name in Schedule A under the heading "Commitment" and subheading "Revolving Loans", provided that the Lender shall not be required to extend further credit hereunder if any further extension of credit made by the Lender as requested by the Borrowers would result in (i) the Lender's Exposure exceeding the Lender's Commitment, or (ii) the sum of the total Exposure exceeding either the total Commitment or the Borrowing Base. Within the foregoing limits and subject to the terms and conditions set forth herein, the Borrowers may borrow, repay and reborrow Revolving Loans. In addition, the Borrowers may, subject to the Lender's prior written approval in its sole discretion, on at least ten (10) days' prior written notice to the Lender, from time to time permanently increase the Commitment in an aggregate principal amount of up to \$5,000,000, provided that (i) the Lender may agree to accept or decline a requested Commitment increase in its sole discretion, (ii) no increase in the Commitment shall be made if a Default or an Event of Default shall have occurred and be continuing or would result after giving effect to such increase, (iii) each such increase shall be in a minimum principal amount of \$1,000,000, (iv) the Borrowers shall pay to

the Lender a one-time fee in an amount equal to 0.30% of the amount of each such Commitment increase, and (v) the aggregate principal amount of all such Commitment increases shall not exceed \$5,000,000. The Lender's Commitment hereunder shall automatically increase as a result of any permitted increase in the Commitment hereunder, and Schedule A shall be amended to reflect any such permitted increase.

(b) Subject to the terms and conditions set forth herein, on the Effective Date the Lender commits to make a single term loan advance to the Borrowers (the "Term Loan") in the aggregate principal amount set forth beside the Lender's name in Schedule A under the heading "Commitment" and subheading "Term Loan" not exceeding, cumulatively, \$4,000,000 (in multiples of \$50,000). Once repaid, whether such repayment is voluntary or required, the Term Loan may not be reborrowed.

2.2 Loans and Borrowings.

(a) Each Revolving Loan shall be made as part of a Borrowing consisting of Revolving Loans made by the Lender in accordance with its Commitment.

(b) Subject to the Letter of Credit Sub-Line limitation, the F/X Contract Sub-Line limitation, the Borrowing Base limitations and the other limitations on Loans and Borrowings as provided in this Agreement, each Borrowing shall be comprised entirely of Canadian Prime Loans, Bankers Acceptances, BA Equivalent Loans, Base Rate Loans, LIBO Rate Loans and/or the issuance of Letters of Credit or the entry into F/X Contracts.

(c) The Lender may at its option make any LIBO Rate Loan by causing any domestic or foreign branch or Affiliate of the Lender to make such Loan; provided that any exercise of such option shall not result in any increased costs for the Borrowers or affect the obligation of the Borrowers to repay such Loan in accordance with the terms of this Agreement. At the commencement of each Interest Period for any LIBO Rate Borrowing, such Borrowing shall be in an aggregate amount that is an integral multiple of \$100,000 and not less than \$500,000. At the commencement of each Contract Period for any BA Borrowing, such Borrowing shall be in an aggregate amount that is an integral multiple of \$100,000 and not less than \$500,000. Borrowings of more than one Type may be outstanding at the same time; provided that there shall not at any time be more than a total of five BA Borrowings or five LIBO Rate Borrowings outstanding.

2.3 Requests for Borrowings.

(a) The initial Borrowings hereunder on the Effective Date in respect of the Revolving Loans shall be Canadian Prime Borrowings and/or Base Rate Borrowings. The Term Loan shall be in the amount specified in the Borrowing Request on the Effective Date. Thereafter, to request a Borrowing, the relevant Borrower shall notify the Lender of such request by written Borrowing Request (i) in the case of a LIBO Rate Borrowing, not later than 11:00 a.m., Toronto time, three Business Days before the date of the proposed Borrowing, (ii) in the case of a BA Borrowing, not later than 11:00 a.m., Toronto time, two Business Days before the date of the proposed Borrowing, (iii) in the case of a Canadian Prime Borrowing or a Base Rate Borrowing, not later than 10:00 a.m., Toronto time, on the date of the proposed Borrowing; or (iv) in the case of a Letter of Credit in accordance with Section 2.18 or the entry into an F/X Contract in accordance with Section 2.19, not later than 11:00 a.m., Toronto time, five (5) Business Days before the date of the proposed Borrowing. The Lender is entitled to rely and act upon any written Borrowing Request given or purportedly given by a Borrower, and each Borrower hereby waives the right to dispute the authenticity and validity of any such request or resulting transaction once the Lender has advanced funds or the Issuing Bank has issued a Letter of Credit based on such written Borrowing Request.

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Each such written Borrowing Request shall be substantially in the form of Exhibit B and shall specify the following information:

- (i) the aggregate amount of each requested Borrowing and the Type thereof;
- (ii) the date of such Borrowing, which shall be a Business Day;
- (iii) whether such Borrowing is to be a Canadian Prime Borrowing, a BA Borrowing, a Base Rate Borrowing, a LIBO Rate Borrowing, or the issuance of a Letter of Credit in accordance with Section 2.18 or the entry into an F/X Contract in accordance with Section 2.19;
- (iv) in the case of a LIBO Rate Borrowing, the initial Interest Period to be applicable thereto, which shall be a period contemplated by the definition of the term "Interest Period", and in the case of a BA Borrowing, the initial Contract Period to be applicable thereto, which shall be a period contemplated by the definition of the term "Contract Period"; and
- (v) the location and number of the relevant Borrower's account to which funds are to be disbursed, which shall comply with the requirements of this Agreement.

(b) If no election as to the Type of Borrowing is specified, then the requested Borrowing shall be a Canadian Prime Borrowing (if denominated in Canadian Dollars) or a Base Rate Borrowing (if denominated in U. S. Dollars). If no currency is specified, the Borrowing shall be denominated in Canadian Dollars. If no Interest Period is specified with respect to any requested LIBO Rate Borrowing, then the relevant Borrower shall be deemed to have selected an Interest Period of a one month duration. If no Contract Period is specified with respect to any requested BA Borrowing, then the relevant Borrower shall be deemed to have selected a Contract Period of a one month duration.

(c) Each Borrowing initially shall be of the Type specified in the applicable Borrowing Request. Thereafter, the relevant Borrower may elect to convert a Borrowing to a different Type or to continue such Borrowing and, in the case of (i) a LIBO Rate Borrowing, may elect a new Interest Period therefor, or (ii) a BA Borrowing, may elect a new Contract Period therefor, all as provided in this Section 2.3(c). The Borrowers may elect different options with respect to different portions of the affected Borrowing and the Loans comprising each such portion shall be considered a separate Borrowing. To make an election pursuant to this Section 2.3(c), a Borrower shall notify the Lender of such election in the manner and by the time that a Borrowing Request would be required under Section 2.3(a) if such Borrower were requesting a Borrowing of the Type resulting from such election to be made on the effective date of such election. In addition to the information specified in Section 2.3(a), each Borrowing Request shall specify the Borrowing to which such request applies and, if different options are being elected with respect to different portions thereof, the portions thereof to be allocated to each resulting Borrowing.

(d) In the absence of a timely and proper election with regard to (i) LIBO Rate Borrowings, the relevant Borrower shall be deemed to have elected to convert such LIBO Rate Borrowings to Base Rate Borrowings on the last day of the Interest Period of the relevant LIBO Rate Borrowings, and (ii) BA Borrowings, the relevant Borrower shall be deemed to have elected to convert such BA Borrowings to Canadian Prime Borrowings on the last day of the Contract Period of the relevant BA Borrowings.



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(e) The Lender shall not incur any liability to the Borrowers as a result of acting in accordance with any notice or request referred to in this Section 2.3, which notice or request the Lender believes in good faith to have been given by an officer duly authorized by the Borrowers to request Loans on its behalf or for otherwise acting in good faith under this Section 2.3, and the crediting of Loans to the relevant Borrower's disbursement accounts, or transmittal to such Person or other bank account as the Borrowers shall direct, shall conclusively establish the obligation of the Borrowers to repay such Loans as provided herein. Nothing herein shall, however, release or be deemed to release the Lender in respect of its gross negligence or willful misconduct.

(f) Except to the extent otherwise permitted to the contrary hereunder, any Borrowing Request made pursuant to in this Section 2.3 shall be irrevocable and the Borrowers shall be bound to borrow the funds requested therein in accordance therewith.

2.4 Funding of Borrowings.

The Lender shall make each Loan to be made by it hereunder on the proposed date thereof by 12:00 noon, Toronto time. The Lender will make such Loans available to the Borrowers by promptly crediting the amounts of such Loan to an account of the relevant Borrower and designated by such Borrower in the applicable Borrowing Request. The Borrowers shall satisfy Reimbursement Obligations promptly as they arise by way of a request for a Loan and all Loans made hereunder to satisfy Reimbursement Obligations: (i) in respect of any Letter of Credit shall be remitted by the Lender to the Issuing Bank in accordance with such Letter of Credit (unless the Issuing Bank has already been fully reimbursed directly by the Borrowers in respect of drawings under the Letter of Credit), and (ii) in respect of any F/X Contract shall be remitted by the Lender to the F/X Bank in accordance with such F/X Contract (unless the F/X Bank has already been fully reimbursed directly by the Borrowers in respect of all such losses in respect of the F/X Contract).

2.5 Interest.

(a) The Loans comprising each Canadian Prime Borrowing shall be made in Canadian Dollars and shall bear interest (computed on the basis of the actual number of days elapsed over a year of 365 days or 366 days, as the case may be) at a rate per annum equal to the Canadian Prime Rate plus the Applicable Margin. The Loans comprising each BA Borrowing shall be made in Canadian dollars and shall bear interest (computed in advance on the basis of the actual number of days in the relevant Contract Period over a year of 365 days or 366 days, as the case may be) at a rate per annum equal to the BA Rate plus the Applicable Margin. The Loans comprising each Base Rate Borrowing shall be made in U.S. Dollars and shall bear interest (computed on the basis of the actual number of days elapsed over a year of 360 days at a rate per annum equal to the Base Rate plus the Applicable Margin. The Loans comprising each LIBO Rate Borrowing shall be made in U.S. Dollars and shall bear interest (computed on the basis of the actual number of days in the relevant Interest Period over a year of 360 days) at the LIBO Rate for the Interest Period in effect for such LIBO Rate Borrowing plus the Applicable Margin. The Loans comprising each BA Borrowing shall be subject to an Acceptance Fee, which shall be payable as set out in Section 2.11.

(b) If a Default or an Event of Default has occurred and is continuing, all amounts outstanding hereunder (including, without duplication, all Loans and all Letter of Credit Exposure and F/X Exposure) shall bear interest, after as well as before judgment, at a rate per annum equal to 2% plus the rate otherwise applicable to such Loan or, in the case of any amount not constituting principal or interest on a Loan, at a rate equal to 2% plus the rate otherwise applicable to, in the case of Canadian Dollar amounts, Canadian Prime Loans, or in the case of U.S. Dollar amounts, Base Rate Loans.

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(c) Accrued interest on each Loan shall be payable in arrears on the earlier of (i) each applicable Interest Payment Date, and (ii) the date of termination of the Commitment. In addition, in the event of any repayment or prepayment of any Loan, accrued interest on the principal amount repaid or prepaid shall be payable on the date of such repayment or prepayment.

(d) All interest hereunder shall be payable for the actual number of days elapsed (including the first day but excluding the last day). Any Loan that is repaid on the same day on which it is made shall bear interest for one day. The applicable Canadian Prime Rate, Base Rate, LIBO Rate or BA Rate shall be determined by the Lender, and such determination shall be conclusive absent manifest error.

(e) For the purposes of the *Interest Act* (Canada) and disclosure thereunder, whenever any interest or any fee to be paid hereunder or in connection herewith is to be calculated on the basis of a 360-day or 365-day year, the yearly rate of interest to which the rate used in such calculation is equivalent is the rate so used multiplied by the actual number of days in the calendar year in which the same is to be ascertained and divided by 360 or 365, as applicable. The rates of interest under this Agreement are nominal rates, and not effective rates or yields. The principle of deemed reinvestment of interest does not apply to any interest calculation under this Agreement. Each Credit Party confirms that it fully understands and is able to calculate the rate of interest applicable to Loans based on the methodology for calculating per annum rates provided for in this Agreement. Each Credit Party hereby irrevocably agrees not to plead or assert, whether by way of defence or otherwise, in any proceeding relating to this Agreement or any Loan Documents, that the interest payable under this Agreement and the calculation thereof has not been adequately disclosed to such Credit Party as required pursuant to Section 4 of the *Interest Act* (Canada).

(f) If any provision of this Agreement would oblige the Borrowers to make any payment of interest or other amount payable to the Lender in an amount or calculated at a rate which would be prohibited by any Applicable Law or would result in a receipt by that Lender of "interest" at a "criminal rate" (as such terms are construed under the *Criminal Code* (Canada)), then, notwithstanding such 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 Applicable Law or so result in a receipt by that Lender of "interest" at a "criminal rate", such adjustment to be effected, to the extent necessary (but only to the extent necessary), as follows:

- (i) first, by reducing the amount or rate of interest required to be paid to the affected Lender under Section 2.5; and
- (ii) thereafter, by reducing any fees, commissions, costs, expenses, premiums and other amounts required to be paid to the affected Lender which would constitute interest for purposes of section 347 of the *Criminal Code* (Canada).

(g) Notwithstanding anything to the contrary contained in this Agreement, if, as a result of any restatement or other adjustment to the financial statements delivered under this Agreement (including any adjustment to unaudited financial statements as a result of subsequent audited financial statements) or for any other reason (including without limitation an adjustment on any subsequent Borrowing Base Report delivered hereunder), the Borrowers or the Lender determine that Excess Availability as of any applicable date was inaccurate and, as a result of such inaccuracy, the Applicable Margin applicable to any Loans or any fees for any period was lower than would otherwise be the case had such inaccuracy not occurred, then the Borrowers shall immediately and retroactively be obligated to pay to the Lender, promptly on demand by the Lender (or, if an Event of Default pursuant to any of Sections 7.1(h), (i) or (j) shall have occurred and be continuing,

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automatically and without further action by the Lender), an amount equal to the excess of the amount of interest and fees that should have been paid by the Borrowers for such period over the amount of interest and fees actually paid by the Borrowers for such period, plus interest on such amount at the rate otherwise applicable herein. The Borrowers' obligations under this Section 2.5(g) shall survive the termination of the Commitment and the repayment of all Indebtedness hereunder.

2.6 Termination and Reduction of Commitment.

(a) Unless previously terminated and subject to any earlier demand for payment upon the occurrence of an Event of Default, the Revolving Loan Commitment shall terminate on the Maturity Date and the Term Loan Commitment shall terminate upon the making of the Term Loan on the Effective Date.

(b) The Borrowers may, upon five Business Days prior written notice to the Lender, permanently cancel any unused portion of the Commitment. Each notice delivered by a Borrower pursuant to this Section 2.6(b) shall be irrevocable. Notwithstanding the termination of this Agreement, until all Obligations are irrevocably and indefeasibly paid and performed in full, the Credit Parties shall remain bound by the terms of this Agreement and under the Loan Documents and shall not be relieved of any of their Obligations and the Lender shall retain all its rights and remedies hereunder and under the Loan Documents (including, without limitation, in all then existing and after-arising Collateral). Pending a final accounting, the Lender may withhold any balances in the Borrowers' loan account to cover all of the Obligations, whether absolute or contingent, including cash reserves for any contingent Obligations, including an amount equal to 105% of the face amount of any outstanding Letters of Credit with an expiry date on, or within thirty (30) days of the effective date of termination of this Agreement.

(c) Unless the Commitment have been previously terminated, upon the occurrence of the Maturity Date, the Commitment of the Lender shall be permanently reduced to an amount equal to the amount of the Loans made by the Lender at such date and the Commitment shall be permanently reduced by an amount equal to such reduction of such Commitment.

(d) Subject to the other terms and conditions of this Agreement and unless the Commitment have been earlier terminated, the Commitment shall be available hereunder from the Effective Date until the Maturity Date.

2.7 Repayment of Loans.

(a) The Borrowers hereby unconditionally promise to pay to the Lender the then unpaid principal amount of each Revolving Loan and all other Obligations on the earlier of the Maturity Date and the date that the Commitment is terminated pursuant to Section 2.6(b) or Section 7.1.

(b) The Term Loan shall amortize over forty-eight (48) months beginning on the Effective Date, with principal installments in an amount per installment of \$83,333.33, payable on the first day of each Fiscal Month beginning July 1, 2018. The Borrowers hereby unconditionally promise to pay to the Lender the then unpaid principal amount and accrued but unpaid interest on the Term Loan on the earlier of the Maturity Date and the date that the Commitment is terminated pursuant to Section 2.6(b) or Section 7.1.

2.8 Evidence of Debt.

(a) The Lender shall maintain in accordance with its usual practice an account or accounts evidencing the Indebtedness of the Borrowers to the Lender resulting from each Borrowing

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made by the Lender hereunder, including the amounts of principal and interest payable and paid to the Lender from time to time hereunder.

(b) The Lender shall maintain accounts in which it shall record (i) the amount of each Borrowing made hereunder, the Type thereof and, in the cases of BA Borrowings and LIBO Rate Loans, the relevant Contract Period or Interest Period, applicable thereto, (ii) the amount of any principal or interest due and payable or to become due and payable from the Borrowers to the Lender hereunder, and (iii) the amount of any sum received by the Lender hereunder.

(c) The entries made in the accounts maintained pursuant to Sections 2.8(a) and (b) shall be conclusive evidence (absent manifest error) of the existence and amounts of the obligations recorded therein and shall be admissible in any action or proceeding arising therefrom; provided that the failure of the Lender to maintain such accounts or any error therein shall not in any manner affect the obligation of the Borrowers to repay the Borrowings in accordance with the terms of this Agreement.

(d) The Lender may request that Loans (other than BA Borrowings) made by it be evidenced by a promissory note. In such event, the Borrowers shall prepare, execute and deliver to the Lender a promissory note payable to the order of the Lender (or, if requested by the Lender, to the Lender and its registered assigns) and in a form approved by the Lender. Thereafter, the Loans evidenced by such promissory note and interest thereon shall at all times be represented by one or more promissory notes in such form payable to the order of the payee named therein (or, if such promissory note is a registered note, to such payee and its registered assigns).

2.9 Prepayments.

(a) Mandatory Borrowing Base Prepayments. If at any time the aggregate Exposure of the Lender is in excess of (i) the Borrowing Base or (ii) the total Commitment (in either case, including any excess arising as a result of fluctuations in exchange rates), the Borrowers shall, immediately pay to the Lender the amount of such excess to be applied (i) first, in satisfaction of all Reimbursement Obligations, if any, outstanding at such time, (ii) second, as a prepayment of the Revolving Loans, and (iii) third, as Cover for any remaining Bankers Acceptances, Letter of Credit Exposure and F/X Exposure in an amount of such remaining excess.

(b) Mandatory Excess Cash Flow Prepayment. Within ten (10) Business Days of delivery to Lender of the annual financial statements pursuant to Section 5.1, commencing with the delivery to Lender of the financial statements for Fiscal Year ended December 31, 2018 or, if such financial statements are not delivered to the Lender on the date such statements are required to be delivered pursuant to Section 5.1, prior to April 30th of such year, the Borrowers shall prepay the outstanding principal amount of the Term Loan in an amount equal to 50% of the Excess Cash Flow of the Borrowers and their Subsidiaries for such Fiscal Year.

(c) Application of Cover Amount. The amount of Cover shall be paid by the Borrowers under Section 2.9(a) to the Lender and retained by the Lender in a collateral account maintained by the Lender at its Payment Office and collaterally assigned to, or charged in favour of, the Lender as security until such time as the applicable Letters of Credit and F/X Contracts shall have expired or matured and Reimbursement Obligations, if any, with respect thereto shall have been fully satisfied; provided that if any such Reimbursement Obligations are not satisfied when due hereunder, the Lender may apply any or all amounts in such collateral account in satisfaction of any or all such Reimbursement Obligations.

(d) Currency Fluctuations. If, at any time, the Canadian \$ Equivalent of the Loans made by the Lender to the Borrowers under any Credit exceeds the Commitment of the Lender under such



Credit (any such excess being referred to in this Section as an “**Excess Amount**”), then the Borrowers will forthwith repay to the Lender an amount equal to the Excess Amount.

(e) Voluntary Prepayment. The Borrowers may, upon delivery of a Repayment Notice to the Lender (delivered in accordance with the notice periods applicable to delivery of a Borrowing Request under Section 2.3(a)), prepay all or any part of a Canadian Prime Borrowing, Base Rate Borrowing, BA Borrowing, LIBO Rate Borrowing (provided that any such prepayment of part of a BA Borrowing or a LIBO Borrowing, and any BA Borrowing or LIBO Borrowing not repaid by such partial payment, shall be in amounts contemplated by Section 2.2(c)) or the Term Loan (provided that any prepayment of less than all of the outstanding balance of the Term Loan shall be applied to the remaining installments of the Term Loan in the inverse order of their maturity), provided that a BA Borrowing or LIBO Rate Borrowing or part thereof may only be repaid on the last day of the Contract Period or Interest Period, as the case may be. Each Repayment Notice delivered hereunder shall be irrevocable. No prepayment under this Section 2.9(e) shall permanently reduce or terminate any of the Commitment in respect of the Revolving Loans.

(f) Repayment Notice. Each Repayment Notice provided by the Borrowers in respect of any permanent repayment or prepayment hereunder shall be in the form of Exhibit E and shall be irrevocable at such time as the Lender has commenced taking any action pursuant to any such prepayment notice.

2.10 Fees.

(a) The Borrowers shall pay to the Lender in Canadian Dollars, an unused line fee (the “**Unused Line Fee**”) for the period commencing on the Effective Date to and including the Maturity Date (or such earlier date as the Commitment shall have been terminated entirely) computed at a rate of 0.25% per annum on the average daily excess amount of the Commitment for Revolving Loans over the aggregate Exposure (but excluding, solely for the purpose of this Section 2.10, any F/X Exposure). The Unused Line Fees on the Commitment shall be calculated monthly in arrears on the last Business Day of each calendar month (and on the date on which the Commitment terminate) and each such calculated amount shall be payable on the first Business Day of the immediately following calendar month (or on the date on which the Commitment terminate, as the case may be). All Unused Line Fees shall be computed on the basis of a year of 365 or 366 days, as the case may be, and shall be payable for the actual number of days elapsed (including the first day but excluding the last day).

(b) The Borrowers agree to pay to the Lender a fee (a “**Letter of Credit Fee**”) with respect to the provision of Letters of Credit, at the rate of 1.00% per annum on the average daily amount of the Letter of Credit Exposure with respect to documentary Letters of Credit and at the rate of 1.75% per annum on the average daily amount of the Letter of Credit Exposure with respect to standby Letters of Credit, in each case during the period from and including the Effective Date (or the date on which any Letter of Credit Exposure first exists to but excluding the latter of: (i) the date of termination of the Commitment and (ii) the date on which there ceases to be any Letter of Credit Exposure. All such Letter of Credit Fees shall be calculated monthly in arrears on the last Business Day of each calendar month (and on the date on which the Commitment terminate) and each such calculated amount shall be payable on the first Business Day of the immediately following calendar month (or on the date on which the Commitment terminate, as the case may be); provided that all Letter of Credit Fees, together with all Standard Letter of Credit Fees (as defined below), accruing after the date on which the Commitment terminate shall be payable on demand. All Standard Letter of Credit Fees payable pursuant to this Section 2.10(b) shall be computed on the basis of a year of 365 or 366 days, as the case may be, and shall be payable for the actual number of days elapsed (including the first day but excluding the last day). The Borrowers also agree to pay to the Issuing Bank, the Issuing Bank’s standard fees (the “**Standard Letter of Credit Fees**”) with respect to the



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issuing, administration, handling, amendment, renewal or extension of any Letter of Credit or processing of drawings thereunder. Such Standard Letter of Credit Fees shall be payable within 10 days after demand by the Lender or the Issuing Bank. It is acknowledged and agreed by the Lender that the Issuing Bank may charge fees and other amounts directly to the Lender as a condition to issuing Letters of Credit.

(c) The Borrowers agree to pay to the Lender, for its own account, on the Effective Date a loan facility fee of \$72,000, which the Borrowers acknowledge and agree shall be fully earned when paid.

(d) The Borrowers agree to pay to the Lender, for its own account, on the Effective Date and on the first Business Day of each calendar month thereafter a collateral management fee in the amount of \$1,200 per month, which the Borrowers acknowledge and agree shall be fully earned when paid.

(e) The Borrowers agree to pay to the Lender, for its own account, the Lender's standard charges, fees, costs and expenses for its field examinations, verifications and audits in an amount equal to \$1,200 per person per day plus such field examiner's and auditor's out-of-pocket expenses.

(f) The Borrowers agree to pay to the Lender, for its own account, fees payable in the amounts and at the times separately agreed upon in writing between a Borrower and the Lender.

(g) All fees payable hereunder shall be paid on the dates due, in immediately available funds, to the Lender. Fees paid shall not be refundable except in the case of manifest error in the calculation of any fee payment.

2.11 BA Borrowings.

(a) Subject to the terms and conditions of this Agreement, the Borrowers may request a Borrowing by presenting drafts for acceptance and purchase as Bankers Acceptances by the Lender.

(b) No Contract Period with respect to a BA Borrowing shall extend beyond the Maturity Date. The Borrowers shall not be entitled to obtain or roll over any BA Borrowings at any time that a Default or an Event of Default has occurred and is continuing.

(c) To facilitate availment of BA Borrowings, each Borrower hereby appoints the Lender as its attorney to sign and endorse on its behalf (in accordance with a Borrowing Request relating to a BA Borrowing), in handwriting or by facsimile or mechanical signature as and when deemed necessary by the Lender, blank forms of Bankers Acceptances in the form requested by the Lender. Each Borrower recognizes and agrees that all Bankers Acceptances signed and/or endorsed by the Lender on behalf of such Borrower shall bind such Borrower as fully and effectually as if signed in the handwriting of and duly issued by the proper signing officers of such Borrower. The Lender is hereby authorized (in accordance with a Borrowing Request relating to a BA Borrowing) to issue such Bankers Acceptances endorsed in blank in such face amounts as may be determined by the Lender; provided that the aggregate amount thereof is equal to the aggregate amount of Bankers Acceptances required to be accepted and purchased by the Lender. No Lender shall be liable for any damage, loss or other claim arising by reason of any loss or improper use of any such instrument except the gross negligence or willful misconduct of the Lender or its officers, employees, agents or representatives. The Lender shall maintain a record with respect to Bankers Acceptances (i) received by it in blank hereunder, (ii) voided by it for any reason, (iii) accepted and purchased by it hereunder, and (iv) cancelled at their respective maturities. On request by or on behalf of a Borrower, the Lender shall cancel all forms of Bankers Acceptances which have been pre-signed or

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pre-endorsed on behalf of such Borrower and which are held by the Lender and are not required to be issued in accordance with such Borrower's irrevocable notice. Alternatively, the Borrowers agree that, at the request of the Lender, each Borrower shall deliver to the Lender a "depository note" which complies with the requirements of the *Depository Bills and Notes Act* (Canada), and consents to the deposit of any such depository note in the book-based debt clearance system maintained by the Canadian Depository for Securities.

(d) Drafts of a Borrower to be accepted as Bankers Acceptances hereunder shall be signed as set out in this Section 2.11. Notwithstanding that any person whose signature appears on any Bankers Acceptances may no longer be an authorized signatory for the Lender or the Borrowers at the date of issuance of a Bankers Acceptances, such signature shall nevertheless be valid and sufficient for all purposes as if such authority had remained in force at the time of such issuance and any such Bankers Acceptances so signed shall be binding on the Borrowers.

(e) The aggregate face amount of the Bankers Acceptances to be accepted by the Lender shall be in a minimum aggregate amount of Cdn.\$200,000 and shall be a whole multiple of Cdn.\$100,000.

(f) The Lender may at any time and from time to time hold, sell, rediscount or otherwise dispose of any or all Bankers Acceptances accepted and purchased by it.

(g) The Lender may, instead of accepting and purchasing Bankers Acceptances, make a Loan (a "**BA Equivalent Loan**") to a Borrower in the amount and for the same term as the draft which the Lender would otherwise have been required to accept and purchase hereunder. Each such BA Equivalent Loan will bear interest at the same rate which would result if the Lender had accepted (and been paid an Acceptance Fee) and purchased (on a discounted basis) a Bankers Acceptance for the relevant Contract Period (it being the intention of the parties that each such BA Equivalent Loan shall have the same economic consequences for the Lender and such Borrower as the Bankers Acceptance which such BA Equivalent Loan replaces). All such interest shall be paid in advance on the date such BA Equivalent Loan is made, and will be deducted from the principal amount of such BA Equivalent Loan in the same manner in which the Discount Proceeds of a Bankers Acceptance would be deducted from the face amount of the Bankers Acceptance. Subject to repayment requirements, on the last day of the relevant Contract Period for such BA Equivalent Loan, the relevant Borrower shall be entitled to convert each such BA Equivalent Loan into another type of Loan, or to roll over each such BA Equivalent Loan into another BA Equivalent Loan, all in accordance with the applicable provisions of this Agreement.

(h) With respect to each BA Borrowing, at or before 10:00 a.m. two Business Days before the last day of the Contract Period of such BA Borrowing, the relevant Borrower shall notify the Lender by telephone notice, followed by a notice in writing if such Borrower intends to issue Bankers Acceptances on such last day of the Contract Period to provide for the payment of such maturing BA Borrowing. If such Borrower fails to notify the Lender of its intention to issue Banker's Acceptances on such last day of the Contract Period, such Borrower shall provide payment to the Lender of an amount equal to the aggregate face amount of such BA Borrowing on the last day of the Contract Period of thereof. If such Borrower fails to make such payment, such maturing Bankers Acceptances shall be deemed to have been converted on the last day of the Contract Period into a Canadian Prime Loan in an amount equal to the face amount of such Bankers Acceptances.

(i) Each Borrower waives presentment for payment and any other defence to payment of any amounts due to the Lender in respect of a Bankers Acceptances accepted and purchased by it pursuant to this Agreement which might exist solely by reason of such Bankers Acceptances being held, at the maturity thereof, by the Lender in its own right, and each Borrower agrees not to claim any days of grace if the Lender, as holder, sues such Borrower on the Bankers Acceptances for

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payment of the amount payable by such Borrower thereunder. On the last day of the Contract Period of a Bankers Acceptances, or such earlier date as may be required or permitted pursuant to the provisions of this Agreement, the Borrowers shall pay the Lender the full face amount of such Bankers Acceptances and, after such payment, the Borrowers shall have no further liability in respect of such Bankers Acceptances and the Lender shall be entitled to all benefits of, and be responsible for all payments due to third parties under, such Bankers Acceptances.

(j) If the Lender grants a participation in a portion of its rights under this Agreement to a participant under Section 9.4(b), then, in respect of any BA Borrowing, a portion thereof may, at the option of the Lender, be by way of Bankers Acceptance accepted by such participant. In such event, the Borrowers shall upon request of the Lender granting the participation execute and deliver a form of Bankers Acceptance undertaking in favour of such participant for delivery to such participant.

(k) Except as required by the Lender upon the occurrence of an Event of Default, no BA Borrowing may be repaid by the Borrowers prior to the expiry date of the Contract Period applicable to such BA Borrowing; provided, however, that the Borrowers may defease any BA Borrowing by depositing with the Lender an amount that is sufficient to repay such BA Borrowing on the expiry date of the Contract Period applicable to such BA Borrowing.

2.12 Increased Costs; Illegality; Alternate Rate of Interest.

(a) If any Change in Law shall:

- (i) impose, modify or deem applicable any reserve, special deposit or similar requirement against assets of, deposits with or for the account of, or credit extended by, the Lender; or
- (ii) impose on the Lender or the Issuing Bank or the London interbank market any other condition affecting this Agreement (including the imposition on the Lender of, or any change to, any Indemnified Tax or other charge with respect to its LIBO Rate Loans or any Letter of Credit or participation therein, or its obligation to make LIBO Rate Loans or issue any Letter of Credit);

and the result of any of the foregoing shall be to increase the cost to the Lender of making or maintaining any Loan (or of maintaining its obligation to make any such Loan) or to increase the cost to the Lender of participating in, issuing or maintaining any Letter of Credit or any Loan or to reduce the amount of any sum received or receivable by the Lender hereunder (whether of principal, interest or otherwise), then the Borrowers will pay to the Lender, such additional amount or amounts as will compensate the Lender, for such additional costs incurred or reduction suffered.

(b) If the Lender determines that any Change in Law regarding capital requirements has or would have the effect of reducing the rate of return on the Lender's capital or on the capital of the Lender's holding company, if any, as a consequence of this Agreement or the Loans made by, or participations in Letters of Credit held by the Lender, or the Letters of Credit issued by the Issuing Bank, to a level below that which the Lender's holding company could have achieved but for such Change in Law (taking into consideration the Lender's policies and the policies of the Lender's holding company with respect to capital adequacy) and the Lender's desired return on capital, then from time to time the Borrowers will pay to the Lender, such additional amount or amounts as will compensate the Lender's holding company for any such reduction suffered. Notwithstanding anything herein to the contrary, (a) all requests, rules, guidelines, requirements and directives promulgated by the Bank for International Settlements, and Basel Committee on Banking Supervision (or any successor or similar authority) or by United States, Canadian or foreign regulatory authorities, in each case pursuant to Basel III, and (b) the Dodd-Frank Wall Street Reform

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and *Consumer Protection Act* (United States) and all requests, rules, guidelines, requirements and directives thereunder or issued in connection therewith or in implementation thereof, shall in each case be deemed to be a Change in Law for purposes of this Section 2.12(b) regardless of the date enacted, adopted, issued or implemented.

(c) A certificate of the Lender setting forth the amount or amounts necessary to compensate the Lender as specified in Sections 2.12(a) or (b), together with a brief description of the Change of Law, shall be delivered to the Borrowers, and shall be conclusive absent manifest error. In preparing any such certificate, the Lender shall be entitled to use averages and to make reasonable estimates, and shall not be required to "match contracts" or to isolate particular transactions. The Borrowers shall pay the Lender the amount shown as due on any such certificate within 10 days after receipt thereof.

(d) Failure or delay on the part of the Lender to demand compensation pursuant to this Section 2.12 shall not constitute a waiver of the Lender's right to demand such compensation.

(e) In the event that the Lender shall have determined (which determination shall be reasonably exercised and shall, absent manifest error, be final, conclusive and binding upon all parties) at any time that the current or reasonably expected foreign currency markets are unusually unstable or that the making or continuance of any Loan denominated in a currency other than Canadian Dollars has become unlawful or materially restricted as a result of compliance by the Lender in good faith with any Applicable Law, or by any applicable guideline or order (whether or not having the force of law and whether or not failure to comply therewith would be unlawful), then, in any such event, the Lender shall give prompt notice (by telephone and confirmed in writing) to the Borrowers and to the Lender of such determination (which notice the Lender shall promptly transmit to the other Lender). Upon the giving of the notice to the Borrowers referred to in this Section 2.12(e), the Borrowers' right to request (by continuation, conversion or otherwise), and the Lender's obligation to make, Loans denominated in a currency other than Canadian Dollars shall be immediately suspended, and thereafter any requested Borrowing of Loans denominated in a currency other than Canadian Dollars shall, as to the Lender only, be deemed to be a request for a Canadian Prime Loan, and if the affected Loan or Loans are then outstanding, the Borrowers shall immediately, or if permitted by Applicable Law, no later than the date permitted thereby, upon at least one Business Day prior written notice to the Lender and the affected Lender, convert each such Loan denominated in a currency other than Canadian Dollars into a Canadian Prime Loan, provided that if more than one Lender is affected at any time, then all affected Lender must be treated the same pursuant to this Section 2.12(e).

(f) If prior to the commencement of any Interest Period for a LIBO Rate Borrowing the Lender determines (which determination shall be conclusive absent manifest error) :

- (i) that adequate and reasonable means do not exist for ascertaining the LIBO Rate for such Interest Period; or
- (ii) that the LIBO Rate for such Interest Period will not adequately and fairly reflect the cost to the Lender of making or maintaining its Loans included in such Borrowing for such Interest Period;

then the Lender shall give notice thereof to the Borrowers and the Lender by telephone or telecopy as promptly as practicable thereafter and, until the Lender notifies the Borrowers and the Lender that the circumstances giving rise to such notice no longer exist, (i) any Borrowing Request that requests the conversion of any Borrowing to, or continuation of any Borrowing as, a LIBO Rate Borrowing shall be ineffective, and (ii) if any Borrowing Request requests a LIBO Rate Borrowing, such

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Borrowing shall be made as a Base Rate Borrowing; provided that if the circumstances giving rise to such notice affect only one Type of Borrowings, then the other Type of Borrowings shall be permitted.

(g) If the Lender requests compensation under this Section 2.12, or if the Borrowers are required to pay any additional amount to the Lender or any Governmental Authority for the account of the Lender pursuant to Section 2.14, then the Lender shall use reasonable efforts to designate a different lending office for funding or booking its Loans hereunder or to assign its rights and obligations hereunder to another of its offices, branches or Lender Affiliates, if, in the judgment of the Lender, such designation or assignment (a) would eliminate or reduce amounts payable pursuant to Section 2.12 or Section 2.14, as the case may be, in the future, and (b) would not subject the Lender to any unreimbursed cost or expense and would not otherwise be disadvantageous to the Lender. The Borrowers shall pay all reasonable costs and expenses incurred by the Lender in connection with any such designation or assignment.

2.13 Break Funding Payments.

In the event of (a) the failure by the Borrowers to borrow, convert, continue or prepay any Loan on the date specified in any notice delivered by or to a Borrower pursuant hereto, or (b) the payment or conversion of any principal of any BA Borrowing or LIBO Rate Loan other than on the last day of a Contract Period or, as applicable, Interest Period applicable thereto (including as a result of an Event of Default), or (c) the prepayment or conversion of any BA Borrowing or LIBO Rate Loan other than on the last day of the Interest Period applicable thereto, then, in any such event, the Borrowers shall compensate the Lender for the loss, cost and expense attributable to such event. A certificate of the Lender setting forth any amount or amounts that the Lender is entitled to receive pursuant to this Section 2.13 shall be delivered to the Borrowers and shall be conclusive absent manifest error. The Borrowers shall pay the Lender the amount shown as due on any such certificate within 10 days after receipt thereof.

2.14 Taxes.

(a) Any and all payments by or on account of any obligation of the Credit Parties hereunder or under any other Loan Document shall be made free and clear of and without deduction or withholding for any Indemnified Taxes; provided that if any Credit Party shall be required to deduct or withhold any Indemnified Taxes from such payments, then (i) the sum payable shall be increased as necessary so that, after making all required deductions or withholdings (including deductions or withholdings applicable to additional sums payable under this Section 2.14), the Lender receives an amount equal to the sum it would have received had no such deduction or withholding been made, (ii) the Credit Parties shall make such deduction or withholding, and (iii) the Credit Party shall pay to the relevant Governmental Authority in accordance with Applicable Law the full amount deducted or withheld.

(b) In addition to the payments by the Credit Parties required by Section 2.14(a), the Credit Parties shall pay any and all present or future stamp or documentary Taxes or any other excise or property Taxes, charges or similar levies arising from any payment made hereunder or from the execution, delivery or enforcement of, or otherwise with respect to, this Agreement to the relevant Governmental Authority in accordance with Applicable Law.

(c) The Credit Parties shall indemnify the Lender, within 10 days after written demand therefor, for the full amount of any Indemnified Taxes paid by the Lender, on or with respect to any payment by or on account of any obligation of any Credit Party hereunder or any other Loan Document (including Indemnified Taxes imposed or asserted on or attributable to amounts payable under this Section 2.14) and any penalties, interest and reasonable expenses arising therefrom or

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with respect thereto (including reasonable attorneys' and tax advisors' fees and expenses), 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 the Credit Parties shall be conclusive absent manifest error.

(d) As soon as practicable after any payment of Indemnified Taxes by a Credit Party to a Governmental Authority, the Credit Party shall deliver to the Lender the original or a certified copy of a receipt issued by such Governmental Authority evidencing such payment, a copy of the return reporting such payment or other evidence of such payment reasonably satisfactory to the Lender.

(e) If the Lender determines, in its sole discretion, that it has received a refund of any Taxes as to which it has been indemnified by a Credit Party or with respect to which a Credit Party has paid additional amounts pursuant to this Section 2.14 and, in the Lender's opinion, such refund amount is both reasonably identifiable and quantifiable by it without involving it in an unacceptable administrative burden, it shall pay over such refund amount to the Credit Party (but only to the extent of indemnity payments made, or additional amounts paid, by such Credit Party under this Section 2.14 with respect to the Taxes giving rise to such refund, and only to the extent that the Lender is satisfied that it may do so without prejudice to its right, as against the relevant Governmental Authority, to retain such refund), net of all Out-of-Pocket Expenses and without interest (other than any interest paid by the relevant Governmental Authority with respect to such refund); provided, that the Credit Parties, upon the request of the Lender, agree to repay the amount paid over to such Credit Party (plus any penalties, interest or other charges imposed by the relevant Governmental Authority) to the Lender if the Lender is required to repay such refund to such Governmental Authority. Nothing herein contained shall (i) interfere with the right of the Lender to arrange its affairs in whatever manner it thinks fit and, in particular, the Lender shall not be under any obligation to claim relief for tax purposes on its corporate profits or otherwise, or to claim such relief in priority to any other claims, reliefs, credits or deductions available to it, or (ii) require the Lender to make available its tax returns (or any other information relating to its Taxes which it deems confidential) to any Credit Party or any other Person or (iii) require the Lender to make any payment under this Section 2.14(e), the payment of which would place the Lender (or its Affiliates) in a less favorable net after-Tax position than such Person would have been in if the Tax subject to indemnification and giving rise to such refund had not been deducted, withheld or otherwise imposed and the indemnification payments or additional amounts with respect to such Tax had never been paid.

(f) If the Lender is entitled to an exemption from or reduction of withholding Tax with respect to payments made under any Loan Document it shall deliver to the Borrowers, at the time or times reasonably requested by the Borrowers, such properly completed and executed documentation reasonably requested by the Borrowers as will permit such payments to be made without withholding or at a reduced rate of withholding. In addition, the Lender, if reasonably requested by the Borrowers shall deliver such other documentation prescribed by Applicable Law or reasonably requested by the Borrowers as will enable the Borrowers to determine whether or not the Lender is subject to backup withholding or information reporting requirements. Notwithstanding anything to the contrary in the preceding two sentences, the completion, execution and submission of such documentation (other than such documentation set forth in paragraphs (f)(ii)) shall not be required if in the Lender's reasonable judgment such completion, execution or submission would subject the Lender to any unreimbursed cost or expense or would materially prejudice the legal or commercial position of the Lender or its Affiliates.

(g) Prior to becoming a Lender under this Agreement or acquiring any beneficial interest in any Loan, and within fifteen (15) days after a reasonable written request of Borrower, from time to time thereafter, each such Person or Lender that is not in each case a "United States person" (as such term is defined in Section 7701(a)(30) of the Code) for U.S. federal income tax purposes (a "Non-US Lender") shall provide to Nilex USA, Inc., a properly completed and executed IRS Form W

8BEN, Form W-8BEN-E or Form W 8ECI or other applicable form, certificate or document prescribed by the United States Internal Revenue Service, certifying as to such Non-US Lender's entitlement to an exemption from, or reduction in, United States federal withholding tax with respect to payments to be made to such Non-US Lender under this Agreement or any other Loan Document, and if such Non-U.S. Lender is relying on the portfolio interest exception of Code Section 881(c), a certificate to the effect that that such Non-U.S. Lender is not a "bank" within the meaning of Section 881(c)(3)(A) of the Code, a "10 percent shareholder" of a Borrower within the meaning of Section 871(h)(3)(B) of the Code, or a "controlled foreign corporation" related to a Borrower as described in Section 881(c)(3)(C) of the Code (a "U.S. Tax Compliance Certificate"). If a payment made to a Lender under this Agreement would be subject to United States federal withholding taxes imposed by FATCA if such Lender were to fail to comply with the applicable reporting requirements of FATCA (including those contained in Section 1471(b) or 1472(b) of the Code, as applicable), such Lender shall deliver to the Borrowers at the time or times prescribed by law and at such time or times reasonably requested by the Borrowers, such documentation prescribed by applicable law (including as prescribed by Section 1471(b)(3)(C)(i) of the Code) and such additional documentation reasonably requested by the Borrowers as may be necessary for Borrowers to comply with their applicable obligations under FATCA, to determine that such Lender has or has not complied with the such Lender's obligations under FATCA, or to determine the amount to deduct and withhold from such payment. Any Lender or other recipient of a payment under this Agreement or any other Loan Document that is a "United States person" within the meaning of Section 7701(a)(30) of the Code shall on or prior to the date it becomes a party to this Agreement or acquires a beneficial interest in any Loan and within 15 days after a reasonable written request of the Borrowers, provide Nillex USA, Inc., with a duly executed Internal Revenue Service Form W-9.

2.15 Payments Generally.

(a) The Borrowers shall make each payment required to be made by it hereunder (whether of principal, interest, fees or amounts payable in respect of amounts payable under any of Sections 2.12, 2.13 or 2.14, or amounts otherwise payable hereunder) prior to 12:00 noon, Toronto time, on the date when due, in immediately available funds, without set-off or counterclaim. Any amounts received after such time on any date may, in the discretion of the Lender, be deemed to have been received on the next succeeding Business Day for purposes of calculating interest thereon. All such payments shall be made to the Lender at the Payment Office, except that payments pursuant to any indemnities contained herein shall be made directly to the Persons entitled thereto. The Lender shall distribute any such payments received by it for the account of any other Person to the appropriate recipient promptly following receipt thereof. If any payment hereunder shall be due on a day that is not a Business Day, the date for payment shall be extended to the next succeeding Business Day, and, in the case of any payment accruing interest, interest thereon shall be payable for the period of such extension, provided that, in the case of any payment with respect to a LIBO Rate Loan, the date for payment shall be advanced to the next preceding Business Day if the next succeeding Business Day is in a subsequent calendar month. All payments under this Section 2.15 in respect of LIBO Rate Loans and Base Rate Loans shall be made in U.S. Dollars. All other payments under this Section 2.15 shall be made in Canadian Dollars. Each Borrower hereby authorizes the Lender to debit the Borrowers' loan account to effect any payment due to the Lender pursuant to this Agreement. Any resulting overdraft in such account shall be payable by the Borrowers to the Lender in same day funds.

(b) Unless an Event of Default has occurred and is continuing (in which case, Section 7.2(d) shall apply), if at any time insufficient funds are received by and available to the Lender to pay fully all amounts of principal, interest, fees, amounts payable in respect of amounts payable under any of Sections 2.12, 2.13 or 2.14 and other amounts payable hereunder, any available funds shall be applied (i) first, to pay any fees, indemnities or expense reimbursements then due to the Lender from the Borrowers, (ii) second, to pay interest due in respect of all Revolving Loans, (iii) third, to pay

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or prepay principal of the Revolving Loans and unpaid Reimbursement Obligations, and (iv) fourth, to the payment of any other Obligation due to the Lender by the Borrowers, including amounts payable under any of Sections 2.12, 2.13 or 2.14 and other amounts otherwise payable hereunder.

2.16 Currency Indemnity.

If, for the purposes of obtaining judgment in any court in any jurisdiction with respect to this Agreement or any other Loan Document, it becomes necessary to convert into a particular currency (the "**Judgment Currency**") any amount due under this Agreement or under any other Loan Document in any currency other than the Judgment Currency (the "**Currency Due**"), then conversion shall be made at the rate of exchange prevailing on the Business Day before the day on which judgment is given. For this purpose "rate of exchange" means the rate at which the Lender is able, on the relevant date, to purchase the Currency Due with the Judgment Currency in accordance with its normal practice at its head office in Toronto, Ontario. In the event that there is a change in the rate of exchange prevailing between the Business Day before the day on which the judgment is given and the date of receipt by the Lender of the amount due, the applicable Credit Party will, on the date of receipt by the Lender, pay such additional amounts, if any, or be entitled to receive reimbursement of such amount, if any, as may be necessary to ensure that the amount received by the Lender on such date is the amount in the Judgment Currency which when converted at the rate of exchange prevailing on the date of receipt by the Lender is the amount then due under this Agreement or such other Loan Document in the Currency Due. If the amount of the Currency Due which the Lender is so able to purchase is less than the amount of the Currency Due originally due to it, the Credit Parties shall indemnify and save the Lender harmless from and against all loss or damage arising as a result of such deficiency. This indemnity shall constitute an obligation separate and independent from the other obligations contained in this Agreement and the other Loan Documents, shall give rise to a separate and independent cause of action, shall apply irrespective of any indulgence granted by the Lender from time to time and shall continue in full force and effect notwithstanding any judgment or order for a liquidated sum in respect of an amount due under this Agreement or any other Loan Document or under any judgment or order.

2.17 Collection of Accounts.

(a) Each Credit Party shall, and shall cause each other Credit Party to, at its expense, enforce, collect and receive all amounts owing on its Accounts in the ordinary course of its business and any proceeds it so receives shall be subject to the terms hereof. Any proceeds received by a Credit Party in respect of Accounts, and any cheques, cash, credit card sales and receipts, notes or other instruments or property received by a Credit Party with respect to any Collateral, shall be held by such Credit Party in trust or as mandatary for the Lender, separate from such Credit Party's own property and funds, and promptly turned over to the Lender with proper assignments or endorsements by deposit to the Blocked Accounts.

(b) Each Credit Party shall, and shall cause each other Credit Party to: (i) irrevocably authorize and direct any bank which maintains any Credit Party's initial receipt of cash, cheques and other items to promptly wire transfer all available funds to a Blocked Account; and (ii) advise all such banks of the Lender's security interest in such funds. The Borrowers shall, and shall cause each other Credit Party to, provide the Lender with prior written notice of any and all deposit accounts opened or to be opened subsequent to the Effective Date. All amounts received by the Lender in payment of Accounts will be credited to the Blocked Account when the Lender is advised by its bank of its receipt of "collected funds" at the Lender's bank account in Toronto, Ontario on the Business Day of such advise if advised no later than 12:00 noon, Toronto time, or on the next succeeding Business Day if so advised after 12:00 noon, Toronto time. No cheques, drafts or other instrument received by the Lender shall constitute final payment to the Lender unless and until such instruments have actually been collected.



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(c) Upon the request of the Lender, the Borrowers shall, and shall cause each Credit Party to: (i) indicate on all of its invoices that funds should be delivered to and deposited in a Blocked Account; and (ii) direct all of its account debtors to deposit any and all proceeds of Collateral into the Blocked Accounts.

(d) Subject to the requirements of Section 5.15, each, Credit Party shall, and shall cause each other Credit Party to, establish and maintain, in its own respective name and at its expense, deposit accounts and lock boxes with such banks as are acceptable to the Lender (the "**Blocked Accounts**") into which the Credit Parties shall promptly cause to be deposited: (i) all proceeds of Collateral received by any Credit Party, including all amounts payable to any Credit Party from credit card issuers and credit card processors, and (ii) all amounts on deposit in deposit accounts used by any Credit Party at each of its locations, all as further provided in Section 2.17(b). The banks at which the Blocked Accounts are established and the applicable Credit Parties shall enter into three-party agreements, in form and substance satisfactory to the Lender (the "**Blocked Account Agreements**"), providing that, among other things, all cash, cheques and items received or deposited in the Blocked Accounts are subject to Liens in favour of the Lender, that the depository bank has no Lien upon, or right of set off against, the Blocked Accounts and any cash, cheques, items, wires or other funds from time to time on deposit therein, except as otherwise provided in the Blocked Account Agreements, and that on a daily basis the depository bank will wire, or otherwise transfer, in immediately available funds, all funds received or deposited into the Blocked Accounts to such bank account as the Lender may from time to time designate for such purpose. The Borrowers hereby confirm and agree that all amounts deposited in such Blocked Accounts and any other funds received and collected by the Lender, whether as proceeds of Inventory or other Collateral or otherwise, shall be subject to the Liens in favour of the Lender. Concurrently with the establishment by any Credit Party after the date hereof of any bank account, such Credit Party shall provide the Lender with an amended Schedule 3.27 reflecting such new account.

(e) The parties hereto hereby acknowledge, confirm and agree that the implementation of the cash management arrangements is a contractual right provided to the Lender hereunder in order for the Lender to manage and monitor their collateral position and not a proceeding for enforcement or recovery of a claim, or pursuant to, or an enforcement of, any security or remedies whatsoever, that the cash management arrangements contemplated herein are critical to the structure of the lending arrangements contemplated herein, that the Lender is relying on the Borrowers' acknowledgement, confirmation and agreement with respect to such cash management arrangements in making accommodations of credit available to the Borrowers and in particular that any accommodations of credit are being provided by the Lender to the Borrowers strictly on the basis of a borrowing base calculation to fully support and collateralize any such accommodations of credit hereunder.

2.18 Letters of Credit.

Subject to Sections 4.1 and 4.2, a Borrower may request, and the Issuing Bank shall issue, Letters of Credit in accordance with this Section 2.18:

(a) Within the limits of the Commitment and the Borrowing Base, and the other limitations contained in this Agreement, a Borrower may obtain Letters of Credit from the Issuing Bank, denominated in Canadian Dollars or U.S. Dollars, in an amount not to exceed the outstanding amount of the Letter of Credit Sub-Line. The issuance of Letters of Credit for amounts in excess of the limitation set forth herein shall at all times and in all respects be in the Lender's sole discretion. It is understood that the term, form and purpose of each Letter of Credit and all documentation in connection therewith, and any amendments, modifications or extensions thereof, must be mutually acceptable to the Lender, the Issuing Bank and the relevant Borrower. Any and all outstanding Letters of Credit shall be reserved dollar for dollar from the Borrowing Base as an Availability

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Reserve. Each Letter of Credit shall expire at or prior to the close of business on the earlier of (i) the date one year after the date of the issuance of such Letter of Credit (or, in the case of any renewal or extension thereof, one year after such renewal or extension) and (ii) the date that is five Business Days prior to the Maturity Date.

(b) By the issuance of a Letter of Credit (or an amendment to a Letter of Credit increasing the amount thereof) and without any further action on the part of the Issuing Bank or the Lender, the Issuing Bank hereby grants to the Lender, and the Lender hereby acquires from the Issuing Bank, a participation in such Letter of Credit equal to the aggregate amount available to be drawn under such Letter of Credit. In consideration and in furtherance of the foregoing, the Lender hereby absolutely and unconditionally agrees to pay to the Issuing Bank, the amount of each disbursement made by the Issuing Bank and not reimbursed by the Borrowers on the date due, or of any reimbursement payment required to be refunded to the Borrowers for any reason. The Lender acknowledges and agrees that its obligation to acquire participations in respect of Letters of Credit is absolute and unconditional and shall not be affected by any circumstance whatsoever, including any amendment, renewal or extension of any Letter of Credit or the occurrence and continuance of a Default or reduction or termination of the Commitment, and that each such payment shall be made without any offset, abatement, withholding or reduction whatsoever. If the Issuing Bank shall make any disbursement in respect of a Letter of Credit, the Borrowers shall reimburse such disbursement by paying to the Lender an amount equal to such disbursement not later than 12:00 noon, on the date that such disbursement is made, if the Borrowers shall have received notice of such disbursement prior to 10:00 a.m., on such date, or, if such notice has not been received by the Borrowers prior to such time on such date, then not later than 12:00 noon, on (i) the Business Day that the Borrowers receive such notice, if such notice is received prior to 10:00 a.m., on the day of receipt, or (ii) the Business Day immediately following the day that the Borrowers received such notice, if such notice is not received prior to such time on the day of receipt. In the alternative, the Lender shall have the right, without notice to the Borrowers, to charge the applicable Borrower's loan account with the amount of any and all indebtedness, liability or obligation of any kind incurred by the Issuing Bank or the Lender under any Letter of Credit at the earlier of (a) payment by the Issuing Bank under any Letter of Credit; or (b) the occurrence and continuance of an Event of Default, unless the Borrowers have provided Cover to the Lender in an amount equal to the face amount of all Letters of Credit. Any amount so charged to the applicable Borrower's loan account shall be deemed a Canadian Prime Loan or a Base Rate Loan hereunder, depending on the currency of the applicable Borrower's payment obligation thereunder, and shall incur interest at the rate provided in Section 2.5.

(c) The Borrowers unconditionally indemnify the Lender and the Issuing Bank and hold the Lender and the Issuing Bank harmless from any and all loss, claim or liability incurred by the Issuing Bank or the Lender arising from any transactions or occurrences relating to Letters of Credit established or opened for the applicable Borrower's account, the collateral relating thereto and any drafts or acceptances thereunder, and all Obligations thereunder, including any such loss or claim due to any errors, omissions, negligence, misconduct or action taken by the Issuing Bank, other than for any such loss, claim or liability arising out of the gross negligence or willful misconduct by the Lender or the Issuing Bank under the Letter of Credit. This indemnity shall survive termination of this Agreement. The Borrowers agree that any charges lawfully incurred by the Issuing Bank or the Lender in respect of any Letter of Credit shall be for the Borrowers' account and may be charged to the Borrowers' loan account.

(d) The Issuing Bank and the Lender shall not be responsible for: (a) the existence, character, quality, quantity, condition, packing, value or delivery of the goods purporting to be represented by any documents; (b) any difference or variation in the character, quality, quantity, condition, packing, value or delivery of the goods from that expressed in the documents; (c) the validity, sufficiency or genuineness of any documents or of any endorsements thereon, even if such



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documents should in fact prove to be in any or all respects invalid, insufficient, fraudulent or forged; (d) the time, place, manner or order in which shipment is made; partial or incomplete shipment, or failure or omission to ship any or all of the goods referred to in the Letters of Credit or documents; (e) any deviation from instructions; (f) delay, default, or fraud by the shipper and/or anyone else in connection with the goods or the shipping thereof; or (g) any breach of contract between the shipper or vendors and the relevant Borrower.

(e) Each of the Credit Parties agrees that any action taken by the Issuing Bank or the Lender, if taken in good faith, under or in connection with any Letter of Credit, the drafts or acceptances, or the Collateral, shall be binding on the Credit Parties and shall not result in any liability whatsoever of the Issuing Bank or the Lender to any Credit Party. In furtherance thereof, the Issuing Bank shall have the full right and authority to: (a) clear and resolve any questions of non compliance of documents; (b) give any instructions as to acceptance or rejection of any documents or goods; (c) execute any and all steamship or airways guarantees (and applications therefor), indemnities or delivery orders; (d) grant any extensions of the maturity of, time of payment for, or time of presentation of, any drafts, acceptances, or documents; and (e) agree to any amendments, renewals, extensions, modifications, changes or cancellations of any of the terms or conditions of any of the applications, Letters of Credit, drafts or acceptances; all in the sole discretion of the Issuing Bank. The Issuing Bank shall be entitled to comply with and honor any and all such documents or instruments, all without any consent from any Credit Party. In addition, without the Issuing Bank's express consent and endorsement in writing, each of the Credit Parties agrees: (a) not to (i) execute any applications for steamship or airway guarantees, indemnities or delivery orders; (ii) grant any extensions of the maturity of, time of payment for, or time of presentation of, any drafts, acceptances or documents; or (iii) agree to any amendments, renewals, extensions, modifications, changes or cancellations of any of the terms or conditions of any of the applications, Letters of Credit, drafts or acceptances; and (b) upon the occurrence and during the continuance of an Event of Default, not to (i) clear and resolve any questions of non compliance of documents, or (ii) give any instructions as to acceptances or rejection of any documents or goods.

(f) Each of the Credit Parties shall, and shall cause each other Credit Party to: (a) procure any necessary import, export or other licenses or certificates for the import or handling of the Collateral; (b) comply with all Applicable Law in regard to the shipment and importation of the Collateral, or the financing thereof; and (c) deliver to the Issuing Bank or the Lender any certificates in that regard that the Lender may at any time request to be furnished. In connection herewith, the Borrowers warrant and represent that all shipments made under any such Letters of Credit are in accordance with Applicable Law of the countries in which the shipments originate and terminate, and are not prohibited by any such Applicable Law. Each of the Credit Parties assumes all risk, liability and responsibility for, and agrees to pay and discharge, all present and future local, provincial, state, federal or foreign Taxes, duties, or levies with respect to such Collateral. Any embargo, restriction, laws, customs or regulations of any country, state, city, or other political subdivision, where the Collateral is or may be located, or wherein payments are to be made, or wherein drafts may be drawn, negotiated, accepted, or paid, shall be solely the Borrowers' risk, liability and responsibility.

(g) If any Event of Default shall occur and be continuing, on the Business Day that the Borrowers receive notice from the Lender demanding the deposit of Cover, the Borrowers shall deposit in an account with the Lender, in the name of the Lender, the required amount of Cover. Such deposit shall be held by the Lender as collateral for the payment and performance of the obligations of the Borrowers under this Agreement. The Lender shall have exclusive dominion and control, including the exclusive right of withdrawal, over such account. Other than any interest earned on the investment of such deposits, which investments shall be made at the option and sole discretion of the Lender and at the Borrowers' risk and expense, such deposits shall not bear interest. Interest or profits, if any, on such investments shall accumulate in such account. Moneys in such account shall be applied by the Lender to reimburse the Issuing Bank for disbursements

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pursuant to Letters of Credit for which it has not been reimbursed and, to the extent not so applied, shall be held for the satisfaction of the reimbursement obligations of the Borrowers for the Letter of Credit Exposure at such time or, if the maturity of the Loans has been accelerated, be applied to satisfy other obligations of the Borrowers under this Agreement. If the Borrowers are required to provide an amount of cash collateral hereunder as a result of the occurrence of an Event of Default, such amount (to the extent not applied as aforesaid) shall be returned to the Borrowers within three Business Days after all Events of Default have been cured or waived.

2.19 F/X Contracts.

Subject to Sections 4.1 and 4.2, a Borrower may request F/X Contracts in accordance with this Section 2.19:

(a) Within the limits of the Commitment and the Borrowing Base and the other limitations as contained in this Agreement, a Credit Party may obtain F/X Contracts in an amount such that the F/X Exposure does not to exceed the outstanding amount of the F/X Contract Sub-Line. The entry into F/X Contracts for amounts in excess of the limitation set forth herein shall at all times and in all respects be in the Lender's sole discretion. Any F/X Contract will be documented by separate documentation in the form required by the F/X Bank. The term, form and purpose of the F/X Contract and all confirmations and other documentation in connection therewith, and any amendments, modifications or extensions thereof, must be mutually acceptable to the Lender, the F/X Bank and the applicable Borrower.

(b) The Lender shall have the right, without notice to the Borrowers, to charge the applicable Borrower's loan account with the amount of any and all indebtedness, liability or obligation of any kind incurred by the Lender or the F/X Bank under any F/X Contract at such time which is the earlier of (a) payment by the Lender under the F/X Contract; or (b) the occurrence and continuance of an Event of Default, unless the Borrowers have provided Cover to the Lender. Any amount charged to the applicable Borrower's loan account shall be deemed a Canadian Prime Loan or a Base Rate Loan hereunder, depending on the currency of the Credit Party's payment obligation in respect of such F/X Contract, and shall incur interest at the rate provided in Section 2.5.

(c) Each of the Credit Parties unconditionally indemnifies the Lender and the F/X Bank and holds the Lender harmless from any and all loss, claim or liability incurred by the Lender or the F/X Bank arising from any transactions or occurrences relating to F/X Contracts, the collateral relating thereto, and all Obligations thereunder, including any such loss or claim due to any errors, omissions, negligence, misconduct or action taken by the F/X Bank, other than for any such loss, claim or liability arising out of the gross negligence or willful misconduct of the Lender or the F/X Bank, as applicable. This indemnity shall survive termination of this Agreement. The Borrowers agree that any charges incurred by the Lender or the F/X Bank, as applicable, are for the Borrowers' account and may be charged to the Borrowers' loan account.

(d) Each of the Credit Parties agrees that any action taken by the Lender, if taken in good faith, or any action taken by the F/X Bank, under or in connection with the F/X Contracts or the Collateral, shall be binding on the Credit Parties and shall not result in any liability whatsoever of the Lender to any Credit Party.

(e) All rights, remedies, duties and obligations of the Credit Parties in respect of F/X Contracts shall be secured by the Liens arising under the Security Documents.

ARTICLE 3 REPRESENTATIONS AND WARRANTIES

In order to induce the Lender to enter into this Agreement, to make any Loans hereunder, to issue any Letters of Credit hereunder and to permit the Borrowers to obtain F/X Contracts, each Credit Party hereby represents and warrants to the Lender that each statement set forth in this Article 3 is true and correct on the date hereof, and will be true and correct on the date of each Borrowing, on the date each Letter of Credit is requested hereunder and on the date each Letter of Credit is issued hereunder:

3.1 Organization; Powers.

The Borrowers and each other Credit Party is duly organized, validly existing and in good standing under the laws of the jurisdiction of its organization, has all requisite power and authority to carry on its business as now and formerly conducted and, except where the failure to do so, individually or in the aggregate, could not reasonably be expected to result in a Material Adverse Effect, is qualified to do business in, and is in good standing in, every jurisdiction where such qualification is required.

3.2 Authorization; Enforceability.

The Transactions are within each Credit Party's corporate powers and have been duly authorized by all necessary corporate and, if required, shareholder action. This Agreement and the other Loan Documents have been duly executed and delivered by the Borrowers and each other Credit Party party thereto and constitute legal, valid and binding obligations of the Borrowers and each other Credit Party party thereto, enforceable in accordance with their terms, subject to applicable bankruptcy, insolvency, reorganisation, moratorium or other Applicable Laws affecting creditors' rights generally and subject to general principles of equity, regardless of whether considered in a proceeding in equity or at law.

3.3 Governmental Approvals; No Conflicts.

The Transactions (a) do not require any consent or approval of, registration or filing with, or any other action by, any Governmental Authority, except as disclosed in Schedule 3.3, (b) will not violate any Applicable Law or the charter, by-laws or other organizational documents of the Borrowers or any other Credit Party or any order of any Governmental Authority, (c) will not violate or result in a default under any Material Contract binding upon the Borrowers or any other Credit Party or their respective assets, or give rise to a right thereunder to require any payment to be made by the Borrowers or any other Credit Party, and (d) will not result in the creation or imposition of any Lien on any asset of the Borrowers or any other Credit Party, except for any Lien arising in favour of the Lender under the Loan Documents.

3.4 Financial Condition; No Material Adverse Effect.

(a) The Borrowers have furnished to the Lender their consolidated balance sheets and statements of income, retained earnings and changes in financial position (i) as of and for the Fiscal Year ended December 31, 2017, reported on by its auditors, and (ii) as of and for the Fiscal Month and the portion of the Fiscal Year ended April 30, 2018, certified by a Responsible Officer. Such financial statements present fairly, in all material respects, the consolidated financial position and results of operations and cash flows of the Borrowers as of such dates and for such periods in accordance with GAAP, subject to year-end audit adjustments and the absence of footnotes in the case of the statements referred to in clause (ii) above.

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(b) The Borrowers have delivered to the Lender their consolidated monthly financial projections for their Fiscal Years ending December 31, 2018 and December 31, 2019, including projected balance sheets and income statements. Such financial projections have been prepared in good faith by the Borrowers, are based on assumptions which are believed by the Borrowers on the date hereof to be reasonable, and are based on the best information available to the Borrowers as of the date of delivery thereof.

(c) Since December 31, 2017, there has been no event, development or circumstance that has had or could reasonably be expected to have a Material Adverse Effect.

(d) All information (including that disclosed in all financial statements) pertaining to the Borrowers and the other Credit Parties (other than projections) (in this Section 3.4(c), the "Information") that has been or will be made available to the Lender by the Borrowers or any representative of the Borrowers and the other Credit Parties, taken as a whole, is or will be, when furnished, complete and correct in all material respects and does not or will not, when furnished, contain any untrue statement of a material fact or omit to state a material fact necessary in order to make the statements contained therein not materially misleading in light of the circumstances under which such statements are made. The projections that have been or will be made available to the Lender by the Borrowers or any representative of the Borrowers have been or will be prepared in good faith based upon reasonable assumptions.

3.5 Litigation.

(a) Except as disclosed in Schedule 3.5, there are no actions, suits, counterclaims or proceedings (including any Tax-related matter) by any Person or investigation by any Governmental Authority pending against or, to the knowledge of the Borrowers, threatened against or affecting the Borrowers or any of the other Credit Parties (i) as to which there is a reasonable possibility of an adverse determination and that, if adversely determined, could reasonably be expected, individually or in the aggregate, to result in a Material Adverse Effect (other than the Disclosed Matters), or (ii) that involve this Agreement, any other Loan Document, or the Transactions.

(b) Since the date of this Agreement, there has been no change in the status of the Disclosed Matters that, individually or in the aggregate, has resulted in, or materially increased the likelihood of, a Material Adverse Effect.

3.6 Compliance with Applicable Laws and Agreements.

Each Borrower and each other Credit Party is in compliance with all Applicable Laws applicable to it or its property and all indentures, agreements and other instruments binding upon it or its property, except where the failure to do so, individually or in the aggregate, could not reasonably be expected to result in a Material Adverse Effect. Neither the Borrowers nor any other Credit Party has violated or failed to obtain any Authorization necessary to the ownership of any of its property or assets or the conduct of its business, which violation or failure could reasonably be expected to have (in the event that such a violation or failure were asserted by any Person through appropriate action) a Material Adverse Effect.

3.7 Ownership.

The registered and beneficial holders of all of the Equity Securities of the Borrowers and the other Credit Parties are as set out on Schedule 3.7.

3.8 Taxes.

Each Borrower and each other Credit Party has timely filed or caused to be filed all Tax returns and reports required to have been filed and has paid or caused to be paid all Taxes required to have been paid by it (including all instalments with respect to the current period) and has made adequate provision for Taxes for the current period, except Taxes that are being contested in good faith by appropriate proceedings and for which the Borrowers or such other Credit Party, as applicable, has set aside on its books adequate reserves.

3.9 Titles to Real Property.

The Borrowers and each other Credit Party have indefeasible fee simple title to their respective owned real properties (or in Quebec, owned immovable properties), and with respect to leased real properties, indefeasible title to the leasehold estate with respect thereto, pursuant to valid and enforceable leases, free and clear of all Liens except Permitted Liens, including the Liens disclosed in Schedule 3.9.

3.10 Titles to Personal Property.

The Borrowers and each other Credit Party have title to their respective owned personal property (or in Quebec, owned movable properties), and with respect to leased personal property, title to the leasehold estate with respect thereto, pursuant to valid and enforceable leases, free and clear of all Liens except Permitted Liens, including the Liens disclosed in Schedule 3.10.

3.11 Pension Plans.

The Pension Plans are, with the exception of a supplemental retirement plan for eligible employees, duly registered under the ITA and any other Applicable Laws which require registration, have been administered in accordance with the ITA and such other Applicable Laws and no event has occurred which could reasonably be expected to cause the loss of such registered status, except to the extent that any failure to do so could not reasonably be expected to have a Material Adverse Effect. All material obligations of the Borrowers and each other Credit Party (including funding, investment and administration obligations) required to be performed in connection with the Pension Plans and the funding agreements therefor and Applicable Laws have been performed on a timely basis, except to the extent that any failure to do so could not reasonably be expected to have a Material Adverse Effect. There are no outstanding disputes concerning the assets of the Pension Plans or any benefit plans other than routine claims for benefits. No promises of benefit improvements under the Pension Plans or any benefit plans have been made except where such improvement could not reasonably be expected to have a Material Adverse Effect. All contributions or premiums required to be made or paid by the Borrowers and each other Credit Party to the Pension Plans or any benefit plans have been made on a timely basis in accordance with the terms of such plans and all Applicable Laws. There have been no improper withdrawals or applications of the assets of the Pension Plans or any benefit plans. No Pension Plan contains a "defined benefit provision" as such term is defined in section 147.1(1) of the ITA. Subject to the matters disclosed in Schedule 3.11, for any Pension Plan or fund, and for any other employee benefit plan, which is a defined contribution plan requiring the Borrowers or any Subsidiary to contribute thereto, or to deduct from payments to any individual and pay such deductions into or to the credit of such Pension Plan or fund, all required employer contributions have been properly withheld by the Borrowers or such Subsidiary and fully paid into the funding arrangements for the applicable Pension Plan or fund.

None of the Credit Parties nor any of their respective Subsidiaries maintains, contributes to, or is liable under any Defined Benefit Plan, or Multiemployer Plan as of the Effective Date.

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Except as could not reasonably be expected to have a Material Adverse Effect, (i) each Employee Benefit Plan complies with, and has been operated in accordance with, all applicable laws, including ERISA and the Code, and the terms of such Employee Benefit Plan, (ii) no Credit Party has any liability for a fine, penalty, damage, or excise tax with respect to an Employee Benefit Plan and no Credit Party has received notice from a Governmental Authority, plan administrator, or participant (or any participant's agent) that any such fine, penalty, damage or excise tax may be owing by such Credit Party and (iii) each Employee Benefit Plan intended to be qualified by a Credit Party under Section 401 of the Code is so qualified, and (iv) no ERISA Event has occurred.

3.12 Disclosure.

The Borrowers have disclosed to the Lender all agreements, instruments and corporate or other restrictions to which they or any other Credit Party is subject, and all other matters known to them, that, individually or in the aggregate, could reasonably be expected to result in a Material Adverse Effect. None of the representations or warranties made by any Credit Party in the Loan Documents as of the date such representations and warranties are made or deemed made, and none of the statements contained in any exhibit, report, statement or certificate furnished by or on behalf of any Credit Party in connection with the Loan Documents, contains any untrue statement of a material fact or omits any material fact necessary to be stated therein to make the statements made therein, in light of the circumstances under which they are made, not misleading as of the time when made or delivered.

3.13 Defaults.

No Borrower nor any other Credit Party is in default nor has any event or circumstance occurred which, but for the passage of time or the giving of notice, or both, would constitute a default (in any respect that would have a Material Adverse Effect) under any loan or credit agreement, indenture, mortgage, deed of trust, security agreement or other instrument or agreement evidencing or pertaining to any Indebtedness of or Lien against the Borrowers or any other Credit Party, or under any Material Contract to which the Borrowers or any other Credit Party is a party or by which the Borrowers or any other Credit Party is bound, except as disclosed to the Lender in Schedule 3.13. No Default has occurred and is continuing.

3.14 Casualties; Taking of Properties.

Neither the business nor the properties of the Borrowers or any other Credit Party have been affected in a manner that has had, or could reasonably be expected to have, a Material Adverse Effect as a result of any fire, explosion, earthquake, flood, drought, windstorm, accident, strike or other labour disturbance, embargo, requisition or taking of property or cancellation of contracts, permits or concessions by any domestic or foreign Governmental Authority, riot, activities of armed forces, or acts of God or of any public enemy.

3.15 Subsidiaries.

Schedule 3.15 correctly sets forth the (i) names, (ii) form of legal entity, (iii) Equity Securities issued and outstanding, (iv) Equity Securities owned by each Credit Party or a Subsidiary of such Credit Party (and specifying such owner), and (v) jurisdictions of organization of all Credit Parties and their Subsidiaries. Except as described in Schedule 3.15 the Credit Parties directly or indirectly do not own any Equity Securities or debt security which is convertible, or exchangeable, for Equity Securities of any other Person. Unless otherwise indicated in Schedule 3.15 all of the outstanding Equity Securities of each Credit Party is directly or indirectly owned of record and beneficially by the Borrowers, there are no outstanding options, warrants or other rights to purchase Equity Securities of any such Credit Party, and all such Equity Securities so owned are duly authorized, validly issued,

fully paid and non-assessable, and were issued in compliance with all applicable federal, provincial or foreign securities and other Applicable Laws, and are free and clear of all Liens, except for Permitted Liens.

3.16 Insurance.

All policies of fire, liability, workers' compensation, casualty, flood, business interruption and other forms of insurance owned or held by the Borrowers or any other Credit Party are (a) sufficient for compliance with all requirements of Applicable Law and of all agreements to which the Borrowers or any other Credit Party is a party, (b) are valid, outstanding and enforceable policies, (c) provide adequate insurance coverage in at least such amounts and against at least such risks (but including in any event public liability) as are usually insured against in the same general area by Persons engaged in the same or a similar business to the assets and operations of the Borrowers and each other Credit Party, (d) will not in any way be adversely affected by, or terminate or lapse by reason of, the Transactions, and (e) are held in the name of a Credit Party. All such material policies are in full force and effect, all premiums with respect thereto have been paid in accordance with their respective terms, and no notice of cancellation or termination has been received with respect to any such policy. Neither the Borrowers nor any other Credit Party maintains any formalized self-insurance program with respect to its assets or operations or material risks with respect thereto. The certificate of insurance delivered to the Lender pursuant to Section 4.1(f) contains an accurate and complete description of all material policies of insurance owned or held by the Borrowers and each other Credit Party on the Effective Date.

3.17 Solvency.

No Borrower nor any other Credit Party is an "insolvent person" within the meaning of the BIA and is not "insolvent" within the meaning of Section 101(32) of the *United States Bankruptcy Code*.

3.18 Material Contracts.

Schedule 3.18 sets out all Material Contracts. A true and complete copy of each Material Contract has been delivered to the Lender. Each of the Material Contracts is in full force and effect. No Borrower nor any other Credit Party is in default under or in breach of any term or condition of any Material Contract that would have, either individually or in the aggregate, a Material Adverse Effect, nor is any Borrower or any other Credit Party aware of any material default under or material breach of any term or condition of any Material Contract by any other party thereto. No contract to which a Borrower or any other Credit Party is a party contains any material provisions which impose burdensome or onerous obligations on the Borrowers or such other Credit Party which are inconsistent with prudent commercial activity by the Borrowers or such other Credit Party.

3.19 Environmental Matters.

Except as disclosed to the Lender in the Disclosed Matters schedule (Schedule 3.19):

(a) Environmental Laws. Neither any property of a Borrower or any other Credit Party nor the operations conducted thereon violate any applicable order of any court or Governmental Authority or any Environmental Laws, which violation could reasonably be expected to result in remedial obligations having a Material Adverse Effect, assuming disclosure to the applicable Governmental Authority of all material relevant facts, conditions and circumstances, if any, pertaining to the relevant property.



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(b) Notices and Permits. All notices, permits, licenses or similar authorizations, if any, required to be obtained or filed by a Borrower or any other Credit Party in connection with the operation or use of any and all property of the Borrowers or any other Credit Party, including but not limited to past or present treatment, transportation, storage, disposal or Release of Hazardous Materials into the environment, have been duly obtained or filed, except to the extent the failure to obtain or file such notices, permits, licenses or similar authorizations could not reasonably be expected to have a Material Adverse Effect, or which could not reasonably be expected to result in remedial obligations having a Material Adverse Effect, assuming disclosure to the applicable Governmental Authority of all material relevant facts, conditions and circumstances, if any, pertaining to the relevant property.

(c) Hazardous Substances Carriers. All Hazardous Materials generated at any and all property of the Borrowers or any other Credit Party have been treated, transported, stored and disposed of only in accordance with all Environmental Laws applicable to them, except to the extent the failure to have such Hazardous Materials transported, treated or disposed by such carriers could not reasonably be expected to have a Material Adverse Effect, and only at treatment, storage and disposal facilities maintaining valid permits under applicable Environmental Laws, which carriers and facilities have been and are operating in compliance with such permits, except to the extent the failure to have such Hazardous Materials treated, transported, stored or disposed at such facilities, or the failure of such carriers or facilities to so operate, could not reasonably be expected to have a Material Adverse Effect or which could not reasonably be expected to result in remedial obligations having a Material Adverse Effect, assuming disclosure to the applicable Governmental Authority of all material relevant facts, conditions and circumstances, if any, pertaining to the relevant property.

(d) Hazardous Materials Disposal. The Borrowers and the other Credit Parties have taken all reasonable steps necessary to determine and have determined that no Hazardous Materials have been disposed of or otherwise released and there has been no threatened Release of any Hazardous Materials on or to any property of a Borrower or any other Credit Party other than in compliance with Environmental Laws, except to the extent the failure to do so could not reasonably be expected to have a Material Adverse Effect or which could not reasonably be expected to result in remedial obligations having a Material Adverse Effect, assuming disclosure to the applicable Governmental Authority of all material relevant facts, conditions and circumstances, if any, pertaining to the relevant property.

(e) No Contingent Liability. The Borrowers and the other Credit Parties have no material contingent liability in connection with any Release or threatened Release of any Hazardous Materials into the environment other than such contingent liabilities at any one time and from time to time which could reasonably be expected to exceed \$500,000 and for which adequate reserves for the payment thereof as required by GAAP have been provided, or which could reasonably be expected to result in remedial obligations having a Material Adverse Effect, assuming disclosure to the applicable Governmental Authority of all relevant facts, conditions and circumstances, if any, pertaining to such Release or threatened Release.

3.20 Employee Matters.

Except as set forth on Schedule 3.20, none of the Borrowers nor any of the other Credit Parties, nor any of their respective employees, is subject to any collective bargaining agreement. There are no strikes, slowdowns, work stoppages or controversies pending or, to the best knowledge of the Borrowers, threatened against a Borrower or any other Credit Party, or their respective employees, which could reasonably be expected to have, either individually or in the aggregate, a Material Adverse Effect. Except as set forth in Schedule 3.20, none of the Borrowers nor any other Credit Party is subject to an employment contract providing for a fixed term of employment or providing for special payments on termination of employment. Each of the

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Borrowers and the other Credit Parties has withheld from each payment to each of their respective officers, directors and employees the amount of all Taxes, including income tax, Canada pension plan, employment insurance and other payments and deductions required to be withheld therefrom, and has paid the same to the proper taxation or other receiving authority in accordance with Applicable Law. None of the Borrowers nor any other Credit Party is subject to any claim by or liability to any of their respective officers, directors or employees for salary (including vacation pay) or benefits which would rank in whole or in part *pari passu* with or prior to the Liens created by the Security Documents, other than Permitted Liens to the extent reserved for as Priority Payables of any Credit Party.

3.21 Fiscal Year.

The Fiscal Year of each Credit Party ends on December 31 of each calendar year.

3.22 Intellectual Property Rights.

Each Borrower and each Credit Party is the registered and beneficial owner of, with good and marketable title, free of all licenses, franchises and Liens other than Permitted Liens, to all patents, patent applications, trademarks, trademark applications, trade names, service marks, copyrights, industrial designs, integrated circuit topographies, or other rights with respect to the foregoing and other similar property, used in or necessary for the present and planned future conduct of its business, without any conflict with the rights of any other Person, other than as listed on Schedule 3.22, or other than for such conflicts as could not reasonably be expected to have a Material Adverse Effect. All material patents, trademarks, trade names, service marks, copyrights, industrial designs, integrated circuit topographies, and other similar rights owned or licensed by a Borrower or any other Credit Party, and all rights of each Borrower and each other Credit Party to the use of any patents, trademarks, trade names, service marks, copyrights, industrial designs, integrated circuit topographies, or other similar rights, are described in Schedule 3.22 (collectively, the "Intellectual Property Rights"). Except as set forth in Schedule 3.22, no material claim has been asserted and is pending by any Person with respect to the use by a Borrower or any other Credit Party of any intellectual property or challenging or questioning the validity, enforceability or effectiveness of any intellectual property necessary for the conduct of the business of the Borrowers or any other Credit Party. Except as disclosed in Schedule 3.22 or except as could not reasonably be expected to have a Material Adverse Effect, (i) the Borrowers and each other Credit Party has the exclusive right to use the intellectual property which the Borrowers (or each other Credit Party) owns, (ii) all applications and registrations for such intellectual property are current, and (iii) to the knowledge of the Borrowers and the other Credit Parties, the conduct of each Borrower's and each other Credit Party's business does not infringe the intellectual property rights of any other Person.

3.23 Residency of Borrower for Tax Purposes.

Nilex Inc. is a resident of Canada for income tax purposes and Nilex USA Inc. is a resident of the United States of America for income tax purposes. No Credit Party is a CFC, and no Credit Party is a "United States shareholder" within the meaning of Section 951(b) of the Code.

3.24 Restricted Payments.

No Restricted Payment has been declared, paid, or made upon or in respect of Equity Securities of any Credit Party except as expressly permitted hereby.

3.25 Indebtedness.

None of the Credit Parties has any Indebtedness except (a) the Obligations, (b) the Indebtedness set forth in the most recent financial statements delivered to the Lender, or the notes thereto, (c) Tax obligations (including deferred Taxes), trade payables and other contractual obligations arising in the ordinary course of business as carried on by the Credit Parties and their Subsidiaries since the date of such financial statements, and (d) Indebtedness permitted under Section 6.1.

3.26 Workers' Compensation.

None of the Credit Parties has any unpaid workers' compensation or like obligations except as are being incurred, and paid on a current basis in the ordinary course of business, and there are no proceedings, claims, actions, orders or investigations of any Governmental Authority relating to workers' compensation outstanding, pending or, to their knowledge, threatened relating to them or any of their employees or former employees which could reasonably be expected to have a Material Adverse Effect.

3.27 Bank Accounts and Credit/Debit Card Processing Arrangements.

Schedule 3.27 contains a complete and accurate list of all bank accounts and credit and/or debit card processing arrangements maintained by the Credit Parties with any bank or other financial institution.

3.28 Real Property and Leases.

Schedule 3.28 hereto is a correct and complete list of all real property owned by each Credit Party, all leases and subleases of real property by any Credit Party, as lessee or sublessee, and all leases and subleases of real property by any Credit Party, as lessor or sublessor. Each of such leases and subleases is valid and enforceable in accordance with its terms and is in full force and effect, and no default by any party to any such lease or sublease exists.

3.29 Further Real Property Matters.

(a) Except as advised in writing to the Lender, no investigation or proceeding of any Governmental Authority is pending in respect of real property owned by any of the Credit Parties. No part of any such real property has been condemned, taken or expropriated by any Governmental Authority, federal, state, provincial, municipal or any other competent authority.

(b) Except as advised in writing to the Lender, all present uses in respect of any real property of the Credit Parties may lawfully be continued and all permitted uses are satisfactory for the Credit Parties' current and intended purposes; and

(c) No Inventory is located at any leased real property of the Credit Parties except as indicated in Schedule 3.28.

3.30 Jurisdictions of Credit Parties.

Schedule 3.30 sets out the various jurisdictions in which the Borrowers and the other Credit Parties (i) has its registered office, chief executive office and principal place of business, and (ii) carries on business or has tangible assets having an aggregate value in excess of \$50,000.

3.31 Corporate Name; Prior Transactions.

Except as set forth in Schedule 3.31, none of the Credit Parties has during the five (5) years preceding the Effective Date been known by or used any other corporate or business name, or been a party to any amalgamation, merger or consolidation, or acquired all or substantially all of the assets of any Person or acquired any of its or their Property out of the ordinary course of business. All trade names or styles under which any Credit Party sells Inventory or create Accounts or to which instruments in payment of Accounts may be made payable, are listed on Schedule 3.31.

3.32 Brokers.

Except as set forth on Schedule 3.32, no broker or finder acting on behalf of any Credit Party or Affiliate thereof brought about the obtaining, making or closing of the Commitment or the Loans, and no Credit Party or Affiliate thereof has any obligation to any Person in respect of any finder's or brokerage fees in connection therewith.

3.33 Customer and Trade Relations.

There exists no actual or, to the knowledge of any Credit Party, threatened termination or cancellation of, or any material adverse modification or change in the business relationship of any Credit Party with any customer or group of customers whose purchases during the preceding 12 months caused them to be ranked among the ten largest customers of such Credit Party or the business relationship of any Credit Party with any supplier material to its operations.

3.34 Subordinated Debt.

As of the Effective Date, the Borrowers have delivered to the Lender a complete and correct copy of the Subordinated Debt Documents (including all schedules, exhibits, amendments, supplements, modifications, assignments and all other material documents delivered pursuant thereto or in connection therewith), certified as such by an officer of a Borrower. All Obligations, including any Letter of Credit Exposure and any F/X Exposure, constitute Indebtedness entitled to the benefits of the subordination provisions contained in the Subordinated Debt.

3.35 OFAC

Each Credit Party and each Subsidiary of a Credit Party is and will remain in compliance in all material respects with all U.S. economic sanctions laws, Executive Orders and implementing regulations as promulgated by the U.S. Treasury Department's Office of Foreign Assets Control ("**OFAC**"), and all applicable anti-money laundering and counter-terrorism financing provisions of the *Bank Secrecy Act* and all regulations issued pursuant to it. Neither any Credit Party nor any Subsidiary or Affiliate of a Credit Party (i) is a Person designated by the U.S. government on the list of the Specially Designated Nationals and Blocked Persons (the "**SDN List**") with which a U.S. Person cannot deal with or otherwise engage in business transactions, (ii) is a Person who is otherwise the target of U.S. economic sanctions laws such that a U.S. Person cannot deal or otherwise engage in business transactions with such Person or (iii) is controlled by (including without limitation by virtue of such person being a director or owning voting shares or interests), or acts, directly or indirectly, for or on behalf of, any person or entity on the SDN List or a foreign government that is the target of U.S. economic sanctions prohibitions such that the entry into, or performance under, this Agreement or any other Loan Document would be prohibited under U.S. law.

3.36 USA Patriot Act.

Each Credit Party, each of their Subsidiaries and each of their Affiliates are in compliance with (a) the *Trading with the Enemy Act*, and each of the foreign assets control regulations of the United States Treasury Department (31 CFR, Subtitle B Chapter V, as amended) and any other enabling legislation or executive order relating thereto, (b) the *USA Patriot Act* and (c) other federal or state laws relating to "know your customer" and anti-money laundering rules and regulations. No part of the proceeds of any Loan will be used directly or indirectly for any payments to any government official or employee, political party, official of a political party, candidate for political office, or anyone else acting in an official capacity, in order to obtain, retain or direct business or obtain any improper advantage, in violation of the *United States Foreign Corrupt Practices Act of 1977*.

ARTICLE 4 CONDITIONS

4.1 Effective Date.

The obligations of the Lender to make Loans or to permit the issuance of a Letter of Credit or to permit the Borrowers to obtain an F/X Contract shall not become effective until the date on which each of the following conditions is satisfied (or waived in accordance with Section 9.2):

(a) Credit Agreement. The Lender shall have received from each party hereto either (i) a counterpart of this Agreement signed on behalf of each party hereto, or (ii) written evidence satisfactory to the Lender (which may include facsimile transmission of a signed signature page of this Agreement) that each such party has signed a counterpart of this Agreement.

(b) Legal Opinions. The Lender shall have received a favourable written opinion of counsel to the Borrowers and the other Credit Parties, in a form satisfactory to the Lender, acting reasonably, and covering such other matters relating to the Borrowers, the Credit Parties, this Agreement, the other Loan Documents, or the Transactions as the Lenders shall reasonably request (together with copies of all factual certificates and legal opinions delivered to such counsel in connection with such opinion upon which counsel has relied). The Lender shall also have received favourable written opinions of such special and local counsel as may be required by the Lender (together with copies of all factual certificates and legal opinions delivered to such counsel in connection with such opinion upon which such counsel has relied). The Borrowers hereby request each such counsel to deliver such opinions and supporting materials. All opinions and certificates referred to in this Section 4.1(b) shall be addressed to the Lender and dated the Effective Date.

(c) Corporate Certificates. The Lender shall have received:

- (i) certified copies of the resolutions of the Board of Directors of each Borrower, and each other Credit Party which is a party to any Loan Document, dated as of the Effective Date, and approving, as appropriate, the Loans, this Agreement and the other Loan Documents, and all other documents, if any, to which the Borrowers or such other Credit Party is a party and evidencing corporate authorization with respect to such documents; and
- (ii) a certificate of a Responsible Officer of each Borrower, and each other Credit Party which is a party to any Loan Document, dated as of the Effective Date, and certifying (A) the name, title and true signature of each officer of such Person authorized to execute this Agreement and the other Loan Documents to which it is a party, (B) the name, title and true signature of each officer of

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such Person authorized to provide the certifications required pursuant to this Agreement, including certifications required pursuant to Section 5.1 and Borrowing Requests, and (C) that attached thereto is a true and complete copy of the articles of incorporation and bylaws (or equivalent) of each Borrower, and any other Credit Party which is a party to any Loan Document, as amended to date, and a recent certificate of status, certificate of compliance, good standing certificate or analogous certificate.

(d) Closing Conditions Certificate. The Lender shall have received a certificate, dated the Effective Date and signed by a Responsible Officer of each of the Borrowers, confirming compliance with the financial covenants set forth in Section 5.12 and with the conditions set forth in Section 4.2(a) and (b).

(e) Fees. The Lender shall have received all fees and other amounts due and payable on or prior to the Effective Date, including, to the extent invoiced, reimbursement or payment of all legal fees and other Out-of-Pocket Expenses required to be reimbursed or paid by the Borrowers hereunder or under any other Loan Document.

(f) Insurance. The Lender shall have received a certificate of insurance coverage, naming the Lender as first loss payee dated not more than 30 days prior to the Effective Date, evidencing that the Borrowers and the Credit Parties are carrying insurance in accordance with Section 5.9 hereof.

(g) Inventory Control Systems: Appraisal: Field Audit: Opening Availability. The Lender shall have reviewed and be satisfied with the Collateral, the inventory control systems, the books and records and the reporting capability of the Credit Parties. The Lender shall have received appraisals, completed by a reputable and independent appraisal firm at the expense of the Borrowers, determining the Net Orderly Liquidation Value of the inventory of the Credit Party. In addition, the Lender shall have received the results of an updated field audit, and the Borrowing Base on the Effective Date shall be sufficient in value, as determined by Lender, to provide Borrowers with Excess Availability, after giving effect to the extensions of credit to be made hereunder on the Effective Date (on a pro forma basis, with trade payables being paid currently, and expenses and liabilities being paid in the ordinary course of business and without acceleration of sales or deterioration of working capital) of at least \$1,000,000.

(h) No Cessation of Financing Market. There shall have not been occurred and be continuing on the Effective Date any general banking moratorium or any practical cessation in the bank or private debt financing markets, and there shall not have been introduced any material governmental restrictions imposed on lending institutions, which materially affect the type of lending transactions contemplated by this Agreement.

(i) Execution and Delivery of Documentation. Each Borrower and any other Credit Party which is a party to any Loan Document shall have duly authorized, executed and delivered all documents, including Loan Documents, required hereunder, all in form and substance satisfactory to the Lender, acting reasonably, and all of the Security Documents shall have been registered in all offices in which, in the opinion of the Lender or its counsel, registration is necessary or of advantage to preserve the priority of the Liens intended to be created thereby (or where real property registrations have not yet been completed because of land registry office registration delays, the title insurer has confirmed that gap coverage is in effect under the title insurance policy or commitment to title insure), and duplicate copies of such Security Documents bearing or accompanied by appropriate endorsements or certificates of registration shall have been delivered to the Lender. The Lender shall have received and be satisfied with the results of all personal property, bankruptcy, execution and other searches conducted by, or provided to, the Lender and its counsel with respect

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to the Borrowers and any other Credit Party in all jurisdictions selected by the Lender and its counsel. The Lender shall have received and be satisfied with all estoppel letters, acknowledgements, waivers, subordinations, postponements, discharges, priority agreements and inter-creditor and non-disturbance agreements as the Lender may reasonably require to ensure its first priority, subject to Permitted Liens, over and unfettered access to, the Collateral or, in the sole discretion of the Lender, have implemented Availability Reserves in connection therewith.

- (j) Security Documents. The Lender shall have received:
- (i) a guarantee executed by each Borrower and each other Credit Party in favour of the Lender dated as of the Effective Date;
 - (ii) a general security agreement executed by each Credit Party in favour of the Lender dated as of the Effective Date, constituting a first-priority Lien on all property from time to time of each Credit Party, subject to no Liens except Permitted Liens; together with, but subject to Section 5.15, all stock certificates, instruments and other documents required to be delivered to the Lender pursuant to such general security agreement;
 - (iii) a U.S. security agreement executed by each Borrower in favour of the Lender dated as of the Effective Date, constituting a first-priority Lien on all property from time to time of such Borrower, subject to no Liens except Permitted Liens;
 - (iv) a postponement and subordination agreement in respect of the Shareholder Subordinated Debt; and
 - (v) security under Section 427 of the *Bank Act* (Canada), executed by the Nilx Inc. in favour of the Lender in respect of any amounts owing by such Borrower to the Lender,

provided that if any of the foregoing documents are not suitable for use in any jurisdiction, the applicable Credit Party shall provide to the Lender alternative document(s) with substantially equivalent substantive effect and which are suitable for use in such jurisdiction.

(k) Landlord Waivers; Bailee Letters. The Lender shall have received (i) executed copies of Acceptable Landlord Waivers for each parcel of leased real property where any Collateral of any of the Credit Parties which is included in the Borrowing Base is located or a Rent Reserve shall have been established in respect of such property and (ii) executed copies of Acceptable Bailee Letters from each bailee who is in possession of any Collateral of any of the Credit Parties which is included in the Borrowing Base or an Availability Reserve shall have been established.

(l) Regulatory Approval; Consents; Waivers. The Lender shall be satisfied, acting reasonably, that all material Authorizations required in connection with the Transactions contemplated hereby have been obtained and are in full force and effect (including all approvals listed in Schedule 3.3), and that all consents and waivers required to consummate the Transactions have been obtained, to the extent that consummation of the Transactions would otherwise be restricted or prohibited under the terms of any Material Contract to which any Borrower or any other Credit Party is a party, or by which it is bound, in each case without the imposition of any burdensome provisions.

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(m) Delivery of Financial Statements. The Lender shall have received and be satisfied with the financial statements and projections described in Section 3.4(a) and unaudited consolidated and consolidating balance sheets of the Borrowers and their Subsidiaries (*pro forma* as of the Effective Date).

(n) No Material Adverse Change. The Lender shall be satisfied that, since December 31, 2017, there has not been a Material Adverse Change.

(o) Indebtedness. The Transactions contemplated in this Agreement and the other Loan Documents shall not have caused any event or condition to occur which has resulted, or which will result, in any Material Indebtedness becoming due prior to its scheduled maturity or that permits (with or without the giving of notice, the lapse of time, or both) the holder or holders of any Material Indebtedness or any trustee or agent on its or their behalf to cause any Material Indebtedness to become due, or to require the prepayment, repurchase, redemption or defeasance thereof, prior to its scheduled maturity, or which will result in the creation of any Liens under any Indebtedness.

(p) Blocked Account/Cash Management Systems. The Lender shall have received evidence satisfactory to the Lender that, as of the Effective Date but subject to Section 5.15, blocked account and cash management systems complying with Section 2.17 have been established and are currently being maintained in the manner set forth in such Section 2.17, and the Lender shall have received copies of duly executed tri-party Blocked Account Agreements and other control agreements satisfactory to the Lender, acting reasonably, with the banks and other Persons as required by Section 2.17.

(q) Material Contracts. The Lender shall be satisfied with the terms and conditions of each of the Material Contracts.

(r) Cancellation of Existing Credit Lines. The Lender shall have received one or more pay off letters, in form and substance satisfactory to the Lender, confirming that the Borrowers shall have repaid all amounts outstanding under its existing credit lines, and that all such existing credit lines shall have been cancelled permanently.

(s) Capitalization Arrangement. The Lender shall be satisfied with the ownership, corporate and capital structure of the Borrowers, that each Borrower is solvent, and that the Borrowers have sufficient working capital to pay their debts as they become due.

(t) Background Checks. The Lender shall have received and be satisfied with the results of the background checks conducted on the key senior management and principals of the Credit Parties.

(u) Judgments/Litigation. The Lender shall be satisfied that there are no judgments outstanding, and no legal or administrative proceedings (including in any court arbitrator or any Governmental Authority) pending or threatened except as expressly permitted hereunder which could reasonably be expected to give rise to a Material Adverse Effect.

(v) "Know Your Customer" Information. The Lender shall have received all documentation and other information required by bank regulatory authorities under applicable "know your customer" and anti-money laundering rules and regulations, including the *Proceeds of Crime (Money Laundering) and Terrorist Financing Act (Canada)*, the *United States Executive Order No. 13224 on Terrorist Financing* and the *USA Patriot Act*.

(w) Business Due Diligence. The Lender shall have completed, to their satisfaction, and with satisfactory results, all business due diligence in respect of each of the Borrowers including, but

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not limited to, supplier due diligence (a review of supplier agreements and contracts, purchasing practices and length of relationships), customer due diligence (a review of sales cycles, pricing practices, discounts and rebates), and currency hedging practices.

(x) Other Documentation; Credit Approvals. The Lender shall have received (i) the Information Certificate executed by each Credit Party in favour of the Lender and dated as of the Effective Date, (ii) such other documents and instruments as are customary for transactions of this type or as they may reasonably request, and (iii) its final credit approval.

The conditions set forth in Section 4.1 are for the exclusive benefit of the Lender, and may be waived by the Lender in accordance with Section 9.2 at any time and from time to time, with or without further conditions.

4.2 Each Credit Event.

The obligations of the Lender to make any Loan or to permit the issuance of any Letter of Credit or to permit the Borrowers to obtain any F/X Contract (including the initial Borrowing hereunder) shall be conditional upon each of the following conditions being satisfied (or waived in accordance with Section 9.2):

(a) the representations and warranties of the Borrowers set forth in this Agreement shall be true and correct on and as of the date of each such Borrowing (including the date of issuance, amendment, renewal or extension of such Letter of Credit, as applicable) as if made on such date (except where such representation or warranty refers to a different date);

(b) at the time of and immediately after giving effect to such Borrowing (including the issuance, amendment, renewal or extension of such Letter of Credit, as applicable), no Default shall have occurred and be continuing; and

(c) the Lender shall have received a Borrowing Request in the manner and within the time period required by Section 2.3; and

(d) except as may be otherwise agreed to from time to time by the Lender and the Borrowers in writing, after giving effect to the extension of credit requested to be made by the Borrowers on such date, the aggregate Exposure will not exceed the lesser of (i) the Commitment, or (ii) an amount equal to the Borrowing Base.

Each Borrowing, including each issuance, amendment, renewal or extension of a Letter of Credit, shall be deemed to constitute a representation and warranty by the Borrowers on the date thereof as to the accuracy of the matters specified in paragraphs (a) and (b) above. This requirement does not apply on the conversion or rollover of an existing Borrowing provided that the aggregate outstanding Borrowings will not be increased as a consequence thereof.

ARTICLE 5 AFFIRMATIVE COVENANTS

From (and including) the Effective Date until the Commitment have expired or been terminated and the principal of and interest on each Loan and all fees payable hereunder shall have been paid in full and all Letters of Credit and F/X Contracts shall have expired and been terminated and all Reimbursement Obligations have been satisfied by the Borrowers, and the Borrowers and each other Credit Party covenants and agrees with the Lender that:

5.1 Financial Statements and Other Information.

The Borrowers will furnish to the Lender:

(a) as soon as available and in any event within 120 days after the end of each Fiscal Year of the Borrowers, the Borrowers' and their respective Subsidiaries' audited consolidated balance sheets and related statements of income, retained earnings and changes in financial position as of the end of and for such Fiscal Year, setting forth in each case in comparative form the figures for the previous Fiscal Year, all reported on by Kingston Ross Pasnak LLP or other independent auditors of recognized national standing (without a "going concern" or like qualification or exception and without any qualification or exception as to the scope of such audit) to the effect that such consolidated financial statements present fairly in all material respects the financial condition and results of operations of the Borrowers and their respective Subsidiaries on a consolidated basis in accordance with GAAP consistently applied;

(b) as soon as available and in any event within 30 days after the end of each calendar month, the Borrowers' and their respective Subsidiaries' unaudited consolidated balance sheet and related statements of income, retained earnings and changes in financial position as of the end of such month and the then elapsed portion of the Fiscal Year which includes such calendar month, setting forth in each case in comparative form the figures for the corresponding period or periods of (or, in the case of the balance sheet, as of the end of) the previous Fiscal Year, all certified by a Responsible Officer as presenting fairly in all material respects the financial condition and results of operations of the Borrowers and their Subsidiaries on a consolidated basis in accordance with GAAP consistently applied, subject to normal year-end audit adjustments;

(c) concurrently with the financial statements required pursuant to Sections 5.1(a) and (b) above, a certificate of the Borrowers, signed by a Responsible Officer in the form of Exhibit F;

(d) copies of each management letter issued to any Borrower by its auditors promptly following consideration or review thereof by the Board of Directors of such Borrower, or any committee thereof (together with any response thereto prepared by the Borrowers);

(e) [Intentionally Deleted];

(f) promptly upon the request of the Lender, and in any event no less frequently than the tenth Business Day of each calendar month, (together with a copy of all or any part of the following reports requested by the Lender in writing after the Effective Date), a Borrowing Base Report, as of the last day of the immediately preceding calendar month that reflects the Accounts as at the last business day of such month, together with a report of Priority Payables as at such date, accompanied by such supporting detail and documentation as shall be requested by the Lender in its reasonable discretion including:

- (i) an accounts receivable aging (including both summary and detail format) showing Accounts outstanding, aged from invoice date as follows: 1 to 30 days past due, 31 to 60 days past due, 61 to 90 days past due, and 91 days or more past due, accompanied by such supporting detail and documentation as shall be requested by the Lender in its reasonable discretion, including the ledger for disputed/legal accounts;
- (ii) a calculation of the Accounts which would not meet the criteria of an Eligible Account;

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- (iii) a reconciliation of the Accounts receipt batch totals for the month against the deposits to the blocked depository accounts for the Credit Parties for such month;
- (iv) an aged listing of the ten largest customer accounts for the month;
- (v) a detailed, monthly, Inventory listing of the Borrowers and each Credit Party by location, type and product group with a supporting perpetual Inventory report, in each case, accompanied by such supporting detail and documentation as shall be requested by the Lender in its sole discretion; such summaries and reports shall include the dollar value thereof both at cost, determined on a first-in, first out basis, and at fair market value;
- (vi) a calculation and report as to the Inventory which does not meet the definition of Eligible Inventory;
- (vii) details of any changes to any inventory costing methods;
- (viii) detailed monthly accounts payable aging;
- (ix) an aged listing of the ten largest accounts payable for the month; and
- (x) written confirmation that all rent payments under each lease of real property (under which a Credit Party is a tenant) has been paid.

(g) at all times when (i) the Term Loan balance is equal to or greater than \$2,000,000 and (ii) a Weekly Reporting Trigger Period has not occurred, every second week, on the third Business Day of such week for the prior two weeks, a Borrowing Base Report that reflects the Accounts as at the last business day of the previous two weeks together with a report of Priority Payables as at such date;

(h) at all times during a Weekly Reporting Trigger Period, weekly, on the third Business Day of each week for the prior week:

- (i) a weekly Borrowing Base Report that reflects the Accounts as at the last business day of the previous week together with a report of Priority Payables as at such date;
- (ii) a calculation of the Accounts which would not meet the criteria of an Eligible Account;
- (iii) an accounts receivable aging (including both summary and detail format) showing Accounts outstanding, aged from invoice date as follows: 1 to 30 days past due, 31 to 60 days past due, 61 to 90 days past due, and 91 days or more past due, accompanied by such supporting detail and documentation as shall be requested by the Lender in its reasonable discretion, including the ledger for disputed/legal accounts;
- (iv) a detailed, weekly, Inventory listing of each Credit Party by location, type and product group with a supporting perpetual Inventory report, in each case, accompanied by such supporting detail and documentation as shall be requested by the Lender in its sole discretion; such summaries and reports

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shall include the dollar value thereof both at cost, determined on a first-in, first out basis, and at fair market value;

- (v) a calculation and report as to the Inventory which does not meet the definition of Eligible Inventory; and
 - (vi) a reconciliation of the Accounts receipt batch totals for the week against the deposits to the blocked depository accounts for the Credit Parties for such week.
- (i) monthly within 30 days of the last day of each calendar month:
- (i) a copy of the internally generated general ledger report as at the month end;
 - (ii) a reconciliation of Accounts aging to the general ledger and to the financial statement as at the month end;
 - (iii) a reconciliation of the monthly inventory perpetual listing to the general ledger and to the financial statement as at the month end; and
 - (iv) promptly upon receipt thereof, copies of all material correspondence, actuarial valuation reports and other filings with any pension regulators or the applicable Governmental Entity to which such correspondence, reports and filings must be sent (including any filings furnished to the trustee under any Pension Plan and any valuation reports prepared by the Borrowers' actuary and confirming that all contributions to be made in respect of the Pension Plans have been made when due).
- (j) such other reports designating, identifying and describing the Accounts and Inventory as required by the Lender and on a more frequent basis as the Lender may reasonably request in its reasonable credit discretion;
- (k) the results of each physical verification, if any, that the Borrowers may have made, or caused any other Person to have made on its behalf, of all or any portion of its Inventory, within 10 Business Days of completion of any such physical verification (and, if a Default or an Event of Default has occurred and be continuing, the Borrowers shall, upon the request of the Lender, conduct, and deliver the results of, such physical verifications as the Lender may require);
- (l) such appraisals of the inventory of the Borrowers and the Credit Parties as the Lender may request at any time, such appraisals to be conducted at the expense of the Borrowers by an appraiser that is acceptable to the Lender, and shall be in scope, form and substance acceptable to the Lender; provided that until the Term Loan balance is less than \$2,000,000, the Borrowers will be liable for the expense of two (2) appraisals per Fiscal Year, and once the Term Loan balance is less than \$2,000,000 and no Excess Availability Trigger has occurred, then the Borrowers will only be liable for the expense of one (1) appraisal per Fiscal Year; however (A) if an Excess Availability Trigger has occurred at any time, then the Borrowers will be liable for the expense of up to two (2) appraisals per Fiscal Year, and (B) if an Event of Default has occurred and is continuing at any time, then the Borrowers will be liable for the expenses of all further appraisals required by the Lender in its sole discretion;
- (m) at the cost of the Borrowers, a report or reports of an independent collateral field examiner (which collateral field examiner may be the Lender or an Affiliate thereof) approved (i) by the Borrowers, whose approval shall not be unreasonably withheld, and (ii) by the Lender with

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respect to the Eligible Accounts and Eligible Inventory components included in the Borrowing Base. The Lender may request such reports or additional reports as it shall reasonably deem necessary. Until the Term Loan balance is less than \$2,000,000, the Borrowers will be liable for the expense of two (2) field examinations per Fiscal Year, and once the Term Loan balance is less than \$2,000,000 and no Excess Availability Trigger has occurred, then the Borrowers will only be liable for the expense of one (1) field examination per Fiscal Year; however (A) if an Excess Availability Trigger has occurred at any time, then the Borrowers will be liable for the expense of up to two (2) field examinations per Fiscal Year, and (B) if an Event of Default has occurred and is continuing at any time, then the Borrowers will be liable for the expenses of all further field examinations required by the Lender in its sole discretion.

(n) promptly after a Borrower learns of the receipt or occurrence of any of the following, a certificate of such Borrower, signed by a Responsible Officer, specifying (i) any official notice of any violation, possible violation, non-compliance or possible non-compliance, or claim made by any Governmental Authority pertaining to all or any part of the properties of the Borrowers or any other Credit Party which could reasonably be expected to have a Material Adverse Effect, (ii) any event which constitutes a Default or Event of Default, together with a detailed statement specifying the nature thereof and the steps being taken to cure such Default or Event of Default, (iii) the receipt of any notice from, or the taking of any other action by, the holder of any promissory note, debenture or other evidence of Indebtedness of the Borrowers or any other Credit Party in an amount in excess of \$250,000 with respect to an actual or alleged default, together with a detailed statement specifying the notice given or other action taken by such holder and the nature of the claimed default and what action the Borrowers or the relevant Subsidiary is taking or proposes to take with respect thereto, (iv) any default or non-compliance of any party to any of the Loan Documents with any of the terms and conditions thereof or any notice of termination or other proceedings or actions which could reasonably be expected to adversely affect any of the Loan Documents, (v) the creation, dissolution, amalgamation, merger, consolidation or acquisition of any Subsidiary of the Borrowers, (vi) any event or condition not previously disclosed to the Lender, which violates any Environmental Law and which could potentially, in the Borrowers' reasonable judgment, have a Material Adverse Effect, (vii) any material amendment to, termination of, or material default under a Material Contract or any execution of, or material amendment to, termination of, or material default under, any material collective bargaining agreement, (viii) any circumstance which could reasonably be expected to result in a claim by the issuer of any performance bond, surety bond, appeal bond, completion guarantee or like instrument arising as a result of any failure of performance by a Credit Party, and (ix) any other event, development or condition which may reasonably be expected to have a Material Adverse Effect;

(o) promptly after the occurrence thereof, notice of the institution of or any material adverse development in any action, suit or proceeding or any governmental investigation or any arbitration before any court or arbitrator or any Governmental Authority or official against a Borrower or any other Credit Party or any of its or their Subsidiaries or any material property of any thereof which could reasonably be expected to have a Material Adverse Effect;

(p) promptly after the filing thereof with any Governmental Authority (if requested by the Lender), copies of each annual and other report (including applicable schedules and actuarial reports) with respect to each Pension Plan of a Borrower or any other Credit Party or any trust created thereunder;

(q) upon request by the Lender, a summary of the insurance coverages of the Borrowers and any other Credit Party, in form and substance reasonably satisfactory to the Lender, and upon renewal of any insurance policy, a copy of an insurance certificate summarizing the terms of such policy, and upon request by the Lender, copies of the applicable policies;

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(r) on or before the earlier of the 10th day after approval by the Board of Directors of the respective Borrowers and the 30th day after each Fiscal Year end, an annual budget of the Borrowers and the other Credit Parties on a consolidated and consolidating basis, approved by the Board of Directors of each Borrower, setting forth in reasonable detail and on a monthly basis the projected revenues and expenses (including capital expenditures) of the Borrowers for the following Fiscal Year, it being recognized by the Lender that projections as to future results are not to be viewed as fact and that the actual results for the period or periods covered by such projections may differ from the projected results; and

(s) concurrently with any delivery of financial statements under Section 5.1 (a) or (b) above, a certificate of a Responsible Officer of Nilex Inc. (i) stating whether any change in GAAP or in the application thereof has occurred since the date of the audited financial statements referred to in Section 5.1(a) and, if any such change has occurred, specifying the effect of such change on the financial statements accompanying such certificate, (ii) identifying all its Subsidiaries existing on the date of such certificate and indicating, for each such Subsidiary, and whether such Subsidiary is a Guarantor and whether such Subsidiary was formed or acquired since the end of the previous calendar month, and (iii) identifying any parcels of real property or improvements thereto that have been acquired by any Credit Party since the end of the previous calendar month.

5.2 Existence; Conduct of Business.

Each Credit Party will do or cause to be done all things necessary to preserve, renew and keep in full force and effect its legal existence (subject only to Section 6.3), and obtain, preserve, renew and keep in full force and effect any and all rights, licenses, permits, privileges and franchises material to the conduct of its business.

5.3 Payment of Obligations.

Each Credit Party will pay its obligations, including Tax liabilities, that, if not paid, could result in a Material Adverse Effect before the same shall become delinquent or in default, except where (a) the validity or amount thereof is being contested in good faith by appropriate proceedings, (b) such Borrower or such other Credit Party has set aside on its books adequate reserves with respect thereto in accordance with GAAP, and (c) the failure to make payment pending such contest could not reasonably be expected to result in a Material Adverse Effect.

5.4 Maintenance of Properties.

Each Credit Party will keep and maintain all property material to the conduct of its business in good working order and condition, ordinary wear and tear excepted.

5.5 Books and Records; Inspection Rights.

Each Credit Party will keep proper books of record and account in which full, true and correct entries are made of all dealings and transactions in relation to its business and activities. Each Credit Party will permit any representatives designated by the Lender, upon reasonable prior notice, to visit and inspect its properties, to examine and make extracts from its books and records, and to discuss its affairs, finances and condition with its officers and independent accountants, all at such reasonable times and as often as reasonably requested.

5.6 Compliance with Applicable Laws and Material Contracts.

Each Credit Party will comply with all Applicable Laws and orders of any Governmental Authority applicable to it or its property and with all of its Material Contracts, except where the failure

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to do so, individually or in the aggregate, could not reasonably be expected to result in a Material Adverse Effect. No Credit Party shall modify, amend or alter its certificate or articles of incorporation.

5.7 Use of Proceeds and Letters of Credit.

The proceeds of the Revolving Loans will be used to refinance the Borrowers' existing senior credit facility, for working capital and other general corporate purposes of the Borrowers. Letters of Credit will be issued only to support any activity of the Borrowers or any other Credit Party that is reasonably acceptable to the Lender.

5.8 Further Assurances.

Each Credit Party will cure promptly any defects in the execution and delivery of the Loan Documents, including this Agreement. Upon request, each Credit Party will, at its expense, as promptly as practical, execute and deliver to the Lender, all such other and further documents, agreements and instruments in compliance with or performance of the covenants and agreements of the Borrowers or any other Credit Party in any of the Loan Documents, including this Agreement, or to further evidence and more fully describe the Collateral, or to correct any omissions in any of the Loan Documents, or more fully to state the security obligations set out herein or in any of the Loan Documents, or to perfect, protect or preserve any Liens created pursuant to any of the Loan Documents, or to make any recordings, to file any notices, or obtain any consents, all as may be necessary or appropriate in connection therewith, in the judgment of the Lender, acting reasonably.

5.9 Insurance.

Each Credit Party shall maintain insurance on its property and assets under such policies of insurance, with such insurance companies, in such reasonable amounts and covering such insurable risks as are at all times reasonably satisfactory to the Lender. All such policies are subject to the rights of any holders of Permitted Liens holding claims senior to the Lender, to be made payable to the Lender, to the extent required herein, in case of loss, under a standard non contributory "mortgagee", "lender" or "secured party" clause and are to contain such other provisions as the Lender may require to fully protect the Lender's interest in the property and assets subject to the Liens in favour of the Lender and to any payments to be made under such policies. All original policies (or true copies thereof) which relate to Collateral are to be delivered to the Lender, with the loss payable endorsement in the Lender's favour, and shall provide for not less than thirty (30) days prior written notice to the Lender of the exercise of any right of cancellation. Upon the occurrence and continuance of an Event of Default which is not waived in writing by the Lender, the Lender shall, subject to the rights of any holders of Permitted Liens holding claims senior to the Lender, have the sole right, in the name of the Lender, the Borrowers or any other applicable Credit Party, to file claims under any insurance policies, to receive, receipt and give acquittances for any payments that may be payable thereunder, and to execute any and all endorsements, receipts, releases, assignments, reassignments or other documents that may be necessary to effect the collection, compromise or settlement of any claims under any such insurance policies. If any part of the Collateral is lost or damaged by fire or other casualty and the insurance proceeds for such loss or damage is less than or equal to \$100,000, such insurance proceeds shall be paid to the Borrowers. Notwithstanding the foregoing, to the extent such insurance proceeds are received by the Lender, the Lender shall promptly, and in any event within one (1) Business Day of receipt, remit such insurance proceeds to the applicable Credit Party. If any part of the Collateral is lost or damaged by fire or other casualty and the insurance proceeds for such loss or damage is greater than \$100,000, such insurance proceeds shall be paid to the Borrowers, and provided that the applicable Credit Party has sufficient business interruption insurance to replace the lost profits of any of its facilities, the Borrowers may irrevocably elect (by delivering written notice to the Lender) to replace, repair or

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restore such Collateral to substantially the equivalent condition prior to such fire or other casualty as set forth herein. If such election is not made by the Borrowers, insurance proceeds shall be used by the Borrowers to repay outstanding Revolving Loans. Notwithstanding the foregoing, to the extent that such insurance proceeds are received by the Lender, the Lender shall promptly, and in any event within one (1) Business Day of receipt, remit such insurance proceeds to the Borrowers to be applied in accordance with this Section 5.9. If the Borrowers does not, or cannot, elect to use the insurance proceeds as set forth above, or if the Lender in its Permitted Discretion believes that the applicable Credit Party will not be able to timely replace, repair or restore such Collateral to substantially the equivalent condition prior to such fire or other casualty, the Lender may, subject to the rights of any holders of Permitted Liens holding claims senior to the Lender in respect of such insurance proceeds, (i) if no Event of Default has occurred and is continuing, apply the insurance proceeds to the payment of any Revolving Loans until paid in full and (b) if an Event of Default has occurred and is continuing, apply the insurance proceeds to the Obligations in such manner and in such order as the Lender may reasonably elect. Upon the occurrence and during the continuance of an Event of Default, all insurance proceeds in respect of any Collateral shall be paid to the Lender. The Lender may apply such insurance proceeds to the Obligations in such manner as it may deem advisable in its sole discretion. In the event the Borrowers fail to provide the Lender with timely evidence, acceptable to the Lender, of the maintenance of insurance coverage required pursuant to this Section 5.9, or in the event that any Credit Party fails to maintain such insurance, the Lender may purchase or otherwise arrange for such insurance, but at the Borrowers' expense and without any responsibility on the Lender's part for: (i) obtaining the insurance; (ii) the solvency of the insurance companies; (iii) the adequacy of the coverage; or (iv) the collection of claims. The insurance acquired by the Lender may, but need not, protect the Borrowers' or any other Credit Party's interest in the Collateral, and therefore such insurance may not pay claims which the Borrowers may have with respect to the Collateral or pay any claim which may be made against the Borrowers in connection with the Collateral. In the event the Lender purchases, obtains or acquires insurance covering all or any portion of the Collateral, the Borrowers shall be responsible for all of the applicable costs of such insurance, including premiums, interest (at the applicable interest rate for Revolving Loans set forth in Section 2.5), fees and any other charges with respect thereto, until the effective date of the cancellation or the expiration of such insurance. The Lender may charge all of such premiums, fees, costs, interest and other charges to the Borrowers' loan account. The Borrowers hereby acknowledge that the costs of the premiums of any insurance acquired by the Lender may exceed the costs of insurance which the Borrowers may be able to purchase on its own. In the event that the Lender purchases such insurance, the Lender will promptly, and in any event within fifteen (15) days, notify the Borrowers of said purchase.

5.10 Operation and Maintenance of Property.

Each Credit Party will, manage and operate its business or cause its business to be managed and operated (i) in accordance with prudent industry practice in all material respects and in compliance in all material respects with the terms and provisions of all applicable licenses, leases, contracts and agreements, and (ii) in compliance with all Applicable Laws of the jurisdiction in which such businesses are carried on, and all Applicable Laws of every other Governmental Authority from time to time constituted to regulate the ownership, management and operation of such businesses, except where a failure to so manage and operate would not have a Material Adverse Effect.

5.11 Additional Subsidiaries; Additional Liens.

If, at any time on or after the Effective Date, a Borrower or any other Credit Party creates or acquires an additional Subsidiary or in some other fashion becomes the holder of any Equity Securities of a new Subsidiary, then to the extent permitted by Applicable Law, the Borrowers and the other Credit Parties will cause such new Subsidiary to within 10 Business Days execute and deliver to the Lender a guarantee, and security agreements, hypothecs and other security-related

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documents covering such new Subsidiary's Inventory, Accounts and other Collateral, all in form and substance satisfactory to the Lender, acting reasonably. In addition, if at any time on or after the Effective Date, the Borrowers or any other Credit Party has Inventory, Accounts or other Collateral located in any jurisdiction in which the Lender does not hold duly perfected security in respect of the Inventory, Accounts or other Collateral of such Credit Party in such jurisdiction, the applicable Credit Party shall give notice to the Lender of those facts. If the Lender, acting reasonably, determines that it is practical to perfect security in such jurisdiction, the applicable Credit Party shall promptly execute all such security agreements, hypothecs and other security-related documents covering such Credit Party's Inventory, Accounts or other Collateral in such jurisdiction, all in form and substance satisfactory to the Lender, acting reasonably, and shall take all such action as may reasonably be required to ensure that the Liens in favour of the Lender in respect of the Inventory, Accounts or other Collateral of such Credit Party located in such jurisdiction are duly perfected. In connection with the execution and delivery of any guarantee, security agreement, intellectual property security agreements, hypothecs or related document pursuant to this Section, the Borrowers and each other Credit Party will cause to be delivered to the Lender such corporate resolutions, certificates, legal opinions and such other related documents and registrations as shall be reasonably requested by the Lender and consistent with the relevant forms and types thereof delivered on the Effective Date or as shall be otherwise reasonably acceptable to the Lender. Each guarantee, security agreement, intellectual property security agreements, hypothecs and other documents delivered pursuant to this Section shall be deemed to be a Security Document from and after the date of execution thereof. For greater certainty, the Credit Parties acknowledge that, to the extent that Collateral is located in a jurisdiction in which the Lender does not hold duly perfected security in such Collateral in such jurisdiction, such Collateral is not eligible for inclusion in the Borrowing Base.

5.12 Fixed Charge Coverage Ratio.

The Borrowers will, (i) at all times prior to the repayment in full of the Term Loan, and (ii) at all times during the continuance of an Excess Availability Trigger in any month, maintain a Fixed Charge Coverage Ratio of not less than 1.00:1.00.

5.13 [Intentionally Deleted].

5.14 Most Favoured Nations.

The Borrowers and the other Credit Parties will ensure that, if the Borrowers provide to any lender as at the Effective Date, or provides to any other lender in the future, a financial ratio or other form of financial measurement covenant which is not specifically included in this Agreement, then this Agreement shall be deemed to have been amended automatically to have the benefit of such other present or future financial ratio or other form of financial measurement covenant; provided that if any such present or future financial ratio or other form of financial measurement covenant provided by the Borrowers to another lender and not specifically included in this Agreement is changed or eliminated, the same change or elimination will automatically apply to this Agreement. For greater certainty, but without limitation, a covenant to maintain any particular type or class of assets or any particular type or class of liabilities (as the terms "asset" and "liability" are used under GAAP) at a specified maximum or minimum dollar amount (for example, a covenant that indebtedness will not exceed a fixed dollar amount) shall not constitute a "financial ratio or other financial measurement covenant"; however, a covenant such as a net worth covenant, which is not limited to any particular type or class of assets or any particular type or class of liabilities, shall constitute a "financial ratio or other financial measurement covenant".

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5.15 Post-Closing Undertakings.

The Borrowers will ensure that all post-closing undertakings as set forth in Schedule 5.15 (collectively, the "Post-Closing Undertakings") have been satisfied within the time periods set forth therein and any failure to satisfy any of the Post-Closing Undertakings within the applicable time periods shall constitute an Event of Default.

5.16 Environmental Laws.

Each of the Borrowers and the other Credit Parties will conduct its business in compliance in all material respects with all Environmental Laws applicable to it or them, including those relating to the Credit Parties' generation, handling, use, storage and disposal of Hazardous Materials. Each of the Borrowers and the other Credit Parties will take prompt and appropriate action to respond to any non-compliance or alleged non-compliance with Environmental Laws, and the Borrowers shall regularly report to the Lender on such response. Without limiting the generality of the foregoing, whenever any Credit Party gives notice to the Lender pursuant to Section 5.1(l)(vi) and the Lender so requests, the Credit Parties shall, at the applicable Credit Party's expense:

(a) cause an independent environmental engineer acceptable to the Lender in its reasonable discretion to conduct such tests of the site where the non-compliance or alleged non-compliance with Environmental Laws has occurred, and prepare and deliver to the Lender a report setting forth the results of such tests, a proposed plan for responding to any environmental problems described therein, and an estimate of the costs thereof;

(b) provide to the Lender a supplemental report of such engineer whenever the scope of the environmental problem, or the Credit Party's, and any other Person's response thereto or the estimated costs thereof, shall change. Such reports shall also be addressed to the Lender and shall, as requested by the Lender, set out the results of such engineers' review of, among other things:

- (i) the internal policies and procedures of the Credit Parties relating to environmental regulatory compliance to ensure that all appropriate steps are being taken by or on behalf of the Credit Parties to comply in all material respects with all applicable requirements of Environmental Laws;
- (ii) the progress of compliance satisfaction, capital expenditures required to effect remedial steps and compliance deficiencies;
- (iii) all other environmental audit reports which the Credit Parties or any predecessor has commissioned in the normal conduct of its business which relate to the subject matter of such notice; and
- (iv) all environmental reports which have been commissioned by or made available to a Credit Party in connection with new acquisitions, and the engineers' report and recommendations on results of tests performed or samples taken by it during the course of its review, irregularities or steps which may be taken to ensure continued compliance, as well as such other matters as the Lender may reasonably request from time to time.

5.17 Landlords' Agreement, Mortgagee Agreements, Bailee Letters and Real Estate Purchases.

Each Credit Party shall use commercially reasonable efforts to obtain an Acceptable Landlord Waiver or Acceptable Bailee Letter, as applicable, from the lessor of each leased property,

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or bailee with respect to any warehouse, processor or converter facility or other location where Collateral is stored or located to the extent such Collateral shall be included in the Borrowing Base. With respect to such locations or warehouse space leased or owned as of the Effective Date and thereafter, if the Lender has not received an Acceptable Landlord Waiver or Acceptable Bailee Letter, as applicable, the Lender may establish such Rent Reserves with respect to leased premises and other Availability Reserves with respect to any other such location as may be established by the Lender in its Permitted Discretion. At any time following the Effective Date, no Inventory which is to be included in the Borrowing Base shall be located on real property that is leased or shall be shipped to a processor or converter under arrangements established after the Effective Date unless and until the Lender has established such Rent Reserves with respect to leased premises and other Availability Reserves with respect to any other such location as may be established by the Lender in its Permitted Discretion) or, unless and until an Acceptable Landlord Waiver or Acceptable Bailee Letter, as applicable, shall first have been obtained with respect to such location. Each Credit Party shall timely and fully pay and perform its obligations under all leases and other agreements with respect to each leased location or public warehouse where any Collateral is or may be located.

5.18 Pension Plans.

Each Credit Party will administer its Pension Plans in accordance with the requirements of the applicable pension plan texts, funding agreements, any other documents governing the Pension Plans, the ITA, ERISA, the Code and applicable federal or provincial pension benefits legislation except for any non-compliance which would not reasonably be expected to have a Material Adverse Effect. Each Credit Party shall, and shall cause its Subsidiaries to, promptly provide the Lender with any documentation relating to any of the Pension Plans as the Lender may request. Each Credit Party shall, and shall cause its Subsidiaries to, notify the Lender within thirty (30) days of: (i) a material increase in the obligations, liabilities and indebtedness of any of the Pension Plans; and (ii) commencing payment of contributions to a Pension Plan to which a Credit Party had not previously been contributing.

5.19 Collateral Monitoring and Review.

Upon the request of the Lender, after reasonable notice and during normal business hours, the Borrowers permit the Lender or professionals (including, consultants, accountants, and/or appraisers) retained by the Lender to conduct appraisals, commercial finance examinations and other evaluations, including, of (i) the Credit Parties' practices in the computation of the Borrowing Base, and (ii) the assets included in the Borrowing Base and financial information such as, but not limited to, sales, gross margins, payables, accruals and reserves, related to the calculation of the Borrowing Base. In connection with any Inventory appraisal and commercial finance examination relating to the computation of the Borrowing Base, the Borrowers shall make such adjustments to the calculation of the Borrowing Base as the Lender shall reasonably require based upon the terms of this Agreement and the results of such Inventory appraisal and commercial finance examination.

5.20 Physical Inventories.

The Borrowers will cause physical inventories and periodic cycle counts to be undertaken, at the expense of the Credit Parties, in each case consistent with past practices (but in no event less frequently than one (1) physical inventory per Fiscal Year), conducted by such inventory takers and following such methodology as is consistent with the immediately preceding inventory or as otherwise may be satisfactory to the Lender. The Lender, at the expense of the Credit Parties, may participate in and/or observe each scheduled physical count of Inventory which is undertaking on behalf of any Credit Party. The Credit Parties, within five (5) days following the completion of any such inventory, shall provide the Lender with a reconciliation of the results of such inventory (as well

as of any other physical inventory or cycle counts undertaken by a Credit Party) and shall post such results to the Credit Parties' stock ledgers and general ledgers, as applicable.

5.21 Application under the CCAA.

Each Borrower acknowledges that its business and financial relationships with the Lender are unique from its relationship with any other of its creditors. Each Borrower agrees that it shall not file any plan of arrangement under the *Companies' Creditors Arrangement Act* (the "CCAA Plan") which provides for, or would permit, directly or indirectly, the Lender to be classified in the same class with any other creditor of the Credit Parties for purposes of such CCAA Plan.

5.22 Special Provisions Regarding Accounts, Inventory and Other Collateral.

(a) Each Credit Party hereby represents and warrants, with respect to its Accounts, that: (i) each existing Account represents or results from, and each future Account will represent or result from, a bona fide sale or lease and delivery of goods by such Credit Party, or rendition of services by such Credit Party, in the ordinary course of such Credit Party's business; (ii) each existing Account is, and each future Account will be, for a liquidated amount payable by the Account debtor thereon on the terms set forth in the invoice (or other document or record setting forth same) therefor or in the schedule thereof delivered to the Lender, without any material offset, deduction, defence or counterclaim except those known to such Credit Party and disclosed to the Lender; (iii) no payment will be received with respect to any Account of a Credit Party, and no credit, discount or extension or agreement therefor will be granted on any Account of a Credit Party, except as reported in Borrowing Base Reports delivered hereunder or otherwise reported by the Borrowers to the Lender pursuant to the terms hereof; (iv) each copy of an invoice or other documents delivered to the Lender by the Borrowers will be a genuine copy of the original invoice or document sent to the Account debtor named therein; and (v) all goods described in any invoice representing a sale of goods will have been delivered to the Account debtor and all services of a Credit Party described in each invoice will have been performed.

(b) The Credit Parties shall not extend or modify any Account (other than extensions and modifications made in the ordinary course of business). If, at any time, a Credit Party becomes aware of any matter adversely affecting the collectability in any material respect of any of its Accounts or the Account debtor therefor involving an amount greater than \$250,000, including a dispute or claim, or information regarding the Account debtor's creditworthiness, the Borrowers will promptly advise the Lender of the same.

(c) The Credit Parties shall not accept any note or other instrument (except a cheque or other instrument for the immediate payment of money) with respect to any of its Eligible Accounts, without the Lender's prior written consent. If the Lender consents to the acceptance of any such instrument, it shall be considered as evidence of the applicable Account and not payment thereof and such Credit Party will promptly deliver such instrument to the Lender, endorsed by such Credit Party to the Lender in a manner reasonably satisfactory in form and substance to the Lender.

(d) No discount, credit or allowance shall be granted to any Account debtor without the Lender's prior written consent, except for discounts, credits and allowances made or given in the ordinary course of a Credit Party's business when no Event of Default exists. The Borrowers shall send the Lender a copy of each credit when issued, and the Borrowers shall promptly report such credit on Borrowing Base Reports submitted by it.

(e) Each Credit Party represents and warrants to the Lender and agrees with the Lender that all of the Inventory owned by the Credit Parties is and will be held for sale or lease, or to be furnished in connection with the rendition of services, in the ordinary course of the Credit Parties'

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business, and is and will be fit for such purposes. Each Credit Party will keep its Inventory in good and marketable condition, except for damaged or defective goods arising in the ordinary course of such Credit Party's business. The Credit Parties will not, without the prior written consent of the Lender, acquire or accept any Inventory on consignment or approval other than in the ordinary course of business in a manner consistent with past practices and, upon the reasonable request of the Lender, the Borrowers will provide the Lender with the details of any such arrangements. Each Credit Party will maintain a perpetual inventory reporting system at all times. The Credit Parties will not, without the Lender's written consent, sell any of their Inventory on a sale on approval, consignment or other repurchase or return basis other than in the ordinary course of business in a manner consistent with past practices and, upon the reasonable request of the Lender, the Borrowers will provide the Lender with the details of any such arrangements.

(f) In connection with all Inventory of a Credit Party financed by Letters of Credit, the Borrowers will, at the Lender's request made after the occurrence and during the continuance of an Event of Default, instruct all suppliers, carriers, forwarders, customs brokers, warehouses or others receiving or holding cash, cheques, Inventory, documents or instruments of such Credit Party on which the Lender holds a Lien to deliver them to the Lender and/or subject to the Lender's order, and if they shall come into such Credit Party's possession, to deliver them, upon request, to the Lender in their original form. Each Credit Party shall also, at the Lender's request made after the occurrence and during the continuance of an Event of Default, designate the Lender as the consignee on all bills of lading and other negotiable and non-negotiable documents of such Credit Party.

(g) The Lender may, in its sole discretion, pay any amount or do any act required of any Credit Party hereunder or under any other Loan Document or requested by the Lender to preserve, protect, maintain or, upon the occurrence of an Event of Default which is continuing and exercise by the Lender of its rights under Section 7.2 hereof, enforce the Obligations, the Collateral or the Lender's Liens, and which the Credit Party fails to pay or do, including, without limitation, payment of any judgment against the Credit Party any insurance premium, any warehouse charge, any finishing or processing charge, any landlord's or processor's claim, and any other Lien upon or with respect to the Collateral. All payments that the Lender makes under this Section and all reasonable Out-of-Pocket-Expenses that the Lender pays or incurs in connection with any action taken hereunder shall be charged to the Borrower's loan account as a Revolving Loan. Any payment made or other action taken by the Lender under this Section shall be without prejudice to any right to assert an Event of Default hereunder and to proceed thereafter as herein provided.

(h) Each Credit Party hereby constitutes the Lender, or any person, agent or mandatary the Lender may designate, as its attorney-in-fact, at the Borrower's cost and expense to, upon the occurrence of an Event of Default which is continuing, exercise all of the following powers, which being coupled with an interest, shall be irrevocable until all Obligations to the Lender have been indefeasibly paid in full:

(1) receive, take, endorse, sign, assign and deliver, all in the name of the Lender or any Credit Party, as the case may be, any and all cheques, notes, drafts, and other documents or instruments relating to the Collateral, provided, however, that the Lender shall have the powers set out in this Subsection (h) at all times with or without the occurrence or continuance of an Event of Default;

(2) notwithstanding the foregoing, at all times (including prior to an Event of Default) at the Lender's discretion, request from customers indebted on Accounts at any time, in the name of any Credit Party, in the name of the chartered accountants designated by the Lender or in the name of the Lender's designee, information concerning the amounts owing on the Accounts;

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(3) transmit to customers indebted on Accounts notice of the Lender's interest therein and to notify customers indebted on Accounts to make payment directly to the Lender for the requisite Credit Party's account;

(4) take or bring, in the name of the Lender or any Credit Party, as the case may be, all steps, actions, suits or proceedings deemed by the Lender necessary or desirable to enforce or effect collection of the Accounts; and

(5) receive, open and dispose of all mail addressed to a Credit Party and to notify the postal authority of any change of address for delivery thereof to such address as the Lender may designate.

(i) Such Credit Party assumes all responsibility and liability arising from or relating to the use, sale or other disposition of the Collateral. The Obligations shall not be affected by any failure of the Lender to take any steps to perfect the Lender's Liens or to collect or realize upon the Collateral, nor shall loss of or damage to the Collateral release any Credit Party from any of the Obligations. Following the occurrence and continuation of an Event of Default, the Lender may (but shall not be required to), without notice to or consent from any Credit Party, sue upon or otherwise collect, extend the time for payment of, modify or amend the terms of, compromise or settle for cash, credit, or otherwise upon any terms, grant other indulgences, extensions, renewals, compositions, or releases, and take or omit to take any other action with respect to the Collateral, any security therefor, any agreement relating thereto, any insurance applicable thereto, or any Person liable directly or indirectly in connection with any of the foregoing, without discharging or otherwise affecting the liability of any Credit Party for the Obligations or under this Agreement or any other agreement now or hereafter existing between the Lender and any Credit Party.

(j) Such Credit Party represents and warrants to the Lender and agrees with the Lender that all of the Equipment is and will be used or held for use in any Credit Party's business, and is and will be fit for such purposes. Each Credit Party shall keep and maintain the Equipment in good operating condition and repair (ordinary wear and tear excepted) and shall make all necessary replacements thereof.

5.23 USA Patriot Act, Bank Secrecy Act and Office of Foreign Asset Control.

Each Borrower shall ensure, and cause each other Credit Party to ensure, that no Person who owns a controlling interest in or otherwise controls a Credit Party is or shall be (i) listed on the Specially Designated Nationals and Blocked Person List maintained by OFAC, Department of the Treasury, and/or any other similar lists maintained by OFAC pursuant to any authorizing statute, Executive Order or regulation or (ii) a Person designated under Section 1(b), (c) or (d) of Executive Order No. 13224 (September 23, 2001), any related enabling legislation or any other similar Executive Orders, and (b) comply, and cause each other Credit Party to comply, with all applicable *Bank Secrecy Act* and anti-money laundering laws and regulations.

ARTICLE 6 NEGATIVE COVENANTS

From (and including) the Effective Date until the Commitment have expired or been terminated and the principal of and interest on each Loan and all fees payable hereunder shall have been paid in full and all Letters of Credit and F/X Contracts shall have expired and been terminated and all Reimbursement Obligations have been satisfied by the Borrowers and the other Credit Parties, each Borrower and each other Credit Party covenants and agrees with the Lender that:

6.1 Indebtedness.

No Credit Party will create, incur, assume or permit to exist any Indebtedness, except:

- (a) any Indebtedness created hereunder;
- (b) any Indebtedness existing on the date hereof and set forth in Schedule 6.1 (including, any extensions or renewals of any such Indebtedness but excluding any replacements of any such Indebtedness);
- (c) any (i) Shareholder Subordinated Debt, and (ii) Indebtedness of one Credit Party to another Credit Party;
- (d) any Guarantee by a Credit Party of Indebtedness of any other Credit Party which is permitted hereunder;
- (e) any Indebtedness of the Credit Parties incurred under Purchase Money Liens or Capital Lease Obligations in an aggregate amount not exceeding \$3,000,000 for all Credit Parties;
- (f) any Indebtedness of any Person that becomes a Credit Party after the date hereof, provided that (i) such Indebtedness exists at the time such Person becomes a Credit Party and is not created in contemplation of or in connection with such Person becoming a Credit Party, and (ii) the aggregate principal amount of Indebtedness permitted by this clause (f) shall not exceed \$1,000,000 at any time outstanding;
- (g) any Indebtedness in respect of trade letters of credit or Letters of Credit;
- (h) any Indebtedness in respect of Swap Transactions entered into in compliance with Section 6.5; and
- (i) Indebtedness in respect of the U.S. Bank Commercial Card Program.

6.2 Liens.

No Credit Party will, and no Credit Party will permit any Credit Party to, create, incur, assume or permit to exist any Lien on any property or asset now owned or hereafter acquired by any Credit Party or assign or sell any income or revenues (including Accounts of the Credit Parties) or rights in respect of any thereof, except Permitted Liens.

6.3 Fundamental Changes; Asset Sales.

- (a) No Credit Party will merge into or amalgamate or consolidate with any other Person, or permit any other Person to merge into or amalgamate or consolidate with it, or sell, transfer, lease or otherwise dispose of (in one transaction or in a series of transactions) all or substantially all of its assets, or all or any of the Equity Securities of any of its Subsidiaries (in each case, whether now owned or hereafter acquired), or liquidate or dissolve without the prior written consent of the Lender.
- (b) No Credit Party will engage to any material extent in any material business other than businesses of the type conducted by the Credit Party on the date of execution of this Agreement and businesses reasonably related thereto.
- (c) No Credit Party will make any sale, lease, license, transfer, assignment or other disposition of all or any portion of its business, assets, rights, revenues or property, real, personal or



mixed, tangible or intangible, whether in one transaction or a series of transactions, other than (a) inventory sold in the ordinary course of business upon customary credit terms, (b) sales or dispositions of scrap or obsolete material or equipment which are not material in the aggregate, (c) leases of real property or personal property (under which such Person is lessor) which have a fair market value less than \$250,000 for any transaction and less than \$1,000,000 for all such transactions and which are no longer used or useful in the business, (d) sales or other dispositions of other assets not exceeding \$250,000 in any Fiscal Year.

6.4 Investments, Loans, Advances, Guarantees and Acquisitions.

Each Credit Party will not purchase, hold or acquire (including pursuant to any amalgamation, merger or consolidation with any Person that was not a Credit Party prior to such amalgamation, merger or consolidation) any Equity Securities, evidences of indebtedness or other securities (including any option, warrant or other right to acquire any of the foregoing) of, make or permit to exist any loans or advances to, Guarantee any obligations of, or make or permit to exist any Investment or any other interest in, any other Person, or purchase or otherwise acquire (in one transaction or a series of transactions) any assets of any other Person or otherwise make an Acquisition, except:

- (a) Investments by a Credit Party in the Equity Securities of any other Credit Party;
- (b) loans or advances made by one Credit Party to any other Credit Party;
- (c) Guarantees constituting Indebtedness permitted by Section 6.1; and
- (d) Permitted Investments.

6.5 Swap Transactions.

No Credit Party will enter into any Swap Transaction or engage in any transactions in respect thereof, except (i) Swap Transactions entered into by a Borrower to hedge or mitigate risks to which the Borrowers or any other Credit Party has actual exposure (other than those in respect of Equity Securities), (ii) Swap Transactions entered into in order to effectively cap, collar or exchange interest rates (from fixed to floating rates, from one floating rate to another floating rate or otherwise) with respect to any interest-bearing liability or investment of a Borrower or any other Credit Party, and (iii) F/X Contracts entered into pursuant to Section 2.19.

6.6 Restricted Payments.

No Credit Party will declare, pay or make, or agree to pay or make, directly or indirectly, any Restricted Payment, except (a) a Borrower may declare and pay dividends with respect to its Equity Securities payable solely in additional Equity Securities, (b) any Credit Party may declare and pay dividends to a Borrower or any other Credit Party and any Credit Party may redeem or repurchase its own Equity Securities, and (c) Nilex Inc. may otherwise make Restricted Payments provided that the Payment Conditions are satisfied.

6.7 Transactions with Affiliates.

No Credit Party will sell, lease or otherwise transfer any property or assets to, or purchase, lease or otherwise acquire any property or assets from, or otherwise engage in any other transactions with, any of its Affiliates, except (a) in the ordinary course of business at prices and on terms and conditions not less favourable to the Credit Party than could be obtained on an arm's-length basis from unrelated third parties, (b) transactions between or among the Credit Parties not

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involving any other Affiliate, and (c) any Restricted Payment permitted by Section 6.6. The foregoing restrictions shall not apply to: (i) the payment of reasonable and customary fees to directors of the Credit Party, (ii) any other transaction with any employee, officer or director of a Credit Party pursuant to employee profit sharing and/or benefit plans and compensation and non-competition arrangements in amounts customary for corporations similarly situated to the Credit Party and entered into in the ordinary course of business and approved by the board of directors of the Credit Party, or (iii) any reimbursement of reasonable out-of-pocket costs incurred by an Affiliate of the Credit Party on behalf of or for the account of the Credit Party.

6.8 Repayment of Debt.

No Credit Party will repay, prepay, redeem, repurchase, defease or otherwise make any payment on account of any Indebtedness for borrowed money except for (a) payment on account of Indebtedness owing to the Lender under this Agreement, (b) any payment consented to in writing by the Lender, and (c) payment on account of Indebtedness permitted by Section 6.1, the repayment of which is not restricted by Section 6.6.

6.9 Restrictive Agreements.

No Credit Party will directly or indirectly, enter into, incur or permit to exist any agreement or other arrangement that prohibits, restricts or imposes any condition upon (a) the ability of a Borrower or any Subsidiary to create, incur or permit to exist any Lien upon any of its property or assets, (b) the ability of a Credit Party to pay dividends or other distributions with respect to any Equity Securities or with respect to, or measured by, its profits or to make or repay loans or advances to a Borrower or any other Credit Party or to provide a Guarantee of any Indebtedness of a Borrower or any other Credit Party, (c) the ability of a Borrower or any other Credit Party to make any loan or advance to a Borrower or any of the other Credit Parties, or (d) the ability of a Borrower or any other Credit Party to sell, lease or transfer any of its property to a Borrower or any other Credit Party; provided that (i) the foregoing shall not apply to restrictions and conditions imposed by Applicable Law or by this Agreement, (ii) the foregoing shall not apply to restrictions and condition existing on the date hereof identified on Schedule 6.9 (but shall apply to any extension or renewal of, or any amendment or modification expanding the scope of, any such restriction or condition), (iii) the foregoing shall not apply to customary restrictions and conditions contained in agreements relating to the sale of a Subsidiary of a Borrower pending such sale, provided such restrictions and conditions apply only to the Subsidiary of a Borrower that is to be sold and such sale is permitted hereunder, (iv) clause (a) of the foregoing shall not apply to restrictions or conditions imposed by any agreement relating to secured Indebtedness permitted by this Agreement if such restrictions or conditions apply only to the property or assets securing such Indebtedness, and (v) clause (a) of the foregoing shall not apply to customary provisions in leases and other ordinary course contracts restricting the assignment thereof.

6.10 [Intentionally Deleted].

6.11 Sales and Leasebacks.

No Credit Party will enter into any arrangement, directly or indirectly, with any Person whereby the Credit Party shall sell or transfer any property, whether now owned or hereafter acquired, and whereby the Credit Party shall then or thereafter rent or lease as lessee such property or any part thereof or other property which the Credit Party intends to use for substantially the same purpose or purposes as the property sold or transferred.



6.12 Pension Plan Compliance.

No Credit Party will (a) terminate any Pension Plan in a manner, or take any other action with respect to any Pension Plan, which could reasonably be expected to result in any material liability of any Credit Party, (b) fail to make full payment when due of all amounts which, under the provisions of any Pension Plan, agreement relating thereto or Applicable Law, the Credit Party is required to pay as contributions thereto, except where the failure to make such payments could not reasonably be expected to have a Material Adverse Effect, or give rise to any Lien under ERISA or the Code, (c) permit to exist any material accumulated funding deficiency, whether or not waived, with respect to any Pension Plan, (d) contribute to or assume an obligation to contribute to or become liable under any "multi-employer pension plan" as such term is defined in the *Pension Benefits Act (Ontario)* or other Applicable Law, or any Pension Plan with a "defined benefit provision" as such term is defined in section 147.1(1) of the ITA not disclosed to the Lender, (e) acquire an interest in any Person if such Person sponsors, maintains or contributes to, or at any time in the six-year period preceding such acquisition has sponsored, maintained, or contributed to any Pension Plan with a "defined benefit provision" as such term is defined in section 147.1(1) of the ITA.

6.13 Sale or Discount of Receivables.

No Credit Party will discount or sell (with or without recourse) any of its Accounts.

6.14 Unconditional Purchase Obligations.

No Credit Party will enter into or be a party to, any Material Contract for the purchase of materials, supplies or other property or services, if such contract requires that payment be made by it regardless of whether or not delivery of such materials, supplies or other property or services is ever made, provided that this Section 6.14 shall not restrict the ability of any Credit Party to enter into any such contract in the ordinary course of its business to the extent that the materials, supplies or other property or services which are the subject matter of such contract are reasonably expected to be used by the applicable Credit Party in the ordinary course of its business.

6.15 Capital Expenditures.

No Credit Party will make Capital Expenditures in any period for the Credit Parties on a consolidated basis in excess of 150% of the budgeted Capital Expenditures for such period, as set forth in the most recent capital expenditure budget delivered to and approved by the Lender.

6.16 No Amendments to Material Contracts.

No Credit Party will amend, modify or terminate (or waive any provision of or provide any consent under), any Material Contract in a manner which may reasonably be expected to have a Material Adverse Effect.

6.17 Changes Relating to Subordinated Debt.

(a) No Credit Party shall change or amend the terms of any Subordinated Debt (or any indenture or agreement in connection therewith) if the effect of such amendment is to: (a) increase the interest rate on such Subordinated Debt; (b) change the dates upon which payments of principal or interest are due on such Subordinated Debt other than to extend such dates; (c) change any default or event of default other than to delete or make less restrictive any default provision therein, or add any covenant with respect to such Subordinated Debt; (d) change the redemption or prepayment provisions of such Subordinated Debt other than to extend the dates therefor or to reduce the premiums payable in connection therewith; (e) grant any further or additional security or

collateral to secure payment of such Subordinated Debt; or (f) change or amend any other term if such change or amendment would materially increase the obligations of the Credit Party thereunder or confer additional material rights on the holder of such Subordinated Debt in a manner adverse to any Credit Party or the Lender.

ARTICLE 7 EVENTS OF DEFAULT

7.1 Events of Default.

It shall constitute an event of default ("Event of Default") if any one or more of the following shall occur:

(a) the Borrowers shall fail to pay any principal of any Loan or any Reimbursement Obligation in respect of any Letter of Credit when and as the same shall become due and payable, whether at the due date thereof or at a date fixed for prepayment thereof or otherwise;

(b) the Borrowers shall fail to pay any interest on any Loan or any fee or any other amount (other than an amount referred to in clause (a) above) payable under this Agreement, when and as the same shall become due and payable;

(c) any representation or warranty made or deemed made by or on behalf of any Credit Party in or in connection with any Loan Document or any amendment or modification thereof or waiver thereunder, or in any report, certificate, financial statement or other document furnished pursuant to or in connection with any Loan Document or any amendment or modification thereof or waiver thereunder, shall prove to have been incorrect when made or deemed to be made;

(d) any Credit Party shall fail to observe or perform any covenant, condition or agreement contained in Section 5.1(n)(ii) (notices of Defaults or Events of Default), 5.2 (with respect to the Credit Party's existence), 5.7 and 5.12 or in Article 6 (or in any comparable provision of any other Loan Document);

(e) any Credit Party shall fail to observe or perform any covenant, condition or agreement contained in this Agreement (other than those specified in clauses (a), (b) or (d) above) or any other Loan Document, and such failure shall continue unremedied for a period of 30 days after notice thereof from the Lender to the Borrowers (which notice will be given at the request of the Lender);

(f) any Credit Party shall fail to make any payment whether of principal or interest, and regardless of amount, in respect of any Material Indebtedness, when and as the same shall become due and payable;

(g) any event or condition occurs that results in any Material Indebtedness becoming due prior to its scheduled maturity or that enables or permits (with or without the giving of notice, the lapse of time or both) the holder or holders of any Material Indebtedness or any trustee or agent on its or their behalf to cause any Material Indebtedness to become due, or to require the prepayment, repurchase, redemption or defeasance thereof, prior to its scheduled maturity; provided that this Section 7.1(g) shall not apply to secured Indebtedness that becomes due as a result of the voluntary sale or transfer of the property or assets securing such Indebtedness so long as the proceeds of such sale or transfer are sufficient to, and are applied to, reduce such secured Indebtedness to nil;

(h) any Credit Party:

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- (i) becomes insolvent, or generally does not or becomes unable to pay its debts or meet its liabilities as the same become due, or admits in writing its inability to pay its debts generally, or declares any general moratorium on its indebtedness, or proposes a compromise or arrangement between it and any class of its creditors;
 - (ii) commits an act of bankruptcy under the BIA, or makes an assignment of its property for the general benefit of its creditors under the BIA, or makes a proposal (or files a notice of its intention to do so) under the BIA;
 - (iii) institutes any proceeding seeking to adjudicate it an insolvent, or seeking liquidation, dissolution, winding-up, reorganization, compromise, arrangement, adjustment, protection, moratorium, relief, stay of proceedings of creditors generally (or any class of creditors), or composition of it or its debts or any other relief, under any federal, provincial or foreign Applicable Law now or hereafter in effect relating to bankruptcy, winding-up, insolvency, reorganization, receivership, plans of arrangement or relief or protection of debtors (including the BIA, the *Companies' Creditors Arrangement Act* (Canada), the *United States Bankruptcy Code* and any applicable corporations legislation) or at common law or in equity, or files an answer admitting the material allegations of a petition filed against it in any such proceeding;
 - (iv) applies for the appointment of, or the taking of possession by, a receiver, interim receiver, receiver/manager, sequestrator, conservator, custodian, administrator, trustee, liquidator or other similar official for it or any substantial part of its property; or
 - (v) threatens to do any of the foregoing, or takes any action, corporate or otherwise, to approve, effect, consent to or authorize any of the actions described in this Section 7.1(h) or in Section 7.1(i), or otherwise acts in furtherance thereof or fails to act in a timely and appropriate manner in defense thereof,
- (i) any petition is filed, application made or other proceeding instituted against or in respect of any Credit Party:
- (i) seeking to adjudicate it an insolvent;
 - (ii) seeking a receiving order against it under the BIA or other Applicable Law;
 - (iii) seeking liquidation, dissolution, winding-up, reorganization, compromise, arrangement, adjustment, protection, moratorium, relief, stay of proceedings of creditors generally (or any class of creditors), or composition of it or its debts or any other relief under any federal, provincial or foreign Applicable Law now or hereafter in effect relating to bankruptcy, winding-up, insolvency, reorganization, receivership, plans of arrangement or relief or protection of debtors (including the BIA, the *Companies' Creditors Arrangement Act* (Canada) or the *United States Bankruptcy Code* and any applicable corporations legislation) or at common law or in equity; or
 - (iv) seeking the entry of an order for relief or the appointment of, or the taking of possession by, a receiver, interim receiver, receiver/manager, sequestrator,

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conservator, custodian, administrator, trustee, liquidator or other similar official for it or any substantial part of its property;

and such petition, application or proceeding continues undismissed, or unstayed and in effect, for a period of 30 days after the institution thereof, provided that if an order, decree or judgment is granted or entered (whether or not entered or subject to appeal) against the Credit Party thereunder in the interim, such grace period will cease to apply, and provided further that if the Credit Party files an answer admitting the material allegations of a petition filed against it in any such proceeding, such grace period will cease to apply;

(j) any other event occurs which, under the Applicable Laws of any applicable jurisdiction, has an effect which is comparable to any of the events referred to in either of Sections 7.1(h) or (i);

(k) one or more judgments for the payment of money in a cumulative amount in excess of \$500,000 (or its then equivalent in any other currency) in the aggregate is rendered against a Borrower, any other Credit Party or any combination thereof and the applicable Borrower or the other Credit Party has not (i) provided for its discharge in accordance with its terms within 30 days from the date of entry thereof, or (ii) procured a stay of execution thereof within 30 days from the date of entry thereof and within such period, or such longer period during which execution of such judgment has not been stayed, appealed such judgment and caused the execution thereof to be stayed during such appeal, provided that if enforcement and/or realization proceedings are lawfully commenced in respect thereof in the interim, such grace period will cease to apply;

(l) any property of any Credit Party having a fair market value in excess of \$500,000 (or its then equivalent in any other currency) in the aggregate is seized (including by way of execution, attachment, garnishment, levy or distraint), or any Lien thereon securing Indebtedness in excess of \$500,000 (or its then equivalent in any other currency) is enforced, or such property has become subject to any charging order or equitable execution of a Governmental Authority, or any writ of execution or distress warrant exists in respect of any Borrower, any other Credit Party or the property of any of them, or any sheriff or other Person becomes lawfully entitled by operation of law or otherwise to seize or distraint upon such property and in any case such seizure, enforcement, execution, attachment, garnishment, distraint, charging order or equitable execution, or other seizure or right, continues in effect and is not released or discharged for more than 45 days or such longer period during which entitlement to the use of such property continues with the Credit Party (as the case may be), and the Credit Party (as the case may be) is contesting the same in good faith and by appropriate proceedings, provided that if the property is removed from the use of the Credit Party (as the case may be), or is sold, in the interim, such grace period will cease to apply;

(m) one or more final judgments, not involving the payment of money and not otherwise specified in this Section 7.1(m), has been rendered against any Credit Party, the result of which could reasonably be expected to result in a Material Adverse Effect, so long as the Credit Party (as the case may be) has not (i) provided for its discharge in accordance with its terms within 30 days from the date of entry thereof, or (ii) procured a stay of execution thereof within 30 days from the date of entry thereof and within such period, or such longer period during which execution of such judgment has been stayed, appealed such judgment and caused the execution thereof to be stayed during such appeal, provided that if enforcement and/or realization proceedings are lawfully commenced in respect thereof in the interim, such grace period will cease to apply;

(n) this Agreement, any other Loan Document or any material obligation or other provision hereof or thereof at any time for any reason terminates or ceases to be in full force and effect and a legally valid, binding and enforceable obligation of any Credit Party, is declared to be void or voidable or is repudiated, or the validity, binding effect, legality or enforceability hereof or

thereof is at any time contested by any Credit Party, or any Credit Party denies that it has any or any further liability or obligation hereunder or thereunder or any action or proceeding is commenced to enjoin or restrain the performance or observance by any Credit Party of any material terms hereof or thereof or to question the validity or enforceability hereof or thereof, or at any time it is unlawful or impossible for any Credit Party to perform any of its material obligations hereunder or thereunder;

(o) any Lien purported to be created by any Security Document shall cease to be, or shall be asserted by any Credit Party not to be, a valid, perfected, first priority (except as otherwise expressly provided in this Agreement or such Security Document) Lien in Collateral with a fair market value or book value (whichever is greater) in excess, individually or in the aggregate, of Cdn.\$500,000 (or the equivalent in any other currency);

(p) a Material Adverse Change shall occur;

(q) a Change in Control shall occur;

(r) if any Credit Party or any of its Subsidiaries violates any Environmental Law which results in an Action Request, Violation Notice or other notice or control order or cancellation of any license or certificate or approval, that results in any disruption of any Credit Party's business or that could reasonably be expected to have a Material Adverse Effect;

(s) any event or condition shall occur or exist with respect to a Pension Plan, Multiemployer Plan or Employee Benefit Plan that could, in the Lender's good faith judgment, subject any Credit Party to any tax, penalty or other liabilities under Applicable Laws which could reasonably be expected to give rise to a Material Adverse Effect, or if any ERISA Event occurs, or if or if any Lien arises (save for contribution amounts not yet due) in connection with any Pension Plan and in any such case, any Credit Party shall have a payment liability in excess of Cdn \$500,000;

then, and in every such event, and at any time thereafter during the continuance of such event or any other such event, the Lender may, by notice to the Borrowers, take any or all of the following actions, at the same or different times: (i) terminate the Commitment, and thereupon the Commitment shall terminate immediately, (ii) declare the Loans then outstanding to be due and payable in whole (or in part, in which case any principal not so declared to be due and payable may thereafter be declared to be due and payable), and thereupon the principal of the Loans so declared to be due and payable, together with accrued interest thereon and all fees and other obligations of the Borrowers accrued hereunder, shall become due and payable immediately, without presentment, demand, protest or other notice of any kind except as set forth earlier in this paragraph, all of which are hereby waived by the Borrowers, (iii) apply any amounts outstanding to the credit of the Borrowers to repayment of all amounts outstanding under this Agreement, and (iv) declare any or all of the Security Documents to be immediately enforceable.

7.2 Remedies.

(a) If an Event of Default described in Section 7.1(h) or 7.1(i) occurs with respect to any Credit Party, then to the extent permitted by Applicable Law, all Obligations shall become automatically due and payable and the Commitment shall terminate, without any action by the Lender or notice of any kind. In addition, or if any other Event of Default has occurred and is continuing, the Lender may, in its discretion, do one or more of the following at any time or times and in any order, without notice to or demand on the Borrower: (i) reduce the Commitment, or the advance rates against Eligible Accounts and/or Eligible Inventory used in computing the Borrowing Base, or reduce one or more of the other elements used in computing the Borrowing Base; (ii) restrict the amount of or refuse to make Revolving Loans; (iii) restrict or refuse to provide Letters of Credit and F/X Contracts; (iv) terminate the Commitment; (v) declare any or all Obligations to be

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immediately due and payable; and (vi) pursue its other rights and remedies under the Loan Documents and applicable law and equity.

(b) If an Event of Default has occurred and is continuing and without limiting any rights or remedies arising under the Security Documents, (i) the Lender shall have, in addition to all other rights of the Lender, the rights and remedies of a secured party under Applicable Law (including, as applicable, the PPSA, the *Civil Code of Quebec* and the UCC) in the jurisdiction where the Collateral is located and all rights and remedies provided for in the Loan Documents; (ii) the Lender may, at any time, take possession of the Collateral and keep it on any Borrower's or any Guarantor's Premises, at no cost to the Lender, or remove any part of it to such other place or places as the Lender may desire, or the Borrowers or any Guarantor shall, upon the Lender's demand, at the Borrowers' cost, assemble the Collateral and make it available to the Lender at a place convenient to the Lender; and (iii) the Lender may sell and deliver any Collateral at public or private sales, for cash, upon credit or otherwise, at such prices and upon such terms as the Lender deems advisable, in its sole discretion, and may postpone or adjourn any sale of the Collateral by an announcement at the time and place of sale or of such postponed or adjourned sale without giving a new notice of sale. Without in any way requiring notice to be given in the following manner, the Borrowers and each of the Guarantors agree that any notice by the Lender of sale, disposition or other intended action hereunder or in connection herewith, whether required by the PPSA, Civil Code of Quebec and the UCC or otherwise, shall constitute reasonable notice to the Borrowers and Guarantors if such notice is mailed by registered or certified mail, return receipt requested, postage prepaid, or is delivered personally against receipt, at least fifteen (15) days prior to such action to the Borrowers' address specified in or pursuant to Section 9.1. If any Collateral is sold on terms other than payment in full at the time of sale, no credit shall be given against the Obligations until the Lender receive payment, and if the buyer defaults in payment, the Lender may resell the Collateral without further notice to the Borrowers or any Guarantor. If the Lender seeks to take possession of all or any portion of the Collateral by judicial process, the Borrowers and each of the Guarantors irrevocably waives: (A) the posting of any bond, surety or security with respect thereto which might otherwise be required; (B) any demand for possession prior to the commencement of any suit or action to recover the Collateral; and (C) any requirement that the Lender retain possession and not dispose of any Collateral until after trial or final judgment. Each Borrower and each of the Guarantors agree that the Lender has no obligation to preserve rights to the Collateral or marshal any Collateral for the benefit of any Person. The Lender is hereby granted a license or other right to use, without charge, all of the Borrowers' and each Guarantor's Property, whether or not constituting Collateral, including its real estate, Equipment and Intellectual Property Rights (including labels, patents, copyrights, name, trade secrets, trade names, trademarks, and advertising matter, or any similar property), in completing production of, advertising or selling any Collateral, and the Borrowers' and Guarantors' rights under all licenses and all franchise agreements shall inure to the Lender's benefit for such purpose. The proceeds of sale shall be applied first to all expenses of sale, including legal fees, and then to the Obligations. The Lender will return any excess to the Borrowers and Guarantors and the Borrowers shall remain liable for any deficiency.

(c) If an Event of Default has occurred and is continuing, to the maximum extent permitted by law, each Borrower and each of the Guarantors hereby waive all rights to notice and hearing prior to the exercise by the Lender of the Lender's rights to repossess the Collateral without judicial process or to reply, attach or levy upon the Collateral without notice or hearing.

(d) During the continuance of an Event of Default, the Lender may apply any and all payments received by the Lender in respect of any Obligation as set forth below. Notwithstanding any provision herein to the contrary, all payments made by or for the account of the Credit Parties to the Lender after any or all of the Obligations have been accelerated (so long as such acceleration has not been rescinded), including proceeds of Collateral, shall be applied as follows:

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first, to payment of costs and expenses, including legal costs, of the Lender payable or reimbursable by the Credit Parties under the Loan Documents;

second, to payment of legal costs of Lender payable or reimbursable by the Borrowers under this Agreement;

third, to payment of all accrued unpaid interest on the Obligations and fees owed to Lender and the Issuing Bank;

fourth, to payment of all Loans, reimbursement obligations in respect of Letters of Credit, F/X Exposure, Cover, and Cash Management Obligations (but excluding Cash Management Obligations which are not subject to Availability Reserves, and excluding all Excluded Swap Obligations);

fifth, Cash Management Obligations which are not subject to Availability Reserves;

sixth, to payment of any other amounts owing which constitute Obligations; and

seventh, any remainder shall be for the account of and paid to whoever may be lawfully entitled thereto.

In carrying out the foregoing, (i) amounts received shall be applied in the numerical order provided until exhausted prior to the application to the next succeeding category, and (ii) the Lender or other Persons entitled to payment shall receive an amount equal to its pro rata share of amounts available to be applied pursuant to each applicable category.

(e) If the Lender receives any payment from or for the account of a Credit Party in any currency other than the currency in which the Obligation is denominated, the Lender may convert the payment (including the proceeds of realization upon any Collateral) in accordance with its normal practice into the currency in which such Obligation is denominated.

**ARTICLE 8
[INTENTIONALLY DELETED]**

**ARTICLE 9
MISCELLANEOUS**

9.1 Notices.

(a) Except in the case of notices and other communications expressly permitted to be given by telephone (and subject to paragraph (b) below), all notices and other communications provided for herein shall be in writing and shall be delivered by hand or overnight courier service, mailed by certified or registered mail or sent by facsimile in each case to the addressee, as follows:

(i) if to a Borrower or any other Credit Party:

c/o NILEX INC.
6810 8th Street
Edmonton, AB, T6P 0C5
Attention: Director, Finance
Facsimile: (780) 463-1773

with a copy to:

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BLAKE, CASSELS & GRAYDON LLP
 595 Burrard Street
 P.O. Box 49314
 Suite 2600, Three Bentall Centre
 Vancouver, BC, V7X 1L3

Attention: Michael Birch
 Facsimile: (604) 631-3309

(ii) if to the Lender:

CANADIAN IMPERIAL BANK OF COMMERCE.
 199 Bay Street, 4th Floor
 Toronto, ON M5L 1A2
 Attention: Senior Director, Portfolio Management
 Facsimile: (416) 861-9422

with a copy to:

CANADIAN IMPERIAL BANK OF COMMERCE
 199 Bay Street, 11th Floor
 Toronto, ON M5L 1A9
 Attention: Tim Meadowcroft, Vice President and Assistant General Counsel
 Facsimile: 416.304.4573
 Email: tim.meadowcroft@cibc.com

and

NORTON ROSE FULBRIGHT CANADA LLP
 Royal Bank Plaza, South Tower, Suite 3800
 Toronto, ON M5J 2Z4
 Attention: David M.A. Amato
 Facsimile: (416) 216-1861
 Email: david.amato@nortonrosefulbright.com

(iii) if to the Lender or any Issuing Bank, to it at its address (or facsimile number) set forth opposite its name in the execution page(s) of this Agreement or the applicable Assignment and Assumption Agreement, as the case may be.

(b) Any notice received by any Borrower from the Lender shall be deemed also to have been received by each other Credit Party. Notices and other communications to the Lender hereunder may be delivered or furnished by electronic communications pursuant to procedures approved by the Lender. The Lender or the Borrowers may, in its discretion, agree to accept notices and other communication to it hereunder by electronic communications pursuant to procedures approved by it; provided that approval of such procedures may be limited to particular notices or communications.

(c) Any party hereto may change its address or facsimile number for notices and other communications hereunder by notice to the other parties hereto. All notices and other communications given to any party hereto in accordance with the provisions of this Agreement shall be deemed to have been given on the date of receipt.

9.2 Waivers; Amendments.

(a) No failure or delay by the Lender in exercising any right or power hereunder shall operate as a waiver thereof, nor shall any single or partial exercise of any such right or power, or any abandonment or discontinuance of steps to enforce such a right or power, preclude any other or further exercise thereof or the exercise of any other right or power. The rights and remedies of the Lender hereunder are cumulative and are not exclusive of any rights or remedies that they would otherwise have. No waiver of any provision of this Agreement or consent to any departure by the Borrowers therefrom shall in any event be effective unless the same shall be permitted by Section 9.2(b), and then such waiver or consent shall be effective only in the specific instance and for the purpose for which given. Without limiting the generality of the foregoing, the making of a Loan or issuance of a Letter of Credit shall not be construed as a waiver of any Default, regardless of whether the Lender may have had notice or knowledge of such Default at the time.

(b) Neither this Agreement nor any other Loan Document (or any provision hereof or thereof) may be waived, amended or modified except pursuant to an agreement or agreements in writing entered into by the Borrowers and Lender (and for greater certainty, any such waiver, amendment or modification shall not require any consent or other agreement of any Credit Party other than the Borrowers, notwithstanding that any such Credit Party may be a party to this Agreement or any other Loan Document). For greater certainty, the Lender may release and discharge the Liens constituted by the Security Documents to the extent necessary to enable the Borrowers to complete any asset sale which is not prohibited by this Agreement or the other Loan Documents.

9.3 Expenses; Indemnity; Damage Waiver.

(a) The Borrowers shall pay (i) all reasonable Out-of-Pocket Expenses incurred by the Lender and its Affiliates, including the reasonable fees, charges and disbursements of counsel for the Lender and all applicable Taxes, and the preparation and administration of this Agreement and the other Loan Documents, (ii) all reasonable Out-of-Pocket Expenses incurred by the Lender and its Affiliates, including the reasonable fees, charges and disbursements of counsel for the Lender and applicable Taxes, in connection with any amendments, modifications or waivers of the provisions hereof or of any of the other Loan Documents, (whether or not the transactions contemplated hereby or thereby shall be consummated and, including, without limitation, as a result of an assignment by a Lender of all or a portion of its Commitments and Loans pursuant to Section 9.4), and (iii) all Out-of-Pocket Expenses incurred by the Lender, including the fees, charges and disbursements of any counsel for the Lender and all applicable Taxes, in connection with the enforcement or protection of their rights in connection with this Agreement, including its rights under this Section, or in connection with the Loans made hereunder, including all such Out-of-Pocket Expenses incurred during any workout, restructuring or negotiations in respect of such Loans.

(b) Each Credit Party shall indemnify the Lender, as well as each Related Party and each assignee of any of the foregoing Persons (each such Person and each such assignee being called an "Indemnitee") against, and hold each Indemnitee harmless from, any and all losses, claims, cost recovery actions, damages, expenses and liabilities of whatsoever nature or kind and all Out-of-Pocket Expenses and all applicable Taxes to which any Indemnitee may become subject arising out of or in connection with (i) the execution or delivery of the Loan Documents or any agreement or instrument contemplated thereby, the performance by the parties thereto of their respective obligations thereunder, and the consummation of the Transactions or any other transactions thereunder, (ii) any Loan, Letter of Credit or F/X Contract or any actual or proposed use of the proceeds therefrom, including any refusal by the Issuing Bank to honour a demand for payment under a Letter of Credit if the documents presented in connection with such demand do not strictly comply with the terms of such Letter of Credit, (iii) any actual or alleged presence or release

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of Hazardous Materials on or from any property owned or operated by a Borrower or any other Credit Party, or any Environmental Liability related in any way to a Borrower or any other Credit Party, (iv) any actual or prospective claim, litigation, investigation or proceeding relating to any of the foregoing (including, without limitation, any claim arising out of the Lender's collection and use of personal information of any Credit Party's principals and/or senior management), whether based on contract, tort or any other theory and regardless of whether any Indemnitee is a party thereto, (v) any other aspect of this Agreement and the other Loan Documents, or (vi) the enforcement of any Indemnitee's rights hereunder and any related investigation, defence, preparation of defence, litigation and enquiries; provided that such indemnity shall not, as to any Indemnitee, be available to the extent that such losses, claims, damages, liabilities or related expenses are determined by a court of competent jurisdiction by final and nonappealable judgment to have resulted from the gross negligence (it being acknowledged that ordinary negligence does not necessarily constitute gross negligence) or willful misconduct of such Indemnitee.

(c) The Credit Parties shall not assert, and hereby waive (to the fullest extent permitted by Applicable Law), any claim against any Indemnitee, on any theory of liability, for special, indirect, consequential or punitive damages (as opposed to direct or actual damages) arising out of, in connection with, or as a result of, any Loan Document, or any agreement or instrument contemplated thereby, the Transactions, any Loan or Letter of Credit or the use of the proceeds thereof.

(d) Any inspection of any property of a Borrower or any other Credit Party made by or through the Lender is for purposes of administration of the Credits only, and neither the Borrowers nor any other Credit Party is entitled to rely upon the same (whether or not such inspections are at the expense of the Borrowers).

(e) By accepting or approving anything required to be observed, performed, fulfilled or given to the Lender pursuant to the Loan Documents, the Lender shall not be deemed to have warranted or represented the sufficiency, legality, effectiveness or legal effect of the same, or of any term, provision or condition thereof, and such acceptance or approval thereof shall not constitute a warranty or representation to anyone with respect thereto by the Lender.

(f) The relationship between the Borrowers and the Lender is, and shall at all times remain, solely that of borrowers and lender. The Lender shall not under any circumstance be construed to be partners or joint venturers of the Borrowers or their Affiliates. The Lender shall not under any circumstance be deemed to be in a relationship of confidence or trust or a fiduciary relationship with the Borrowers or their Affiliates, or to owe any fiduciary duty to the Borrowers or their Affiliates. The Lenders does not undertake or assume any responsibility or duty to the Borrowers or their Affiliates to select, review, inspect, supervise, pass judgment upon or inform the Borrowers or their Affiliates of any matter in connection with their property or the operations of the Borrowers or their Affiliates. The Borrowers or their Affiliates and all Shareholders and all direct and indirect shareholders of the Credit Parties shall rely entirely upon their own judgment with respect to such matters, and any review, inspection, supervision, exercise of judgment or supply of information undertaken or assumed by the Lender in connection with such matters is solely for the protection of the Lender, and neither the Borrowers nor any other Person is entitled to rely thereon.

(g) The Lender shall not be responsible or liable to any Person for any loss, damage, liability or claim of any kind relating to injury or death to Persons or damage to Property caused by the actions, inaction or negligence of the Borrowers or any other Credit Party and/or their Affiliates and/or any Shareholder and/or any direct or indirect shareholder of any Credit Party; each Credit Party hereby indemnifies and holds the Lender harmless from any such loss, damage, liability or claim.

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(h) This Agreement is made for the purpose of defining and setting forth certain obligations, rights and duties of the Borrowers, the Lender in connection with the Loans, and is made for the sole benefit of the Borrowers, each other Credit Party, the Lender, and the Lender's and the Lender's successors and assigns. Except as provided in Sections 9.3(b) and 9.4, no other Person shall have any rights of any nature hereunder or by reason hereof.

(i) All amounts due under this Section 9.3 shall be payable not later than three Business Days after written demand therefor.

9.4 Successors and Assigns.

(a) The provisions of this Agreement shall be binding upon and inure to the benefit of the parties hereto and their respective successors and assigns permitted hereby, except that (i) a Borrower may not assign or otherwise transfer any of its rights or obligations hereunder without the prior written consent of the Lender (and any attempted assignment or transfer by a Borrower without such consent shall be null and void), and (ii) no Lender may assign or otherwise transfer its rights or obligations hereunder except in accordance with this Section. Nothing in this Agreement, expressed or implied, shall be construed to confer upon any Person (other than the parties hereto, their respective successors and assigns permitted hereby and, to the extent expressly contemplated hereby, the Related Parties of the Lender) any legal or equitable right, remedy or claim under or by reason of this Agreement.

(b) The Lender may assign to one or more Persons all or a portion of its rights and obligations under this Agreement and the other Loan Documents (including all or a portion of its Commitment and the Loans at the time owing to it); provided that (i) the Lender and the Borrowers must give their prior written consent to such assignment (which consent shall not be unreasonably withheld or delayed); and provided further that (ii) notwithstanding clause (i) immediately above, the Borrowers' consent shall not be required with respect to any assignment made at any time after the occurrence and during the continuance of an Event of Default, or in connection with any assignment by the Lender to an Affiliate of the Lender. Notwithstanding the foregoing, no assignment by the Lender or a Borrower shall be made to the Credit Parties, the Permitted Holders or any Affiliate thereof. Any such assignment shall, if required by the Lender, be subject to an amended and restated version of this Agreement and the granting by the Credit Parties of new Guarantees and Liens as security for the Obligations on terms and conditions to be agreed upon by the parties (but substantially in accordance with the Guarantee and Security Documents executed and delivered on the Effective Date) and such other documents and instruments (including legal opinions of the Credit Parties' counsel) as the Lender may reasonably require. Nillex USA Inc. shall act as an agent for all the Borrowers to maintain a register as to the principal and stated interest of each Loan owing to the Lender, along with a copy of all transfer documents and the name and address of the Lender and assignee. No assignment of an interest in a Loan shall be effective unless recorded in such register, absent manifest error. It is intended that such register be maintained such that the Loans are in "registered form" for the purposes of the Code.

(c) The Lender may at any time pledge or assign a security interest in all or any portion of its rights under this Agreement to secure obligations of the Lender, including any pledge or assignment to secure obligations to a Federal Reserve Bank, and Section 9.4 shall not apply to any such pledge or assignment of a security interest; provided that no such pledge or assignment of a security interest shall release the Lender from any of its obligations hereunder or substitute any such pledgee or assignee for the Lender as a party hereto.

9.5 Survival.

All covenants, agreements, representations and warranties made by the Borrowers herein and in the certificates or other instruments delivered in connection with or pursuant to this Agreement shall be considered to have been relied upon by the other parties hereto and shall survive the execution and delivery of this Agreement and the making of any Loans and issuance of any Letters of Credit, regardless of any investigation made by any such other party or on its behalf and notwithstanding that the Lender may have had notice or knowledge of any Default or incorrect representation or warranty at the time any credit is extended hereunder, and shall continue in full force and effect as long as the principal of or any accrued interest on any Loan or any fee or any other amount payable under this Agreement is outstanding and unpaid or any Letter of Credit is outstanding and so long as the Commitment has not expired or terminated. Sections 2.12, 2.13, 2.14 and 9.3 shall survive and remain in full force and effect, regardless of the consummation of the Transactions, the repayment of the Loans, the expiration or termination of the Letters of Credit and the Commitment or the termination of this Agreement or any provision hereof.

9.6 Counterparts; Integration; Effectiveness.

This Agreement may be executed in counterparts (and by different parties hereto on different counterparts), each of which shall constitute an original, but all of which when taken together shall constitute a single contract. This Agreement, the other Loan Documents and any separate letter agreements with respect to fees payable to the Lender, constitute the entire contract among the parties relating to the subject matter hereof and supersede any and all previous agreements and understandings, oral or written, relating to the subject matter hereof. Except as provided in Section 4.1, this Agreement shall become effective when it shall have been executed by the Lender and when the Lender shall have received counterparts hereof which, when taken together, bear the signatures of each of the other parties hereto, and thereafter shall be binding upon and inure to the benefit of the parties hereto and their respective successors and assigns. Delivery of an executed original counterpart of a signature page of this Agreement by facsimile or other electronically scanned method of delivery shall be as effective as delivery of a manually executed original counterpart of this Agreement.

9.7 Severability.

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

9.8 Right of Set-Off.

The Lender and each of its Affiliates is hereby authorized at any time and from time to time, to the fullest extent permitted by Applicable Law, to set off and apply any and all deposits (general or special, time or demand, provisional or final) at any time held and other obligations at any time owing by the Lender or Affiliate to or for the credit or the account of any Credit Party against any of and all of the obligations of the Borrowers now or hereafter existing under this Agreement held by the Lender, irrespective of whether or not the Lender shall have made any demand under this Agreement and although such obligations may be unmaturing and regardless of the currency of the deposit. The rights of the Lender under this Section are in addition to other rights and remedies (including other rights of set off) which the Lender may have.

9.9 Governing Law; Jurisdiction; Consent to Service of Process.

(a) This Agreement shall be construed in accordance with and governed by the Laws of the Province of Alberta.

(b) Each of the Credit Parties hereto hereby irrevocably and unconditionally submits, for itself and its property, to the non-exclusive jurisdiction of the Courts of the Province of Alberta, and any appellate court thereof, in any action or proceeding arising out of or relating to this Agreement, or any other Loan Document or for recognition or enforcement of any judgment, and each of the parties hereto hereby irrevocably and unconditionally agrees that all claims in respect of any such action or proceeding may be heard and determined in Alberta. Each of the parties hereto agrees that a final judgment in any such action or proceeding shall be conclusive and may be enforced in other jurisdictions by suit on the judgment or in any other manner provided by Applicable Law. Nothing in this Agreement shall affect any right that the Lender may otherwise have to bring any action or proceeding relating to this Agreement or any other Loan Document against the Borrowers or their properties in the courts of any other jurisdiction.

(c) Each of the Credit Parties hereto hereby irrevocably and unconditionally waives, to the fullest extent it may legally and effectively do so, any objection which it may now or hereafter have to the laying of venue of any suit, action or proceeding arising out of or relating to this Agreement in any court referred to in this Section 9.9. Each of the parties hereto hereby irrevocably waives, to the fullest extent permitted by Applicable Law, any *forum non conveniens* defence to the maintenance of such action or proceeding in any such court.

(d) Each party to this Agreement irrevocably consents to service of process in the manner provided for notices in Section 9.1. Nothing in this Agreement will affect the right of any party to this Agreement to serve process in any other manner permitted by Applicable Law.

9.10 WAIVER OF JURY TRIAL.

EACH PARTY HERETO HEREBY WAIVES, TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, ANY RIGHT IT MAY HAVE TO A TRIAL BY JURY IN ANY LEGAL PROCEEDING DIRECTLY OR INDIRECTLY ARISING OUT OF OR RELATING TO THIS AGREEMENT, ANY OTHER LOAN DOCUMENT, OR THE TRANSACTIONS CONTEMPLATED HEREBY OR THEREBY (WHETHER BASED ON CONTRACT, TORT OR ANY OTHER THEORY). EACH PARTY HERETO (A) CERTIFIES THAT NO REPRESENTATIVE, AGENT OR ATTORNEY OF ANY OTHER PARTY HAS REPRESENTED, EXPRESSLY OR OTHERWISE, THAT SUCH OTHER PARTY WOULD NOT, IN THE EVENT OF LITIGATION, SEEK TO ENFORCE THE FOREGOING WAIVER AND (B) ACKNOWLEDGES THAT IT AND THE OTHER PARTIES HERETO HAVE BEEN INDUCED TO ENTER INTO THIS AGREEMENT BY, AMONG OTHER THINGS, THE MUTUAL WAIVERS AND CERTIFICATIONS IN THIS SECTION.

9.11 Headings.

Article and Section headings and the Table of Contents used herein are for convenience of reference only, are not part of this Agreement and shall not affect the construction of, or be taken into consideration in interpreting, this Agreement.

9.12 Confidentiality.

The Lender agrees to maintain the confidentiality of the Information (as defined below), except that Information may be disclosed (a) to each of their, and each of their Affiliates', directors, officers, employees, agents and advisors, including accountants, legal counsel and other advisors (it

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being understood that the Persons to whom such disclosure is made will be informed of the confidential nature of such Information and instructed to keep such Information confidential), (b) to the extent requested by any rating agency, regulatory authority or other Governmental Authority, or their legal counsel, (c) to the extent required by applicable laws or regulations or by any subpoena or similar legal process, (d) to any other party to this Agreement, (e) in connection with the exercise of any remedies under any Loan Document or any suit, action or proceeding relating to any Loan Document or the enforcement of rights thereunder, (f) subject to an agreement containing provisions substantially the same as those of this Section, to (i) any actual or prospective assignee (or such assignee's advisors) in any of its rights or obligations under this Agreement, or (ii) any actual or prospective counterparty (or its advisors) to any swap or derivative transaction relating to the Borrowers and their obligations, (g) to their auditors in connection with any audit, (h) to any financial institution (other than as otherwise identified in this Section 9.12), credit reporting agency or credit bureau, (i) to any Person with whom a Borrower or any other Credit Party may have or proposes to have financial dealings, or (j) with the consent of the Borrowers. For greater certainty, each Borrower and each of the Credit Parties acknowledges that from time to time, the Borrowers or any other Credit Party may request the Lender to facilitate the provision of certain financial services offered by CIBC (the "CIBC Services"). In such circumstances, CIBC policies and procedures ("CIBC's Policies") will apply in respect of all transactions undertaken by CIBC in connection with the provision of the CIBC Services, including any required due diligence investigation and related business approval processes conducted in respect of the Borrowers and the other Credit Parties. Each Borrower and each of the Credit Parties consents to the use of Information by CIBC for the purpose of facilitating compliance with CIBC's Policies. For the purposes of this Section, "Information" means all information received from the Borrowers or any Credit Party relating to the Borrowers, any of the Credit Parties, or their respective businesses, other than Information that is (i) is or becomes publicly available other than as a result of a breach of this Section, (ii) any such information that is or becomes available to the Lender on a non-confidential basis prior to disclosure by the Borrowers, or (iii) was already in the possession of the Lender prior to its disclosure by the Borrowers or any other Credit Party; or (iv) marked "non-confidential" (or such other words or expression having the same or similar meaning by the Borrowers or any other Credit Party. Any Person required to maintain the confidentiality of Information as provided in this Section shall be considered to have complied with its obligation to do so if such Person has exercised the same degree of care to maintain the confidentiality of such Information as such Person would accord to its own confidential information, acting prudently.

9.13 Press Releases and Related Materials.

Each Credit Party agrees that neither it nor its Affiliates will in the future issue any press releases or other public disclosure using the name of the Lender or referring to this Agreement, or the other Loan Documents without at least two (2) Business Days' prior notice to the Lender unless (and only to the extent that) such Credit Party or Affiliate is required to do so under law and then, in any event, such Credit Party or Affiliate will consult with the Lender before issuing such press release or other public disclosure. Each Credit Party consents to the publication by the Lender of advertising material relating to the financing transactions contemplated by this Agreement using its name, product photographs, logo or trademark. The Lender reserves the right to provide to industry trade organizations information necessary and customary for inclusion in league table measurements.

9.14 Anti-Money Laundering Legislation.

(a) Each Credit Party acknowledges that, pursuant to the *Proceeds of Crime (Money Laundering) and Terrorist Financing Act* (Canada) and other applicable anti-money laundering, anti-terrorist financing, government sanction and "know your client" Laws (collectively, including any guidelines or orders thereunder, "AML Legislation"), the Lender may be required to obtain, verify

and record information regarding the Credit Parties, their directors, authorized signing officers, direct or indirect shareholders or other Persons in control of the Credit Parties, and the transactions contemplated hereby. The Credit Parties shall promptly provide all such information, including supporting documentation and other evidence, as may be reasonably requested by the Lender, or any prospective assignee or participant of the Lender, in order to comply with any applicable AML Legislation, whether now or hereafter in existence.

9.15 Keepwell.

Each Qualified ECP Guarantor hereby jointly and severally absolutely, unconditionally and irrevocably undertakes to provide such funds or other support as may be needed from time to time by each other Credit Party to honour all of its obligations under this Credit Agreement and each other Loan Document to which it is a party in respect of Swap Obligations (provided, however, that each Qualified ECP Guarantor shall only be liable under this Section 9.16 for the maximum amount of such liability that can be hereby incurred without rendering its obligations under this Section 9.16, or otherwise under this Credit Agreement or any other Loan Document, voidable under Applicable Law relating to fraudulent conveyance or fraudulent transfer, and not for any greater amount). The obligations of each Qualified ECP Guarantor under this Section shall remain in full force and effect until the payout of such Qualified ECP Guarantor's Obligations. Each Qualified ECP Guarantor intends that this Section 9.16 constitute, and this Section 9.16 shall be deemed to constitute, a "keepwell, support, or other agreement" for the benefit of each other Credit Party for all purposes of Section 1a(18)(A)(v)(II) of the *Commodity Exchange Act*.

9.16 No Strict Construction.

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

9.17 Paramountcy.

In the event of any inconsistency between the provisions of this Agreement and the provisions of any other Loan Document, the provisions of this Agreement shall prevail.

9.18 LIMITATION OF LIABILITY.

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

9.19 Language.

The parties herein have expressly requested that this Agreement and all related documents be drawn up in the English language. *À la demande expresse des parties aux présentes, cette convention et tout document y afférent ont été rédigés en langue anglaise.*



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[Balance of page left blank; signature pages follow]

A handwritten signature in blue ink, located in the bottom right corner of the page. The signature is stylized and appears to be a single name.

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

NILEX INC.

Per: 

Name: Jeff Allen
Title: Director, Finance


Per: 

Name: Glenn Heroux
Title: President & CEO

NILEX USA INC.

Per: 

Name: Jeff Allen
Title: Director, Finance


Per: 


Name: Glenn Heroux
Title: President & CEO



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CANADIAN IMPERIAL BANK OF COMMERCE,
as Lender

By: 
Name: **Geoff Golding**
Title: **Authorized Signatory**

By: 
Name: **Anthony Tsuen**
Title: **Authorized Signatory**



SCHEDULE A**COMMITMENTS**

<u>Lender</u>	<u>Commitment</u>
Canadian Imperial Bank of Commerce	Revolving Loans: \$20,000,000 Term Loan: \$4,000,000



SCHEDULE 3.3

APPROVALS

None.



SCHEDULE 3.5

LITIGATION

None.



SCHEDULE 3.7**OWNERSHIP**

<u>Credit Party</u>	<u>Registered/Beneficial Holders of Equity Securities</u>
Nilex Inc.	a) PEF 2010 Nilex Investment Limited Partnership b) Gurchate Sekhon c) Hugh D. Watt d) Ian Wilson e) David LeMay
Nilex USA Inc.	Nilex Inc.



SCHEDULE 3.9
LIENS ON REAL PROPERTY

None.



SCHEDULE 3.10
LIENS ON PERSONAL PROPERTY

<u>Credit Party</u>	<u>Jurisdiction</u>	<u>Secured Creditor</u>	<u>Registration Number(s) Perfecting the Lien (each as amended, as applicable)</u>
Nilex Inc.	Alberta	Element Fleet Management Inc.	10010720861
Nilex Inc.	Alberta	PEF 2010 Nilex Investment Limited Partnership; FCPI Nilex GP Inc.	13042623420; 13042623460
Nilex Inc.	Alberta	Foss National Leasing Ltd.	16032435197; 16112207721; 16121603816; 18041624228; 18041624236; 18041624253; 18041624384; 18041624393
Nilex Inc.	British Columbia	PEF 2010 Nilex Investment Limited Partnership; FCPI Nilex GP Inc.	314726H
Nilex Inc.	British Columbia	Foss National Leasing Ltd.	593249J; 912124J; 693514K
Nilex Inc.	Saskatchewan	Element Fleet Management Inc.	301163190
Nilex Inc.	Saskatchewan	PEF 2010 Nilex Investment Limited Partnership; FCPI Nilex GP Inc.	301015975
Nilex Inc.	Saskatchewan	Foss National Leasing Ltd.	301461191
Nilex Inc.	Ontario	PEF 2010 Nilex Investment Limited Partnership; FCPI Nilex GP Inc.	File: 686418885 Reg: 20130426 1704 1462 6168
Nilex Inc.	Ontario	Foss National Leasing Ltd.	File: 716811939 Reg: 20160519 1036 2677

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			8638 File: 721762857 Reg: 20161021 1124 2677 9350 File: 738649629 Reg: 20180426 1034 2677 1851 File: 739104165 Reg: 20180508 1011 2677 1897
Nilex USA Inc.	Colorado	Element Financial Corp. PNC Equipment Finance, LLC	20142092764

SCHEDULE 3.11
PENSION PLANS

None.



SCHEDULE 3.13

DEFAULTS

None.



SCHEDULE 3.15**SUBSIDIARIES****Nilex Inc.:**

- (i) Name: Nilex Inc.
- (ii) Form: Corporation
- (iii) Equity Securities issued and outstanding:
 - (A) 1,193,850 Class A Common Shares to PEF 2010 Nilex Investment Limited Partnership;
 - (B) 75,352 Class B Common Shares and 1,431,686 Class C Preferred Shares to Gurchate Sekhon;
 - (C) 63,467 Class B Common Shares and 1,205,867 Class B Preferred Shares to Hugh D. Watt;
 - (D) 173,918 Class B Common Shares and 3,304,447 Class A Preferred Shares to Ian Wilson; and
 - (E) 7,941 Class B Common Shares and 150,886 Class B Preferred Shares to David LeMay.
- (iv) Jurisdiction of formation: Alberta



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Nilex USA Inc.:

- (i) Name: Nilex USA Inc.
- (ii) Form: Corporation
- (iii) Equity Securities issued and outstanding:
 - (A) 100 Common Shares to Nilex Inc.
- (iv) Jurisdiction of formation: Colorado



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SCHEDULE 3.18
MATERIAL CONTRACTS

None.



SCHEDULE 3.19
ENVIRONMENTAL MATTERS

None.



SCHEDULE 3.20
EMPLOYEE MATTERS

(See attached.)



**Pension Plan for the employees of
Nilex Inc. and Participating Employers**

Amended effective January 1, 2016

Registration Number 1074939



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1. Interpretation

In this Plan,

"Act" means the *Alberta Employment Pension Plans Act*, and regulations as amended and any similar legislation of another jurisdiction governing the rights of a Member of the Plan.

"Administrator" means the Employer.

"Applicable Legislation" means the Act, the Income Tax Act and any other legislation governing the administration of the Plan.

"Continuous" in reference to employment with the Employer or membership in the Plan, includes any period of temporary suspension of employment or membership and periods of layoff from employment, or any other period required to be included under the Applicable Legislation.

"Earnings" means, in reference to employment within Canada, the Member's basic salary including overtime and bonuses and excluding profit sharing. If contributions are made to the Plan as permitted under Section 11, the Member's Earnings will include a prescribed amount of compensation in accordance with the Income Tax Act.

"Employee" means a person who is employed by the Employer.

"Employer" means Nilex Inc. and includes other employers who have entered into a Participation Agreement with the Administrator of the Plan as indicated below:

Nilex Construction Inc.

"Forfeited Amount" means the portion, if any, of a Member's account which arose from the Employer's contributions that the Member would not be entitled to receive upon termination of employment, retirement or death.

"Funding Agreement" means the agreement between the Administrator and a financial institution or other entity authorized to act as a funding agent for registered pension plans and under which contributions to the Plan are received and invested.

"Income Tax Act" means the *Income Tax Act (Canada)* and regulations as amended.

"Investment Income" means the rate of return of an investment option, including interest, gains and losses less the rate attributable to any investment expenses, administration expenses and other reasonable expenses related to the Plan and pension fund that are not paid separately by the Employer. Investment Income can be a positive or negative amount.



“Life Income Type Benefits Account” means an account, if any, created under defined contribution provisions of a pension plan that provides for benefits similar to those provided under a life income fund and complies with the requirements of the Applicable Legislation.

“Locked-in” means the benefit cannot be taken as a cash refund under the Applicable Legislation and/or as provided in the Plan.

“Locked-in Retirement Account” means a retirement savings plan that meets the requirements of the Applicable Legislation;

“Member” means an Employee or former Employee of the Employer for whom benefits are to be provided under the Plan.

“Participation Agreement” means the agreement between an Employer and the Administrator which sets forth the rules for employers who participate in the Plan, including, among other things, the obligation of the Employer to make and remit contributions to the Plan.

“Part-time”, in reference to an Employee, refers to permanent or temporary Employees of the Employer who are not employed on a full-time basis.

“Pension Partner” means, in relation to another person

- a person who, at the relevant time, was married to that other person and had not been living separate and apart from that other person for a continuous period of longer than three years, or;
- if there is no person as described above, a person who, immediately preceding the relevant time, had lived with that other person in a marriage-like relationship
 - for a continuous period of at least three years, or
 - of some permanence, if there is a child of the relationship by birth or adoption.

“Plan” means Pension Plan for the employees of Nillex Inc. and Participating Employers as amended from time to time.

“Plan Beneficiary” means the Pension Partner of a Member or, if the Member has no Pension Partner or the Pension Partner has waived entitlement to the death benefit, the Member’s designated beneficiary or the Member’s estate.

“Plan Documents” means the provisions, forms and information relating to the Plan which the Administrator is required under the Act to make available for inspection.

“Plan Year” means January 1 to December 31.

“Prescribed Retirement Income Arrangement” means

- a life income fund that meets the requirements of the Act and is registered under the Income Tax Act; or
- any other fund, account or other arrangement that is prescribed by the Act and registered under the Income Tax Act to be a retirement income arrangement.

“Year’s Maximum Pensionable Earnings” has the same meaning assigned by the *Canada Pension Plan* or other Applicable Legislation.



2. Introduction

This document sets out the terms and conditions of the Plan.

The effective date of the Plan is August 1, 2001.

Nilex Inc. has established this pension plan as a continuing part of its benefit program; however, Nilex Inc. reserves the right to amend or terminate the Plan. The Plan is designed to qualify for registration as a non-collectively bargained multi-employer defined contribution pension plan in accordance with the Applicable Legislation. Employers who wish to participate in the Plan must enter into a Participation Agreement with the Administrator and provide the Administrator with the information it reasonably requires to administer the Plan.

The Administrator of the Plan is responsible for the operation and administration of the Plan. The Administrator has the authority, in accordance with the Applicable Legislation, to determine all matters concerning the operation, administration and interpretation of the Plan. The Administrator may retain professionals to perform certain administrative functions. Administration expenses, investment expenses and other reasonable expenses related to the Plan and pension fund will be paid by Members from the assets of the pension fund, unless Nilex Inc. pays for all or part of those expenses separately.

On written request, a Member, the Member's Pension Partner, a person entitled to a benefit, or an authorized agent of any of them, may review the Plan Documents once a year as permitted under the Act. The Administrator will provide a copy of the Plan Documents on request for a reasonable fee. The Administrator will give each Member a written summary of any amendment to the Plan that affects the Member's benefits.

The Administrator will establish a pension plan fund for the accumulation and investment of contributions to the Plan. The assets of the pension plan fund will be invested as permitted by the Applicable Legislation. The fund will be maintained by a funding agent in accordance with the terms of the Funding Agreement. From time to time, the Administrator may appoint successor funding agents as considered necessary or desirable for purposes of the Plan.



3. Membership

(a) Eligibility

All Employees, Directors and Executives are eligible for membership in the Plan.

Eligible full-time Employees may join the Plan on the first day of any month on or after the completion of one year of Continuous employment with an employer participating in the Plan.

Eligible Part-time Employees may join the Plan on the first day of any month on or after the completion of two years of Continuous employment with an employer participating in the Plan, provided the Employee has earned 35 per cent of the Year's Maximum Pensionable Earnings in each of the two consecutive calendar years immediately before joining the Plan.

Part-time Employees who join the Plan do not cease to be Members of the Plan if their Earnings drop below 35 per cent of the Year's Maximum Pensionable Earnings after they become Members.

The Administrator may elect to waive or vary the eligibility requirements for an Employee as permitted by the Applicable Legislation.

To enrol in the Plan, an application for membership must be completed.

The Administrator will give each eligible Employee a written summary of the Plan and of the rights and duties as a Member.

If a Member terminates employment and is subsequently re-hired by the Employer, the Employee will be treated as a new Employee for purposes of eligibility for membership and benefits under the Plan.



4. Contributions

(a) Member's required contributions

All Employees

Each Member is required to contribute to the Plan by payroll deduction an amount equal to two per cent of the Member's Earnings during each full or partial year of membership in the Plan.

Directors and Executives

Each Member is required to contribute to the Plan by payroll deduction an amount equal to four per cent of the Member's Earnings during each full or partial year of membership in the Plan.

(b) Member's voluntary contributions

Subject to the maximum contributions provision below, a Member may make voluntary contributions to the Plan and withdraw those contributions at any time.

(c) Member's transferred contributions

A Member may transfer amounts from another registered pension plan, a retirement savings plan or a deferred profit sharing plan into the Plan as permitted under the Income Tax Act.

If these funds are Locked-in, they will continue to be Locked-in and will be administered according to the Applicable Legislation.

(d) Employer's contributions

Each Employer is required to contribute to the Plan an amount equal to the Member's required contributions for each Member for each full or partial year of membership in the Plan.

(e) Payment of contributions

The Employer is required to remit contributions to the Plan **within 30 days** after the end of the month for which contributions are payable. The contributions will be remitted to the funding agent by the Administrator.

(f) Maximum contributions

The aggregate of the Member's contributions, the Employer's contributions made on behalf of a Member, and any Forfeited Amounts allocated to the Member in any calendar year may not exceed the lesser of 18 per cent of the Member's compensation and the money purchase limit for the calendar year, both as defined in the Income Tax Act, or such other maximum as required under the Applicable Legislation.

(g) Return of contributions

Subject to any consent required under the Applicable Legislation, all or a portion of the contributions made by the Member or the Employer on behalf of the Member will be returned to the Member or Employer respectively where such action is required to avoid revocation of the registration of the Plan.

(h) Suspension of contributions

A Member may elect to discontinue making required contributions. If the Member does so, the Employer's contributions on the Member's behalf will cease as well. These contributions may resume at any time. No benefits will be payable until the Member terminates employment, retires, dies or the Plan terminates. If all Members cease to contribute to the Plan, the Plan must be terminated.

(i) Investment options

Contributions will be invested in one or more of the investment options available under the Funding Agreement as directed by the Member.

The Administrator will provide the Member with information regarding the investment options currently available. Those options will be diversified and involve varying degrees of risk and expected rate of return to permit the Member to make a prudent investment choice. The Member may select one or a combination of the investment options at the time of joining the Plan, subject to any legislative restrictions. If the Member wishes to change the investment election at a later date, the Member may do so for any new contributions as well as existing investments, subject to the provisions of the Funding Agreement. If no election has been made by the Member, new contributions will be invested in the default investment option(s) selected by the Administrator. Members are solely responsible for their investment decisions (or decisions made on their behalf when the Member fails to make an election) regardless of any advice or recommendations that may be given by the Employer, Administrator or any agent of the Employer or Administrator.

The rate of return on investments may vary depending on the investment option selected. If an investment option is selected that does not guarantee a rate of return, the value of the investment, including the principal amount invested, will fluctuate based on the investment performance of the funds. Neither the Employer, Administrator nor any of the Administrator's agents will be responsible for the performance of the investment beyond the obligations required by the Applicable Legislation.



5. Member's Account

An account will be maintained for each Member. Each Member's account consists of contributions made by the Member, contributions made by the Employer on the Member's behalf and any Forfeited Amounts that have been applied to the Member's account, together with Investment Income.

Investment Income will be applied to the Member's account at least annually and will be calculated in accordance with the terms of the Funding Agreement and the Applicable Legislation.

A Member's account will be used to provide benefits in accordance with the terms of the Plan.

Where a benefit becomes payable under the Plan, the value of the Member's account will be equal to:

- the total contributions and any Forfeited Amounts that have been applied to the Member's account;
- plus Investment Income on those contributions and the Forfeited Amounts;
- less any voluntary contributions;

calculated in accordance with the terms of the Funding Agreement and the Applicable Legislation.

The Administrator will give the Member a statement indicating the value of the Member's account at least annually.



6. Retirement

A Member may elect to retire on the Member's normal retirement date or at an earlier or postponed retirement date.

(a) Normal retirement date

The normal retirement date is the first day of the month on or after the Member's 65th birthday. The value of the Member's account will be used to provide a retirement benefit.

(b) Early retirement date

A Member may elect an early retirement date up to 10 years before the normal retirement date. If the Member elects an early retirement date, the value of the Member's account will be used to provide a retirement benefit.

(c) Postponed retirement date

If a Member remains in the employment of the Employer after the normal retirement date, the Member must elect to receive a retirement benefit or to postpone the retirement date. If a Member elects to postpone the retirement date, or the Member does not make an election under this subsection, contributions to the Plan will continue on the same basis as before the normal retirement date. The value of the Member's account will be used to provide a retirement benefit which must begin no later than December 31 of the calendar year of the Member's 71st birthday, or at such other time or date as required under the Income Tax Act.

The Member retains the right to receive the value of any voluntary contributions as a cash refund or to transfer the value of those contributions to a registered retirement savings plan or such other vehicle as permitted under the Applicable Legislation.



7. Retirement Benefits

On retirement, a Member may elect to receive a retirement annuity or transfer the Member's benefit, subject to the requirements of the Applicable Legislation.

(a) Normal form of retirement annuity

If a Member elects a retirement annuity as the Member's retirement benefit and has a Pension Partner when the retirement annuity begins, the normal form of retirement annuity is a joint and survivor annuity. This annuity provides equal monthly payments to the Member for as long as the Member is alive. Following the Member's death, the retirement annuity payments will be reduced by 40 per cent and will be paid to the Member's Pension Partner for as long as the Pension Partner is alive. The Member's Pension Partner may waive this form of retirement annuity by completing the form required by the Applicable Legislation. The form must be signed in the manner required under the Applicable Legislation, not more than 90 days before the Member's actual retirement date and received by the Employer before the Member's actual retirement date.

If a Member elects a retirement annuity as the Member's retirement benefit and does not have a Pension Partner when the retirement annuity begins, the normal form of retirement annuity is a single life annuity. This annuity provides equal monthly payments for the Member's lifetime with payments guaranteed for 120 months.

If a Member elects a retirement annuity, the Member will receive the normal form of retirement annuity unless an optional form of retirement annuity is chosen.

(b) Optional forms of retirement annuity

Subject to the rights of the Member's Pension Partner under the Act and the limitations imposed by the Income Tax Act, a Member may elect, before the Member's actual retirement date, to receive any one of the following optional forms of retirement annuity:

- **Single life annuity**
A life annuity payable for life with payments guaranteed for a specified period, not to exceed 15 years.
- **Joint and survivor life annuity**
A life annuity payable for life and, upon the death of the Member, for the lifetime of the Member's Pension Partner. Either all or a percentage of the original annuity amount may continue to the Member's Pension Partner. Payments may be guaranteed for a specified period, not to exceed 15 years and as permitted under the Income Tax Act.

- **Government integrated annuity**
An increased retirement annuity payable until age 65, at which time the annuity payments will be reduced to provide an approximately level income from the Plan and government sources.
- **Indexed life annuity**
A retirement annuity increased each year by a specified per cent of the increase in the Consumer Price Index, subject to the maximum permitted under the Income Tax Act.
- Any other form of retirement annuity permitted under the Income Tax Act.

(c) Transfer at retirement

Instead of receiving a retirement annuity, a Member may transfer the benefit to another registered pension plan, a Locked-In Retirement Account or a Prescribed Retirement Income Arrangement subject to any rights of the Member's Pension Partner as provided in the Act and as permitted under the Applicable Legislation.

Within 60 days of receiving notification of a Member's retirement, the Administrator will give the Member a statement of options, indicating the options available to the Member as required by the Act. A Member's retirement benefit will be processed within 30 days after receipt of the Member's election and any other information that is required to process the election. If the Member does not make an election within 90 days after receipt of the statement of options, the Administrator may proceed with the purchase of a retirement annuity on behalf of the Member or any other option permitted under the Applicable Legislation and as communicated to the Member.



8. Death Benefit

(a) Death benefit before retirement

If a Member dies before retirement, the value of the Member's account will be paid to the Plan Beneficiary as a cash refund.

The Member's Pension Partner may waive the right to the above death benefit in the form and manner required under the Applicable Legislation. Subsequently, the Member's Pension Partner may revoke the waiver at any time before the Member's death.

Notwithstanding the above, if the Plan Beneficiary is the Member's Pension Partner the amount of the cash refund, except the value of any Member's voluntary contributions, must be:

- transferred to an approved Locked-in Retirement Account;
- transferred to a Prescribed Retirement Income Arrangement, provided the Member's Pension Partner is at least age 50;
- used to purchase an immediate or deferred life annuity which must commence no later than December 31 of the calendar year the Pension Partner attains age 71, or at such other time or date as required under the Income Tax Act. If the age of the Member's Pension Partner is greater than this maximum, payments must begin within one year after the Member's death; or
- transferred to another registered pension plan as permitted by the Applicable Legislation.

When an amount becomes payable to a Plan Beneficiary who qualifies as a spouse or common-law partner under the Income Tax Act but does not qualify as a Pension Partner under the Plan, the amount of the cash refund may be:

- transferred to a registered retirement savings plan;
- transferred to a registered retirement income fund;
- used to purchase an immediate or deferred life annuity which must commence no later than December 31 of the calendar year the Pension Partner attains age 71 or at such other time or date as required under the Income Tax Act. If the age of the Member's Pension Partner is greater than this maximum, payments must begin within one year after the Member's death; or
- transferred to another registered pension plan as permitted by the Applicable Legislation.

If the Pension Partner dies after the Member and before receiving the amount payable, the estate of the Pension Partner will receive the amount payable as a cash refund.

Within 60 days following receipt of notice of a Member's death, the Administrator will give the Plan Beneficiary a statement of options available as required by the Act. The option the Plan Beneficiary elects will be processed within 60 days after receipt of the election and any other information that is required to process the election. If the Plan Beneficiary does not make an election within 90 days after the date the statement of options is received, the Administrator may, to the extent an option is permitted under the Applicable Legislation, proceed with the purchase of a retirement annuity or any other option that is permitted and as communicated to the Plan Beneficiary.

(b) Death benefit after retirement

If a Member dies after retirement annuity payments commence, the death benefit, if any, will depend on the form of retirement benefit selected by the Member.



9. Termination of Membership

If a Member ceases employment with a participating employer, membership in the Plan does not automatically terminate if the Member returns to employment with another employer participating in the Plan within a period not exceeding one year. However, at the option of the Member, the Member may elect to terminate membership in the Plan when employment ceases with a participating employer.

For greater clarity and for the purpose of determining entitlement to a deferred retirement annuity, a Member who terminates employment will be deemed not to have terminated membership in the Plan if, before the end of the one-year period, the Member becomes employment by another employer participating in the Plan and contributions are required to be made on behalf of the Member unless the Member elects to terminate membership in the Plan.

If a Member terminates employment, the Member will be entitled to receive a deferred retirement annuity with payments commencing on the Member's normal retirement date provided by the value of the Member's account.

Instead of receiving a deferred retirement annuity, the Member may elect to transfer the benefit to one of the following, as permitted by the Applicable Legislation:

- an approved Locked-in Retirement Account;
- a Prescribed Retirement Income Arrangement; provided the Member is at least age 50,
- another registered pension plan;
- an insurer to purchase an immediate or deferred life annuity.

Any deferred retirement annuity transferred under this section remains subject to the rights of the Member's Pension Partner.

The Member retains the right to elect an early or postponed retirement date and an optional form of retirement annuity as provided in the Plan.

The Member retains the right to receive the value of any voluntary contributions as a cash refund or to transfer the value of those contributions to a registered retirement savings plan or such other vehicle as permitted under the Applicable Legislation.

Within 30 days after receipt of notice of termination of membership, the Administrator will give the Member a statement of the options available as required by the Act. The option the Member elects will be processed within 30 days after receipt of the election and any other information that is required to process the election. If the Member does not advise the Administrator of the election chosen within 90 days after receipt of the statement of options, the Administrator may, to the extent permitted under the Applicable Legislation, elect to purchase a deferred retirement annuity on behalf of the Member, transfer the Member's benefit to a Locked-in Retirement Account in the Member's name or may proceed with any other permissible option as communicated to the Member.

10. Termination of the Plan

If the Plan is terminated, the Employer must pay all contributions due under the Plan to the date of the termination. Any outstanding costs of administering the Plan, including the costs of termination and windup, will be paid by Members from the assets of the pension fund, unless paid by Nilex Inc. No funds may be released from the Plan until permitted by the Applicable Legislation.

On termination of the Plan, the Member is entitled to receive the value of the Member's account as permitted under the Applicable Legislation. The Member will be deemed to have elected to terminate membership on the date the Plan terminated. If any assets remain in the Plan after payment of all liabilities under the Plan, such assets will be refunded to each employer participating in the Plan as permitted by the Applicable Legislation and subject to the consent of the Superintendent of Pensions. At the discretion of each employer participating in the Plan, all or a portion of such assets may be allocated to active Members on an equitable basis.

If a participating employer withdraws from the Plan, the Plan will be considered to have terminated but only with respect to the Members affected by the termination (unless the affected members enroll in another pension plan as a result of the withdrawal).

After termination of the Plan each affected Member will be given a statement of the options available as required by the Act. The payment of benefits will be completed in accordance with the Act. If the Member does not advise the Administrator of an election within 90 days after receipt of the statement of options, the Administrator may, to the extent permitted under the Applicable Legislation, elect to purchase a deferred retirement annuity on behalf of the Member, transfer the Member's benefit to a Locked-in Retirement Account in the Member's name or proceed with any other permissible option as communicated to the Member. No funds may be released from the Plan until permitted by the Applicable Legislation.



11. Temporary Absence from Employment

Subject to the following paragraphs, if a Member is unable to work because of disability, leave of absence or temporary layoff, all contributions will cease during such periods. No benefits are payable until the Member terminates membership, retires, dies or until the Plan terminates.

If a Member becomes totally disabled as certified by a medical doctor licensed to practice in a province or the place where the Member resides and the disability qualifies as a period of disability under the Income Tax Act, the Member may continue to make voluntary contributions to the Plan.

If contributions are made to the Plan as described above, such contributions will respect the conditions applicable to a prescribed amount of compensation under the Income Tax Act.



12. General Provisions

(a) Proof of age and survival

Before any retirement annuity payments begin, the Member must provide satisfactory proof of age and the age of any other person on whose life the annuity depends. If an age has been misstated, the retirement annuity payments will be adjusted accordingly.

After retirement annuity payments begin, the Member may be required to provide satisfactory proof of survival and the survival of any other person on whose life the annuity depends. If such proof is not provided, the person will be considered to have died.

(b) Purchase of retirement annuity

If a retirement annuity is purchased by or on behalf of a Member, the sex of the Member, former Member or Plan Beneficiary will not be considered in determining the amount of the retirement annuity. The annuity must be purchased from a person who is licensed or authorized to conduct annuity business in Canada and must conform with the requirements of the Applicable Legislation. The annuity will commence no later than the date required under the Income Tax Act.

(c) Unlocking of small benefits

On termination of membership, retirement, death or termination of the Plan, a Locked-in benefit may be received as a cash refund if the benefit is less than the amount prescribed by the Act. Instead of receiving a cash refund, the benefit may be transferred to a registered retirement savings plan.

If the Member or Pension Partner does not make an election in respect of a small benefit amount within 90 days of receiving the statement of options on termination of membership, retirement, death or termination of the Plan, the Administrator may proceed with payment in the form of a cash refund in accordance with the statement of options and as permitted under the Applicable Legislation.

If a deferred Member or deferred Pension Partner requests that a Locked-in benefit be subsequently recalculated and the value of the benefit is less than the amount prescribed by the Act at the time of recalculation, the benefit may, at the option of the deferred Member or deferred Pension Partner, be paid as a cash refund or be transferred to a registered retirement savings plan.



- (d) **Unlocking for non-residents**
 Subject to the rights of the Member's Pension Partner, if a Member's membership in the Plan is terminated and the Member has been declared a non-resident of Canada for purposes of the Income Tax Act, a Locked-in benefit may be paid in the form of a cash refund as permitted under the Applicable Legislation. Similarly, on the death of the Member, a Locked-in benefit payable to the Member's Pension Partner may be paid in the form of a cash refund if the Pension Partner has been declared a non-resident.
- (e) **Unlocking of up to 50 per cent of a locked-in benefit**
 A person who is at least age 50, is withdrawing a Locked-in benefit from the Plan as a result of termination of membership, retirement, death, marriage breakdown or termination of the Plan and is transferring the benefit to a Prescribed Retirement Income Arrangement or a Life Income Type Benefits Account of another pension plan may elect to receive a cash refund of an amount up to 50 per cent of the Locked-in benefit, subject to the rights of the Member's Pension Partner. Instead of receiving a cash refund, the benefit may be transferred to a registered retirement savings plan or registered retirement income fund.
- (f) **Forfeited amounts**
 Any Forfeited Amount will be credited to the Employer to pay future Employer's contributions. Alternatively, the Employer may direct that such Forfeited Amounts be allocated to Members on an equitable basis or be used to pay administrative costs due under the Plan. Such amounts must be utilized no later than December 31 following the year in which the Forfeited Amount arose. Any amounts remaining will be returned to the Employer, subject to the requirements of the Applicable Legislation.
- (g) **Benefits not assignable**
 Rights and benefits under the Plan are not capable of being assigned, charged, anticipated, given as security or surrendered.
- However, upon marriage breakdown, benefits payable under the Plan may be divided in accordance with the provisions of a court order or agreement made under the Matrimonial Property Act (Alberta) or a similar order enforceable in Alberta or another jurisdiction and in accordance with the Applicable Legislation. The order or agreement is not effective to the extent it purports to entitle the Pension Partner to a share that exceeds the maximum permitted under the Act.
- (h) **Reduced life expectancy**
 If a medical doctor licensed to practice in a province or the place where the Member resides certifies that a Member's life expectancy is likely to be shortened considerably due to disability or otherwise as provided under the Act, the Member may be eligible to withdraw the value of the Member's account, subject to any rights of the Member's Pension Partner as provided under the Act.



- (I) **Payment of benefits**
Any payment under the Plan will, to the extent of the payment, constitute a full and final settlement of the rights of the Member, the Member's Pension Partner, former Pension Partner, or Plan Beneficiary, as applicable, against the Plan, the Administrator, the Employer, any agents of the Administrator and Employer, and the financial institution or other entity acting as a funding agent for the Plan.
- (J) **Applicable legislation**
This Plan is subject to all Applicable Legislation, which will prevail over any inconsistent or conflicting provisions contained in this Plan.



Appendix - British Columbia Employees

Notwithstanding the provisions in Sections 1 to 12 of the Plan, Members who are employed in British Columbia are subject to the provisions of the *British Columbia Pension Benefits Standards Act* and regulations (the Act), as amended, and the provisions of this appendix. This appendix highlights the major revisions to the Plan for Members employed in British Columbia.

The following provisions are applicable to Members employed in British Columbia and override the equivalent Plan provisions.

1. Interpretation

The following definitions apply to Members employed in British Columbia:

“Connected Person” means an individual who:

- owns – directly or indirectly – 10 per cent or more of any class of capital stock issued by the Employer or any other corporation related to the Employer;
- does not deal at arm's length, as defined in the Income Tax Act, with the Employer; or
- is a specified shareholder of the Employer according to the Income Tax Act.

“Locked-in Retirement Account” means a registered retirement savings plan that meets the requirements of the Applicable Legislation.

“Plan Beneficiary” means the Spouse of a Member or, if the Member has no Spouse or the Spouse has waived the right to the death benefit, the Member's designated beneficiary or the Member's estate.

“Prescribed Retirement Income Arrangement” means

- a life income fund that meets the requirements of the Act and is registered under the Income Tax Act; or
- any other retirement income fund or arrangement that is prescribed by the Act to be a retirement income arrangement and registered under the Income Tax Act.

“Spouse” means, in relation to another person, a person who at the relevant time

- was married to that other person, and has not been living separate and apart from that person for a continuous period longer than two years immediately preceding the relevant time; or
- has been living with each other in a marriage-like relationship for a period of at least two years immediately preceding the relevant time.



3. Membership

The following provisions apply to Members employed in British Columbia:

The waiting period for eligible Part-time Employees to join the Plan is replaced with the following:

After the completion of two years of Continuous employment with an employer participating in the Plan, provided the Employee has earned 35 per cent of the Year's Maximum Pensionable Earnings in each of two consecutive calendar years.

6. Retirement

Section 6 is replaced with the following:

A Member may elect to retire on the Member's Normal Retirement Date or at an earlier or postponed retirement date.

(d) Normal Retirement Date

The Normal Retirement Date is the first day of the month on or after the Member's 65th birthday. The value of the Member's account will be used to provide a retirement benefit.

(e) Early retirement date

A Member may elect an early retirement date up to 10 years before the Normal Retirement Date. If the Member elects an early retirement date, the value of the Member's account will be used to provide a retirement benefit.

(f) Postponed retirement date

If a Member remains in the employment of the Employer after the Normal Retirement Date, the Member must elect to receive a retirement benefit or to postpone the retirement date. If a Member elects to postpone the retirement date, or the Member does not make an election under this subsection, contributions to the Plan will continue on the same basis as before the Normal Retirement Date. The value of the Member's account will be used to provide a retirement benefit which must begin no later than December 31 of the calendar year of the Member's 71st birthday, or at such other time or date as required under the Income Tax Act.

The Member retains the right to receive the value of any voluntary contributions as a cash refund or to transfer the value of those contributions to a registered retirement savings plan or such other vehicle as permitted under the Applicable Legislation.

7. Retirement Benefits

Section 7 is replaced with the following:

(a) Normal form of retirement annuity

If a Member elects a retirement annuity as the Member's retirement benefit and has a Spouse when the retirement annuity begins, the normal form of retirement annuity is a joint and survivor annuity. This annuity provides equal monthly payments to the Member for as long as the Member is alive. Following the Member's death, the retirement annuity payments will be reduced by 40 per cent and will be paid to the Member's Spouse for as long as the Spouse is alive. The Member's Spouse may waive this form of retirement annuity by completing the form required by the Applicable Legislation. The form must be signed in the manner required under the Applicable Legislation not more than 90 days before the Member's actual retirement date and received by the Administrator before the Member's actual retirement date.

If a Member elects a retirement annuity as the Member's retirement benefit and does not have a Spouse when the retirement annuity begins, the normal form of retirement annuity is a single life annuity. This annuity provides equal monthly payments for the Member's lifetime with payments guaranteed for 120 months.

If a Member elects a retirement annuity, the Member will receive the normal form of retirement annuity unless an optional form of retirement annuity is chosen.

(b) Optional forms of retirement annuity

Subject to the rights of the Member's Spouse under the Act and the limitations imposed by the Income Tax Act, a Member may elect, before the Member's actual retirement date, to receive any one of the following optional forms of retirement annuity:

- **Single life annuity**

A life annuity payable for life with payments guaranteed for a specified period, not to exceed 15 years.

- **Joint and survivor life annuity**

A life annuity payable for life and, upon the death of the Member, for the lifetime of the Member's Spouse. Either all or a percentage of the original annuity amount may continue to the Member's Spouse. Payments may be guaranteed for a specified period, not to exceed 15 years and as permitted under the Income Tax Act.

- **Government Integrated annuity**
An increased retirement annuity payable until age 65, at which time the annuity payments will be reduced to provide an approximately level income from the Plan and government sources.
 - **Indexed life annuity**
A retirement annuity increased each year by a specified per cent of the increase in the Consumer Price Index, subject to the maximum permitted under the Income Tax Act.
 - **Any other form of retirement annuity permitted under the Income Tax Act.**
- (c) **Transfer at retirement**
Instead of receiving a retirement annuity, a Member may transfer the benefit to another registered pension plan, a Locked-in Retirement Account or, provided the Member is at least age 50, to a Prescribed Retirement Income Arrangement subject to any rights of the Member's Spouse as provided in the Act.

Within 60 days of receiving notification of a Member's retirement, the Administrator will give the Member a statement of options, indicating the options available to the Member as required by the Act. A Member's retirement benefit will be processed within 30 days after receipt of the Member's election and any other information that is required to process the election. If the Member does not make an election within 90 days after receipt of the statement of options, the Administrator may proceed with the purchase of a retirement annuity on behalf of the Member or any other option permitted under the Applicable Legislation and as communicated to the Member.

8. Death Benefit

Section 8 is replaced with the following:

- (a) **Death benefit before retirement**
If a Member dies before retirement, the value of the Member's account will be paid to the Plan Beneficiary as a cash refund.

The Member's Spouse may waive the right to the above death benefit in the form and manner required under the Applicable Legislation. Subsequently, the Member's Spouse may revoke the waiver at any time before the Member's death.



As permitted by the Applicable Legislation, when an amount becomes payable to the Member's Spouse, the amount of the cash refund may be:

- transferred to a registered retirement savings plan;
- transferred to a registered retirement income fund;
- used to purchase an immediate or deferred life annuity that must commence no later than December 31 of the calendar year the Spouse attains age 71 or at such other time or date as required under the Income Tax Act. If the age of the Member's Spouse is greater than this maximum, payments must begin within one year after the Member's death; or
- transferred to another registered pension plan.

When an amount becomes payable to a Plan Beneficiary who qualifies as a spouse or common-law partner under the Income Tax Act but does not qualify as a Spouse under the Plan, the above options are available to the Plan Beneficiary, as permitted by the Applicable Legislation.

Notwithstanding the above, if the Plan Beneficiary is the Member's Spouse, the amount of the cash refund, except the value of any Member's voluntary contributions, must be:

- transferred to a Locked-in Retirement Account;
 - transferred to a Prescribed Retirement Income Arrangement provided the Member's Spouse is at least age 50;
 - used to purchase an immediate or deferred life annuity that will not commence payments before the Spouse's age 50 and commence no later than December 31 of the calendar year the Spouse attains age 71 or at such other time or date as required under the Income Tax Act. If the age of the Member's Spouse is greater than this maximum, payments must begin within one year after the Member's death; or
 - transferred to another registered pension plan
- as permitted by the Applicable Legislation.

If the Spouse dies after the Member and before receiving the amount payable, the estate of the Spouse will receive the amount payable as a cash refund.



Within 60 days following receipt of notice of a Member's death, the Administrator will give the Plan Beneficiary a statement of options available as required by the Act. The option the Plan Beneficiary elects will be processed within 60 days after receipt of the election and any other information that is required to process the election. If the Plan Beneficiary does not make an election within 90 days after the date the statement of options is received, the Administrator may, to the extent an option is permitted under the Applicable Legislation, proceed with the purchase of a retirement annuity or any other option that is permitted and as communicated to the Plan Beneficiary.

(b) Death benefit after retirement

If a Member dies after retirement annuity payments commence, the death benefit, if any, will depend on the form of retirement benefit selected by the Member.

9. Termination of Membership

Section 9 is replaced with the following:

If a Member ceases employment with a participating employer, membership in the Plan does not automatically terminate if the Member returns to employment with another employer participating in the Plan within a period not exceeding one year. However, at the option of the Member, the Member may elect to terminate membership in the Plan when employment ceases with a participating employer.

For greater clarity and for the purpose of determining entitlement to a deferred retirement annuity, a Member who terminates employment will be deemed not to have terminated membership in the Plan if, before the end of the one-year period, the Member becomes employment by another employer participating in the Plan and contributions are required to be made on behalf of the Member unless the Member elects to terminate membership in the Plan.

Instead of receiving a deferred retirement annuity, the Member may elect to transfer the benefit to one of the following, as permitted by the Applicable Legislation:

- an approved Locked-in Retirement Account;
- a Prescribed Retirement Income Arrangement; provided the Member is at least age 50,
- another registered pension plan;
- an insurer to purchase an immediate or deferred life annuity that will not commence payments before the Member's age 50.

Any deferred retirement annuity transferred under this section remains subject to the rights of the Member's Spouse.



The Member retains the right to elect an early or postponed retirement date and an optional form of retirement annuity as provided in the Plan. Notwithstanding the above, the Member retains the right to receive the value of any voluntary contributions as a cash refund or to transfer the value of those contributions to a registered retirement savings plan or such other vehicle as permitted under the Applicable Legislation.

Within 60 days after receipt of notice of termination of membership, the Administrator will give the Member a statement of the options available as required by the Act. The option the Member elects will be processed within 30 days after receipt of the election and any other information that is required to process the election. If the Member does not advise the Administrator of the election chosen within 90 days after the termination of membership statement is received, the Administrator may, to the extent permitted under the Applicable Legislation, elect to purchase a deferred retirement annuity on behalf of the Member, transfer the Member's benefit to a Locked-in Retirement Account in the Member's name or may proceed with any other permissible option as communicated to the Member.

11. Temporary Absence from Employment

Section 11 is replaced with the following:

Subject to the following paragraphs, if a Member is unable to work because of disability, leave of absence or temporary layoff, all contributions will cease during such periods. No benefits are payable until the Member terminates membership, retires, dies or until the Plan terminates.

However, if a Member is on a maternity or parental leave of absence, and the Member elects to continue to make contributions required under the Plan, then the Employer's contributions made on the Member's behalf will continue for the period required by the Applicable Legislation. If a Member is not required to contribute to the Plan, the Employer's contributions on the Member's behalf will automatically continue for the period required by the Applicable Legislation. The Member may continue to make voluntary contributions to the Plan.

The above periods of maternity and/or parental leave of absence qualify as periods of parenting under the Income Tax Act.

In addition, there may be other circumstances required under the applicable employment legislation where contributions will continue to be made to the Plan. Such continuance of contributions **will** be subject to the terms and conditions of the Applicable Legislation.



If a Member becomes totally disabled as certified by a medical practitioner licensed to practice in a province or the place where the Member resides and the disability qualifies as a period of disability under the Income Tax Act, the Member may continue to make voluntary contributions to the Plan.

NOTE: If the Member is a Connected Person, contributions may not continue to be made to the Plan unless the absence qualifies as a period of disability under the Income Tax Act.

If any contributions are made to the Plan as described above, such contributions will respect the conditions applicable to a prescribed amount of compensation under the Income Tax Act.

12. General Provisions

(c) Unlocking of small benefits

This provision is replaced with the following:

On termination of membership, retirement, death or termination of the Plan, a Locked-in benefit may be received as a cash refund if the benefit is less than the amount prescribed by the Act. Instead of receiving a cash refund, the benefit may be transferred to a registered retirement savings plan.

If the Member or Spouse does not make an election in respect of a small benefit amount within 90 days of receiving the statement of options on termination of employment, retirement, death or termination of the Plan, the Administrator may proceed with payment in the form of a cash refund in accordance with the statement of options and as permitted under the Applicable Legislation.

If a deferred Member or deferred Spouse requests that a Locked-in benefit be subsequently recalculated and the value of the benefit is less than the amount prescribed by the Act at the time of recalculation, the benefit may, at the option of the deferred Member or deferred Spouse, be paid as a cash refund or be transferred to a registered retirement savings plan.

(d) Unlocking for non-residents

This provision is replaced with the following:

If a Member's membership in the Plan is terminated and the Member has been a non-resident of Canada for at least two years, a Locked-in benefit may be paid in the form of a cash refund as permitted under the Applicable Legislation.

(e) Unlocking of up to 50 per cent of a locked-in benefit

This provision does not apply to Members employed in British Columbia.

(g) Benefits not assignable

The second paragraph is replaced with the following:

However, upon the breakdown of the relationship between a Member and the Member's Spouse, benefits payable under the Plan may be assigned to the Member's Spouse pursuant to a court order or a written separation agreement as permitted under the Applicable Legislation.

(h) Reduced life expectancy

This provision is replaced with the following:

If a medical practitioner licensed to practice in a province or the place where the Member resides certifies that a Member has an illness or disability which is terminal or is likely to shorten the Member's life considerably or otherwise as provided under the Act, the Member may be eligible to withdraw all or a portion of the value of the Member's account, subject to any rights of the Member's Spouse as provided under the Act.



Appendix - Ontario Employees

Notwithstanding the provisions in Sections 1 to 12 of the Plan, Members who are employed in Ontario are subject to the provisions of the *Pension Benefits Act*, Revised Statutes of Ontario 1990, and regulations (the Act), as amended, and the provisions of this appendix. This appendix highlights the major revisions to the Plan for Members employed in Ontario.

The following provisions are applicable to Members employed in Ontario and override the equivalent Plan provisions.

1. Interpretation

The following definitions apply to Members employed in Ontario:

“Connected Person” means an individual who:

- owns – directly or indirectly – 10 per cent or more of any class of capital stock issued by the Employer or any other corporation related to the Employer;
- does not deal at arm’s length, as defined in the Income Tax Act, with the Employer; or
- is a specified shareholder of the Employer according to the Income Tax Act.

“Plan Beneficiary” means the Spouse of a Member or, if the Member has no Spouse or the Spouse has waived the right to the death benefit, the Member’s designated beneficiary or the Member’s estate.

“Prescribed Retirement Savings Arrangement” means

- a locked-in retirement account or a life income fund, that meets the requirements of the Act and is registered under the Income Tax Act; or
- any other retirement savings arrangement prescribed by the Act and registered under the Income Tax Act.

“Spouse” means the individual, who at the relevant time

- is married to the Member and is not living separate and apart from the Member; or
- if not married to the Member, has been living with the Member in a conjugal relationship:
 - continuously for a period of not less than three years; or
 - in a relationship of some permanence, if the individual and the Member are the natural or adoptive parents of a child, both defined in the *Family Law Act*, 1990 as amended.

3. Membership

The following provisions apply to Members employed in Ontario:

The waiting period for eligible Part-time Employees to join the Plan is replaced with the following:

After the completion of two years of Continuous employment with an employer participating in the Plan, provided the Employee has earned 35 per cent of the Year’s Maximum Pensionable Earnings or has worked 700 hours in each of the two consecutive calendar years immediately before joining the Plan.

7. Retirement Benefits

Section 7 is replaced with the following:

(a) Normal form of retirement annuity

If a Member has a Spouse when the retirement annuity begins, the normal form of retirement annuity is a joint and survivor annuity. This annuity provides equal monthly payments to the Member for as long as the Member is alive. Following the Member’s death, the retirement annuity payments will be reduced by 40 per cent and will be paid to the Member’s Spouse for as long as the Spouse is alive. The Member and the Member’s Spouse may waive this form of retirement annuity by completing the form required by the Applicable Legislation. The form must be received by the Administrator within the 12-month period preceding the Member’s actual retirement date. Subsequently, the Member and the Member’s Spouse may revoke the waiver at any time before the Member’s retirement annuity commences.

If a Member does not have a Spouse when the retirement annuity begins, the normal form of retirement annuity is a single life annuity. This annuity provides equal monthly payments for the Member’s lifetime with payments guaranteed for 120 months.

A Member will receive the normal form of retirement annuity unless an optional form of retirement annuity is chosen.

(b) Optional forms of retirement annuity

Subject to the rights of the Member's Spouse under the Act and the limitations imposed by the Income Tax Act, a Member may elect, before the Member's actual retirement date, to receive any one of the following optional forms of retirement annuity:

- **Single life annuity**
A life annuity payable for life with payments guaranteed for a specified period, not to exceed 15 years.
- **Joint and survivor life annuity**
A life annuity payable for life and, upon the death of the Member, for the lifetime of the Member's Spouse. Either all or a percentage of the original annuity amount may continue to the Member's Spouse. Payments may be guaranteed for a specified period, not to exceed 15 years and as permitted under the Income Tax Act.
- **Government Integrated annuity**
An increased retirement annuity payable until age 65, at which time the annuity payments will be reduced to provide an approximately level income from the Plan and government sources.
- **Indexed life annuity**
A retirement annuity increased each year by a specified per cent of the increase in the Consumer Price Index, subject to the maximum permitted under the Income Tax Act.
- Any other form of retirement annuity permitted under the Income Tax Act.

(c) Transfer at retirement

Instead of receiving an immediate life annuity at retirement, a Member may transfer the benefit to a Prescribed Retirement Savings Arrangement subject to any rights of the Member's Spouse as provided in the Act.

A Member's retirement annuity payments will begin within 30 days after receipt of the Member's election and any other information that is required to process the election.

8. Death Benefit

Section 8 is replaced with the following:

(a) Death benefit before retirement

If a Member dies before any retirement annuity payments are made, the value of the Member's account will be paid to the Plan Beneficiary as a cash refund.

The Member's Spouse may waive the right to the above death benefit in the form and manner required under the Applicable Legislation. Subsequently, the Member's Spouse may revoke the waiver at any time before the Member's death.

As permitted by the Applicable Legislation, when an amount becomes payable to the Member's Spouse, or to the Member's former Spouse, the amount of the cash refund may be:

- transferred to a registered retirement savings plan;
- transferred to a registered retirement income fund;
- used to purchase an immediate or deferred life annuity which must commence no later than December 31 of the calendar year the Spouse or the former Spouse attains age 71 or at such other time or date as required under the Income Tax Act. If the age of the Member's Spouse, or the age of the former Spouse, is greater than this maximum, payments must begin within one year after the Member's death; or
- transferred to another registered pension plan.

When an amount becomes payable to a Plan Beneficiary who qualifies as a spouse or common-law partner under the Income Tax Act but does not qualify as a Spouse or former Spouse under the Plan, the above options are available to the Plan Beneficiary, as permitted by the Applicable Legislation.

If the Spouse dies after the Member and before receiving the amount payable, the estate of the Spouse will receive the amount payable as a cash refund.

Within 30 days following receipt of notice of a Member's death, the Administrator will give the Plan Beneficiary a statement of options available as required by the Act. The option the Plan Beneficiary elects will be processed within 60 days after receipt of the election and any other information that is required to process the election.

(b) Death benefit after retirement

If a Member dies after retirement annuity payments commence, the death benefit, if any, will depend on the form of retirement benefit selected by the Member.



9. Termination of Employment

Section 9 is replaced with the following:

If a Member ceases employment with a participating employer, membership in the Plan does not automatically terminate if the Member returns to employment with another employer participating in the Plan within a period not exceeding one year. However, at the option of the Member, the Member may elect to terminate membership in the Plan when employment ceases with a participating employer.

For greater clarity and for the purpose of determining entitlement to a deferred retirement annuity, a Member who terminates employment will be deemed not to have terminated membership in the Plan if, before the end of the one-year period, the Member becomes employment by another employer participating in the Plan and contributions are required to be made on behalf of the Member unless the Member elects to terminate membership in the Plan.

If a Member terminates membership, the Member will be entitled to receive a deferred retirement annuity with payments commencing on the Member's normal retirement date provided by the value of the Member's account.

Instead of receiving a deferred retirement annuity, the Member may elect to transfer that benefit to one of the following, as permitted by the Applicable Legislation:

- a Prescribed Retirement Savings Arrangement;
- another registered pension plan;
- an insurer to purchase an immediate or deferred life annuity.

Any deferred retirement annuity transferred under this section remains subject to the rights of the Member's Spouse.

The Member retains the right to receive the value of any voluntary contributions as a cash refund.

If a Member is entitled to receive a deferred retirement annuity, the Member retains the right to elect an early or postponed retirement date and an optional form of retirement annuity as provided in the Plan.

Within 30 days after receipt of notice of termination of membership, the Administrator will give the Member a statement of the options available as required by the Act. The option the Member elects will be processed within 30 days after receipt of the election and any other information that is required to process the election. If the Member does not advise the Administrator of the election chosen within 90 days after the date the termination of membership statement is received, the Administrator may elect to purchase a deferred retirement annuity on behalf of the Member.



11. Temporary Absence from Employment

Section 11 is replaced with the following:

Subject to the following paragraphs, if a Member is unable to work because of disability, leave of absence or temporary layoff, all contributions will cease during such periods. No benefits are payable until the Member terminates membership, retires, dies or until the Plan terminates.

However, if a Member is on a maternity or parental leave of absence or is absent from work as a result of work-related injury for which the Member receives worker's compensation benefits, and the Member elects to continue to make contributions required under the Plan, then the Employer's contributions made on the Member's behalf will continue for the period required by the Applicable Legislation. If a Member is not required to contribute to the Plan, the Employer's contributions on the Member's behalf will automatically continue for the period required by the Applicable Legislation. The Member may continue to make voluntary contributions to the Plan.

The above periods of maternity and/or parental leave of absence qualify as periods of parenting under the Income Tax Act.

In addition, there may be other circumstances required under the applicable employment legislation where contributions will continue to be made to the Plan. Such continuance of contributions will be subject to the terms and conditions of the Applicable Legislation.

If a Member becomes totally disabled as certified by a medical doctor licensed to practice in a province or the place where the Member resides and the disability qualifies as a period of disability under the Income Tax Act, the Member may continue to make voluntary contributions to the Plan.

NOTE: If the Member is a Connected Person, contributions may not continue to be made to the Plan unless the absence qualifies as a period of disability under the Income Tax Act.

If any contributions are made to the Plan as described above, such contributions will respect the conditions applicable to a prescribed amount of compensation under the Income Tax Act.

12. General Provisions

(c) Unlocking of small benefits

This provision is replaced with the following:

On termination of membership, retirement or termination of the Plan, a Locked-in benefit may be received as a cash refund if the benefit is less than the amount prescribed by the Act. Instead of receiving a cash refund, the benefit may be transferred to a registered retirement savings plan.

(d) Unlocking for non-residents

This provision does not apply to Members employed in Ontario.

(e) Unlocking of up to 50 per cent of a locked-in benefit

This provision does not apply to Members employed in Ontario.

(g) Benefits not assignable

The second paragraph is replaced with the following:

However, upon the breakdown of the relationship between a Member and the Member's Spouse, benefits payable under the Plan may be assigned to the Member's Spouse pursuant to a court order, family arbitration award or domestic contract as permitted under the Applicable Legislation.

(h) Reduced life expectancy

This provision is replaced with the following:

If a medical doctor licensed to practice in a province or the place where the Member resides certifies that a Member's life expectancy is likely to be shortened considerably due to disability as provided under the Act, the Member may be eligible to withdraw the value of the Member's account, subject to the rights of the Member's Spouse as provided under the Act.



Appendix - Saskatchewan Employees

Notwithstanding the provisions in Sections 1 to 12 of the Plan, Members who are employed in Saskatchewan are subject to the provisions of the *Saskatchewan Pension Benefits Act, 1992* and regulations (the Act), as amended, and the provisions of this appendix. This appendix highlights the major revisions to the Plan for Members employed in Saskatchewan.

The following provisions are applicable to Members employed in Saskatchewan and override the equivalent Plan provisions.

1. Interpretation

The following definitions apply to Members employed in Saskatchewan:

“Connected Person” means an individual who:

- owns – directly or indirectly – 10 per cent or more of any class of capital stock issued by the Employer or any other corporation related to the Employer;
- does not deal at arm’s length, as defined in the Income Tax Act, with the Employer; or
- is a specified shareholder of the Employer according to the Income Tax Act.

“Locked-in Retirement Account” means a retirement savings plan that meets the requirements of the Applicable Legislation.

“Plan Beneficiary” means

- the Member’s Spouse or, if the Member has no Spouse, the Member’s designated beneficiary; or
- if the Member has not designated a beneficiary, the Member’s estate.

“Prescribed Retirement Plan” means

- a registered retirement income fund (commonly referred to as a prescribed registered retirement income fund); or
- any other retirement plan registered under the Income Tax Act and prescribed by the Applicable Legislation for the purpose of accepting Locked-in pension funds.

“Spouse” means in relation to a Member

- the person who is married to the Member or former Member; or
- if the Member or former Member is not married, the person with whom the Member or former Member is cohabiting in a conjugal relationship at the relevant time and who has been cohabiting continuously with the Member or former Member for at least one year prior to the relevant time.

3. Membership

The following provisions apply to Members employed in Saskatchewan:

The waiting period for eligible Part-time Employees to join the Plan is replaced with the following:

After the completion of two years of Continuous employment with an employer participating in the Plan, provided the Employee has earned 35 per cent of the Year's Maximum Pensionable Earnings or has worked 700 hours in each of the two consecutive calendar years immediately before joining the Plan.

4. Contributions

The Suspension of contributions provision is replaced with the following:

Suspension of contributions

A Member may elect to discontinue making required contributions. If the Member does so, the Employer's contributions on the Member's behalf will cease as well. The Member may elect to resume making required contributions at any time. If the Member makes such an election, the Employer's contributions will resume as well. No benefits will be payable until the Member terminates membership, retires, dies or the Plan terminates. A Member who elects to suspend contributions will continue to be a Member for all purposes of the Plan. If all Members cease to contribute to the Plan, the Plan must be terminated.

7. Retirement Benefits

Section 7 is replaced with the following:

(a) Normal form of retirement annuity

If a Member has a Spouse when the retirement annuity begins, the normal form of retirement annuity is a joint and survivor annuity. This annuity provides equal monthly payments to the Member for as long as the Member is alive. Following the Member's death, the retirement annuity payments will be reduced by 40 per cent and will be paid to the Member's Spouse for as long as the Spouse is alive. The Member's Spouse may waive this form of retirement annuity by completing the form required by the Applicable Legislation. The form must be signed not more than 90 days preceding the Member's actual retirement date and received by the Administrator before the Member's actual retirement date.

If a Member does not have a Spouse when the retirement annuity begins, the normal form of retirement annuity is a single life annuity. This annuity provides equal monthly payments for the Member's lifetime with payments guaranteed for 120 months.

A Member will receive the normal form of retirement annuity unless an optional form of retirement annuity is chosen.

(b) Optional forms of retirement annuity

Subject to the rights of the Member's Spouse under the Act and the limitations imposed by the Income Tax Act, a Member may elect, before the Member's actual retirement date, to receive any one of the following optional forms of retirement annuity:

- **Single life annuity**
A life annuity payable for life with payments guaranteed for a specified period, not to exceed 15 years.
- **Joint and survivor life annuity**
A life annuity payable for life and, upon the death of the Member, for the lifetime of the Member's Spouse. Either all or a percentage of the original annuity amount may continue to the Member's Spouse. Payments may be guaranteed for a specified period, not to exceed 15 years and as permitted under the Income Tax Act.
- **Government integrated annuity**
An increased retirement annuity payable until age 65, at which time the annuity payments will be reduced to provide an approximately level income from the Plan and government sources.

- **Indexed life annuity**
A retirement annuity increased each year by a specified per cent of the increase in the Consumer Price Index, subject to the maximum permitted under the Income Tax Act.
- Any other form of retirement annuity permitted under the Income Tax Act.

- (c) **Transfer at retirement**
Instead of receiving an immediate life annuity at retirement, a Member may transfer the benefit to a Locked-in Retirement Account, or a Prescribed Retirement Plan provided the Member has reached the early retirement date under the Plan, subject to any rights of the Member's Spouse as provided in the Act.

A Member's retirement annuity payments will begin within 30 days after receipt of the Member's election and any other information that is required to process the election as required by the Act.

8. Death Benefit

Section 8 is replaced with the following:

- (a) **Death benefit before retirement**
If a Member dies before any retirement annuity payments are made, the value of the Member's account will be paid to the Plan Beneficiary as a cash refund.

The Member's Spouse may waive the right to the above death benefit in the form and manner required under the Applicable Legislation. Subsequently, the Member's Spouse may revoke the waiver at any time before the Member's death.

As permitted by the Applicable Legislation, any amount payable to the Member's Spouse, except the value of any Member's voluntary contributions, may be:

- transferred to a Locked-in Retirement Account;
- transferred to a Prescribed Retirement Plan;
- used to purchase an immediate or deferred life annuity which must commence no later than December 31 of the calendar year the Spouse attains age 71 or at such other time or date as required under the Income Tax Act. If the age of the Member's Spouse is greater than this maximum, payments must begin within one year after the Member's death; or
- transferred to another registered pension plan.



Alternatively, the amount payable to the Member's Spouse, including the value of any Member's voluntary contributions, may be:

- transferred to a registered retirement savings plan;
- transferred to a registered retirement income fund;
- used to purchase an immediate or deferred life annuity which must commence no later than December 31 of the calendar year the Spouse attains age 71 or at such other time or date as required under the Income Tax Act. If the age of the Member's Spouse is greater than this maximum, payments must begin within one year after the Member's death; or
- transferred to another registered pension plan.

If an amount becomes payable to a Plan Beneficiary who qualifies as a spouse or common-law partner under the Income Tax Act but does not qualify as a Spouse under the Plan, the above non-locked-in options are available to the Plan Beneficiary as permitted under the Applicable Legislation.

If the Spouse dies after the Member and before receiving the amount payable, the estate of the Spouse will receive the amount payable as a cash refund.

Within 30 days following receipt of notice of a Member's death, the Administrator will give the Plan Beneficiary a statement of options available as required by the Act. The option the Plan Beneficiary elects will be processed within 60 days after receipt of the election and any other information that is required to process the election.

(b) Death benefit after retirement

If a Member dies after retirement annuity payments commence, the death benefit, if any, will depend on the form of retirement benefit selected by the Member.

9. Termination of Employment

Section 9 is replaced with the following:

If a Member ceases employment with a participating employer, membership in the Plan does not automatically terminate if the Member returns to employment with another employer participating in the Plan within a period not exceeding one year. However, at the option of the Member, the Member may elect to terminate membership in the Plan when employment ceases with a participating employer.



For greater clarity and for the purpose of determining entitlement to a deferred retirement annuity, a Member who terminates employment will be deemed not to have terminated membership in the Plan if, before the end of the one-year period, the Member becomes employment by another employer participating in the Plan and contributions are required to be made on behalf of the Member unless the Member elects to terminate membership in the Plan.

- (a) **Before the completion of two years of continuous employment**
If a Member terminates membership before the completion of two years of Continuous employment, the Member will be entitled to receive a deferred retirement annuity with payments commencing on the Member's normal retirement date provided by the value of the Member's account.
- (b) **After the completion of two years of continuous employment**
If a Member terminates membership after the completion of two years of Continuous employment, the Member will be entitled to receive a deferred retirement annuity with payments commencing on the Member's normal retirement date provided by the value of the Member's account.
- (c) **Transfer rights**
If the Member is entitled to receive a cash refund upon termination of membership, the Member may elect to transfer that benefit to one of the following, as permitted by the Applicable Legislation:
- a registered retirement savings plan;
 - a registered retirement income fund;
 - another registered pension plan;
 - an insurer to purchase an immediate or deferred life annuity.

If the Member is entitled to receive a deferred retirement annuity upon termination of membership, the Member may elect to transfer that benefit to one of the following, as permitted by the Applicable Legislation:

- a Locked-in Retirement Account;
- a Prescribed Retirement Plan, provided the Member has reached the early retirement date under the Plan;
- another registered pension plan;
- an insurer to purchase an immediate or deferred life annuity.

Any deferred retirement annuity transferred under this section remains subject to the rights of the Member's Spouse.

The Member retains the right to receive the value of any voluntary contributions as a cash refund.

Notwithstanding the provisions above, the Employer may waive the vesting for a Member, in which case the Member will be entitled to the value of the Member's account on termination of membership. The benefit will be payable in the form(s) indicated under Section 9(a).



If a Member is entitled to receive a deferred retirement annuity, the Member retains the right to elect an early or postponed retirement date and an optional form of retirement annuity as provided in the Plan.

Within 30 days after receipt of notice of termination of membership, the Administrator will give the Member a statement of the options available as required by the Act. The option the Member elects will be processed within 30 days after receipt of the election and any other information that is required to process the election. If the Member does not advise the Administrator of the election chosen within 90 days after the date the termination of membership statement is received, the Administrator may elect to purchase a deferred retirement annuity on behalf of the Member.

11. Temporary Absence from Employment

Section 11 is replaced with the following:

Subject to the following paragraphs, if a Member is unable to work because of disability, leave of absence or temporary layoff, all contributions will cease during such periods. No benefits are payable until the Member terminates membership, retires, dies or until the Plan terminates.

However, if a Member is on a maternity or parental leave of absence, the Employer will give the Member the option of maintaining active participation in the Plan during the leave. If the Member so elects, contributions to the Plan will continue for the period required by the Applicable Legislation. The Member will be responsible to pay the Employer's contributions in addition to any Member's required contributions.

Similarly, there may be other circumstances required under the applicable employment legislation where the Member will be given the option of maintaining active participation in the Plan. If the Member so elects, the continuance of contributions will be subject to the terms and conditions of the Applicable Legislation.

The above periods of maternity and/or parental leave of absence qualify as periods of parenting under the Income Tax Act.

If a Member becomes totally disabled as certified by a medical doctor licensed to practice in a province or the place where the Member resides and the disability qualifies as a period of disability under the Income Tax Act, the Member may continue to make voluntary contributions to the Plan.

NOTE: If the Member is a Connected Person, contributions may not continue to be made to the Plan unless the absence qualifies as a period of disability under the Income Tax Act.

If any contributions are made to the Plan as described above, such contributions will respect the conditions applicable to a prescribed amount of compensation under the Income Tax Act.



12. General Provisions

(b) Purchase of retirement annuity

This provision is replaced with the following:

When a retirement annuity is purchased under the Plan, the sex of the Member, former Member or Plan Beneficiary will not be considered in determining the amount of the retirement annuity. The annuity must be purchased from a person who is licensed or authorized to conduct annuity business in Canada and must conform with the requirements of the Applicable Legislation. The annuity will commence no later than the date required under the Income Tax Act.

(c) Unlocking of small benefits

This provision is replaced with the following:

On termination of membership, retirement or termination of the Plan, a Locked-in benefit may be received as a cash refund if the benefit amount:

- is less than 20 per cent of the Year's Maximum Pensionable Earnings;
- purchases a retirement annuity in the normal form that is less than 1/12th of four per cent of the Year's Maximum Pensionable Earnings for Members who are eligible to retire; or
- is less than such other amount as prescribed by the Act.

Instead of receiving a cash refund, the benefit may be transferred to a registered retirement savings plan.

(d) Unlocking for non-residents

This provision is replaced with the following:

Subject to the requirements of the Applicable Legislation, if a person entitled to a benefit under the Plan has been a non-resident of Canada for at least two years, a Locked-in benefit may be paid in the form of a cash refund.

(e) Unlocking of up to 50 per cent of a locked-in benefit

This provision does not apply to Members employed in Saskatchewan.

(g) Benefits not assignable

This provision is replaced with the following:

Rights and benefits under the Plan are not capable of being assigned, charged, anticipated, given as security or surrendered.

However, upon the breakdown of the relationship between a Member and the Member's Spouse, benefits payable under the Plan may be assigned to the Member's Spouse pursuant to a court order or written agreement as permitted under the Applicable Legislation.

For the purpose of enforcement of a maintenance order, benefit entitlements of a former Member are subject to attachment or garnishment as provided under the Applicable Legislation.

(h) Reduced life expectancy

This provision is replaced with the following:

If a medical doctor licensed to practice in a province or the place where the Member resides certifies that a Member's life expectancy is likely to be shortened considerably due to disability or otherwise as provided under the Act, the Member may be eligible to withdraw the value of the Member's account, subject to the rights of the Member's Spouse as provided under the Act.



Nilex Variable Compensation Plan – 2018

The compensation structure provided to every Nilex employee is comprised of two elements; Salary or Hourly Wage and benefits. For most employees, there is a third element to their compensation structure and that is Variable Compensation.

The Nilex Variable Compensation Plan (VCP) has been created in such a way to achieve greater alignment with team members and the strategic direction of the Company. Our 2018 Incentive plan has a few very important characteristics that are quite different from previous Nilex Incentive plans;

- Independent of the employee's base salary or wage.
- Independent of the budget.
- Measured quarterly and paid quarterly, rather than measured monthly and paid quarterly.
- No cap on the earning potential.

Financial Measurement

A key financial objective of Nilex is the steady and dependable growth of our revenue base and more importantly, our profit. The Company measures its financial performance on a quarterly basis comparing the current quarter to the same quarter in the previous year. The Company also measures itself on how it is performing on a trailing year of financial performance. So, every quarter, management looks back four quarters and compares the performance to the same time span of the previous year. This measure is an accurate reflection of the progress the company is making as it accounts for the seasonality of our business. Its no different that comparing year on year at the end of a year, its just that the comparison is done at the end of each quarter.

Plan Mechanics

The Nilex Variable Compensation Plan (VCP) rewards participants for delivering growth in either Gross Margin or EBITDA. Both of these plans will be measured quarterly and paid quarterly. The performance measure is a trailing four quarter (T4Q) summation that creates a trailing year of results. If the T4Q summation of the plan year is greater than the T4Q summation of previous year, a portion of the difference goes into a pool to be paid out to participants. If the difference between current T4Q and prior year T4Q is negative, the pool receives no funds and no incentive is paid in that quarter. The pool is self-funding, the more the current year results beat the previous year T4Q results, the more money goes into the incentive pool. There is no cap on the size of the pool.

Pool Allocation

The percent of the Company's profits that are directed to the VCP pool for each business unit is determined by management as the plan is developed each year. That percentage will vary depending on the size of the business unit, the number of participants and the business unit's ability to exceed the previous year's performance.

Pool Assignment

There are two levels to the plan; Profit Measure and Business Unit. Participants are assigned to a Gross Margin or EBITDA plan based on their position's ability to affect either profit measure. Generally, sales and marketing staff and anyone in direct support of Sales and Marketing are on a Gross Margin plan and

management and support staff are on the EBITDA plan. Further, based on where participants exert the most influence, they are assigned to a business unit plan. For example, a Technical Sales Representative based in Surrey would be assigned to the Pacific Region's Gross Margin plan. A person working in the corporate finance department would be assigned to the Corporate EBITDA plan.

Point System

An individual's payout from their respective pool is determined by a point allocation system. Individuals are allotted a certain number of points reflective of their position and ability to influence results of their pool. An individual's points, relative to the number of overall points in their respective pool, determines their pro-rata share of the pool. For example, an employee is assigned 10 points for their position and the pool they participate in has a total of 100 points assigned, that employee is entitled to 10/100 or 10% of the pool each quarter.

Plan Administration

At the beginning of every Plan Year participating employees will receive a letter confirming their participation and the point level they have been assigned. Within the letter will be a table that details;

- The previous year's T4Q results for the business unit they are participating in.
- The T4Q values for the Plan year that management feels are achievable
- The total expected points for the business unit.
- The employee's point assignment.
- The potential payout if the business unit performs to management expectations.

As the year progresses actual values will be shared with the employees. As each quarter wraps up and the financials are deemed accurate by the executive team, employees will receive a personalized letter detailing how their business unit performed against the previous year and confirmation of their VCP payout. VCP incentive earned will be paid by the end of the first month following the end of the quarter. (e.g. Q1 incentive will be paid before the end of April.)

Plan Rules

1. Must be in a position deemed eligible for participation in the Nilex Variable Compensation Plan (VCP).
2. Must have full time or permanent part time status.
3. Permanent part time employee participation will be pro-rated to their work schedule.
4. Participation for eligible employees begins after completion of their 3 month probationary period or upon exception granted by the CEO.
5. Employees who undergo a position change within the plan year will have their plan migrated to the new position plan commencing the day they begin their new position and the quarter incentive will be pro-rated to match the start date.
6. Each VCP eligible employee will receive a letter detailing the specifics of their plan participation before the start of the next plan year.
7. Employees must be employed by Nilex on the day of distribution to receive payment. Employees who are terminated without cause will collect a prorated VCP incentive estimate for the time they were employed.
8. The Company cannot claw back an incentive once it has been paid.

9. Point levels for positions are assigned by the CEO in consultation with the executive team and Human Resources Manager.
10. The percentage of Gross Margin or EBITDA performance achievement assigned to the incentive pool is determined by the CEO in consultation with the executive team. This assignment will be done during the budgeting process and will be in place for the start of the incentive plan year. The CEO reserves the right to alter the pool percentage should business conditions deem it appropriate.
11. Quarterly incentive plan payouts are subject to approval by the Nilex Board of Directors.
12. An employee will only participate in one incentive pool at any given time.

Definitions

Gross Margin – Selling price less the cost of the product sold or service provided.

Product Sold includes Nilex's cost to purchase the product along with shipping, customs, duties and import taxes (landed cost). Employees in a position of direct Customer contact can influence Gross Margin on a product sold by negotiating a high sales price, selling the value of the product over a competitor's product to support Nilex pricing, selling high volumes of a product so Nilex has negotiating power with its suppliers to lower the landed cost.

Service Provided includes all labor and consumables, vehicle costs, equipment maintenance costs, accommodation, meals and any other costs directly related to providing the service on a specific project. Employees can influence the Gross Margin on Services Provided by providing the service in a time efficient and operationally excellent manner such that the service delivered and the product installed is done in the more cost-effective way while still providing the customer with excellent service and no installation errors or warranty issues.

EBITDA – Earnings Before Interest, Taxes, Depreciation and Amortization.

It is a measure of profit that accounts for all direct costs of running a business separate from the more intangible elements that are manipulated to manage the debt the company has, the various tax laws and obligations and declining value of the Company's assets over time (depreciation and amortization) that proper accounting practice dictate a company must keep track of. EBITDA represents a clean vision of a Company's ability to generate free cash from its business. All employees can influence the Company's EBITDA performance. If Sales gets a higher price for the goods sold, that extra Gross Margin flows directly to offset other costs the Company deals with. Some however, have a more direct effect on managing the actual costs of running the Company. Negotiating our insurance and benefits costs, minimizing expensive safety incidents, managing the day to day costs of running regional operations, managing and executing the efficiency of our purchasing processes and managing the Company's personnel and overall efficiency of Nilex's operations.



Trailing 4-Quarter Gross Margin Performance - Value per Point Calculation

One Year = Four Quarters

One Year = Four Quarters

Gross Margin Results	2016				2017				2018			
	Q1	Q2	Q3	Q4	Q1	Q2	Q3	Q4	Q1	Q2	Q3	Q4
Region A	199,000	513,000	305,000	110,000	130,000	241,000	454,000	253,000	140,000	330,000	400,000	325,000
Region B	467,000	784,000	933,000	577,000	368,000	907,000	1,148,000	596,000	515,000	920,000	1,300,000	619,000
Region C	493,000	1,748,000	2,757,000	1,739,000	1,098,000	2,222,000	3,805,000	1,252,000	1,500,000	2,400,000	3,256,000	2,530,000

Trailing 4-Quarter Totals	2017				2018			
	Q1	Q2	Q3	Q4	Q1	Q2	Q3	Q4
Region A	1,058,000	786,000	935,000	1,078,000	1,088,000	1,177,000	1,123,000	1,195,000
Region B	2,662,000	2,785,000	3,000,000	3,019,000	3,166,000	3,179,000	3,331,000	3,354,000
Region C	7,342,000	7,816,000	8,864,000	8,377,000	8,779,000	8,957,000	8,408,000	9,686,000

In this example for Region A, a point per value is calculated starting with adding the trailing 4 quarters back from Q1-2017.

$$513,000 + 305,000 + 110,000 + 130,000 = 1,058,000.$$

That is then compared to how Region A did in the same four quarters back from Q1-2018.

$$241,000 + 454,000 + 253,000 + 140,000 = 1,088,000$$

The 2018 value less the 2017 value is the amount of improvement over the same year long time period

$$1,088,000 - 1,058,000 = 30,000$$

10% of the 30,000 (\$3,000) goes into Region A's incentive pool for Q1-2018.

All of the employees individual points who participate in Region A's pool add up to 60. So, \$3,000/60 points = \$60/point. An employee with a 5 point share of the pool would receive \$60*5 points or \$300. In Region C where a big improvement in Q1-2018, was delivered, the employee with 5 points would earn 5*\$287 = \$1,435.

Trailing 4-Quarter Comparison (2017 less 2016)	2018			
	Q1	Q2	Q3	Q4
Region A	30,000	391,000	188,000	117,000
Region B	504,000	394,000	331,000	335,000
Region C	1,437,000	1,141,000	(456,000)	1,309,000

% of Gross Margin achievement to Pool	2018			
	Q1	Q2	Q3	Q4
Region A	10%	10%	10%	10%
Region B	5%	5%	5%	5%
Region C	5%	5%	5%	5%

Total Amount in Incentive Pool	2018			
	Q1	Q2	Q3	Q4
Region A	3,000	39,100	18,800	11,700
Region B	25,200	19,700	16,550	16,750
Region C	71,850	57,050	(22,800)	65,450

Total Points in Pool	2018			
	Q1	Q2	Q3	Q4
Region A	60	60	60	70
Region B	75	75	75	75
Region C	250	260	235	235

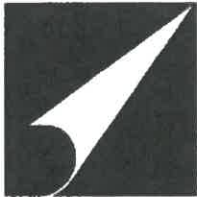
Value per Point	2018			
	Q1	Q2	Q3	Q4
Region A	\$ 50	\$ 652	\$ 313	\$ 167
Region B	\$ 336	\$ 263	\$ 221	\$ 223
Region C	\$ 287	\$ 219	\$ -	\$ 279



SCHEDULE 3.22**INTELLECTUAL PROPERTY RIGHTS***Patents*


Owner	Registration Number	Description
Nilex Inc.	Patent # (Canada): 2310483 Patent Serial # (USA): 6,610,781	Reinforced networked polymer/clay alloy composite (geosynthetic composite liner)
Nilex Inc.	Patent # (Canada): 2588196	Degradable Erosion Control Barrier
Nilex Inc. and Innotech Alberta Inc.	Patent # (USA): 6737472	Reinforced Networked Polymer / Clay Alloy Composite
Nilex Inc.	Patent # (USA): 8596930	Degradable Erosion Control Barrier

Trademarks

Owner	Registration Number	Trademark
Nilex Inc.	TMA833996 (Canada)	Mulchmax
Nilex Inc.	TMA757659 (Canada)	Square with slanted triangle in the middle 
Nilex Inc.	TMA758094 (Canada)	Unearthing Better Results
Nilex Inc.	TMA513690 (Canada)	NRS
Nilex Inc.	TMA521575 (Canada)	NILEX
Nilex Inc.	3879659 (USA)	NILEX



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Owner	Registration Number	Trademark
Nilex Inc.	TMA508923 (Canada)	NILEX & DESIGN  NILEX
Nilex Inc.	TMA491878 (Canada)	GEO-RIDGE
Nilex Inc.	3877087 (USA)	3877087 (USA)
Nilex Inc.	GEORIDGE	GEORIDGE
Nilex Inc.	3899606 (USA)	3899606 (USA)
Nilex Inc.	UNEARTHING BETTER RESULTS	UNEARTHING BETTER RESULTS



SCHEDULE 3.28**REAL PROPERTY AND LEASES**

Owned real property: none.

Leased real property:

Credit Party	Common Name and Address	Landlord/ Owner
Nilex Inc.	18877 96 Avenue, Surrey, BC, V4N 3P3	Kelfor Properties Inc.
Nilex Inc.	9222 40 ST SE, Calgary, AB, T2C 2P3	Adak Properties Canada Inc.
Nilex Inc	6810 8 ST NW AB	Adak Properties Canada ULC
Nilex Inc.	#4, 3003 Millar Ave, Saskatoon, SK, S7K 6G5	101003967 Saskatchewan Ltd.
Nilex Inc.	#2, 40 Audia Court, Vaughan, ON, L4K 3N4	Stellarbridge Management Inc.
Nilex USA Inc.	15253 East Fremont Drive, Centennial, CO, 80112	Adak Properties LLC
Nilex USA Inc.	425 N Neil Armstrong Road, Salt Lake City, UT, 84116	SATT Management LLC

SCHEDULE 5.15**Post-Closing Undertakings**

1. Within 90 days of the Effective Date or such longer period as the Lender may permit, the Credit Parties shall (a) open one or more Accounts with the Lender, (b) cause each Account maintained by them with HSBC Bank Canada on the Effective Date to be closed and migrated to the Accounts maintained with the Lender described in item 1(a), and (c) enter into Blocked Account Agreements in respect of the Accounts opened with the Lender described in item 1(a).
2. Within 30 days of the Effective Date or such longer period as the Lender may permit, the Credit Parties shall deliver to the Lender certificated Equity Securities representing 100% of the equity interests of Nilex USA Inc., together with stock transfer powers in respect of same executed in blank and in form and substance satisfactory to the Lender, acting reasonably.
3. Within 10 days of the Effective Date or such longer period as the Lender may permit, the Credit Parties shall use all commercially reasonable efforts to deliver to Lender (i) an issued endorsement to each liability insurance policy of such Credit Parties naming Lender as an additional insured thereunder, (ii) an issued endorsement to each property insurance policy of such Credit Parties naming Lender as the lenders' loss payee thereunder, and (iii) an issued endorsement to each insurance policy described in clause (i) and (ii) above (to the extent the foregoing is not already included in the applicable endorsement delivered pursuant to clause (i) or (ii) above that provides for at least thirty (30) days' prior written notice to Lender of any modification or cancellation of such policy (or ten (10) days' prior written notice in the case of the failure to pay any premiums thereunder), each in form and substance satisfactory to Lender in its sole discretion.



SCHEDULE 6.1**INDEBTEDNESS**

Indebtedness owed by the Credit Parties to PEF 2010 Nilex Investment Limited Partnership including, without limitation, under the promissory note dated April 30, 2013 for \$22,683,150 and the promissory note dated June 14, 2017 for \$2,000,000 (each as amended to the date hereof).



SCHEDULE 6.9**RESTRICTIVE AGREEMENTS**

Unanimous Shareholder Agreement dated April 30, 2013 among PEF 2010 Nilex Investment Limited Partnership, Gurchate Sekhon, Hugh Watt, Ian Wilson and Nilex Inc.



EXHIBIT A FORM OF BORROWING BASE REPORT

CANADIAN IMPERIAL BANK OF COMMERCE
Borrowing Base Certificate

Date _____

REPORT#: BBC-1
Date _____

The following is an accurate and complete calculation of the Borrowing Base in Canadian Dollars at the above date.

	ACCOUNTS RECEIVABLE	INVENTORY
	Date	Date
1 TOTAL COLLATERAL (line 8 of previous report)	\$ -	\$ -
2 GROSS SALES (per attached report).....	(+) \$ -	
3 CREDIT MEMOS (per attached report).....	(-) \$ -	
4 INVENTORY CHANGE (per attached report).....	(+/-) \$ -	
5 (+/-) MISC. ADJUSTMENTS (back-up attached)..	(+/-) \$ -	
6 NET COLLECTIONS (per attached report).....	(-) \$ -	
7 DISCOUNTS ALLOWED (per attached report)....	(-) \$ -	
8 A TOTAL COLLATERAL per this report.....	\$ -	\$ -
B US\$ Exchange Increase	\$ -	
C TOTAL ELIGIBLE COLLATERAL (CAD\$) per this report	\$ -	
9 A MONTHLY INELIGIBLES.....	\$ -	\$ -
B OTHERS.....	\$ -	\$ -
C TOTAL INELIGIBLES.....	(-) \$ -	\$ -
10 TOTAL ELIGIBLE COLLATERAL (line 8C minus 9C)	\$ -	\$ -
A Accounts Receivable at XX% of Line 10	XX% \$ -	
B Inventory at lesser of XX% of the lower of cost or market or XX% of NOLV (XX%)	XX% \$ -	\$ -
11 TOTAL A/R AND INVENTORY COLLATERAL VALUE (line 10A + 10B)	\$ -	
12 A RESERVES (per attached report)	\$ -	
B OTHER	\$ -	
13 TOTAL BORROWING BASE (line 11 - 12A - 12B) (maximum \$XXMM CDN) (lesser of Borrowing Base formula and Max. Revolving Line of Credit)	\$ -	
	CAD	USD
14 LOAN BALANCE (Previous Report)....	\$ -	\$ -
15 ADVANCES	(+) \$ -	\$ -
16 CHARGES (SEE BELOW)	(+/-) \$ -	\$ -
17 NET COLLECTIONS.....	(-) \$ -	\$ -
18 NON A/R COLLECTIONS.....	(-) \$ -	\$ -
19 A REVOLVER LOAN BALANCE per this report	\$ -	\$ -
B LETTERS OF CREDIT	\$ -	\$ -
20 A TOTAL LOAN AND LC EXPOSURE (19A + 19B)	\$ -	\$ -
B USD EXPOSURE STATED IN CAD	1,0000 \$ -	
21 TOTAL REVOLVER LOAN BALANCE (20A + 20B)	\$ -	\$ -
22 Past Due Accounts Payable	\$ -	
23 EXCESS AVAILABILITY (line 13 minus 21 minus 22).....	\$ -	
24 SUPPRESSED AVAILABILITY	\$ -	

The person who executes this Borrowing Base Report on behalf of the Borrower hereby certifies that he/she is an officer of the Borrower and in such capacity is authorized to execute this Borrowing Base Report on behalf of the Borrower pursuant to a credit agreement dated as of _____, 20__ (as amended, supplemented, restated or otherwise modified prior to the date hereof, the "Credit Agreement") between _____ (the "Borrower") and Canadian Imperial Bank of Commerce, in its capacity as Agent for the Lenders (the "Agent"). All capitalized terms not defined herein shall have the meaning ascribed to them in the Credit Agreement. The undersigned certifies, represents and warrants the correctness of this Borrowing Base Report.

AUTHORIZED SIGNATURE: _____

DATE: _____



EXHIBIT B

FORM OF NOTICE OF BORROWING

(Letter to be typed on Borrower's Letterhead, scan signed letter and email to CIBCABLCollateralAnalysts@cibc.com)

[DATE]

CANADIAN IMPERIAL BANK OF COMMERCE
199 Bay Street, 4th Floor
Toronto, ON M5L 1A2

Attention: Collateral Analyst

BORROWING NOTICE

Gentlemen:

We refer to the credit agreement dated as of June 1, 2018 (as amended, restated, supplemented, replaced or otherwise modified from time to time the "**Credit Agreement**"; capitalized terms used herein but not otherwise defined shall have the meanings set forth in the Credit Agreement), between Nilex Inc. and Nilex USA Inc., as borrowers (the "**Borrowers**" and each, a "**Borrower**") and Canadian Imperial Bank of Commerce, as lender (the "**Lender**").

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

[Name of Borrower] hereby requests an advance (the "**Advance**") be made under the Revolving Credit Facility as follows:

A. the Borrowing Amount :

Canadian Prime Loan (Cdn\$): _____

BA Borrowing _____ Contract Period _____

Base Rate Loan (US\$) _____

LIBO Rate Loan (US\$) _____ Contract Period _____

Letter of Credit/Credit Support*: _____

Additional Information: As per the attached Letter of Credit application

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

B. the Drawdown Date: [DATE] _____

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Notice requirements as stated in the Credit Agreement are:

- 10:00 AM (Toronto time) on the requested Drawdown Date for Canadian Prime Loans or Base Rate Loans,
- 11:00 AM (Toronto time) 2 days in advance of the requested Drawdown Date for BA Loans
- 11:00 AM (Toronto time) 3 days in advance of the requested Drawdown Date for LIBO Rate Loans

Proceeds of the Advance are to be directed as follows:

Bank Name: _____

Account Name: _____

Branch #: _____

Account Number: CAD# _____

USD# _____

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

Each of the Borrowers hereby confirms as follows:

- (a) Each of the representations and warranties made by such Borrower in or pursuant to the Credit Agreement and the other Loan Documents are true and correct on and as of the date hereof as if made on and as of the date hereof, except where such representation and warranty refers to a different date.
- (b) No Default or Event of Default has occurred and is continuing on the date hereof or will occur after the making of the Advance(s) requested hereunder.
- (c) Except as may have been otherwise agreed to from time to time by the Lender and the Borrowers in writing, after making the Advance(s) requested to be made by the Borrowers hereunder, the aggregate Exposure will not exceed the lesser of (i) the Commitment, and (ii) an amount equal to the Borrowing Base.

DATED this day of _____, 20__

Yours truly,

[Borrowers]

EXHIBIT C
FORM OF LANDLORD WAIVER

The undersigned is the owner of the premises known as _____ (the "Premises"), which Premises are leased by the undersigned to [NAME OF CREDIT PARTY], a [JURISDICTION] corporation, or one of its affiliates (collectively, the "Obligors") pursuant to a lease agreement dated as of _____ (as it may be amended, restated, supplemented, replaced or otherwise modified from time to time, the "Lease"). The undersigned understands that the Obligors will enter (or have entered) into a credit facility with Canadian Imperial Bank of Commerce (the "Lender") for certain lenders (the "Lender"), pursuant to which (a) the Lender may make loans to certain of the Obligors from time to time, and (b) the Obligors will grant (or have granted) to the Lender, a security interest on all of the Obligors' present and after-acquired accounts receivable, Inventory, general intangibles (including, without limitation, trademarks and intellectual property rights), capital assets, documents of title, collateral proceeds accounts and capital stock (collectively, the "Collateral").

1. The undersigned hereby waives and relinquishes in favour of the Lender any landlord's lien, all rights of levy or distraint, security interests, hypothecs, mortgages, charges, guarantees, assignments, encumbrances or other interest that the undersigned may now or hereafter have, whether by statute, contract (including the Lease) or by common law, in any of the Collateral (the "Landlord's Liens"), whether for rent or otherwise, and agrees that the Lender's security interests and liens in the Collateral, now existing or hereafter arising, shall have priority over and rank senior to any and all of the Landlord's Liens and hereby cedes priority and preference of rank of any hypothec, present or future, granted by the Obligors to the Landlord on the Collateral to the hypothecs of Agent on the Collateral, present or future, granted by the Obligor. The undersigned disclaims any interest in the Collateral and agrees not to assert any claim to the Collateral while the Obligors are indebted to the Lender.

2. In order to exercise any rights as a secured party holding a security interest in the Collateral, the Lender is expressly authorized and privileged at any time to enter the Premises and inspect, remove or repossess the Collateral and may advertise and conduct a public auction or private sale of the Collateral; provided, however, that the Lender will repair, or pay the reasonable cost to repair, any damage to the Premises resulting from such inspection, removal, repossession, auction or sale.

3. If the Lease is terminated by the undersigned whether by reason of any default by the Obligors or otherwise, or if the Obligors default under any of their agreements with the Lender, and in any such case the Lender desires to exercise its rights as a secured party holding a security interest in any of the Collateral, then the Lender may thereafter at its option occupy the Premises for up to 90 days and may keep thereon such property as it determines appropriate, provided that the Lender shall pay rent for its period of occupancy (pro-rated on a daily basis and computed on the basis of a 30-day month) at the rate provided in the Lease based on the rate in effect just prior to such termination or default, without incurring any other obligations of the Obligors.

4. The undersigned hereby consents to the acquisition by the Lender, at the Lender's option, of the absolute ownership of the Obligors' interest in the Lease and agrees that if the Lender, at its option, takes possession of the Obligors' leasehold estate in the Premises, the Lender will thereupon, be recognized as the tenant under the Lease. If the Lender shall become the tenant under the Lease, it may, on behalf of the Lender, sublease or assign the Lease for any lawful

purpose with the express written consent of the undersigned and the assignment of the Lease shall release and relieve the Lender of all obligations thereunder. The undersigned agrees to give notice within 5 days of any default by any Obligor of any of the provisions of the Lease, such notice to be provided to:

Canadian Imperial Bank of Commerce
199 Bay Street, 4th Floor
Toronto, ON M5L 1A2
Attention: Senior Director, Portfolio Management, Asset Based Lending Group

5. All of the Lender’s rights and privileges hereunder shall inure to the benefit of its successors and assigns and shall bind the undersigned’s successors or assigns.

6. This Agreement shall be governed by and construed in accordance with the laws of the Province of Alberta and the federal laws of Canada applicable therein.

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

IN WITNESS WHEREOF, the undersigned has caused this instrument to be executed this _____ day of _____, 20__.

[NAME OF LANDLORD]

By: _____
Name:
Title:

EXHIBIT D**FORM OF BAILEE LETTER**

_____, 20__

[NAME OF BAILEE]
[ADDRESS OF BAILEE]_____

Re: [NAME OF CREDIT PARTY] (the "Bailor")

Ladies and Gentlemen:

This letter (the "**Letter**") is to advise _____ (the "**Bailee**") that the Bailor executed and delivered to Canadian Imperial Bank of Commerce (the "**Lender**") a Credit Agreement (as may be modified, amended, renewed, extended, restated, or replaced from time to time, the "**Credit Agreement**"), pursuant to which the Bailor granted to the Lender a security interest in, and hypothec and lien upon, among other things, all inventory of the Bailor, some of which is in possession of the Bailee from time to time (the "**Controlled Inventory**"). By executing this Letter, the Bailee acknowledges that from time to time the Bailee is in possession of Controlled Inventory and that, because of the Lender's interest in the Controlled Inventory, the instructions contained in this Letter are irrevocable and cannot be altered or amended without the prior written consent of the Lender. The Bailor's execution of this Letter is conclusive evidence to the Bailee of its confirmation of and agreement to the foregoing and of its agreement to be bound by all terms of this Letter on which the Bailee is entitled to rely for all purposes until written notice of termination of this Letter is given to the Bailee by the Lender.

The Bailee recognizes the Lender's continuing security interest in the Controlled Inventory and in the proceeds thereof. The Bailee covenants and agrees that the Controlled Inventory is and shall remain owned by the Bailor, and that the Lender may at any time and from time to time inspect, remove and/or repossess the Controlled Inventory while in possession of the Bailee without accountability to the Bailee therefor and free of any lien, security interest, hypothec, mortgages, charge, guarantee, encumbrance or other interest right or claim which the Bailee may now or hereafter have, such right of the Lender being independent of any other right or remedy the Lender may have. The Bailee hereby authorizes and empowers the Lender to access the premises where the Controlled Inventory is located for the purposes of guarding and maintaining the Controlled Inventory, preparing and showing the same for sale and/or conducting a sale thereof. The Bailee hereby waives and releases, for the benefit of the Lender, its successors and assigns, any and all liens, security interests, hypothecs, mortgages, charges, guarantees, assignments, encumbrances or other interest, rights and claims of every kind, whether statutory, contractual or by law, which the Bailee may now or hereafter have with respect to the Controlled Inventory, including, without limitation, any rights to seize, hold, restrain, levy upon, take possession of, sell or otherwise transfer or dispose of the Controlled Inventory and hereby cedes priority and preference of rank of any hypothec, present or future, granted by the Bailor to the Bailee on the Controlled Inventory to the hypothecs of Agent on the Controlled Inventory, present or future, granted by the Bailor and the Bailee further acknowledges and agrees that no negotiable warehouse receipts or documents of title will be issued covering the Controlled Inventory.

So long as no Default Period (hereinafter defined) is continuing, the Bailor may control the Controlled Inventory. From the date on which the Lender notifies the Bailee that an "Event of

- 2 -

Default" (as defined in the Credit Agreement) has occurred and thereafter until the Bailee receives notice from the Lender that such Event of Default is no longer continuing and that no other Event of Default is continuing (such period being referred to herein as a "Default Period"), the Bailee, the Bailor and the Lender agree that the Lender shall have the exclusive right to direct the Bailee as to control of the Controlled Inventory, which includes, without limitation, the right to dispose of, repossess or remove the Controlled Inventory, and the Bailee shall not comply in any respect with any request or direction by the Bailor in connection with the Controlled Inventory, unless consented to in writing by the Lender.

At any time when the Bailee has possession of the Controlled Inventory, the Bailee agrees to prevent the commingling of the Controlled Inventory in its possession with other Inventory, goods or items in the Bailee's possession by clearly separating, dividing or otherwise isolating the Controlled Inventory from all such other items in the Bailee's possession. The Bailee will also clearly identify the Controlled Inventory as belonging to the Bailor, through the use of labels, tags, or other similar coding methods.

The Bailee will from time to time deliver to the Lender, upon the written request of the Lender (which request may be by facsimile transmission) and at the Bailor's cost and expense, such information regarding the Controlled Inventory as may be reasonably requested by the Lender, and the Bailee will notify the Lender promptly if the Bailee acquires knowledge that the Controlled Inventory shall become subject to any injunction, writ or warrant of attachment or garnishment, judgment, levy and execution, or similar process. The Bailee confirms in favour of the Lender that it has not, prior to the date hereof, executed in favour of any third party any document, instrument or agreement pursuant to which (a) the Bailee has acknowledged a security interest in the Controlled Inventory in favour of such third party, or (b) the Bailee has agreed to follow the instructions of such third party in respect of the Controlled Inventory.

The Bailor agrees that the Bailee shall be fully protected in acting on any notice or direction by the Lender relating to the Controlled Inventory without making any inquiry whatsoever as to the Lender's right or authority to give such notice or direction. Further, the Bailee shall have no liabilities to the Bailor or the Lender other than those imposed upon it by law for its own lack of good faith, gross negligence or wilful misconduct. The Bailee shall not be liable for consequential, indirect or special damages, even if the Bailee has been advised of the possibility of such damages. The Bailee shall not be liable for any failure or delay in performing any service under this Letter in the event and to the extent that such failure arises out of causes beyond the Bailee's control, including but not limited to war, civil commotion, an Act of God, fire, flood, explosion, sabotage, failure or interruption of electrical or other power supplies or of transportation services, compliance with governmental laws, regulations or orders, and strikes and lockouts.

The Bailor agrees to pay the Bailee's costs and expenses, including reasonable legal fees, in connection with the execution, delivery and administration of this Letter.

The Bailor and the Lender, jointly and severally, hereby agree to indemnify and save the Bailee harmless from and against any and all losses, costs and expenses arising out of the compliance by the Bailee with the terms of the instructions contained herein.

If the Bailor is unable to fulfill its obligations to the Bailee in respect of warehouse fees and other expenses payable by the Bailor to the Bailee in connection with the storage, handling and delivery of the Controlled Inventory (collectively, the "Storage Fees"), the Lender agrees that, as a condition to the Lender's rights of access to the Controlled Inventory and the Lender's rights of inspection, removal and/or repossession of the Controlled Inventory provided for in this Letter, it will pay to the Bailee all Storage Fees which remain unpaid as at the commencement of any Default Period together with any Storage Fees incurred during the continuance of a Default Period.



The Bailor acknowledges and agrees that (a) any amounts paid by the Lender to the Bailee hereunder shall constitute "Obligations" of the Bailor for purposes of the Credit Agreement, and (b) that this Letter is a "Loan Document" as such term is defined in the Credit Agreement dated _____ between the Lender and the Bailor, as borrower.

This Letter may only be terminated by the Lender upon written notice to the Bailee.

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

If the foregoing instructions, terms and agreements are acceptable to the Bailee, please indicate the Bailee's acceptance by signing this letter in the space provided below and returning it to the Bailor.

Sincerely,

[NAME OF CREDIT PARTY]

By:

Name:
Title:

AGREED AND ACCEPTED:

CANADIAN IMPERIAL BANK OF COMMERCE

Address for Notice:

By: _____
Name:
Title:
Management,

199 Bay Street, 4th Floor
Toronto, ON M5L 1A2
Attention: Senior Director, Portfolio

Asset Based Lending Group

[BAILEE]

By: _____
Name:
Title:

EXHIBIT E**FORM OF REPAYMENT NOTICE**

(Letter to be typed on Borrower's Letterhead, scan signed letter and email to CIBCABLCollateralAnalysts@cibc.com)

CANADIAN IMPERIAL BANK OF COMMERCE,
199 Bay Street, 4th Floor
Toronto, ON M5L 1A2

, 20_

Attention: Collateral Analyst

REPAYMENT NOTICE

Ladies/Gentlemen:

We refer to the Credit agreement dated June 1, 2018 (the "Credit Agreement"; capitalized terms not otherwise defined herein shall have the meanings ascribed to them in the Credit Agreement), between [Borrower] (the "Company"), Canadian Imperial Bank of Commerce, (the "Lender"), and the Lender party thereto (as "Lender").

We hereby notify the Lender of our repayment of the **[Revolving Loans/Term Loan]** (as defined in the Credit Agreement), subject to and in accordance with the terms and provisions of the Credit Agreement in the amount of:

A. The repayment amount:
Canadian Prime Loan/Term Loan: CAD\$ _____
Base Rate Loan: US\$ _____
LIBO Rate Loan: US\$ _____
BA Borrowing: CAD\$ _____

B. The date of repayment*: _____

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

Proceeds of the repayment are to be deposited to the account of Canadian Imperial Bank of Commerce as follows:

Bank Name:	CIBC, Main Branch Commerce Court, Toronto, ON
Account Name:	CIBC Asset Based Lending suspense account
Transit #:	00002
Account Number:	CAD 09-68617 USD 05-38507

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

Yours truly,

By: _____

By: _____

Name: _____

Name: _____

Title: _____

Title: _____

[NAME OF ASSIGNOR]
As Assignee

By: _____

Title: _____

By: _____

Title: _____

Consented to:¹

[BORROWER]

By: _____

Title: _____

¹ To be added only if the consent of the Borrower is required by the terms of the Credit Agreement.



EXHIBIT F

FORM OF RESPONSIBLE OFFICER'S CERTIFICATE

TO: Canadian Imperial Bank of Commerce

The undersigned, _____ [TITLE of AUTHORIZED SIGNING OFFICER], of Nilex Inc., pursuant to Section 5.1 of the credit agreement dated as of •, 20___, between, amongst others, Canadian Imperial Bank of Commerce, Nilex Inc. and Nilex USA Inc. (the "Borrowers" and each, a "Borrower") (as amended, restated, supplemented, replaced or otherwise modified from time to time the "Credit Agreement"), **DOES HEREBY CERTIFY** in [his/her] capacity as an authorized signing officer of the Borrowers and not in [his/her] personal capacity that:

1. The financial statements attached hereto fairly and accurately represent the Borrowers' financial condition at the end of the particular accounting period set out in such financial statements, as well as the Borrowers' and their Subsidiaries' operating results during such accounting period, subject to year-end audit adjustments;

2. A review of such financial statements and of the activities of the Borrowers and their Subsidiaries during the period covered by such financial statements has been made under my supervision has been made with a view to determining whether the Borrowers and the Subsidiaries have fulfilled all of their obligations;

3. During the accounting period set out in such financial statements:

(a) each of the Borrowers and the other Credit Parties have fulfilled each of its respective obligations under each of the Loan Documents to which it is a party;

(b) there has been no Default or Event of Default under the Credit Agreement,

(c) the Borrowers are not aware of any event or circumstance which could reasonably have or could reasonably have had a Material Adverse Effect;

(d) the representation and warranties contained in the Credit Agreement and the other Loan Documents are correct in all material respects on and as of the date hereof as though made on and as of such date, other than any such representation or warranty which relates to a specified prior date and except to the extent that the Lender has been notified in writing by a Borrower that any representation or warranty is not correct and the Lender has explicitly waived in writing compliance with such representation or warranty;

(e) the Borrowers have been in full compliance with all covenants set out in the Credit Agreement and, specifically, set out in Sections 5.12 and 6.15 of the Credit Agreement as evidenced by the statements and calculations attached hereto as Annex A.;

(f) Annex B hereto sets out all Subsidiaries and indicates, for each such Subsidiary, the date of the formation or acquisition of each Subsidiary;

(g) no change in GAAP or in the application thereof has occurred since the date of the most recent audited annual financial statements of the Borrowers delivered to the Lender [**Note to Draft: - If a change has occurred, specify the details of the change and its effect on the accompanying financial statements**]; and

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(h) the Borrowers and the other Credit Parties have been in compliance with Section 6.4 of the Credit Agreement and Annex C hereto sets out details of all transactions contemplated by Section 6.4 of the Credit Agreement and the details of such compliance.

[Note to Draft: if any of the foregoing is incorrect, revise wording accordingly to include particulars of any variation.]

4. Capitalized terms used herein and not otherwise defined shall have the meanings given to such terms in the Credit Agreement.

IN WITNESS WHEREOF, the undersigned has executed this Responsible Officer's certificate on behalf of Nilex Inc. as of the _____ day of _____, 20__.

By: _____
Name:
Title:



This is Exhibit "E" referred to in the Affidavit of Jeff Allen
sworn before me this 31st day of October, 2022.



A Commissioner for Oaths in and for Alberta

Luke Bandkowski
Barrister & Solicitor



GENERAL SECURITY AGREEMENT

dated as of

June 1, 2018

among

NILEX INC. and NILEX USA INC.

as Debtors

and

CANADIAN IMPERIAL BANK OF COMMERCE

as Lender



THIS GENERAL SECURITY AGREEMENT is dated June 1, 2018

GRANTED TO: **CANADIAN IMPERIAL BANK OF COMMERCE,**
as Lender under the Credit Agreement (as defined below)

(in such capacity and any successor thereto, the **Lender**)

GRANTED BY: **EACH OF THE UNDERSIGNED DEBTORS**

(including each of their successors and permitted assigns, collectively, the **Debtors** and each a **Debtor**)

SECTION 1 - GRANT OF SECURITY INTEREST

1.1 Security Interest

As a general and continuing security for the payment and performance of all Obligations of each Debtor, each such Debtor, **IN CONSIDERATION OF THE OBLIGATIONS** and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, hereby grants, assigns and transfers to the Lender as security, and grants to the Lender a continuing security interest in, all of such Debtor's present and after-acquired personal property, now owned or hereafter acquired by or on behalf of such Debtor, wherever located, including, without limitation, all of the following (collectively, the **Collateral**):

(a) Accounts Receivable

All debts, book debts, accounts, accounts receivable, claims, demands, moneys and choses in action whatsoever, including, without limitation, claims against the Crown and claims under insurance policies, which are now owned by or are due, owing or accruing due to such Debtor or which may hereafter be owned by or become due, owing or accruing due to such Debtor together with all contracts, securities, bills, notes, lien notes, judgments, chattel mortgages, mortgages and all other rights, benefits and documents now or hereafter taken, vested in or held by such Debtor in respect of or as security for the same and the full benefit and advantage thereof, and all rights of action or claims which such Debtor now has or may at any time hereafter have against any Person in respect thereof (all of the foregoing being herein collectively called the **Accounts Receivable**);

(b) Inventory

All inventory of whatever kind now or hereafter owned by such Debtor or in which such Debtor now or hereinafter has an interest or right of any kind, and all accessions thereto and products thereof, including, without limitation, all goods, merchandise, raw materials, goods in process, finished goods, packaging and packing material and other tangible personal property now or hereafter held for sale, lease, rental or resale or that are to be furnished or have been furnished under a contract of service or that are to be used or consumed in the business of such Debtor (all of the foregoing being herein collectively called the **Inventory**);

(c) Equipment

All goods now or hereafter owned by such Debtor which are not inventory or consumer goods (as defined in the *Personal Property Security Act* (Alberta) or, to the extent applicable, similar legislation of any other jurisdiction, as amended from time to time, collectively, the **PPSA**), including, without limitation, all fixtures, equipment, machinery, tools, furniture, vehicles and other tangible personal property (all of the foregoing being herein collectively called the **Equipment**);

(d) **Deposit Accounts**

Any and all depositary accounts maintained at any financial institution into which proceeds of the Collateral or proceeds of loans or other extensions of credit under the Credit Agreement may be deposited from time to time;

(e) **Chattel Paper, Instruments, etc.**

All chattel paper, instruments, warehouse receipts, bills of lading and other documents of title, whether negotiable or non-negotiable, shares, stock, warrants, bonds, debentures, debenture stock, securities and other financial assets, now or hereafter owned by such Debtor;

(f) **Securities and Securities Accounts**

All securities and securities accounts of such Debtor and all of the credit balances, security entitlements and other financial assets and items or property standing to the credit of such Debtor from time to time in any securities accounts;

(g) **Intangibles and Other Intellectual Property**

All intangibles now or hereafter owned by such Debtor, including, without limitation, all contractual rights, goodwill, patents, trademarks, trade names, copyrights, industrial designs and other industrial or intellectual property or rights therein, including, without limitation, the intellectual property rights described in Schedule 3.22 of the Credit Agreement from time to time;

(h) **Books and Accounts, etc.**

With respect to the personal property described in paragraphs (a) to (g) above, inclusive, all books, accounts, invoices, deeds, documents, writings, letters, papers, security certificates and other records in any form evidencing or relating thereto and all contracts, securities, instruments and other rights and benefits in respect thereof, including, without limitation, computer programs, disks, tapes and related electronic data processing media and the rights of such Debtor to receive the same from third persons, which now are or may hereafter become vested in such Debtor;

(i) **Other Property**

The uncalled capital, money, rights, bills of exchange, negotiable and non-negotiable instruments and securities not otherwise described in paragraphs (a) to (h) above, inclusive;

(j) **Replacements, etc.**

With respect to the personal property described in paragraphs (a) to (i) above, inclusive, all substitutions and replacements thereof, increases, additions and accessions thereto and any interest of such Debtor therein;

(k) **Proceeds**

With respect to the personal property described in paragraphs (a) to (j) above, inclusive, personal property in any form or fixtures or crops derived directly or indirectly from any dealing with such property or that indemnifies or compensates for such property destroyed or damaged and proceeds of proceeds whether of the same type, class or kind as the original proceeds, including without limitation, all indemnities and insurance proceeds, expropriation proceeds, rents, income, fruits, revenues, issues and profits arising from, or connection with, such property and the present and continuing right to claim for, collect and receive any one and all of the said indemnities and

insurance proceeds, expropriation proceeds, rents, income, fruits, revenues, issues and profits; and

(i) **Taxes, Assessments etc.**

All reimbursements of taxes, rates, assessments, levies, surtaxes and any other impositions which may be assessed on or payable in respect of any of the property described in paragraphs (a) to (k) above, inclusive.

1.2 **Definitions and Interpretation**

In this General Security Agreement (the **Security Agreement**):

- (a) Capitalized terms used herein and not otherwise defined herein shall have the meanings ascribed thereto in the Credit Agreement;
- (b) Terms used herein and defined in the PPSA shall have the same meanings as in the PPSA unless the context otherwise requires;
- (c) **Credit Agreement** means that certain credit agreement dated as of the date hereof and entered into by and among Nilex Inc. and Nilex USA Inc., as borrowers, the guarantors from time to time parties thereto, as guarantors, and Canadian Imperial Bank of Commerce, as lender, as may be amended, supplemented, revised, restated, replaced or otherwise modified from time to time (the **Credit Agreement**);
- (d) **Guarantee** means that certain guarantee dated as of the date hereof entered into by the Debtors, as guarantors, and the Lender, as the same may be amended, supplemented, revised, restated, replaced or otherwise modified from time to time;
- (e) **PPSA** has the meaning set forth in Section 1.1(c);
- (f) **STA** means the *Securities Transfer Act* (Alberta) or, to the extent applicable, similar legislation of any other jurisdiction, as such legislation may be amended from time to time;
- (g) The grant of the security interest herein provided for shall include, without limitation, a fixed mortgage, hypothecation, pledge, charge and assignment of the Collateral in favour of the Lender;
- (h) Any reference to Collateral shall, unless the context otherwise requires, refer to the Collateral or any part thereof;
- (i) The term **security interest** shall include, without limitation, a fixed mortgage, hypothecation, pledge, charge and assignment; and
- (j) The term **encumbrance** shall include, without limitation, a security interest, lien, claim, charge, deemed trust or encumbrance of any kind whatsoever.

1.3 **Leases**

The last day of the term of any lease or sub-lease, oral or written, or any agreement therefor, now held or hereafter acquired by a Debtor, shall be excepted from the security interest hereby granted and shall not form part of the Collateral, but each Debtor shall stand possessed of such one day remaining upon trust to assign and dispose of the same as the Lender or any assignee of the Lender in respect of such lease, sub-lease or agreement shall direct. If any such lease, sub-lease or agreement therefor

contains a provision which provides in effect that such lease, sub-lease or agreement may not be assigned, sub-leased, charged or encumbered without the leave, license, consent or approval of the lessor, the application of the security interest created hereby to any such lease, sub-lease or agreement shall be conditional upon such leave, license, consent or approval having been obtained.

1.4 Debtors Remain Liable

Notwithstanding anything herein to the contrary:

- (a) each of the Debtors shall remain liable under the contracts and agreements included in the Collateral to the extent set forth therein to perform all its duties and obligations thereunder to the same extent as if this Security Agreement had not been executed;
- (b) the exercise by the Lender of any of the rights or remedies hereunder shall not release any Debtor from any of its duties or obligations under the contracts and agreements included in the Collateral; and
- (c) the Lender shall not have any obligation or liability under the contracts and agreements included in the Collateral by reason of this Security Agreement, nor shall the Lender be obligated to perform any of the obligations or duties of a Debtor thereunder or to take any action to collect or enforce any claim for payment assigned hereunder.

1.5 Scope of Security Interest

- (a) To the extent that the creation of the security interest created hereby would constitute a breach or permit the acceleration or termination of any agreement, right, licence or permit of a Debtor which constitutes Collateral (each, a **Restricted Asset**), the security interest created hereunder shall not attach to the Restricted Asset, but each Debtor shall, subject to paragraph **Error! Reference source not found.** below, hold its interest in the Restricted Asset in trust for the Lender, provided that, until the security interest created hereby has become enforceable, such Debtor shall be entitled to deal with, receive the benefits of and receive and retain all proceeds arising under or in connection with the Restricted Asset.
- (b) The security interest created hereby shall not extend to consumer goods.

1.6 Attachment, Perfection, Possession and Control

- (a) Each of the Debtors acknowledges that (i) value has been given, (ii) it has rights in the Collateral or the power to transfer rights in the Collateral to the Lender (other than after-acquired Collateral) and (iii) it has not agreed to postpone the time of attachment of the security interest hereby created.
- (b) No Person, has any option, warrant, call, commitment, conversion, right of exchange or other agreement or any right or privilege (whether by law, pre-emptive or contractual) capable of becoming an option, warrant, right, call, commitment, conversion right, right of exchange or other agreement to acquire any right or interest in the Collateral.
- (c) Upon request from the Lender, acting reasonably, each of the Debtors shall promptly execute and deliver, from time to time, at its own expense, amendments to this Security Agreement and its schedules or additional Security Agreements or schedules as may be required by the Lender in order to preserve, protect and perfect its security interest in the Collateral.
- (d) Subject to the provisions of the Credit Agreement, if a Debtor acquires Collateral consisting of chattel paper, instruments or negotiable documents of title (collectively, **Negotiable Collateral**), such Debtor shall, immediately upon receipt thereof, deliver to the Lender the Negotiable Collateral and shall, at the request of the Lender (i) endorse the same for transfer in blank or as the Lender may direct, (ii) cause any transfer to be registered wherever, in the opinion of the Lender, such registration may be required or advisable, and (iii) deliver to the Lender any and all consents or other documents which may be necessary or desirable to transfer the Negotiable Collateral.

SECTION 2 - REPRESENTATIONS AND WARRANTIES

Each of the Debtors represents and warrants to and in favour of the Lender that all of the representations and warranties given by it in the Credit Agreement are true and accurate.

SECTION 3 - COVENANTS OF DEBTORS

Each of the Debtors covenants and agrees with the Lender that it shall comply with all covenants given by it in the Credit Agreement.

SECTION 4 - COLLECTION OF PROCEEDS

4.1 Payments to the Lender

Each of the Debtors shall:

- (a) collect and enforce payment of all Accounts Receivable in the ordinary course of business (except as provided for in Section 4.2 below) and shall dispose of and receive payment for all Inventory which is ordinarily disposed of in such Debtor's business;
- (b) upon the occurrence and during the continuance of an Event of Default, receive and hold in trust for the Lender, all payments on or instruments received in respect of the Collateral, all rights by way of suretyship or guarantee which such Debtor now has or may hereafter acquire to enforce payment of the Collateral and all rights in the nature of a security interest whereby such Debtor may satisfy any Collateral out of property, and all non-cash proceeds of any such collection, disposition or realization of any of the Collateral shall be subject to the security interest hereby created;

- (c) upon the occurrence and during the continuance of an Event of Default, endorse to the Lender and forthwith deliver to it all such payments and instruments in the form received by such Debtor; and
- (d) upon the occurrence and during the continuance of an Event of Default, forthwith deliver to the Lender all property in such Debtor's possession or hereafter coming into its possession through enforcement of any such rights.

4.2 Account Debtors

Upon the occurrence and during the continuance of an Event of Default, the Lender may notify an account debtor or obligors under any Account Receivable of the assignment of the Account Receivable to the Lender and require such person to make payment to the Lender in respect of any of the Accounts Receivable and the Lender may hold all amounts acquired or received from any such account debtors or obligors, together with income on such amounts, as part of the Collateral and as security for the Obligations.

SECTION 5 - DEFAULT

5.1 Defaults

The Obligations secured by this Security Agreement shall be immediately due and payable in full and the security hereby constituted shall become enforceable upon the occurrence and during the continuance of an Event of Default.

SECTION 6 - REMEDIES ON DEFAULT

If the security hereby constituted becomes enforceable in accordance with Section 5.1, the Lender shall have, in addition to any other rights, remedies and powers which it may have at law, in equity or under the PPSA, the following rights, remedies and powers:

6.1 Power of Entry

Each of the Debtors shall forthwith upon demand assemble and deliver to the Lender possession of all of the Collateral at such place or places as may be specified by the Lender. The Lender may take such steps as it considers necessary or desirable to obtain possession of all or any part of the Collateral and, to that end, each of the Debtors agrees that the Lender, its servants or agents or Receiver (as defined below) may enter upon lands and premises where the Collateral may be found for the purpose of taking possession of and/or removing the Collateral or any part thereof. In the event of the Lender taking possession of the Collateral, or any part thereof, the Lender shall have the right to maintain the same upon the premises on which the Collateral may then be situate. The Lender may, in a reasonable manner, take such action or do such things as to render any Equipment usable.

6.2 Power of Sale

The Lender may sell, lease or otherwise dispose of all or any part of the Collateral, as a whole or in separate parcels, by public auction, private tender or by private contract, with or without notice, except as otherwise required by Applicable Law, with or without advertising and without any other formality, all of which are hereby waived by the each of the Debtors. Such sale, lease or disposition shall be on such terms and conditions as to credit and otherwise and as to upset or reserve bid or price as to the Lender, acting reasonably, may seem advantageous. If such sale, transfer or disposition is made on credit or part cash and part credit, the Lender need only credit against the Obligations the actual cash received at the time of the disposition. Any payments made pursuant to any credit granted at the time of the disposition shall be credited against the Obligations as they are received. The Lender may buy in or rescind or vary any contract for sale of all or any of the Collateral and may resell without being answerable for any loss

occasioned thereby. Any such sale, lease or disposition may take place whether or not the Lender has taken possession of the Collateral. The Lender may, before any such sale, lease or disposition, perform any commercially reasonable repair, processing or preparation for disposition and the amount so paid or expended shall be deemed advanced to a Debtor by the Lender, shall become part of the Obligations, shall bear interest at the highest rate per annum charged by the Lender on the Obligations or any part thereof and shall be secured by this Security Agreement.

6.3 Validity of Sale

No person dealing with the Lender or its servants or agents shall be concerned to inquire whether the security hereby constituted has become enforceable, whether the powers which the Lender is purporting to exercise have become exercisable, whether any money remains due on the security of the Collateral, as to the necessity or expedience of the stipulations and conditions subject to which any sale, lease or disposition shall be made, otherwise as to the propriety or regularity of any sale or any other dealing by the Lender with the Collateral or to see to the application of any money paid to the Lender. In the absence of fraud on the part of such persons, such dealings shall be deemed, so far as regards the safety and protection of such persons, to be within the powers hereby conferred and to be valid and effective accordingly.

6.4 Receiver-Manager

The Lender may, in addition to any other rights it may have, appoint by instrument in writing a receiver, interim receiver, or receiver and manager (all of which are herein called a **Receiver**) of all or any part of the Collateral or may institute proceedings in any court of competent jurisdiction for the appointment of such a Receiver. Any such Receiver is hereby given and shall have the same powers and rights and exclusions and limitations of liability as the Lender has under this Security Agreement, at law or in equity. In exercising any such powers, any such Receiver shall, to the extent permitted by law, act as and for all purposes shall be deemed to be the agent of a Debtor and the Lender shall not be responsible for any act or default of any such Receiver. The Lender may appoint one or more Receivers hereunder and may remove any such Receiver or Receivers and appoint another or others in his or their stead from time to time. Any Receiver so appointed may be an officer or employee of the Lender. A court need not appoint, ratify the appointment by the Lender of or otherwise supervise in any manner the actions of any Receiver. Upon a Debtor receiving notice from the Lender of the taking of possession of the Collateral or the appointment of a Receiver, all powers, functions, rights and privileges of each of the directors and officers of such Debtor with respect to the Collateral shall cease, unless specifically continued by the written consent of the Lender.

6.5 Carrying on Business

The Lender may carry on, or concur in the carrying on of, all or any part of the business or undertaking of a Debtor and may, to the exclusion of all others, including each of the Debtors, enter upon, occupy and use all or any of the premises, buildings, plant and undertaking of or occupied or used by such Debtor and may use all or any of the tools, machinery, equipment and intangibles of any of such Debtor for such time as the Lender sees fit, free of charge, to carry on the business of such Debtor and, if applicable, to manufacture or complete the manufacture of any Inventory and to pack and ship the finished product.

6.6 Dealing with Collateral

The Lender may seize, collect, realize, dispose of, enforce, release to third parties or otherwise deal with the Collateral or any part thereof in such manner, upon such terms and conditions and at such time or times as may seem to it advisable, all of which without notice to a Debtor except as otherwise required by any Applicable Law. The Lender may demand, sue for and receive any Accounts Receivable with or without notice to a Debtor, give such receipts, discharges and extensions of time and make such compromises in respect of any Accounts Receivable which may, in the Lender's absolute discretion, seem bad or doubtful. The Lender may charge on its own behalf and pay to others, sums for legitimate,

reasonable costs and expenses incurred including, without limitation, reasonable legal fees and expenses on a solicitor and his own client scale and reasonable Receivers' and accounting fees, in or in connection with seizing, collecting, realizing, disposing, enforcing or otherwise dealing with the Collateral and in connection with the protection and enforcement of the rights of the Lender hereunder, including, without limitation, in connection with advice with respect to any of the foregoing. The amount of such sums shall be deemed advanced to a Debtor by the Lender, shall become part of the Obligations, shall bear interest at the highest rate per annum charged by the Lender on the Obligations or any part thereof and shall be secured by this Security Agreement.

6.7 Retention of Collateral

Upon notice to a Debtor and subject to any obligation to dispose of any of the Collateral, as provided in the PPSA, the Lender may elect to retain all or any part of the Collateral in satisfaction of the Obligations or any of them.

6.8 Pay Encumbrances

The Lender may pay any obligations secured by any encumbrance that may exist or be threatened against the Collateral. In addition, the Lender may borrow money required for the maintenance, preservation or protection of the Collateral or for the carrying on of the business or undertaking of a Debtor and may grant further security interests in the Collateral in priority to the security interest created hereby as security for the money so borrowed. In every such case, the amounts so paid or borrowed together with costs, charges and expenses incurred in connection therewith shall be deemed to have been advanced to a Debtor by the Lender, shall become part of the Obligations, shall bear interest at the highest rate per annum charged by the Lender on the Obligations or any part thereof and shall be secured by this Security Agreement.

6.9 Application of Payments Against Obligations

Any and all payments made in respect of the Obligations from time to time and moneys realized on the Collateral shall be applied in accordance with Section 7.2(d) of the Credit Agreement.

6.10 Set-Off

The Obligations will be paid by the Debtors without regard to any equities between the Debtors and the Lender or any right of set-off or cross-claim. Any indebtedness owing by the Lender to a Debtor may be set off and applied by the Lender against the Obligations at any time or from time to time either before or after maturity, without demand upon or notice to anyone.

6.11 Deficiency

If the proceeds of the realization of the Collateral are insufficient to repay the Lender all moneys due to it, the Debtors shall forthwith pay or cause to be paid to the Lender such deficiency.

6.12 Lender Not Liable

Except as otherwise provided in this Security Agreement, the Lender shall not be liable or accountable for any failure to seize, collect, realize, dispose of, enforce or otherwise deal with the Collateral, shall not be bound to institute proceedings for any such purposes or for the purpose of preserving any rights of the Lender, the Debtors or any other Person, firm or corporation in respect of the Collateral and shall not be liable or responsible for any loss, cost or damage whatsoever which may arise in respect of any such failure, other than as a result of the gross negligence or willful misconduct of the Lender or any of its officers, servants, agents, solicitors, attorneys or Receivers. Except as otherwise provided in this Security Agreement, neither the Lender nor its officers, servants, agents or Receivers shall be liable by reason of any entry into possession of the Collateral or any part thereof, to account as a

mortgagee in possession, for anything except actual receipts, for any loss on realization, for any act or omission for which a mortgagee in possession might be liable, for any negligence in the carrying on or occupation of the business or undertaking of a Debtor as provided in Section 6.5 above or for any loss, cost, damage or expense whatsoever which may arise in respect of any such actions, omissions or negligence, in each case, except as a result of the gross negligence or willful misconduct of any such person.

6.13 Extensions of Time

The Lender may grant renewals, extensions of time and other indulgences, take and give up securities, accept compositions, grant releases and discharges, perfect or fail to perfect any securities, release any part of the Collateral to third parties and otherwise deal or fail to deal with the Debtors, debtors of the Debtors, guarantors, sureties and others and with the Collateral and other securities as the Lender may see fit, all without prejudice to the liability of the Debtors to the Lender or the Lender's rights and powers under this Security Agreement.

6.14 Rights in Addition

The rights and powers conferred by this Section 6 are in supplement of and in addition to and not in substitution for any other rights or powers the Lender may have from time to time under this Security Agreement or under Applicable Law. The Lender may proceed by way of any action, suit, remedy or other proceeding at law or in equity and no such remedy for the enforcement of the rights of the Lender shall be exclusive of or dependent on any other such remedy. Any one or more of such remedies may from time to time be exercised separately or in combination.

SECTION 7 - DEALING WITH COLLATERAL BY THE DEBTORS

7.1 Sale of Inventory

So long as no Event of Default is continuing, each of the Debtors may, in the ordinary course of its business and on customary trade terms, lease or sell items of Inventory, so that the purchaser thereof takes title clear of the security interest hereby created. If such sale or lease results in an Account Receivable, such Account Receivable shall be subject to the security interest hereby created.

SECTION 8 - GENERAL

8.1 Security in Addition

The security hereby constituted is not in substitution for any other security for the Obligations or for any other agreement between the parties creating a security interest in all or part of the Collateral, whether heretofore or hereafter made, and such security and such agreements shall be deemed to be continued and not affected hereby unless expressly provided to the contrary in writing and signed by the Lender and the Debtors. The taking of any action or proceedings or refraining from so doing, or any other dealing, with any other security for the Obligations or any part thereof, shall not release or affect the security interest created by this Security Agreement and the taking of the security interest hereby created or any proceedings hereunder for the realization of the security interest hereby created shall not release or affect any other security held by the Lender for the repayment of or performance of the Obligations.

8.2 Waiver

Any waiver of a breach by a Debtor of any of the terms or provisions of this Security Agreement or of an Event of Default must be in writing to be effective against and bind the Lender. No such waiver by the Lender shall extend to or be taken in any manner to affect any subsequent breach or Event of Default or the rights of the Lender arising therefrom.

8.3 Further Assurances

Each of the Debtors shall at all times do, execute, acknowledge and deliver or cause to be done, executed, acknowledged or delivered all and every such further acts, deeds, conveyances, instruments, transfers, assignments, security agreements and assurances as the Lender may require, acting reasonably, in order to give effect to the provisions and purposes of this Security Agreement, including, without limitation, in respect of the Lender's enforcement of the security and its realization on the Collateral, and for the better granting, transferring, assigning, charging, setting over, assuring, confirming and/or perfecting the security interest of the Lender in the Collateral pursuant to this Security Agreement through registration, control or otherwise and for obtaining control of any Collateral that consists of securities, securities entitlements or future contracts in the manner provided under the PPSA or the STA, as applicable. Each of the Debtors hereby constitutes and appoints, effective upon the occurrence and during the continuance of an Event of Default, the manager or acting manager of the Lender at its above address, or any Receiver appointed by a court or the Lender as provided herein, the true and lawful attorney of such Debtor irrevocably with full power of substitution to do, make and execute all such assignments, documents, acts, matters or things which such Debtor has herein agreed to do, make or execute or which may be required by the Lender or a Receiver to give effect to this Security Agreement, with the right to use the name of such Debtor whenever and wherever it may be deemed necessary or expedient. Such power of attorney is coupled with an interest. Each of the Debtors hereby authorizes the Lender to file such proofs of claim and other documents as may be necessary or advisable in order to prove its claim in any bankruptcy, proposed winding-up or other proceeding relating to such Debtor.

8.4 No Merger

Neither the taking of any judgment nor the exercise of any power of seizure or sale shall operate to extinguish the liability of a Debtor to make payment of or satisfy the Obligations. The acceptance of any payment or alternate security shall not constitute or create any novation and the taking of a judgment or judgments under any of the covenants herein contained shall not operate as a merger of such covenants.

8.5 Continuing Security Interest and Discharge

This Security Agreement shall create a continuing security interest in the Collateral and shall remain in full force and effect until discharge of the security interest created hereby in accordance with Section 8.11 hereof, notwithstanding any dealing between the Lender and a Debtor or any Guarantor in respect of the Obligations or any release, exchange, non-perfection, amendment, waiver, consent or departure from or in respect of any or all of the terms or provisions of any security held for the Obligations.

8.6 Governing Law

This Security Agreement shall be governed by and construed in accordance with the laws of the Laws of the Province of Alberta and the federal laws of Canada applicable therein.

8.7 Security Interest Effective Immediately

Neither the execution nor registration of this Security Agreement nor any partial advances by the Lender shall bind the Lender to advance any other amounts to the Debtors. The parties intend the security interest created hereby to attach and take effect forthwith upon execution of this Security Agreement by the Debtors and each of the Debtors acknowledges that it has received a copy of this Security Agreement.

8.8 Invalidity

In the event that any term or provision of this Security Agreement shall, to any extent, be invalid or unenforceable, the remaining terms and provisions of this Security Agreement shall be unaffected thereby and shall be valid and enforceable to the fullest extent permitted by law.

8.9 Binding Effect

All rights of the Lender hereunder shall enure to the benefit of its successors and assigns and all obligations of a Debtor hereunder shall bind such Debtor and its successors and assigns.

8.10 Paramountcy

In the event that any provisions of this Security Agreement contradict, are inconsistent with or are otherwise incapable of being construed in harmony with the provisions (including any rights, remedies and covenants therein) of the Credit Agreement, the provisions of the Credit Agreement shall take precedence over those contained in this Security Agreement.

8.11 Discharge

The Security Interest will be discharged upon, but only upon, (a) full and indefeasible payment and performance of the Obligations, (b) the Lender having no obligations under the Credit Agreement and the other Loan Documents, and (c) at the request and expense of the Debtors. In that connection, the Lender will execute and deliver to each of the Debtors such releases and discharges as the Debtors may reasonably require.

8.12 Notices

Any notices, directions or other communications provided for in this Security Agreement shall be in writing and given in accordance with the provisions of the Credit Agreement.

8.13 Headings, etc.

The division of this Security Agreement into Sections and the insertion of headings are for convenient reference only and are not to affect its interpretation.

8.14 Counterparts

This Security Agreement may be executed electronically and in any number of counterparts, each of which when executed and delivered is an original but all of which taken together constitute one and the same instrument, any party may execute this Security Agreement by signing any counterpart of it and may communicate such signing by facsimile or otherwise.

8.15 Copies of Agreement and Financing Statements

Each of the Debtors acknowledges receipt of a copy of this Security Agreement and waives the right to receive a copy of all present and future financing statements and financing change statements filed in connection with the security interests created hereby and all related verification statements.

8.16 Language

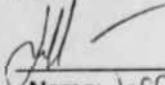
The parties hereto acknowledge that they have requested and are satisfied that the foregoing, as well as all notices, actions and legal proceedings be drawn up in the English language. *Les parties à cette convention reconnaissent qu'elles ont exigé que ce qui précède ainsi que tous avis, actions et procédures légales soient rédigés et exécutés en anglais et s'en déclarent satisfaites.*

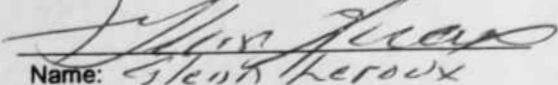
[Signature page follows]

A small, handwritten signature or mark is located in the bottom right corner of the page. It appears to be a stylized, cursive letter, possibly 'J' or 'K', with a small horizontal stroke at the end.

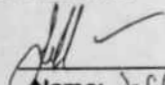
IN WITNESS WHEREOF the each of the Debtors has duly executed this Security Agreement as of the date first above-written.

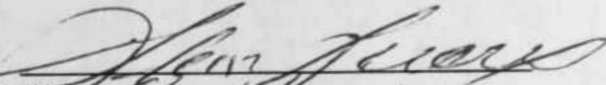
NILEX INC.

Per: 
Name: Jeff Allen
Title: Director, Finance

Per: 
Name: Glenn Keroux
Title: President & CEO

NILEX USA INC.

Per: 
Name: Jeff Allen
Title: Director, Finance

Per: 
Name: Glenn Keroux
Title: President & CEO

CANADIAN IMPERIAL BANK OF COMMERCE, as Lender

Per: _____
Name:
Title:

Per: _____
Name:
Title:



IN WITNESS WHEREOF the each of the Debtors has duly executed this Security Agreement as of the date first above-written.

NILEX INC.

Per: _____

Name:

Title:

Per: _____

Name:

Title:

NILEX USA INC.

Per: _____

Name:

Title:

Per: _____

Name:


Title:

CANADIAN IMPERIAL BANK OF COMMERCE, as Lender

Per: _____

Name:

Title:



Geoff Golding

Authorized Signatory

Per: _____


Name:

Title:


Anthony Tsuen
Authorized Signatory



This is Exhibit "F" referred to in the Affidavit of Jeff Allen
sworn before me this 31st day of October, 2022.



A Commissioner for Oaths in and for Alberta

Luke Bondkowski
Barrister & Solicitor



Search ID #: Z15447851

Transmitting Party

BLAKE CASSELS & GRAYDON LLP

3500 -855-2ND STREET S.W.
CALGARY, AB T2P4J8Party Code: 50038397
Phone #: 403 663 2233
Reference #: 99580/8 JMRD

Search ID #: Z15447851

Date of Search: 2022-Sep-27

Time of Search: 12:51:15

Business Debtor Search For:

NILEX INC.

Exact Result(s) Only Found

NOTE:

A complete Search may result in a Report of Exact and Inexact Matches.
Be sure to read the reports carefully.



Search ID #: Z15447851

Business Debtor Search For:

NILEX INC.

Search ID #: Z15447851

Date of Search: 2022-Sep-27

Time of Search: 12:51:15

Registration Number: 10010720861

Registration Date: 2010-Jan-07

Registration Type: SECURITY AGREEMENT

Registration Status: Current

Expiry Date: 2025-Jan-07 23:59:59

Exact Match on: Debtor No: 4

Amendments to Registration

11092822775	Amendment	2011-Sep-28
12031623745	Amendment	2012-Mar-16
12112105737	Amendment	2012-Nov-21
13042927211	Amendment	2013-Apr-29
13100916707	Amendment	2013-Oct-09
14011617040	Amendment	2014-Jan-16
14073032538	Amendment	2014-Jul-30
14111024332	Renewal	2014-Nov-10
15010613485	Amendment	2015-Jan-06
16090908186	Amendment	2016-Sep-09

Debtor(s)**Block**

1 NILEX INC.
9304 - 39 AVENUE
EDMONTON, AB T6E 6L8

Status

Deleted by
14073032538

Block

2 NILEX CONSTRUCTION
9304 - 39 AVENUE
EDMONTON, AB T6E 6L8

Status

Deleted by
11092822775

Search ID #: Z15447851

Block

3 NILEX CONSTRUCTION INC.
9304 - 39 AVENUE NW
EDMONTON, AB T6E 6L8

Status

Deleted by
14073032538

Block

4 NILEX INC.
6810 - 8 STREET NW
EDMONTON, AB T6P 0C5

Status

Current by
14073032538

Block

5 NILEX CONSTRUCTION INC.
6810 - 8 STREET NW
EDMONTON, AB T6P 0C5

Status

Current by
14073032538

Secured Party / Parties**Block**

1 TRANSPORTACTION LEASE SYSTEMS INC
51 CONSTELLATION COURT
TORONTO, ON M9W 1K4

Status

Deleted by
14011617040

Block

2 ELEMENT FLEET MANAGEMENT INC.
900 - 4 ROBERT SPECK PARKWAY
MISSISSAUGA, ON L4Z 1S1

Status

Current by
14011617040

Collateral: Serial Number Goods

<u>Block</u>	<u>Serial Number</u>	<u>Year</u>	<u>Make and Model</u>	<u>Category</u>	<u>Status</u>
1	1FTWW31R89EA61328	2009	Ford F350	MV - Motor Vehicle	Deleted By 16090908186
2	1FTWW31R79EA30393	2009	Ford F350	MV - Motor Vehicle	Deleted By 13100916707
3	1FTWW3BR9AEA48770	2010	Ford F350	MV - Motor Vehicle	Deleted By 16090908186
4	1FTFW1EV7AFA88689	2010	Ford F150	MV - Motor Vehicle	Deleted By 12112105737
5	1GC4KZBG8AF142086	2010	Chevrolet Silverado 3500	MV - Motor Vehicle	Deleted By 13042927211
6	1GC4KZBGXAF142378	2010	Chevrolet Silverado 3500	MV - Motor Vehicle	Deleted By 15010613485
7	1GC4KXBG7AF131651	2010	Chevrolet Silverado	MV - Motor Vehicle	Deleted By 16090908186

Search ID #: Z15447851

8	1GC4K0BG0AF154860	2010	Chevrolet Silverado 3500	MV - Motor Vehicle	Deleted By 12031623745
9	3TMMU4FN2BM026129	2011	Toyota Tacoma	MV - Motor Vehicle	Deleted By 16090908186

Collateral: General

<u>Block</u>	<u>Description</u>	<u>Status</u>
1	All present and future vehicles of whatever year, make or model,	Current
2	including but not limited to, passenger automobiles, equipment,	Current
3	trucks and all attached equipment, trailers, portable buildings	Current
4	and forklifts that may be provided by the secured party to the	Current
5	debtor pursuant to a motor vehicle lease agreement made between	Current
6	the parties, and any proceeds thereof.	Current

Search ID #: Z15447851

Business Debtor Search For:

NILEX INC.

Search ID #: Z15447851

Date of Search: 2022-Sep-27

Time of Search: 12:51:15

Registration Number: 13042623420

Registration Date: 2013-Apr-26

Registration Type: LAND CHARGE

Registration Status: Current

Registration Term: Infinity

Exact Match on:

Debtor

No: 1

Debtor(s)

Block

Status

1 NILEX INC.
9304 39 AVENUE
EDMONTON, AB T6E 6L8

Current

Secured Party / Parties

Block

Status

1 PEF 2010 NILEX INVESTMENT LIMITED PARTNERSHIP
885 WEST GEORGIA STREET, SUITE 1020
VANCOUVER, BC V6C 3E8

Current

Block

Status

2 FCPI NILEX GP INC.
885 WEST GEORGIA STREET, SUITE 1020
VANCOUVER, BC V6C 3E8

Current

Search ID #: Z15447851

Business Debtor Search For:

NILEX INC.

Search ID #: Z15447851

Date of Search: 2022-Sep-27

Time of Search: 12:51:15

Registration Number: 13042623460

Registration Date: 2013-Apr-26

Registration Type: SECURITY AGREEMENT

Registration Status: Current

Expiry Date: 2023-Apr-26 23:59:59

Exact Match on:

Debtor

No: 1

Amendments to Registration

17061620004

Renewal

2017-Jun-16

Debtor(s)**Block****Status**

Current

1 NILEX INC.
9304 39 AVENUE
EDMONTON, AB T6E 6L8

Secured Party / Parties**Block****Status**

Current

1 PEF 2010 NILEX INVESTMENT LIMITED PARTNERSHIP
885 WEST GEORGIA STREET, SUITE 1020
VANCOUVER, BC V6C 3E8

Block**Status**

Current

2 FCPI NILEX GP INC.
885 WEST GEORGIA STREET, SUITE 1020
VANCOUVER, BC V6C 3E8

Collateral: General**Block****Description****Status**

Current

1 All present and after-acquired personal property and proceeds.

Search ID #: Z15447851

Business Debtor Search For:

NILEX INC.

Search ID #: Z15447851

Date of Search: 2022-Sep-27

Time of Search: 12:51:15

Registration Number: 18041624228

Registration Date: 2018-Apr-16

Registration Type: SECURITY AGREEMENT

Registration Status: Current

Expiry Date: 2023-Apr-16 23:59:59

Exact Match on: Debtor No: 1

Debtor(s)**Block****Status**

1 NILEX INC.
6810 - 8TH STREET NW
EDMONTON, AB T6P0C5

Current

Secured Party / Parties**Block****Status**

1 FOSS NATIONAL LEASING LTD.
801-125 COMMERCE VALLEY DR. W.
MARKHAM, ON L3T7W4

Current

Collateral: Serial Number Goods

<u>Block</u>	<u>Serial Number</u>	<u>Year</u>	<u>Make and Model</u>	<u>Category</u>	<u>Status</u>
1	1C6RR7LG6JS257210	2018	DODGE 1500 SLT 4X4 CREW C	MV - Motor Vehicle	Current

Collateral: General

<u>Block</u>	<u>Description</u>	<u>Status</u>
1	AMOUNT SECURED \$40,176.00	Current

Search ID #: Z15447851

Business Debtor Search For:

NILEX INC.

Search ID #: Z15447851

Date of Search: 2022-Sep-27 Time of Search: 12:51:15

Registration Number: 18041624236

Registration Date: 2018-Apr-16

Registration Type: SECURITY AGREEMENT

Registration Status: Current

Expiry Date: 2023-Apr-16 23:59:59

Exact Match on: Debtor No: 1

Debtor(s)**Block****Status**
Current

1 NILEX INC.
6810 - 8TH STREET NW
EDMONTON, AB T6P0C5

Secured Party / Parties**Block****Status**
Current

1 FOSS NATIONAL LEASING LTD.
801-125 COMMERCE VALLEY DR. W.
MARKHAM, ON L3T7W4

Collateral: Serial Number Goods

<u>Block</u>	<u>Serial Number</u>	<u>Year</u>	<u>Make and Model</u>	<u>Category</u>	<u>Status</u>
1	1C6RR7LG8JS257211	2018	DODGE 1500 SLT 4X4 CREW C	MV - Motor Vehicle	Current

Collateral: General

<u>Block</u>	<u>Description</u>	<u>Status</u>
1	AMOUNT SECURED \$40,176.00	Current

Search ID #: Z15447851

Business Debtor Search For:

NILEX INC.

Search ID #: Z15447851

Date of Search: 2022-Sep-27

Time of Search: 12:51:15

Registration Number: 18041624253

Registration Date: 2018-Apr-16

Registration Type: SECURITY AGREEMENT

Registration Status: Current

Expiry Date: 2023-Apr-16 23:59:59

Exact Match on: Debtor No: 1

Debtor(s)**Block****Status**

1 NILEX INC.
6810 - 8TH STREET NW
EDMONTON, AB T6P0C5

Current

Secured Party / Parties**Block****Status**

1 FOSS NATIONAL LEASING LTD.
801-125 COMMERCE VALLEY DR. W.
MARKHAM, ON L3T7W4

Current

Collateral: Serial Number Goods

<u>Block</u>	<u>Serial Number</u>	<u>Year</u>	<u>Make and Model</u>	<u>Category</u>	<u>Status</u>
1	1C6RR7LGXJS257212	2018	DODGE 1500 SLT 4X4 CREW C	MV - Motor Vehicle	Current

Collateral: General

<u>Block</u>	<u>Description</u>	<u>Status</u>
1	AMOUNT SECURED \$40,176.00	Current

Search ID #: Z15447851

Business Debtor Search For:

NILEX INC.

Search ID #: Z15447851

Date of Search: 2022-Sep-27 Time of Search: 12:51:15

Registration Number: 18041624384

Registration Date: 2018-Apr-16

Registration Type: SECURITY AGREEMENT

Registration Status: Current

Expiry Date: 2023-Apr-16 23:59:59

Exact Match on: Debtor No: 1

Debtor(s)**Block****Status**

Current

1 NILEX INC.
6810 - 8TH STREET NW
EDMONTON, AB T6P0C5

Secured Party / Parties**Block****Status**

Current

1 FOSS NATIONAL LEASING LTD.
801-125 COMMERCE VALLEY DR. W.
MARKHAM, ON L3T7W4

Collateral: Serial Number Goods

<u>Block</u>	<u>Serial Number</u>	<u>Year</u>	<u>Make and Model</u>	<u>Category</u>	<u>Status</u>
1	1C6RR7LG8JS251120	2018	DODGE 1500 SLT 4X4 CREW C	MV - Motor Vehicle	Current

Collateral: General

<u>Block</u>	<u>Description</u>	<u>Status</u>
1	AMOUNT SECURED \$40,176.00	Current

Search ID #: Z15447851

Business Debtor Search For:

NILEX INC.

Search ID #: Z15447851

Date of Search: 2022-Sep-27

Time of Search: 12:51:15

Registration Number: 18041624393

Registration Date: 2018-Apr-16

Registration Type: SECURITY AGREEMENT

Registration Status: Current

Expiry Date: 2023-Apr-16 23:59:59

Exact Match on: Debtor No: 1

Debtor(s)**Block****Status**

1 NILEX INC.
6810 - 8TH STREET NW
EDMONTON, AB T6P0C5

Current

Secured Party / Parties**Block****Status**

1 FOSS NATIONAL LEASING LTD.
801-125 COMMERCE VALLEY DR. W.
MARKHAM, ON L3T7W4

Current

Collateral: Serial Number Goods

<u>Block</u>	<u>Serial Number</u>	<u>Year</u>	<u>Make and Model</u>	<u>Category</u>	<u>Status</u>
1	1C6RR7LGXJS257338	2018	DODGE 1500 SLT 4X4 CREW C	MV - Motor Vehicle	Current

Collateral: General

<u>Block</u>	<u>Description</u>	<u>Status</u>
1	AMOUNT SECURED \$39,448.00	Current

Search ID #: Z15447851

Business Debtor Search For:

NILEX INC.

Search ID #: Z15447851

Date of Search: 2022-Sep-27

Time of Search: 12:51:15

Registration Number: 18052825681

Registration Date: 2018-May-28

Registration Type: SECURITY AGREEMENT

Registration Status: Current

Expiry Date: 2025-May-28 23:59:59

Exact Match on:

Debtor

No: 1

Debtor(s)**Block****Status**

Current

1 NILEX INC.
6810 8TH STREET NW
EDMONTON, AB T6P 0C5

Block**Status**

Current

2 NILEX USA INC.
6810 8TH STREET NW
EDMONTON, AB T6P 0C5

Secured Party / Parties**Block****Status**

Current

1 CANADIAN IMPERIAL BANK OF COMMERCE
199 BAY STREET, 4TH FLOOR
TORONTO, ON M5L 1A2

Collateral: General**Block****Description****Status**

1 All of the Debtors' present and after-acquired personal property.

Current

Search ID #: Z15447851

Business Debtor Search For:

NILEX INC.

Search ID #: Z15447851

Date of Search: 2022-Sep-27

Time of Search: 12:51:15

Registration Number: 19012814797

Registration Date: 2019-Jan-28

Registration Type: SECURITY AGREEMENT

Registration Status: Current

Expiry Date: 2024-Jan-28 23:59:59

Exact Match on: Debtor No: 1

Debtor(s)

Block

Status

Current

1 NILEX INC.
6810 - 8TH STREET NW
EDMONTON, AB T6P0C5

Secured Party / Parties

Block

Status

Current

1 FOSS NATIONAL LEASING LTD.
801-125 COMMERCE VALLEY DR. W.
MARKHAM, ON L3T7W4

Collateral: Serial Number Goods

<u>Block</u>	<u>Serial Number</u>	<u>Year</u>	<u>Make and Model</u>	<u>Category</u>	<u>Status</u>
1	1C6RRFFG6KN739097	2019	RAM 1500 BIG HORN 4	MV - Motor Vehicle	Current

Search ID #: Z15447851

Business Debtor Search For:

NILEX INC.

Search ID #: Z15447851

Date of Search: 2022-Sep-27

Time of Search: 12:51:15

Registration Number: 19032103476

Registration Date: 2019-Mar-21

Registration Type: SECURITY AGREEMENT

Registration Status: Current

Expiry Date: 2024-Mar-21 23:59:59

Exact Match on: Debtor No: 1

Debtor(s)

Block

Status

Current

1 NILEX INC.
6810 - 8TH STREET NW
EDMONTON, AB T6P0C5

Secured Party / Parties

Block

Status

Current

1 FOSS NATIONAL LEASING LTD.
801-125 COMMERCE VALLEY DR. W.
MARKHAM, ON L3T7W4

Collateral: Serial Number Goods

<u>Block</u>	<u>Serial Number</u>	<u>Year</u>	<u>Make and Model</u>	<u>Category</u>	<u>Status</u>
1	1C6RRFFG5KN767473	2019	RAM 1500 BIG HORN 4	MV - Motor Vehicle	Current

Search ID #: Z15447851

Business Debtor Search For:

NILEX INC.

Search ID #: Z15447851

Date of Search: 2022-Sep-27 Time of Search: 12:51:15

Registration Number: 19070919294

Registration Date: 2019-Jul-09

Registration Type: SECURITY AGREEMENT

Registration Status: Current

Expiry Date: 2024-Jul-09 23:59:59

Exact Match on: Debtor No: 1

Debtor(s)**Block****Status**

1 NILEX INC.
6810 - 8TH STREET NW
EDMONTON, AB T6P0C5

Current

Secured Party / Parties**Block****Status**

1 FOSS NATIONAL LEASING LTD.
801-125 COMMERCE VALLEY DR. W.
MARKHAM, ON L3T7W4

Current

Collateral: Serial Number Goods

<u>Block</u>	<u>Serial Number</u>	<u>Year</u>	<u>Make and Model</u>	<u>Category</u>	<u>Status</u>
1	3C63R3HL6KG558900	2019	DODGE 3500 BIG HORN	MV - Motor Vehicle	Current

Search ID #: Z15447851

Business Debtor Search For:

NILEX INC.

Search ID #: Z15447851

Date of Search: 2022-Sep-27 Time of Search: 12:51:15

Registration Number: 19082618002

Registration Date: 2019-Aug-26

Registration Type: SECURITY AGREEMENT

Registration Status: Current

Expiry Date: 2024-Aug-26 23:59:59

Exact Match on: Debtor No: 1

Debtor(s)**Block****Status**

Current

1 NILEX INC.
6810 - 8TH STREET NW
EDMONTON, AB T6P0C5

Secured Party / Parties**Block****Status**

Current

1 FOSS NATIONAL LEASING LTD.
801-125 COMMERCE VALLEY DR. W.
MARKHAM, ON L3T7W4

Collateral: Serial Number Goods**Block****Serial Number****Year****Make and Model****Category****Status**

1 3C63R3HL2KG586709 2019 DODGE 3500 BIG HORN MV - Motor Vehicle Current

Search ID #: Z15447851

Business Debtor Search For:

NILEX INC.

Search ID #: Z15447851

Date of Search: 2022-Sep-27 Time of Search: 12:51:15

Registration Number: 20072920394

Registration Type: SECURITY AGREEMENT

Registration Date: 2020-Jul-29

Registration Status: Current

Expiry Date: 2025-Jul-29 23:59:59

Exact Match on: Debtor No: 1

Debtor(s)**Block****Status**

1 NILEX INC.
6810 - 8TH STREET NW
EDMONTON, AB T6P0C5

Current

Secured Party / Parties**Block****Status**

1 FOSS NATIONAL LEASING LTD.
801-125 COMMERCE VALLEY DR. W.
MARKHAM, ON L3T7W4
Email: ppsaregistrations@fossnational.com

Current

Collateral: Serial Number Goods

<u>Block</u>	<u>Serial Number</u>	<u>Year</u>	<u>Make and Model</u>	<u>Category</u>	<u>Status</u>
1	1C6SRFFT6LN341405	2020	RAM 1500 BIG HORN	MV - Motor Vehicle	Current

Search ID #: Z15447851

Business Debtor Search For:

NILEX INC.

Search ID #: Z15447851

Date of Search: 2022-Sep-27

Time of Search: 12:51:15

Registration Number: 20073117233

Registration Date: 2020-Jul-31

Registration Type: SECURITY AGREEMENT

Registration Status: Current

Expiry Date: 2025-Jul-31 23:59:59

Exact Match on:

Debtor

No: 1

Debtor(s)**Block****Status**

Current

1 NILEX INC.
6810 - 8TH STREET NW
EDMONTON, AB T6P0C5

Secured Party / Parties**Block****Status**

Current

1 FOSS NATIONAL LEASING LTD.
801-125 COMMERCE VALLEY DR. W.
MARKHAM, ON L3T7W4
Email: ppsregistrations@fossnational.com

Collateral: Serial Number Goods

<u>Block</u>	<u>Serial Number</u>	<u>Year</u>	<u>Make and Model</u>	<u>Category</u>	<u>Status</u>
1	3C6UR5DJ9LG192193	2020	DODGE 2500 BIG HORN	MV - Motor Vehicle	Current

Search ID #: Z15447851

Business Debtor Search For:

NILEX INC.

Search ID #: Z15447851

Date of Search: 2022-Sep-27

Time of Search: 12:51:15

Registration Number: 21091517352

Registration Date: 2021-Sep-15

Registration Type: SECURITY AGREEMENT

Registration Status: Current

Expiry Date: 2026-Sep-15 23:59:59

Exact Match on: Debtor No: 1

Debtor(s)**Block****Status**

1 NILEX INC.
6810 - 8TH STREET NW
EDMONTON, AB T6P0C5

Current

Secured Party / Parties**Block****Status**

1 FOSS NATIONAL LEASING LTD.
801-125 COMMERCE VALLEY DR. W.
MARKHAM, ON L3T7W4
Email: ppsaregistrations@fossnational.com

Current

Collateral: Serial Number Goods

<u>Block</u>	<u>Serial Number</u>	<u>Year</u>	<u>Make and Model</u>	<u>Category</u>	<u>Status</u>
1	3C63R3HL7MG692057	2021	DODGE 3500 BIG HORN	MV - Motor Vehicle	Current

Search ID #: Z15447851

Business Debtor Search For:

NILEX INC.

Search ID #: Z15447851

Date of Search: 2022-Sep-27 Time of Search: 12:51:15

Registration Number: 21091517385

Registration Date: 2021-Sep-15

Registration Type: SECURITY AGREEMENT

Registration Status: Current

Expiry Date: 2026-Sep-15 23:59:59

Exact Match on: Debtor No: 1

Debtor(s)**Block****Status**

Current

1 NILEX INC.
6810 - 8TH STREET NW
EDMONTON, AB T6P0C5

Secured Party / Parties**Block****Status**

Current

1 FOSS NATIONAL LEASING LTD.
801-125 COMMERCE VALLEY DR. W.
MARKHAM, ON L3T7W4
Email: ppsaregistrations@fossnational.com

Collateral: Serial Number Goods

<u>Block</u>	<u>Serial Number</u>	<u>Year</u>	<u>Make and Model</u>	<u>Category</u>	<u>Status</u>
1	3C63R3HL0MG647252	2021	DODGE 3500 BIG HORN	MV - Motor Vehicle	Current

Search ID #: Z15447851

Business Debtor Search For:

NILEX INC.

Search ID #: Z15447851

Date of Search: 2022-Sep-27

Time of Search: 12:51:15

Registration Number: 21092816779

Registration Date: 2021-Sep-28

Registration Type: SECURITY AGREEMENT

Registration Status: Current

Expiry Date: 2026-Sep-28 23:59:59

Exact Match on:

Debtor

No: 1

Debtor(s)**Block****Status**

Current

1 NILEX INC.
6810 - 8TH STREET NW
EDMONTON, AB T6P0C5

Secured Party / Parties**Block****Status**

Current

1 FOSS NATIONAL LEASING LTD.
801-125 COMMERCE VALLEY DR. W.
MARKHAM, ON L3T7W4
Email: ppsaregistrations@fossnational.com

Collateral: Serial Number Goods

<u>Block</u>	<u>Serial Number</u>	<u>Year</u>	<u>Make and Model</u>	<u>Category</u>	<u>Status</u>
1	3C63R3HL5MG692056	2021	DODGE 3500 BIG HORN	MV - Motor Vehicle	Current

Search ID #: Z15447851

Business Debtor Search For:

NILEX INC.

Search ID #: Z15447851

Date of Search: 2022-Sep-27 Time of Search: 12:51:15

Registration Number: 22060620459

Registration Type: WRIT OF ENFORCEMENT

Registration Date: 2022-Jun-06

Registration Status: Current

Expiry Date: 2024-Jun-06 23:59:59

Issued in Edmonton Judicial Centre

Court File Number is 2203 04447

Judgment Date is 2022-Jun-02

This Writ was issued on 2022-Jun-03

Type of Judgment is Other

Original Judgment Amount: \$636,843.26

Costs Are: \$2,624.00

Post Judgment Interest: \$0.00

Current Amount Owing: \$639,467.26

Exact Match on: Debtor No: 1

Amendments to Registration

22072706067

Amendment

2022-Jul-27

Solicitor / AgentMILLER THOMSON LLP
2700, 10155 102 STREET
EDMONTON, AB T5J 4G8

Phone #: 780 429 9773

Fax #: 780 424 5866

Reference #: 0240854.0001

Email: BHOSKING@MILLERTHOMSON.COM

Debtor(s)**Block****Status**
Current1 NILEX INC.
2500, 855 2 STREET SW
CALGARY, AB T2P 4J8

Search ID #: Z15447851

Creditor(s)**Block****Status**

1 WILSON, IAN
C/O 2700, 10155 102 STREET
EDMONTON, AB T5J 4G8
Email: BHOSKING@MILLERTHOMSON.COM

Current

Collateral: Serial Number Goods

<u>Block</u>	<u>Serial Number</u>	<u>Year</u>	<u>Make and Model</u>	<u>Category</u>	<u>Status</u>
1	1C6RRFFG6KN739097	2019	Ram 1500 BIG HORN 4	MV - Motor Vehicle	Current By 22072706067
2	1C6RRFFG5KN767473	2019	Ram 1500 BIG HORN 4	MV - Motor Vehicle	Current By 22072706067
3	3C63R3HL6KG558900	2019	Dodge 3500 BIG HORN	MV - Motor Vehicle	Current By 22072706067
4	3C63R3HL2KG586709	2019	Dodge 3500 BIG HORN	MV - Motor Vehicle	Current By 22072706067
5	1C6SRFFT6LN341405	2020	Ram 1500 BIG HORN	MV - Motor Vehicle	Current By 22072706067
6	3C6UR5DJ9LG192193	2020	Dodge 2500 Big Horn	MV - Motor Vehicle	Current By 22072706067
7	3C63R3HL7MG692057	2021	Dodge 3500 Big Horn	MV - Motor Vehicle	Current By 22072706067
8	3C63R3HL0MG647252	2021	Dodge 3500 Big Horn	MV - Motor Vehicle	Current By 22072706067
9	3C63R3HL5MG692056	2021	Dodge 3500 Big Horn	MV - Motor Vehicle	Current By 22072706067
10	HHKHFT23TK0000392	2019	Hyundai 160D-9	MV - Motor Vehicle	Current By 22072706067

Search ID #: Z15447851

Business Debtor Search For:

NILEX INC.

Search ID #: Z15447851

Date of Search: 2022-Sep-27

Time of Search: 12:51:15

Registration Number: 22062937083

Registration Date: 2022-Jun-29

Registration Type: SECURITY AGREEMENT

Registration Status: Current

Expiry Date: 2024-Jun-29 23:59:59

Exact Match on:

Debtor

No: 1

Debtor(s)**Block****Status**

Current

1 NILEX INC
68610 8TH STREET NW
EDMONTON, AB T6P 0C5

Secured Party / Parties**Block****Status**

Current

1 LEAVITT MACHINERY CANADA INC.
24389 FRASER HWY
LANGLEY, BC V2Z 2L3
Email: abautonsp@teranet.ca

Collateral: Serial Number Goods

<u>Block</u>	<u>Serial Number</u>	<u>Year</u>	<u>Make and Model</u>	<u>Category</u>	<u>Status</u>
1	HHKHFT23TK0000392	2019	Hyundai 160D-9	MV - Motor Vehicle	Current

Search ID #: Z15447851

Business Debtor Search For:

NILEX INC.

Search ID #: Z15447851

Date of Search: 2022-Sep-27 Time of Search: 12:51:15

Registration Number: 22071219384

Registration Type: WRIT OF ENFORCEMENT

Registration Date: 2022-Jul-12

Registration Status: Current

Expiry Date: 2024-Jul-12 23:59:59

Issued in Edmonton Judicial Centre

Court File Number is 1903 07838

Judgment Date is 2022-Mar-21

This Writ was issued on 2022-Jun-03

Type of Judgment is Other

Original Judgment Amount: \$473,550.59

Costs Are: \$0.00

Post Judgment Interest: \$4,157.90

Current Amount Owing: \$477,708.49

Exact Match on: Debtor No: 1

Solicitor / Agent

BENNETT JONES LLP
4500, 855 2ND STREET SW
CALGARY, AB T2P 4K7

Phone #: 780 917 5238

Fax #: 780 421 7951

Reference #: 87722.1

Email: HAWRELUKD@BENNETTJONES.COM

Debtor(s)**Block****Status**

Current

1 NILEX INC.
6810 8TH ST NW
EDMONTON, AB T6P 0C5

Creditor(s)**Block****Status**

Current

1 WATT, HUGH
#434 52422 RR224
SHERWOOD PARK, AB T8A 6N1

Search ID #: Z15447851

Email: HUGH.WATT@FOSTERPARK.CA

Result Complete



This is Exhibit "G" referred to in the Affidavit of Jeff Allen
sworn before me this 31st day of October, 2022.



A Commissioner for Oaths in and for Alberta

Lutra Bendkowski
Barrister & Solicitor



Government Corporation/Non-Profit Search of Alberta ■ Corporate Registration System

Date of Search: 2022/10/24
Time of Search: 01:04 PM
Search provided by: BLAKE CASSELS & GRAYDON LLP
Service Request Number: 38509169
Customer Reference Number: 99580/ 8JMRD

Corporate Access Number: 2017393493

Business Number:

Legal Entity Name: 1739349 ALBERTA LTD.

Legal Entity Status: Amalgamated

Alberta Corporation Type: Numbered Alberta Corporation

Amalgamation Date: 2013/04/30 YYYY/MM/DD

Registration Date: 2013/04/01 YYYY/MM/DD

Registered Office:

Street: 855 - 2 STREET SW, SUITE 3500

City: CALGARY

Province: ALBERTA

Postal Code: T2P4J8

Records Address:

Street: 855 - 2 STREET SW, SUITE 3500

City: CALGARY

Province: ALBERTA

Postal Code: T2P4J8

Directors:

Last Name: ROWE

First Name: PAUL

Street/Box Number: 885 WEST GEORGIA STREET, SUITE 1020

City: VANCOUVER

Province: BRITISH COLUMBIA

Postal Code: V6C3E8

Details From Current Articles:**The information in this legal entity table supersedes equivalent electronic attachments**

Share Structure: THE ANNEXED SCHEDULE "A" IS INCORPORATED INTO AND FORMS PART OF THIS FORM.

Share Transfers Restrictions: THE ANNEXED SCHEDULE "B" IS INCORPORATED INTO AND FORMS PART OF THIS FORM.

Min Number Of Directors: 1

Max Number Of Directors: 15

Business Restricted To: NONE.

Business Restricted From: NONE.

Other Provisions: THE ANNEXED SCHEDULE "C" IS INCORPORATED INTO AND FORMS PART OF THIS FORM.

Other Information:**Amalgamation Successor:**

Corporate Access Number	Business Number	Legal Entity Name
2017455896		NILEX INC.

Filing History:

List Date (YYYY/MM/DD)	Type of Filing
2013/04/01	Incorporate Alberta Corporation
2013/04/29	Name/Structure Change Alberta Corporation
2013/04/30	Amalgamate Alberta Corporation

Attachments:

Attachment Type	Microfilm Bar Code	Date Recorded (YYYY/MM/DD)
Share Structure	ELECTRONIC	2013/04/01
Restrictions on Share Transfers	ELECTRONIC	2013/04/01
Other Rules or Provisions	ELECTRONIC	2013/04/01
Share Structure	ELECTRONIC	2013/04/29

The Registrar of Corporations certifies that, as of the date of this search, the above information is an accurate

reproduction of data contained in the official public records of Corporate Registry.



SCHEDULE "B"
ARTICLES OF INCORPORATION
OF
1739349 ALBERTA LTD.
(the "Corporation")

(restrictions on share transfers)

The right to transfer shares of the Corporation is restricted in that no shareholder shall be entitled to transfer any share or shares in the capital of the Corporation unless the transfer has been approved by the directors of the Corporation, such approval to be signified by a resolution of the Board of Directors of the Corporation.



SCHEDULE "C"
ARTICLES OF INCORPORATION
OF
1739349 ALBERTA LTD.
(the "Corporation")

(other rules or provisions)

1. The number of shareholders of the Corporation, exclusive of persons who are in its employment and are shareholders of the Corporation and exclusive of persons who, having been formerly in the employment of the Corporation, were, while in that employment, shareholders of the Corporation, and have continued to be shareholders of the Corporation after termination of that employment, is limited to not more than fifty persons, two or more persons who are the joint registered owners of one or more shares being counted as one shareholder.
2. Any invitation to the public to subscribe for securities of the Corporation is prohibited.
3. The Corporation has a lien on the shares of a shareholder or his legal representative for a debt of that shareholder to the Corporation, provided that such lien shall be released in respect of shares transferred by such shareholder (or his legal representative) as permitted pursuant to the terms of these Articles or any unanimous shareholders agreement in respect of the Corporation.
4. The directors may, between annual general meetings, appoint one or more additional directors of the Corporation to serve until the next annual meeting, but the number of additional directors shall not at any time exceed one-third of the number of directors who held office at the expiration of the last annual meeting of the Corporation.

Schedule "A"

1739349 ALBERTA LTD.
(the "Corporation")

SCHEDULE OF SHARE STRUCTURE AND
SPECIAL RIGHTS AND RESTRICTIONS

1. AUTHORIZED CAPITAL

The Corporation is authorized to issue:

(a) an unlimited number of Class A
Common Shares;

(b) an unlimited number of Class B
Common Shares;

(with the shares in (a) and (b) above being
the "Common Shares")

(c) an unlimited number of Class A
Preferred Shares;

(d) an unlimited number of Class B
Preferred Shares; and

(e) an unlimited number of Class C
Preferred Shares

(with the shares in (c), (d) and (e) above
being the "Preferred Shares")

all of which shares shall have the following rights,
restrictions, privileges and conditions, and all such
rights, restrictions, privileges and conditions
attaching to the shares of any class shall be subject
to the rights, restrictions, privileges and conditions
attaching to any other class of shares now existing
or hereafter created or amended.

2. COMMON SHARE RIGHTS AND RESTRICTIONS

The Common Shares shall have the
following rights, restrictions, privileges and
conditions attached thereto:

2.1 Voting

The holders of the Common Shares shall be
entitled to notice of and to attend at meetings of the
shareholders of the Corporation (the
"Shareholders"), and shall be entitled to one (1)
vote in respect of each such share so held and the
holder shall also be entitled to consent to and sign a
resolution in writing to be signed by the
Shareholders of the Corporation.

2.2 Dividends

(a) Subject to the rights of the holders of
the Preferred Shares to receive dividends, the
holders of the Common Shares shall be entitled to

receive, equally on a share for share basis among all issued and outstanding Common Shares, a dividend when, as, and if declared by the directors of the Corporation (the "Directors").

(b) Notwithstanding anything to the contrary herein contained, no dividends or other payment or distribution of assets or property of the Corporation shall be made to the holders, as such, of shares of the Corporation, if (i) prohibited by the Business Corporations Act (Alberta) (the "Act") or other applicable law, or (ii) the payment thereof would result in the fair market value of the Corporation's assets, net of liabilities owed by the Corporation and the stated capital of all the classes of shares of the Corporation (except the stated capital of the Preferred Shares) being less than the aggregate of the Redemption Price of all of the classes of Preferred Shares then outstanding and all unpaid dividends, whether declared or not, accrued thereon.

2.3 Dissolution

In the event of a liquidation, dissolution, or winding up of the Corporation or other distribution of assets of the Corporation among its shareholders for the purposes of winding-up its affairs, the holders of Common Shares, subject to the prior rights of the holders of the Preferred Shares, shall be entitled to share, equally on a share for share basis, in the distribution of any remaining property or assets of the Corporation.

2.4 Amendment

(a) The special rights and restrictions attached to the Class A Common Shares shall not be modified, abrogated or amended unless consented to by the holders of the Class A Common Shares in a separate resolution, with such consent to be obtained by (i) a resolution in writing signed by holders of all the issued and outstanding Class A Common Shares or (ii) a resolution passed by at least 75 percent of the votes cast at a separate meeting of the holders of the Class A Common Shares who are present in person or represented by proxy.

(b) The special rights and restrictions attached to the Class B Common Shares shall not be modified, abrogated or amended unless consented to by the holders of the Class B Common Shares in a separate resolution, with such consent to be obtained by (i) a resolution in writing signed by holders of all the issued and outstanding Class B Common Shares or (ii) a resolution passed by at least 80 percent of the votes cast at a separate meeting of the holders of the Class B Common Shares who are present in person or represented by proxy.

3. PREFERRED SHARE RIGHTS AND RESTRICTIONS

The Preferred Shares shall have the following



rights, restrictions, privileges and conditions attached thereto:

3.1 Voting

Except as provided in the Act as amended from time to time, the holders of the Preferred Shares shall not, as such, be entitled to vote at, nor to receive notice of or attend Shareholders meetings nor shall the holders be entitled to consent to or sign a resolution in writing to be signed by the shareholders of the Corporation.

3.2 Dividends

(a) The holders of the Preferred Shares shall be entitled to receive as and when declared by the Directors out of funds or assets of the Corporation properly available for the payment of dividends, in preference and priority to any dividends being declared and paid on any other classes of shares in the Corporation, a cumulative, non-compounding dividend at a rate of 15.830 percent per annum on the Redemption Price of each such share. Dividends on the Preferred Shares shall be deemed to accrue on a daily basis, whether or not declared, from and including the date of issuance of each such share until such dividends are declared and paid in full.

(b) Any dividends declared and paid on any Preferred Shares must be declared and paid proportionately on the Class A Preferred Shares, the Class B Preferred Shares and the Class C Preferred Shares based on the aggregate accrued and unpaid dividends attributable to each such Class A Preferred Share, Class B Preferred Share or Class C Preferred Share as compared to the aggregate accrued and unpaid dividends attributable to all of the Preferred Shares at the time of such declaration.

(c) The Directors shall be entitled to declare part of such cumulative dividends at anytime and from time to time notwithstanding that such cumulative dividend may not be declared in full. The holders of the Preferred Shares shall not, as such, be entitled to receive any dividends other than or in excess of the dividends herein provided.

(d) No dividends shall be declared and paid at any time on any other class of shares in any fiscal year of the Corporation unless and until all unpaid dividends, whether declared or not, that have accrued to the holders of the Preferred Shares have been declared and paid.

3.3 Dissolution

In the event of a liquidation, dissolution, or winding up of the Corporation or other distribution of assets of the Corporation among its shareholders for the purposes of winding-up its affairs:

(a) the holders of the Class A Preferred Shares shall be entitled to receive an aggregate



amount of CDN\$1.00 distributed pro rata among the holders of the Class A Preferred Shares (or as nearly thereto as the Directors may in good faith determine) before any amount shall be paid or any property or assets of the Corporation distributed to the holders of any other class of shares;

(b) the holders of the Class B Preferred Shares shall be entitled to receive an aggregate amount of CDN\$1.00 distributed pro rata among the holders of the Class B Preferred Shares (or as nearly thereto as the Directors may in good faith determine) before any amount shall be paid or any property or assets of the Corporation distributed to the holders of any other class of shares, other than the payment to the holders of the Class A Preferred Shares as provided in subsection (a) above;

(c) the holders of the Class C Preferred Shares shall be entitled to receive an aggregate amount of CDN\$1.00 distributed pro rata among the holders of the Class C Preferred Shares (or as nearly thereto as the Directors may in good faith determine) before any amount shall be paid or any property or assets of the Corporation distributed to the holders of any other class of shares, other than the payments to the holders of the Class A Preferred Shares and the Class B Preferred Shares as provided in subsection (a) and (b) above.

(d) subject to the prior rights of the holders of the Preferred Shares to receive distributions pursuant to subsections (a), (b) and (c) above, the holders of the Preferred Shares shall be entitled to receive, before any amount is paid or any property or assets of the Corporation is distributed to the holders of any other class of shares of the Corporation:

(i) firstly, an amount equal to the Redemption Price of each share; and

(ii) secondly, an amount equal to all unpaid dividends, whether declared or not, which shall have accrued thereon.

If the amount of remaining property or assets of the Corporation is less than the aggregate of the Redemption Price of all issued Preferred Shares, then the remaining property or assets of the Corporation shall be distributed to the holders of those shares equally on a share for share basis. If the amount of remaining property or assets of the Corporation is greater than the aggregate of the Redemption Price of all issued Preferred Shares but less than the amount required to satisfy all unpaid dividends, whether declared or not, which have accrued thereon, then the amount of the Corporation's remaining property or assets in excess of the aggregate Redemption Price of those shares shall be distributed to the holders of those shares proportionately, based on the amount of unpaid dividends, whether declared or not, accrued on the shares held by each particular holder as compared to the aggregate of all unpaid dividends, whether

declared or not, which shall have accrued on all the issued Preferred Shares. For greater certainty, upon payment of the Redemption Price in respect of all issued Preferred Shares and all unpaid dividends, whether declared or not, which have accrued thereon, the holders of the Preferred Shares shall not, as such, have any other right to participate or share in the remaining property of the Corporation whether in a liquidation, dissolution, winding up or a reduction, redemption, or purchase by the Corporation of its shares.

3.4 Redemption of Preferred Shares

(a) The redemption price for each Preferred Share shall be the sum of CDN\$1.00 (the "Redemption Price").

(b) Subject to the provisions of the Act, the Corporation may, by resolution of the Directors and upon giving notice as hereinafter provided, from time to time redeem or purchase the whole or any part of any of the Preferred Shares of any one or more holders, without redeeming or purchasing the whole or any part of the Preferred Shares of any other holder or holders of the same or any other class, by paying for each share to be redeemed or purchased the Redemption Price thereof, together with all unpaid dividends, whether declared or not, accrued thereon. Not less than ten (10) clear days' notice in writing, signed by any Director or officer of the Corporation, of such redemption or purchase (each a "Redemption Notice") shall be given by personal delivery or by mailing such notice to the registered holder(s) of the shares to be redeemed at the last address as they appear in the records of the Corporation or its transfer agent, provided that accidental failure to give a Redemption Notice to one or more of such holders shall not affect the validity of such redemption. In the case of each Redemption Notice so delivered or mailed, delivery thereof shall be deemed to have been received on the day of delivery if delivered and on the fifth business day following the day of mailing if mailed.

(c) The Redemption Notice shall specify the number of Preferred Shares to be redeemed, the aggregate Redemption Price and the amount of all unpaid dividends, whether declared or not, accrued on each share to be redeemed and the date and place of redemption or purchase which may be a Canadian Chartered Bank or a trust company. On or after the date so specified in the Redemption Notice, the Corporation shall pay to the order of each holder of the Preferred Shares to be redeemed, by way of certified cheque, bank draft or wire transfer or direct deposit of immediately available funds at the place of redemption or to an account specified by each holder of shares to be redeemed on or before the date fixed for redemption or purchase, an amount sufficient to redeem or purchase such shares thereof on presentation and surrender of the certificate or certificates representing such shares to be redeemed and such shares shall thereupon, without any further action



on the part of the Corporation or the holder of such shares, be redeemed. Surrender of the certificate or certificates for such shares to be redeemed or purchased is sufficient only if such certificate or certificates are duly and properly endorsed in blank for transfer or accompanied by a form of transfer acceptable to the Corporation and duly executed in blank.

(d) If share certificates representing any or all of the Preferred Shares to be redeemed have not been surrendered to the Corporation as required in the foregoing provisions on or before the time specified in the Redemption Notice for doing so, the Corporation may, at its option, at any time on or after such time, deposit the amount required to redeem or purchase such shares to a special account with any chartered bank or any trust company in Canada, with such amount to be paid without interest to or to the order of the holders of the Preferred Shares for which such deposit is being made, and such holders' rights shall be limited to receiving without interest their proportionate part of the total amount required to redeem such shares so deposited against presentation and surrender of the said certificates held by them respectively. Any interest accrued on such amounts shall belong to the Corporation.

(e) From and after the date specified in any Redemption Notice, the holders of the Preferred Shares to be redeemed shall not be entitled to exercise any of the rights of shareholders in respect thereof unless payment of the amount required to redeem the shares has not been made upon presentation of the certificates in accordance with the foregoing provisions, in which case the rights of the holders shall remain unaffected. Unless otherwise determined by the Directors, all Preferred Shares redeemed by the Corporation in accordance with the provisions hereof shall be cancelled and returned to the status of authorized but unissued shares in the capital of the Corporation.

3.5 Liquidity

Notwithstanding anything to the contrary herein contained, no dividends, redemptions, share purchases, capital reductions or other payments or distributions of assets or property of the Corporation shall be made or paid on or with respect to shares of the Corporation which rank subordinate to any of the Preferred Shares on a liquidation, dissolution or winding up, if the payment in respect thereof would result in the fair market value of the Corporation's assets, net of liabilities owed by the Corporation, being less than the aggregate of the Redemption Price for all of the then outstanding Preferred Shares and all unpaid dividends, whether declared or not, accrued thereon, and the Redemption Price or amount payable on redemption or purchase for all other shares then outstanding which rank equal to or in priority to the Preferred Shares on a liquidation, dissolution or winding up, or would otherwise be a breach of the

Act.

3.6 Specified Amount

For the purposes of subsection 191(4) of the Income Tax Act (Canada), the specified amount for each Preferred Share shall be equal to CDN\$1.00.



This is Exhibit "H" referred to in the Affidavit of Jeff Allen sworn before me this 31st day of October, 2022.



A Commissioner for Oaths in and for Alberta

Luke Bendkowski
Barrister & Solicitor



This instrument and the rights and obligations evidenced hereby are subordinate in the manner and to the extent set forth in that certain Standstill and Subordination Agreement dated as of April 30, 2013 among HSBC Bank Canada, PEF 2010 Nilex Investment Limited Partnership, 1739349 Alberta Ltd., Nilex Inc., Nilex Construction Inc., and Nilex USA Inc., as such agreement may be amended, supplemented, restated or replaced from time to time (the "Standstill and Subordination Agreement"), and each holder of this instrument, by its acceptance hereof, irrevocably agrees to be bound by the provisions of the Standstill and Subordination Agreement.

SUBORDINATED PROMISSORY NOTE

April 30, 2013

CAD\$22,683,150

FOR VALUE RECEIVED, **1739349 ALBERTA LTD.** (including any amalgamation successor thereof) (the "**Borrower**") hereby promises to pay to or to the order of **PEF 2010 NILEX INVESTMENT LIMITED PARTNERSHIP** (the "**Lender**"), the principal amount of **CAD\$22,683,150** (the "**Principal Amount**") with interest thereon as and at the rate contemplated hereunder.

1. So long as there are any amounts outstanding on this Promissory Note, interest shall accrue at a rate of 18.00% per annum on the outstanding Principal Amount from the date of this Promissory Note, both before and after demand, default and judgment.
 - 1.1. Interest on the Principal Amount will be calculated in accordance with the following provisions:
 - (a) interest accruing hereunder will be calculated on the basis of a 365 day or a 366 day year, as the case may be; and
 - (b) interest shall be payable after as well as before maturity, demand, default and judgment and whether or not any bankruptcy case or proceeding has been commenced.
 - 1.2. Interest shall not compound on accrued and unpaid interest hereunder.
2. The Principal Amount and any accrued but unpaid interest shall come due on the Maturity Date and, subject to the provisions of the Standstill and Subordination Agreement, shall be paid and satisfied in full on such date. Notwithstanding the foregoing, the Borrower may make regular scheduled payments of interest in cash or in kind via the issuance of additional shares to the Lender in the capital of the Borrower.
3. Subject to any restrictions placed on the Borrower or the Lender under the Standstill and Subordination Agreement, the Borrower shall be permitted to make a prepayment of all or any portion of the Principal Amount or the accrued and unpaid interest thereon from time to time without penalty.
4. All amounts, paid by the Borrower to the Lender from time to time shall, unless otherwise agreed to in writing by the Borrower and the Lender, be applied first, towards payment of any outstanding interest and then towards repayment of any outstanding Principal Amount.



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5. As security for the obligations of the Borrower relating to or arising out of this Promissory Note, the Borrower and certain subsidiaries of the Borrower, agree to grant, execute and deliver to the Lender a security interest in all of their present and after-acquired personal property (collectively, the "Security") which security interest shall be junior and rank subordinate to any and all security interest granted by the Borrower and certain subsidiaries of the Borrower in favour of HSBC Bank Canada pursuant to the Standstill and Subordination Agreement.
6. All amounts payable by the Borrower to the Lender hereunder shall be made on or before 12:00 noon (Alberta time) by way of direct deposit or wire transfer of immediately available funds to such account as the Lender may direct in writing at the request of the Borrower made not less than two Business Days prior to the date such payment is to be made or such other method of payment to which the Lender may agree in writing from time to time. Payments received after the time specified above shall be deemed to have been made on the next following Business Day.
7. Except as otherwise stated in the Standstill and Subordination Agreement, the indebtedness and liabilities of the Borrower under this Promissory Note and the Security are hereby subordinated and postponed in right of payment to any and all Senior Indebtedness now or from time to time hereafter owing by the Borrower, and the Lender agrees to from time to time do all such acts and things and execute and deliver all such instruments, agreements and documents as may from time to time reasonably be required by any holder of any Senior Indebtedness to evidence, confirm and give full force and effect to the subordination and postponement in favour of any Senior Indebtedness contemplated herein.
8. The Borrower shall notify the Lender in writing within three (3) days after the occurrence of any Event of Default of which the Borrower becomes aware. If the Event of Default has not been cured by the Borrower within 30 days of the Borrower becoming aware of such Event of Default, the Lender may, at its option, but subject to the Standstill and Subordination Agreement (i) by written notice to the Borrower, declare the entire Principal Amount owing under this Promissory Note together with all interest accrued thereon, immediately due and payable regardless of any prior forbearance and the Security shall at the option of the Lender, become immediately enforceable in each and every Event of Default, and (ii) exercise any and all rights and remedies available to it under applicable law, including, without limitation, the right to collect from the Borrower all sums due under this Promissory Note.
9. Time shall be of the essence of this Promissory Note.
10. This Promissory Note is not a negotiable instrument.
11. This Promissory Note will be governed by and construed in accordance with the laws of the Province of Alberta and the federal laws of Canada applicable therein.

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12. All communications between the Lender and the Borrower in connection with this Promissory Note, shall be in writing and shall be given by delivery service, by hand delivery, facsimile or email to the addressee as follows:

- (a) to the Borrower:

1739349 Alberta Ltd.
885 West Georgia Street, Suite 1020
Vancouver, British Columbia
V6C 3E8
Attention: Paul W. Rowe

Fax: (604) 408-8892
email: paul.rowe@fulcrumcapital.ca

with a copy to:

Blake, Cassels & Graydon LLP
595 Burrard Street
P.O. Box 49314
Suite 2600, Three Bentall Centre
Vancouver, B.C.
V7X 1L3
Attention: J-P Bogden

Fax No.: (604) 631-3375
email: jp.bogden@blakes.com

- (b) to the Lender:

PEF 2010 Nilex Investment Limited Partnership
885 West Georgia Street, Suite 1020
Vancouver, British Columbia
V6C 3E8
Attention: Paul W. Rowe

Fax: (604) 408-8892
email: paul.rowe@fulcrumcapital.ca

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with a copy to:

Blake, Cassels & Graydon LLP
595 Burrard Street
P.O. Box 49314
Suite 2600, Three Bentall Centre
Vancouver, B.C.
V7X 1L3
Attention: J-P Bogden

Fax No.: (604) 631-3375
email: jp.bogden@blakes.com

Any party may from time to time change its address under this section by notice to the other party given in the manner provided in this section.

13. This Promissory Note and all of its provisions will enure to the benefit of the Lender and its successors and permitted assigns, and will be binding on the Borrower and its successors and permitted assigns.
14. The Borrower hereby waives demand and presentment for payment, notice of dishonour, notice of non-payment, protest and notice of protest of this Promissory Note.
15. For the purposes of this Promissory Note, the following terms shall have the following meanings:
 - 15.1. **"Business Day"** means any day that is not a Saturday, Sunday or a legal holiday on which banks are authorized or required to be closed in Vancouver, British Columbia or Edmonton, Alberta;
 - 15.2. **"Event of Default"** means the occurrence of any one or more of the following events with respect to Borrower:
 - 15.2.1. If Borrower shall fail to pay when due any payment under this Promissory Note.
 - 15.2.2. Borrower instituting any proceeding or executing any agreement to authorize its participation in or commencement of any proceeding seeking to adjudicate it a bankrupt or insolvent or seeking liquidation, arrangement, protection, relief or composition of it or any of its property or debt or making a proposal with respect to it under any law relating to bankruptcy, insolvency or compromise of debts or other similar laws or any arrangement or compromise of debt under the applicable laws.
 - 15.2.3. Any proceeding being commenced against or affecting Borrower seeking to adjudicate it a bankrupt or insolvent, seeking liquidation, arrangement, protection, relief or composition of it or any of its property or debt or making a proposal with respect to Borrower under any law relating to

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bankruptcy, insolvency or compromise of debts or other similar laws (including any arrangement or compromise of debt under the applicable laws), or seeking appointment of a receiver, trustee, agent, custodian or other similar official for Borrower or for any substantial part of its assets.

- 15.2.4. Any creditor of Borrower or any other person privately appoints a receiver, trustee or similar official for all or a substantial part of the assets of Borrower.
- 15.2.5. Any execution, distress or other enforcement process, whether by court order or otherwise, becomes enforceable against all or a substantial part of property of Borrower; or
- 15.2.6. The lender under the Senior Credit Agreement taking any action to enforce its rights against the Borrower due to the Borrower being in default of its obligations under the Senior Credit Agreement;
- 15.3. **"Maturity Date"** means April 30, 2023;
- 15.4. **"Principal Amount"** has the meaning given to such term in the endorsement on the face of this Promissory Note;
- 15.5. **"Promissory Note"** means this promissory note;
- 15.6. **"Senior Credit Agreement"** means the acceptance letter dated April 30, 2013 from HSBC Bank Canada to the Borrower and accepted by the Borrower on April 30, 2013, as amended, supplemented, restated or replaced from time to time;
- 15.7. **"Senior Indebtedness"** means any and all indebtedness and liabilities now or from time to time hereafter owing by the Borrower, direct or indirect, absolute or contingent, under or in connection with any one or more loans or other credit facilities from time to time made available to the Borrower or any of its subsidiaries by any chartered bank, credit union, trust company, insurance company or other financial institution to assist in financing the working capital, day to day operating requirements, capital expenditures or other capital requirements of the Borrower and its subsidiaries, or any of them and, at the date hereof, includes, without limitation, the indebtedness and liabilities of the Borrower arising under or in connection with the Senior Credit Agreement; and
- 15.8. **"Standstill and Subordination Agreement"** has the meaning given to such term in the endorsement on the face of this Promissory Note;

[Signature on next following page]

1739349 ALBERTA LTD.

Per: _____

Name: PAUL ROWE

Title: DIRECTOR



This is Exhibit "I" referred to in the Affidavit of Jeff Allen sworn before me this 31st day of October, 2022.



A Commissioner for Oaths in and for Alberta

Luke Bondrowski
Barrister & Solicitor



This instrument and the rights and obligations evidenced hereby are subordinate in the manner and to the extent set forth in that certain Standstill and Subordination Agreement dated as of April 30, 2013 among HSBC Bank Canada, PEF 2010 Nilex Investment Limited Partnership., Nilex Inc. (as successor by way of amalgamation to 1739349 Alberta Ltd. and Nilex Inc., and by amalgamation of the amalgamated entity resulting therefrom with Nilex Construction Inc.) and Nilex USA Inc., as such agreement may be amended, supplemented, restated or replaced from time to time (the "Standstill and Subordination Agreement"), and each holder of this instrument, by its acceptance hereof, irrevocably agrees to be bound by the provisions of the Standstill and Subordination Agreement.

SUBORDINATED PROMISSORY NOTE

June 14, 2017

CAD\$2,000,000

FOR VALUE RECEIVED, NILEX INC. (the "**Borrower**") hereby promises to pay to or to the order of PEF 2010 NILEX INVESTMENT LIMITED PARTNERSHIP (the "**Lender**"), the principal amount of **CAD\$2,000,000** (the "**Principal Amount**") with interest thereon as and at the rate contemplated hereunder.

1. So long as there are any amounts outstanding on this Promissory Note, interest shall accrue at a rate of 12.00% per annum on the outstanding Principal Amount from the date of this Promissory Note, both before and after demand, default and judgment.
 - 1.1. Interest on the Principal Amount will be calculated in accordance with the following provisions:
 - (a) interest accruing hereunder will be calculated on the basis of a 365 day or a 366 day year, as the case may be; and
 - (b) interest shall be payable after as well as before maturity, demand, default and judgment and whether or not any bankruptcy case or proceeding has been commenced.
 - 1.2. Interest shall not compound on accrued and unpaid interest hereunder.
2. Subject to the provisions of the Standstill and Subordination Agreement, interest will accrue quarterly on the last day of each fiscal quarter of the Borrower (each, an "**Interest Accrual Date**"). Such accrued interest as of each Interest Accrual Date will be added to the unpaid Principal Amount of this promissory note on each Interest Accrual Date and will bear interest thereafter in accordance with the terms of this Promissory Note until paid. Notwithstanding the foregoing, the Borrower may elect to make regular scheduled payments of interest in cash or in kind via the issuance of additional shares to the Lender in the capital of the Borrower.
3. The Principal Amount (including, for certainty, all accrued by unpaid interest that was added to the Principal Amount pursuant to Section 2 above) and any accrued but unpaid interest shall come due on the Maturity Date and, subject to the provisions of the Standstill and Subordination Agreement, shall be paid and satisfied in full on such date.

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4. Subject to any restrictions placed on the Borrower or the Lender under the Standstill and Subordination Agreement, the Borrower shall be permitted to make a prepayment of all or any portion of the Principal Amount or the accrued and unpaid interest thereon from time to time without penalty.
5. All amounts, paid by the Borrower to the Lender from time to time shall, unless otherwise agreed to in writing by the Borrower and the Lender, be applied first, towards payment of any outstanding interest and then towards repayment of any outstanding Principal Amount.
6. The Borrower agrees that certain security previously granted by the Borrower and Nilex USA Inc. will secure the obligations of the Borrower relating to or arising out of this Promissory Note, provided that such security and the security interest granted by the Borrower and Nilex USA Inc. thereunder shall continue to be junior and rank subordinate to any and all security interest granted by the Borrower and certain subsidiaries of the Borrower in favour of HSBC Bank Canada pursuant to the Standstill and Subordination Agreement.
7. All amounts payable by the Borrower to the Lender hereunder shall be made on or before 12:00 noon (Alberta time) by way of direct deposit or wire transfer of immediately available funds to such account as the Lender may direct in writing at the request of the Borrower made not less than two Business Days prior to the date such payment is to be made or such other method of payment to which the Lender may agree in writing from time to time. Payments received after the time specified above shall be deemed to have been made on the next following Business Day.
8. Except as otherwise stated in the Standstill and Subordination Agreement, the indebtedness and liabilities of the Borrower under this Promissory Note and the Security are hereby subordinated and postponed in right of payment to any and all Senior Indebtedness now or from time to time hereafter owing by the Borrower, and the Lender agrees to from time to time do all such acts and things and execute and deliver all such instruments, agreements and documents as may from time to time reasonably be required by any holder of any Senior Indebtedness to evidence, confirm and give full force and effect to the subordination and postponement in favour of any Senior Indebtedness contemplated herein.
9. The Borrower shall notify the Lender in writing within three (3) days after the occurrence of any Event of Default of which the Borrower becomes aware. If the Event of Default has not been cured by the Borrower within 30 days of the Borrower becoming aware of such Event of Default, the Lender may, at its option, but subject to the Standstill and Subordination Agreement (i) by written notice to the Borrower, declare the entire Principal Amount owing under this Promissory Note together with all interest accrued thereon, immediately due and payable regardless of any prior forbearance and the Security shall at the option of the Lender, become immediately enforceable in each and every Event of Default, and (ii) exercise any and all rights and remedies available to it under applicable law, including, without limitation, the right to collect from the Borrower all sums due under this Promissory Note.



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10. Time shall be of the essence of this Promissory Note.
11. This Promissory Note is not a negotiable instrument.
12. This Promissory Note will be governed by and construed in accordance with the laws of the Province of Alberta and the federal laws of Canada applicable therein.
13. All communications between the Lender and the Borrower in connection with this Promissory Note, shall be in writing and shall be given by delivery service, by hand delivery, facsimile or email to the addressee as follows:

(a) to the Borrower:

Nilex Inc.
885 West Georgia Street, Suite 1020
Vancouver, British Columbia
V6C 3E8
Attention: Paul W. Rowe

Fax: (604) 408-8892
email: paul.rowe@fulcrumcapital.ca

with a copy to:

Blake, Cassels & Graydon LLP
595 Burrard Street
P.O. Box 49314
Suite 2600, Three Bentall Centre
Vancouver, B.C.
V7X 1L3
Attention: J-P Bogden

Fax No.: (604) 631-3375
email: jp.bogden@blakes.com

(b) to the Lender:

PEF 2010 Nilex Investment Limited Partnership
885 West Georgia Street, Suite 1020
Vancouver, British Columbia
V6C 3E8
Attention: Paul W. Rowe

Fax: (604) 408-8892
email: paul.rowe@fulcrumcapital.ca

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with a copy to:

Blake, Cassels & Graydon LLP
595 Burrard Street
P.O. Box 49314
Suite 2600, Three Bentall Centre
Vancouver, B.C.
V7X 1L3
Attention: J-P Bogden


Fax No.: (604) 631-3375
email: jp.bogden@blakes.com

Any party may from time to time change its address under this section by notice to the other party given in the manner provided in this section.

14. This Promissory Note and all of its provisions will enure to the benefit of the Lender and its successors and permitted assigns, and will be binding on the Borrower and its successors and permitted assigns.
15. The Borrower hereby waives demand and presentment for payment, notice of dishonour, notice of non-payment, protest and notice of protest of this Promissory Note.
16. For the purposes of this Promissory Note, the following terms shall have the following meanings:
 - 16.1. **"Business Day"** means any day that is not a Saturday, Sunday or a legal holiday on which banks are authorized or required to be closed in Vancouver, British Columbia or Edmonton, Alberta;
 - 16.2. **"Event of Default"** means the occurrence of any one or more of the following events with respect to Borrower:
 - 16.2.1. If Borrower shall fail to pay when due any payment under this Promissory Note.
 - 16.2.2. Borrower instituting any proceeding or executing any agreement to authorize its participation in or commencement of any proceeding seeking to adjudicate it a bankrupt or insolvent or seeking liquidation, arrangement, protection, relief or composition of it or any of its property or debt or making a proposal with respect to it under any law relating to bankruptcy, insolvency or compromise of debts or other similar laws or any arrangement or compromise of debt under the applicable laws.
 - 16.2.3. Any proceeding being commenced against or affecting Borrower seeking to adjudicate it a bankrupt or insolvent, seeking liquidation, arrangement, protection, relief or composition of it or any of its property or debt or making a proposal with respect to Borrower under any law relating to

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bankruptcy, insolvency or compromise of debts or other similar laws (including any arrangement or compromise of debt under the applicable laws), or seeking appointment of a receiver, trustee, agent, custodian or other similar official for Borrower or for any substantial part of its assets.

- 16.2.4. Any creditor of Borrower or any other person privately appoints a receiver, trustee or similar official for all or a substantial part of the assets of Borrower.
- 16.2.5. Any execution, distress or other enforcement process, whether by court order or otherwise, becomes enforceable against all or a substantial part of property of Borrower; or
- 16.2.6. The lender under the Senior Credit Agreement taking any action to enforce its rights against the Borrower due to the Borrower being in default of its obligations under the Senior Credit Agreement;
- 16.3. "Maturity Date" means June 14, ~~2027~~; 
- 16.4. "Principal Amount" has the meaning given to such term in the endorsement on the face of this Promissory Note;
- 16.5. "Promissory Note" means this promissory note;
- 16.6. "Senior Credit Agreement" means the facility letter dated April 30, 2013 from HSBC Bank Canada to the Borrower and accepted by the Borrower on April 30, 2013, as amended, supplemented, restated or replaced from time to time;
- 16.7. "Senior Indebtedness" means any and all indebtedness and liabilities now or from time to time hereafter owing by the Borrower, direct or indirect, absolute or contingent, under or in connection with any one or more loans or other credit facilities from time to time made available to the Borrower or any of its subsidiaries by any chartered bank, credit union, trust company, insurance company or other financial institution to assist in financing the working capital, day to day operating requirements, capital expenditures or other capital requirements of the Borrower and its subsidiaries, or any of them and, at the date hereof, includes, without limitation, the indebtedness and liabilities of the Borrower arising under or in connection with the Senior Credit Agreement; and
- 16.8. "Standstill and Subordination Agreement" has the meaning given to such term in the endorsement on the face of this Promissory Note;

[Signature on next following page]



NILEX INC.

Per:  _____
Name: Jeff Allen
Title: Director, Finance



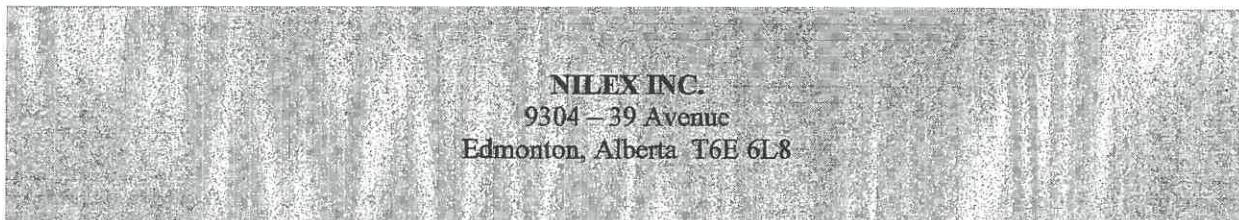
This is Exhibit "J" referred to in the Affidavit of Jeff Allen sworn before me this 31st day of October, 2022.



A Commissioner for Oaths in and for Alberta

Luke Bendkowski
Public Solicitor



GENERAL SECURITY AGREEMENT**(British Columbia, Alberta, New Brunswick, Nova Scotia, Newfoundland and Labrador, Prince Edward Island)**This General Security Agreement made as of the 30 day of APRIL, 2013**Between:**

(the "Debtor")

And:**PEF 2010 Nilex Investment Limited Partnership, a limited partnership under the laws of the Province of British Columbia located at**

(the "Lender")

I Security

- 1.1 For value received, the Debtor grants and creates the security constituted by this General Security Agreement and agrees to the terms, covenants, agreements, conditions, provisos and other matters set out in this General Security Agreement.
- 1.2 As general and continuing security for the Obligations (as defined in clause 2.1 hereof), the Debtor:
- 1.2.1 hereby grants to the Lender, by way of mortgage, charge, assignment and transfer, a security interest in all presently owned and hereafter acquired personal property of the Debtor of whatsoever nature and kind and wheresoever situate and all proceeds thereof and therefrom, renewals thereof, Accessions thereto and substitutions therefor, (all of which are herein collectively called the "Personal Property Collateral"), including, without limiting the generality of the foregoing, all the presently owned or held and hereafter acquired right, title and interest of the Debtor in and to all Goods (including all accessories, attachments, additions and Accessions thereto), Chattel Paper, Documents of Title (whether negotiable or not), Instruments, Intangibles (subject to Clause 1.2.2 hereof), Licences, Money, Securities, Investment Property and all:
- (a) Inventory of whatsoever nature and kind and wheresoever situate;

- (b) Equipment (other than Inventory) of whatsoever nature and kind and wheresoever situate, including, without limitation, all machinery, tools, apparatus, plant, furniture, fixtures and vehicles of whatsoever nature and kind;
- (c) book accounts and book debts and generally all Accounts, debts, dues, claims, choses in action and demands of every nature and kind howsoever arising or secured including letters of credit, letters of guarantee and advices of credit, which are now due, owing or accruing or growing due to or owned by or which may hereafter become due, owing or accruing or growing due to or owned by the Debtor (all of which are herein collectively called the "Debts");
- (d) deeds, documents, writings, papers, books of account and other books relating to or being records of Debts, Chattel Paper or Documents of Title or by which such are or may hereafter be secured, evidenced, acknowledged or made payable;
- (e) contractual rights and insurance claims and all goodwill;
- (f) monies other than trust monies lawfully belonging to others; and
- (g) personal property described in any schedule now or hereafter annexed hereto; and

1.2.2 hereby grants to the Lender, by way of mortgage and charge a security interest in all presently owned and hereafter acquired patents, trade-marks, copyrights, industrial designs and other intellectual property and all proceeds thereof and therefrom, renewals thereof, Accessions thereto and substitutions therefor, **including without limitation all intellectual property rights set out in the Intellectual Property Schedule** (all of which is deemed to be included in the definition of "Personal Property Collateral" referred to in Clauses 1.2.1 and 1.3.2 hereof); and

1.2.3 hereby charges as and by way of a floating charge in favour of the Lender all the presently owned or held and hereafter acquired property, assets, effects and undertakings of the Debtor of whatsoever nature and kind and wheresoever situate, other than such of the property, assets, effects and undertakings of the Debtor as are validly and effectively subjected to the security interest granted to the Lender pursuant to clause 1.2.1, (all of which property, assets, effects and undertakings so charged by this clause 1.2.3 are herein collectively called the "Other Collateral") including, without limiting the generality of the foregoing, all presently owned or held and hereafter acquired right, title and interest of the Debtor in and to real and immovable and leasehold property and rights whether in fee or of a less estate and all interest in and rights relating to lands and all easements, rights of way, privilege, benefits, licences, improvements and rights whether connected therewith or appurtenant thereto or separately owned or held and all structures, buildings, plant, machinery, fixtures, apparatus and fixed assets and the charge created by this clause 1.2.3 shall be a floating charge such that the Debtor shall not have power without the prior written consent of the Lender to:

- (a) create or permit to exist any Encumbrance against any of the Other Collateral which ranks or could in any event rank in priority to or pari passu with the security constituted by this General Security Agreement, save for:
 - (1) those Encumbrances shown in the Encumbrance Schedule; and
 - (2) Encumbrances approved in writing by the Lender prior to creation or assumption; or
- (b) grant, sell, exchange, transfer, assign, lease or otherwise dispose of the Other Collateral.

- 1.3 In this General Security Agreement:
- 1.3.1 any reference to "Premises" shall mean all property owned or leased by the Debtor;
 - 1.3.2 the Personal Property Collateral and the Other Collateral are herein together called the "Collateral";
 - 1.3.3 any reference to "Collateral" shall, unless the context otherwise requires, be deemed a reference to "Collateral or any part thereof";
 - 1.3.4 any reference to "Debtor" and the personal pronoun "it" or "its" and any verb relating thereto and used therewith shall be read and construed as required by and in accordance with the context in which such words are used depending upon whether the Debtor is one or more corporations and, if more than one Debtor executes this General Security Agreement, this General Security Agreement shall apply and be binding upon each of them jointly and severally and all obligations hereunder shall be joint and several;
 - 1.3.5 any reference to "Environmental Laws" shall mean any laws, regulations, orders, by-laws, permits or lawful requirements of any governmental authority with respect to environmental protection or regulating hazardous materials;
 - 1.3.6 any reference to "General Security Agreement" shall, unless the context otherwise requires, be deemed a reference to this General Security Agreement as amended from time to time by written agreement together with the schedules hereto and any schedules added hereto pursuant to the provisions hereof;
 - 1.3.7 any reference to "Hazardous Materials" shall mean any asbestos material, urea formaldehyde, explosives, radioactive materials, pollutants, contaminants, hazardous substances, corrosive substances, toxic substances, special waste or waste of any kind including, without limitation, compounds known as chlorobiphenyls and any substance the storage, manufacture, disposal, treatment, generation, use, transport, remediation or release of which into the environment is prohibited, controlled or licensed under Environmental Laws, all excluding similar or like substances used in the ordinary course of the Debtor's business provided that such excluded substances continue to be used, stored, disposed of or otherwise handled in accordance with Environmental Laws and other applicable laws;
 - 1.3.8 any reference to "PPSA" shall mean the Personal Property Security Act of the Province as amended from time to time, including any amendments thereto and any Act substituted therefor and amendments thereto;
 - 1.3.9 any reference to the "Province" shall mean the Province of Alberta;
and
 - 1.3.10 the terms "Goods", "Chattel Paper", "Documents of Title", "Equipment", "Accounts" "Consumer Goods", "Instruments", "Intangibles", "Licences"(Alberta and British Columbia only), "Money", "Securities", "Investment Property", "Proceeds", "Inventory" and "Accessions" and other words and expressions which have been defined in the PPSA shall be interpreted in accordance with their respective meanings given in the PPSA (either in the singular or plural thereof), as the context requires unless otherwise defined herein or unless the context otherwise requires.
- 1.4 The Lender and the Debtor have not agreed to postpone the time for attachment of the security interests granted hereby.
- 1.5 The security interest in Consumer Goods hereby granted shall not become effective until, but shall become effective immediately when, the Lender notifies the Debtor in writing that it is effective.
- 1.6 The last day of the term of any lease held by the Debtor with respect to any of the Collateral is excluded from the security constituted by this General Security Agreement.

II Obligations Secured

- 2.1 The security constituted by this General Security Agreement is general and continuing security for payment, performance and satisfaction of each and every obligation, indebtedness and liability of the Debtor to the Lender (including interest thereon), present or future, direct or indirect, absolute or contingent, matured or not, extended or renewed, wheresoever and howsoever incurred, and any ultimate unpaid balance thereof, including all future advances and re-advances, and whether the same is from time to time reduced and thereafter increased or entirely extinguished and thereafter incurred again and whether the Debtor be bound alone or with another or others and whether as principal or surety, (all of which obligations, indebtedness and liabilities are herein collectively called the "Obligations").
- 2.2 This General Security Agreement and the security constituted hereby are in addition to and not in substitution for any other security or securities which the Lender may now or from time to time hold or take from the Debtor or from any other person whomsoever.

III Representations and Warranties of the Debtor

- 3.1 The Debtor represents and warrants that, and, so long as this General Security Agreement remains in effect, shall be deemed to continuously represent and warrant that:
- 3.1.1 this General Security Agreement has been authorized, executed and delivered in accordance with resolutions of the directors (and of the shareholders as applicable) of the Debtor and all other matters and things have been done and performed so as to authorize and make the execution and delivery of this General Security Agreement, the creation of the security constituted hereby and the performance of the Debtor's obligations hereunder, legal, valid and binding;
- 3.1.2 the Collateral is genuine and is owned by the Debtor free of all security interests, mortgages, liens, claims, charges and other encumbrances (herein collectively called "Encumbrances"), save for the security constituted by this General Security Agreement, those Encumbrances shown on the Encumbrance Schedule and those Encumbrances approved in writing by the Lender;
- 3.1.3 the Debtor has good and lawful authority to create the security in the Collateral constituted by this General Security Agreement;
- 3.1.4 each Debt, Chattel Paper and Instrument included in Collateral is enforceable in accordance with its terms against the party obligated to pay the same (the "Account Debtor"), and the amount represented by the Debtor to the Lender from time to time as owing by each Account Debtor or by all Account Debtors will be the correct amount actually and unconditionally owing by such Account Debtor or Account Debtors, except for normal cash discounts where applicable, and no Account Debtor will have any defense, set off, claim or counterclaim against the Debtor which can be asserted against the Lender, whether in any proceeding to enforce the Collateral or otherwise;
- 3.1.5 with respect to Goods (including Inventory) comprised in the Collateral, the locations specified in the Location Schedule are accurate and complete (save for Goods in transit to such locations and Inventory on lease or consignment) and all fixtures or Goods about to become fixtures which form part of the Collateral will be situate at one of the locations specified in the Location Schedule;
- 3.1.6 none of the Premises are insulated with urea formaldehyde nor contain any asbestos material or underground tanks;
- 3.1.7 the Premises are free of any Hazardous Materials;

- 3.1.8 the Premises are not currently used in a manner, and, to the Debtor's knowledge, after having made due inquiry, no prior use has occurred, which is contrary to any laws, regulations, orders, bylaws, permits or lawful requirements of any Environmental Laws; and
- 3.1.9 there are no existing or threatened claims, actions, orders or investigations under any Environmental Laws against the Debtor or against the Premises;
- 3.1.10 the Debtor is the owner of any intellectual property applications and registrations and there are no outstanding claims of ownership by third parties in respect of these registrations and applications;
- 3.1.11 all intellectual property applications and registrations are valid and in good standing;
- 3.1.12 all trade-mark and industrial designs have been in continuous use and that the use has been proper in relation to the wares and/or services of Debtor;
- 3.1.13 only the Debtor has used the trade-marks, or if there are any third party users of the Debtor's trade-marks, such third party users are properly licensed to use such trademarks;
- 3.1.14 all assignments and other documents affecting intellectual property rights have been disclosed and provided to the Lender;
- 3.1.15 there are no outstanding or threatened claims or proceedings with respect to the intellectual property; and,
- 3.1.16 all necessary assignments and license agreements have been properly executed by the Debtor for use of third party intellectual property.

IV Covenants of the Debtor

- 4.1 The Debtor covenants and agrees that at all times while this General Security Agreement remains in effect the Debtor will:
 - 4.1.1 defend the Collateral for the benefit of the Lender against the claims and demands of all other persons;
 - 4.1.2 not, without the prior written consent of the Lender:
 - (a) create or permit to exist any Encumbrance against any of the Personal Property Collateral which ranks or could in any event rank in priority to or pari passu with the security constituted by this General Security Agreement, save for:
 - (i) those Encumbrances shown in the Encumbrance Schedule; and
 - (ii) Encumbrances approved in writing by the Lender prior to creation or assumption; or
 - (b) grant, sell, exchange, transfer, assign, lease or otherwise dispose of the Collateral; provided always, that, until default, the Debtor may, in the ordinary course of the Debtor's business, sell or lease Inventory and, subject to clause 5.2 hereof, use monies available to the Debtor;
 - 4.1.3 fully and effectively maintain and keep maintained valid and effective the security constituted by this General Security Agreement;
 - 4.1.4 notify the Lender promptly of:

- (a) any change in the information contained herein or in the Schedules hereto relating to the Debtor, the Debtor's name, the Debtor's business or the Collateral;
 - (b) the details of any significant acquisition of Collateral;
 - (c) the details of any claims or litigation affecting the Debtor or the Collateral;
 - (d) any loss or damage to the Collateral;
 - (e) any default by any Account Debtor in payment or other performance of obligations of the Account Debtor comprised in the Collateral; and
 - (f) the return to, or repossession by, the Debtor of Collateral;
- 4.1.5 keep the Collateral in good order, condition and repair (in the locations specified in the Location Schedule or such other locations as the Lender may approve in writing) and not use the Collateral in violation of the provisions of this General Security Agreement or any other agreement relating to the Collateral or any policy insuring the Collateral or any applicable statute, law, by-law, rule, regulation or ordinance;
- 4.1.6 carry on and conduct the business of the Debtor in a proper and efficient manner and so as to protect and preserve the Collateral and to keep, in accordance with generally accepted accounting principles, consistently applied, proper books of account for the Debtor's business as well as accurate and complete records concerning the Collateral and, at the Lender's request, mark any and all such records and the Collateral so as to indicate the security constituted by this General Security Agreement;
- 4.1.7 forthwith pay:
- (a) all obligations to its employees and all obligations to others which relate to its employees when due, including, without limitation, all taxes, duties, levies, government fees, claims and dues related to its employees;
 - (b) all taxes, assessments, rates, duties, levies, government fees, claims and dues lawfully levied, assessed or imposed upon it or the Collateral when due, unless the Debtor shall in good faith contest its obligations so to pay and shall furnish such security as the Lender may require; and
 - (c) all Encumbrances which rank or could in any event rank in priority to or pari passu with the security constituted by this General Security Agreement, other than the Encumbrances, if any, shown in the Encumbrance Schedule hereto and those approved in writing by the Lender;
- 4.1.8 prevent the Collateral, save Inventory sold or leased as permitted hereby, from being or becoming an Accession to other property not covered by this General Security Agreement;
- 4.1.9 insure the Collateral for such periods, in such amounts, on such terms and against loss or damage by fire and such other risks as the Lender shall reasonably direct (but in any event in accordance with prudent business practice and for not less than the full replacement cost thereof) with loss payable to the Lender and the Debtor, as insureds, as their respective interests may appear, and to pay all premiums for such insurance;
- 4.1.10 deliver to the Lender from time to time promptly upon request:
- (a) any Documents of Title, Instruments, Securities and Chattel Paper comprised in or relating to the Collateral;

- (b) all books of account and all records, ledgers, reports, correspondence, schedules, documents, statements, lists and other writings relating to the Collateral for the purpose of inspecting, auditing or copying the same;
 - (c) all financial statements prepared by or for the Debtor regarding the Debtor's business;
 - (d) all policies and certificates of insurance relating to the Collateral; and
 - (e) such information concerning the Collateral, the Debtor and Debtor's business and affairs as the Lender may reasonably require;
- 4.1.11 forthwith pay all costs, charges, expenses and legal fees and disbursements (on a solicitor and his own client basis) which may be incurred by the Lender in:
- (a) inspecting the Collateral;
 - (b) negotiating, preparing, perfecting and registering this General Security Agreement and other documents, whether or not relating to this General Security Agreement;
 - (c) investigating title to the Collateral;
 - (d) taking, recovering, keeping possession of and insuring the Collateral;
 - (e) connection with any disclosure requirements under the PPSA; and
 - (f) all other actions and proceedings taken in connection with the preservation of the Collateral and the confirmation, perfection and enforcement of this General Security Agreement and of any other security held by the Lender as security for the Obligations;
- 4.1.12 at the Lender's request at any time and from time to time create in favour of the Lender, as security for the Obligations, a fixed charge or charges upon any of the Other Collateral;
- 4.1.13 at the Lender's request at any time and from time to time execute and deliver such further and other documents and instruments and do all other acts and things as the Lender reasonably requires in order to give effect to this General Security Agreement or to confirm and perfect, and maintain perfection of, the security constituted by this General Security Agreement in favour of the Lender;
- 4.1.14 permit the Lender and its representatives, at all reasonable times, access to all the Debtor's property, assets and undertakings and to all its books of account and records for the purpose of inspection and render all assistance necessary for such inspection;
- 4.1.15 comply with the covenants, if any, set out in the Additional Covenants Schedule;
- 4.1.16 develop and use the Premises only in compliance with all Environmental Laws;
- 4.1.17 permit the Lender to investigate the Premises, any goods on the Premises and the Debtor's records at any time and from time to time to verify such compliance with Environmental Laws and this General Security Agreement;
- 4.1.18 upon the request of the Lender, obtain from time to time at the Debtor's cost a report from an independent consultant designated or approved by the Lender verifying compliance with Environmental Laws and this General Security Agreement or the extent of any non-compliance therewith;
- 4.1.19 not store, manufacture, dispose, treat, generate, use, transport, remediate or release Hazardous Materials on or from any of the Premises without notifying the Lender in writing;

- 4.1.20 promptly remove any Hazardous Materials from the Premises in a manner which conforms to Environmental Laws governing their removal; and,
- 4.1.21 notify the Lender in writing of:
- (a) any enforcement, clean-up, removal, litigation or other governmental, regulatory, judicial or administrative action instituted, contemplated or threatened against the Debtor or the Premises pursuant to any Environmental Laws;
 - (b) all claims, actions, orders or investigations, made or threatened by any third party against the Debtor or any of the Premises relating to damage, contribution, cost recovery, compensation, loss or injuries resulting from any Hazardous Materials or any breach of the Environmental Laws; and
 - (c) the discovery of any Hazardous Materials or any occurrence or condition on any of the Premises or any real property adjoining or in the vicinity of any of the Premises which could subject the Debtor or any of the Premises to any fines, penalties, orders or proceedings under any Environmental Laws;
- 4.1.22 apply to file applications and complete registrations on any present intellectual property which is not currently protected by an application or registration where commercially reasonable, including any and all improvements to intellectual property and apply to file registrations on unregistered trade-marks in Canada and the United States;
- 4.1.23 apply to file applications and complete registrations of all after acquired intellectual property in all jurisdictions where commercially reasonable;
- 4.1.24 keep up-to-date witnessed records regarding intellectual property;
- 4.1.25 enter into confidentiality agreements with employees and other third parties who may invent, create, discover, author and/or reduce to practice intellectual property for the Debtor and who may have access to confidential information of the Debtor;
- 4.1.26 ensure that all after acquired intellectual property obtained from third parties is properly acquired by way of a written license agreement or assignment;
- 4.1.27 provide, upon written request by the Lender, a list of all registered and unregistered trade-marks, patent applications, issued patents, copyright, industrial designs and other intellectual property; and,
- 4.1.28 mark all products and advertising appropriately to maintain the validity of all intellectual property rights.

V Payments and Proceeds

- 5.1 Before or after default under this General Security Agreement, the Lender may notify all or any Account Debtors of the security constituted by this General Security Agreement and may also direct such Account Debtors to make all payments on the Collateral to the Lender.
- 5.2 The Debtor acknowledges that any payments on or other proceeds of the Collateral received by the Debtor from Account Debtors, whether before or after notification of the security constituted by this General Security Agreement to Account Debtors and whether before or after default under this General Security Agreement, shall be received and held by the Debtor in trust for the Lender and shall be turned over to the Lender forthwith upon request.

VI Lender Actions

- 6.1 The Debtor hereby authorizes the Lender to:

- (a) file such financing statements and other documents and do such acts, matters and things (including completing and adding schedules hereto identifying the Collateral or any permitted Encumbrances affecting collateral or identifying the locations at which the Debtor's business is carried on and the Collateral and records relating thereto are situate) as the Lender may deem appropriate to perfect and continue the security constituted hereby, to protect and preserve the Collateral and to realize upon the security constituted hereby and the Debtor hereby irrevocably constitutes and appoints the Lender the true and lawful attorney of the Debtor, with full power of substitution, to do any of the foregoing in the name of the Debtor whenever and wherever it may be deemed necessary or expedient by the Lender; and
 - (b) make enquiries from time to time of any governmental authority with respect to the Debtor's compliance with Environmental Laws and the Debtor agrees that the Debtor will from time to time provide to the Lender with such written authorization as the Lender may reasonably require in order to facilitate the obtaining of such information.
- 6.2 The Lender may charge for its reasonable costs incurred in connection with any disclosure requirements under the PPSA.
- 6.3 If the Debtor fails to perform any of its Obligations hereunder, the Lender may, but shall not be obliged to, perform any or all of such Obligations without prejudice to any other rights and remedies of the Lender hereunder, and any payments made and any costs, charges, expenses and legal fees and disbursements (on a solicitor and his own client basis) incurred in connection therewith shall be payable by the Debtor to the Lender forthwith with interest until paid at the highest rate borne by any of the Obligations and such amounts shall form part of the Obligations and constitute a charge upon the Collateral in favour of the Lender prior to all claims subsequent to this General Security Agreement.
- 6.4 The Debtor covenants and agrees that the Lender may, but shall be under no obligation to, at any time or times as the Lender deems necessary and without the concurrence of the Debtor or any other person make such arrangements for the repairing, finishing and putting in order of the Premises, including, without limitation, such repairs, replacements and improvements as are necessary so that the Debtor and the Premises comply with Environmental Laws, and all reasonable costs, charges and expenses including an allowance for the time and services of the Lender, the Lender's servants or agents or any other person or persons appointed for the above purposes including, without limitation, the full amount of all legal fees, disbursements, costs, charges and expenses incurred by the Lender and any amount due hereunder shall be payable forthwith to the Lender, shall be deemed an advance to the Debtor by the Lender, shall be deemed to be Obligations, and shall bear interest at the highest rate per annum from time to time charged by the Lender on any of the other Obligations until paid.

VII Default

- 7.1 The Debtor shall be in default under this General Security Agreement, unless otherwise agreed in writing by the Lender, upon the occurrence of any of the following events:
- 7.1.1 the Debtor makes default in payment when due of any of the Obligations which are indebtedness or liabilities or the Debtor fails to perform or satisfy any other of the Obligations; or
 - 7.1.2 the Debtor is in breach of any term, condition, proviso, agreement or covenant to the Lender, or any representation or warranty given by the Debtor to the Lender is untrue, whether or not any such term, condition, proviso, agreement or covenant, representation or warranty is contained in this General Security Agreement; or

- 7.1.3 the Debtor makes an assignment for the benefit of its creditors, is declared bankrupt, makes a proposal or otherwise takes advantage of provisions for relief under the Bankruptcy and Insolvency Act (Canada), the Companies Creditors' Arrangement Act (Canada) or similar legislation in any jurisdiction, or makes an authorized assignment; or
- 7.1.4 there is instituted by or against the Debtor any formal or informal proceeding for the dissolution or liquidation of, settlement of claims against, or winding-up of affairs of, the Debtor; or
- 7.1.5 the Debtor ceases or threatens to cease to carry on business or makes or agrees to make a bulk sale of assets or commits or threatens to commit an act of bankruptcy; or
- 7.1.6 a receiver, receiver and manager or receiver-manager of all or any part of the Collateral or of any other property, assets or undertakings of the Debtor is appointed; or
- 7.1.7 any execution, sequestration, extent or other process of any court becomes enforceable against the Debtor or a distress or analogous process is levied upon the Collateral or any part thereof; or
- 7.1.8 an order is made or an effective resolution is passed for winding-up the Debtor; or
- 7.1.9 without the prior written consent of the Lender, the Debtor creates or permits to exist any Encumbrance against any of the Collateral which ranks or could in any event rank in priority to or pari passu with the security constituted by this General Security Agreement; or
- 7.1.10 the holder of any Encumbrance against any of the Collateral does anything to enforce or realize on such Encumbrance; or
- 7.1.11 the Debtor enters into any reconstruction, reorganization, amalgamation, merger or other similar arrangement with any other person; or
- 7.1.12 the Lender in good faith believes and has commercially reasonable grounds to believe that the prospect of payment or performance of any of the Obligations is impaired or that any of the Collateral is or is about to be placed in jeopardy; or
- 7.1.13 any certificate, statement, representation, warranty or audit report herewith, heretofore or hereafter furnished by or on behalf of the Debtor to the Lender, whether in connection with this General Security Agreement or otherwise, and whether furnished as an inducement to the Lender to extend any credit to or to enter into this or any other agreement with the Debtor or not:
- (a) proves to have been false in any material respect at the time as of which the facts therein set forth were stated or certified; or
 - (b) proves to have omitted any substantial contingent or unliquidated liability or claim against the Debtor;
- or, upon the date of execution of this General Security Agreement, there shall have been any material adverse change in any of the facts disclosed by any such certificate, statement, representation, warranty or audit report, which change was not disclosed to the Lender at or prior to the time of such execution.
- 7.2 For the purposes of Section 203 of the Land Title Act of British Columbia, the floating charge created by this General Security Agreement over land shall become a fixed charge thereon upon the earliest of:
- 7.2.1 the occurrence of an event described in any of clauses 7.1.3, 7.1.4, 7.1.5, 7.1.6, 7.1.7, or 7.1.8; or

7.2.2 the Lender taking any action to enforce and realize on the security constituted by this General Security Agreement.

VIII Enforcement

- 8.1 The Lender may make demand for payment at any time of any or all of the Obligations which are payable upon demand (whether or not there is any default under this General Security Agreement) and, upon any default under this General Security Agreement, the Lender may declare any or all of the Obligations which are not payable on demand to become immediately due and payable.
- 8.2 Upon default under this General Security Agreement, the security hereby constituted will immediately become enforceable.
- 8.3 To enforce and realize on the security constituted by this General Security Agreement, the Lender may take any action permitted by law or in equity, as it may deem expedient, and in particular, without limiting the generality of the foregoing, the Lender may do any one or more of the following:
- 8.3.1 appoint by instrument a receiver, receiver and manager or receiver-manager (the person so appointed is herein called the "Receiver") of the Collateral, with or without bond as the Lender may determine, and from time to time in its sole discretion remove such Receiver and appoint another in its stead;
 - 8.3.2 enter upon any of the Premises and take possession of the Collateral with power to exclude the Debtor, its agents and its servants therefrom, without becoming liable as a mortgagee in possession;
 - 8.3.3 preserve, protect and maintain the Collateral and make such replacements thereof and repairs and additions thereto as the Lender may deem advisable;
 - 8.3.4 sell, lease or otherwise dispose of or concur in selling, leasing or otherwise disposing of all or any part of the Collateral, whether by public or private sale or lease or otherwise, in such manner, at such price as can be reasonably obtained therefor and on such terms as to credit and with such conditions of sale and stipulations as to title or conveyance or evidence of title or otherwise as to the Lender may seem reasonable, provided that the Debtor will not be entitled to be credited with the proceeds of any such sale, lease or other disposition until the monies therefor are actually received; and
 - 8.3.5 exercise all of the rights and remedies of a secured party under the PPSA.
- 8.4 A Receiver appointed pursuant to this General Security Agreement shall be the agent of the Debtor and not of the Lender and, to the extent permitted by law or to such lesser extent permitted by its appointment, shall have all the powers of the Lender hereunder, and in addition shall have power to carry on the business of the Debtor and for such purpose from time to time to borrow money either secured or unsecured, and if secured by a security on any of the Collateral, any such security may rank in priority to or pari passu with or behind the security constituted by this General Security Agreement, and if it does not so specify such security shall rank in priority to the security constituted by this General Security Agreement.
- 8.5 Subject to applicable law and the claims, if any, of the creditors of the Debtor ranking in priority to the security constituted by this General Security Agreement, all amounts realized from the disposition of the Collateral pursuant to this General Security Agreement will be applied as the Lender, in its sole discretion, may direct as follows:

- Firstly:** in or toward payment of all costs, charges and expenses (including legal fees and disbursements on a solicitor and his own client basis) incurred by the Lender in connection with or incidental to:
- (a) the exercise by the Lender of all or any of the powers granted to it pursuant to this General Security Agreement; and
 - (b) the appointment of the Receiver and the exercise by the Receiver of all or any of the powers granted to the Receiver pursuant to this General Security Agreement, including the Receiver's reasonable remuneration and all outgoings properly payable by the Receiver;
- Secondly:** in or toward payment to the Lender of all principal and other monies (except interest) due in respect of the Obligations;
- Thirdly:** in or toward payment to the Lender of all interest remaining unpaid in respect of the Obligations; and
- Fourthly:** any surplus will be paid to the Debtor.

IX Deficiency

- 9.1 If the amounts realized from the disposition of the Collateral are not sufficient to pay the Obligations in full to the Lender, the Debtor will immediately pay to the Lender the amount of such deficiency.

X Rights Cumulative

- 10.1 All rights and remedies of the Lender set out in this General Security Agreement are cumulative and no right or remedy contained herein is intended to be exclusive but each will be in addition to every other right or remedy contained herein or in any existing or future general security agreement or now or hereafter existing at law or in equity or pursuant to any other agreement between the Debtor and the Lender that may be in effect from time to time.

XI Appointment of Attorney

- 11.1 The Debtor hereby irrevocably appoints the Lender or the Receiver, as the case may be, with full power of substitution, to be the attorney of the Debtor for and in the name of the Debtor to sign, endorse or execute under seal or otherwise any deeds, documents, transfers, cheques, instruments, demands, assignments, assurances or consents that the Debtor is obliged to sign, endorse or execute and generally to use the name of the Debtor and to do all things as may be necessary or incidental to the exercise of all or any of the powers conferred on the Lender or the Receiver, as the case may be, pursuant to this General Security Agreement.

XII Liability of Lender

- 12.1 The Lender shall not be responsible or liable for any debts contracted by it, for damages to persons or property or for salaries or non-fulfilment of contracts during any period when the Lender shall manage the Collateral upon entry of the business of the Debtor, as herein provided, nor shall the Lender be liable to account as mortgagee in possession or for anything except actual receipts or be liable for any loss or realization or for any default or omission for which a mortgagee in possession may be liable.
- 12.2 The Lender shall not be bound to do, observe or perform or to see to the observance or performance by the Debtor of any obligations or covenants imposed upon the Debtor nor shall the Lender, in the case of Securities, Instruments or Chattel Paper, be obliged to reserve rights against other persons, nor shall the Lender be obliged to keep any of the Collateral identifiable.
- 12.3 The Lender shall not be obliged to inquire into the right of any person purporting to be entitled under the PPSA to information and materials from the Lender by making a demand upon the

Lender for such information and materials and the Lender shall be entitled to comply with such demand and shall not be liable for having complied with such demand notwithstanding that such person may in fact not be entitled to make such demand.

- 12.4 The Debtor will indemnify the Lender and hold the Lender harmless from and against any and all claims, costs, losses, demands, actions, causes of action, lawsuits, damages, penalties, judgments and liabilities of whatsoever nature and kind in connection with or arising out of any representation or warranty given by the Debtor, being untrue, the breach of any term, condition, proviso, agreement or covenant to the Lender, or the exercise of any of the rights and or remedies of the Lender, or any transaction contemplated in this General Security Agreement.
- 12.5 The Debtor hereby waives any applicable provision of law permitted to be waived by it which imposes higher or greater obligations upon the Lender than provided in this General Security Agreement.
- 12.6 The Debtor shall indemnify, reimburse and save harmless the Lender, any receiver, its directors, officers, employees, agents, and successors and assigns, from any and all liabilities, actions, damages, claims, losses, costs and expenses whatsoever (including without limitation, the full amount of all legal fees, costs, charges and expenses and the cost of removal, treatment, storage and disposal of any Hazardous Materials and remediation of the Premises) which may be paid, incurred or asserted against the Lender for, with respect to or as a direct or indirect result of the presence on or under, or the escape, seepage, leakage, spillage, discharge, emission or release from the Premises or into or upon any other land, the atmosphere or any watercourse, body of water or wetland of any Hazardous Materials.
- 12.7 Any amount owing by the Debtor hereunder shall, from the date of disbursement until the date the Lender receives reimbursement, be deemed advanced to the Debtor by the Lender, shall be deemed to be Obligations and shall bear interest at the highest rate per annum from time to time charged by the Lender on any of the other Obligations until paid.
- 12.8 The Debtor agrees that the indemnity obligations hereunder shall survive the release of the security of this General Security Agreement and the payment and satisfaction of the indebtedness and liabilities hereby secured.

XIII Appropriation of Payments and Offset

- 13.1 Subject to any applicable provisions of the PPSA, any and all payments made in respect of the Obligations from time to time and monies realized from any security held therefor (including monies collected in accordance with or realized on any enforcement of this General Security Agreement) may be applied to such part or parts of the Obligations as the Lender may see fit, and the Lender may at all times and from time to time change any appropriation as the Lender may see fit or, at the option of the Lender, such payments and monies may be held unappropriated in a collateral account or released to the Debtor, all without prejudice to the liability of the Debtor or to the rights of the Lender hereunder.
- 13.2 Without limiting any other right of the Lender, whenever any of the Obligations is immediately due and payable or the Lender has the right to declare any of the Obligations to be immediately due and payable (whether or not it has so declared), the Lender may, in its sole discretion, set off against any of the Obligations any and all monies then owed to the Debtor by the Lender in any capacity, whether or not due and to do so even though any charge therefor is made or entered on the Lender's records subsequent thereto, and the Lender shall be deemed to have exercised such right to set off immediately at the time of making its decision.

XIV Liability to Advance, Etc.

- 14.1 Except to the extent that the Lender:

14.1.1 by accepting bills of exchange drawn on it by the Debtor; or

14.1.2 by issuing letters of credit or letters of guarantee on the application of the Debtor; is required to advance monies on the maturity of such bills or pursuant to such letters of credit or letters of guarantee, as the case may be, none of the preparation, execution, perfection and registration of this General Security Agreement or the advance of any monies shall bind the Lender to make any advance or loan or further advance or loan, or renew any note or extend any time for payment of any indebtedness or liability of the Debtor to the Lender or extend any term for performance or satisfaction of any obligation of the Debtor to the Lender.

14.2 Nothing herein contained shall in any way oblige the Lender to grant, continue, renew, extend time for payment of or accept anything which constitutes or would constitute Obligations or any of them.

XV Waiver

15.1 No delay or omission by the Lender in exercising any right or remedy hereunder or with respect to any of the Obligations shall operate as a waiver thereof or of any other right or remedy, and no single or partial exercise thereof shall preclude any other or further exercise thereof or the exercise of any other right or remedy.

15.2 The Lender may from time to time and at any time waive in whole or in part any right, benefit or default under any clause of this General Security Agreement but any such waiver of any right, benefit or default on any occasion shall be deemed not to be a waiver of any such right, benefit or default thereafter, or of any other right, benefit or default, as the case may be.

XVI Extensions

16.1 The Lender may grant extensions of time and other indulgences, take and give up security, accept compositions, compound, compromise, settle, grant releases and discharges, refrain from perfecting or maintaining perfection of security, and otherwise deal with the Debtor, Account Debtors of the Debtor, sureties and others and with the Collateral and other security as the Lender may see fit without prejudice to the liability of the Debtor or the Lender's right to hold and realize on the security constituted by this General Security Agreement.

XVII Assignment

17.1 The Lender may, without further notice to the Debtor, at any time mortgage, charge, assign, transfer or grant a security interest in this General Security Agreement and the security constituted hereby.

17.2 The Debtor expressly agrees that the assignee, transferee or secured party of the Lender, as the case may be, shall have all of the Lender's rights and remedies under this General Security Agreement and the Debtor will not assert any defence, counterclaim, right of set-off or otherwise any claim which it now has or hereafter acquires against the Lender in any action commenced by such assignee, transferee or secured party, as the case may be, and will pay the Obligations to the assignee, transferee or secured party, as the case may be, as the Obligations become due.

XVIII Satisfaction and Discharge

18.1 Any partial payment or satisfaction of the Obligations, or any ceasing by the Debtor to be indebted to the Lender, shall be deemed not to be redemption or discharge of the security constituted by this General Security Agreement.

- 18.2 The Debtor shall be entitled to a release and discharge of the security constituted by this General Security Agreement upon full payment, performance and satisfaction of all Obligations, or the securing of the Obligations to the satisfaction of the Lender, and upon written request by the Debtor and payment to the Lender of all costs, charges, expenses and legal fees and disbursements (on a solicitor and his own client basis) incurred by the Lender in connection with the Obligations and such release and discharge.

XIX No Merger

- 19.1 This General Security Agreement shall not operate so as to create any merger or discharge of any of the Obligations, or any assignment, transfer, guarantee, lien, contract, promissory note, bill of exchange or security in any form held or which may hereafter be held by the Lender from the Debtor or from any other person whomsoever.
- 19.2 The taking of a judgment with respect to any of the Obligations will not operate as a merger of any of the terms, conditions, covenants, agreements or provisos contained in this General Security Agreement.
- 19.3 The release and discharge of the security constituted by this General Security Agreement by the Lender shall not operate as a release or discharge of any right of the Lender to be indemnified and held harmless by the Debtor pursuant to clause 12.4 hereof or of any other right of the Lender against the Debtor arising under this General Security Agreement prior to such release and discharge.

XX Interpretation

- 20.1 In this General Security Agreement:
- 20.1.1 the invalidity or unenforceability of the whole or any part of any clause shall not affect the validity or enforceability of any other clause or the remainder of such clause;
- 20.1.2 the headings have been inserted for reference only and shall not define, limit, alter or enlarge the meaning of any provision of this General Security Agreement; and
- 20.1.3 when the context so requires, the singular shall be read as if the plural were expressed and the provisions hereof shall be read with all grammatical changes necessary dependent upon the person referred to being a male, female, firm or corporation.

XXI Notice

- 21.1 Whenever either the Lender or the Debtor is required or entitled to notify or direct the other or to make a demand upon or request of the other relating to the Collateral, this General Security Agreement or the PPSA, such notice, direction, demand or request shall be sufficiently given if given in writing and delivered to the party for whom it is intended at the address of such party herein or as changed pursuant hereto or if sent by prepaid registered mail addressed to the party for whom it is intended at the address of such party herein set forth or as changed pursuant hereto.
- 21.2 Either the Lender or the Debtor may notify the other in accordance herewith of any change in its principal address to be used for the purposes hereof.

XXII Variation

- 22.1 Save for any schedules which may be added hereto pursuant to the provisions hereof, no modification, variation or amendment of any provision of this General Security Agreement shall be made except by written agreement, executed by the parties hereto and no waiver of any provision hereof shall be effective unless in writing.

XXIII Enurement

23.1 This General Security Agreement shall enure to the benefit of the Lender and its successors and assigns and shall be binding upon the respective heirs, executors, personal representatives, successors and permitted assigns of the Debtor.

XXIV Copy of Agreement and Financing Statement

24.1 The Debtor hereby:

24.1.1 acknowledges receiving a copy of this General Security Agreement; and

24.1.2 waives all rights to receive from the Lender a copy of any financing statement, financing change statement or verification statement filed at any time or from time to time in respect of this General Security Agreement.

XXV Governing Law

25.1 This General Security Agreement shall be governed by and construed in accordance with the laws of the Province.

25.2 For the purpose of legal proceedings this General Security Agreement shall be deemed to have been made in the Province and to be performed there and the courts of the Province shall have jurisdiction over all disputes which may arise under this General Security Agreement and the Debtor hereby irrevocably and unconditionally submits to the non-exclusive jurisdiction of such courts, provided always that nothing herein contained shall prevent the Lender from proceeding at its election against the Debtor in the courts of any other Province, country or jurisdiction.

In Witness Whereof the Debtor has executed this General Security Agreement as of the day and year first above written.

FOR BRITISH COLUMBIA

Officer Signature(s)

(For Corporation)

Officer Signature

Name

Address

Execution Date

Y	M	D

Debtor(s) Signature(s)

(Corporation Name) by its authorized signatories

Signature

Name

Title

Signature

(For Individual)

Officer Signature

Name

Address

--	--	--

Name

Title

Debtor Signature

Name

Officer Certification: Your signature constitutes a representation that you are a solicitor, notary public or other person authorized by the Evidence Act, R.S.B.C. 1996, c. 124, to take affidavits for use in British Columbia and certifies the matters set out in Part 5 of the Land Title Act as they pertain to the execution of this instrument.

FOR ALBERTA, NEW BRUNSWICK, NOVA SCOTIA, NEWFOUNDLAND AND LABRADOR

(For Corporation)

NILEX INC.

Per: _____
Name of Corporation

Signature

 IAN WILSON
Name

 PRESIDENT
Title

Per: _____
Signature

Name

Title

} C/S

FOR INDIVIDUAL

DEBTOR'S SIGNATURE

Per: _____
Signature

Name

Address

Occupation

Signature of Debtor

Name



Encumbrance Schedule

Prior Encumbrances:

1. General:

- a. Any and all mortgages, charges, liens, encumbrances and security interests granted by the Debtor to PEF 2010 Nilex Investment Limited Partnership

2. Alberta:

- a. Registration No. 08071107693 in favour of JIM PEPLINSKI LEASING INC.
- b. Registration No. 09030227633 in favour of KONICA MINOLTA BUSINESS SOLUTIONS (CANADA) LTD.
- c. Registration No. 09070716897 in favour of JIM PEPLINSKI'S AUTO LEASING LTD. and JIM PEPLINSKI'S LEASEMASTER NATIONAL
- d. Registration No. 09101319386 in favour of JIM PEPLINSKI'S AUTO LEASING LTD. and JIM PEPLINSKI'S LEASEMASTER NATIONAL
- e. Registration No. 10010720861 in favour of TRANSPORTACTION LEASE SYSTEMS INC.
- f. Registration No. 12122027866 in favour of DE LAGE LANDEN FINANCIAL SERVICES CANADA INC.
- g. Registration No. 13021928004 in favour of INTEGRATED DISTRIBUTION SYSTEMS LP O/A WAJAX INDUSTRIES
- h. Registration No. 13032800044 in favour of INTEGRATED DISTRIBUTION SYSTEMS LP O/A WAJAX EQUIPMENT

3. Ontario:

- a. Registration No. 20091102 0852 5064 2446 in favour of JIM PEPLINSKI'S AUTO LEASING LTD. and JIM PEPLINSKI'S LEASEMASTER NATIONAL

4. Saskatchewan:

- a. Registration No. 300534960 in favour of JIM PEPLINSKI'S AUTO LEASING LTD. and JIM PEPLINSKI'S LEASEMASTER NATIONAL

Location Schedule**Address(es) for Location of the Collateral**

1. 1781 Clearbrook Road, Abbotsford, BC V2T 5X5
2. 3963 and 3981 Phillips Avenue, Burnaby, BC V5A 3K4
3. 9222 – 40 Street SE, Calgary, AB T2C 2P3
4. 15253 East Fremont Drive, Centennial, CO 80112 (Lot 1, 5th Filing, Cherry Creek Business Center)
5. 9304 – 39 Avenue NW, Edmonton, AB T6E 6L8
6. 315, 845 Broad Street, Regina, SK S4R 8G9
7. 130 Yorkland Boulevard, Toronto, ON M2J 1R5
8. VERNON, BC (P: 250.260.3300, F: 250.260.3520)



Additional Covenants Schedule**Additional Covenants of the Debtor further to Clause 4.1.15**

Comply with all terms, conditions and covenants set forth in any and all offer of credit letters executed by the Lender and the Debtor, as such letters may be amended, extended, renewed, altered, modified, substituted or replaced from time to time.



Intellectual Property Schedule

Patent:	REINFORCED NETWORKED POLYMER/CLAY ALLOY COMPOSITE / ALLIAGE COMPOSITE ARGILE-POLYMERE, RENFORCE ET EN RESEAU
Registration Number (Canadian Intellectual Property Office ("CIPO")):	CA 2310483

Patent:	DEGRADABLE EROSION CONTROL BARRIER / BARRIERE DEGRADABLE DE LUTTE CONTRE L'EROSION
Registration Number (CIPO):	CA 2588196

Patent:	METHOD FOR STABILIZING SOIL USING A CATIONIC SURFACTANT, SOIL STABILIZING AGENT AND STABILIZED SOIL / METHODE PERMETTANT DE STABILISER LES SOLS A L'AIDE D'UN SURFACTIF CATIONIQUE, AGENT STABILISANT DE SOL ET SOL STABILISE
Registration Number (CIPO):	CA 2281164

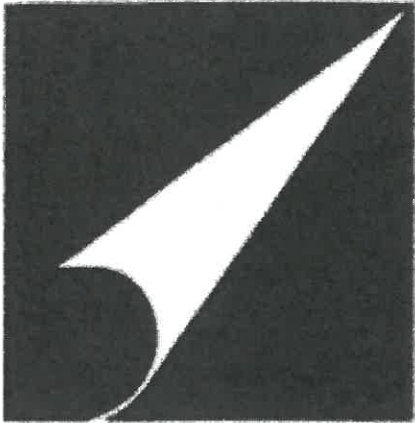
Patent:	BARRIER SYSTEMS / STRUCTURE CONSTITUANT UNE BARRIERE
Registration Number (CIPO):	CA 1304975
Application Number (CIPO):	560501

Trademark:	GEO-RIDGE
Registration Number (CIPO):	TMA491878
Application Number (CIPO):	0813762

Trademark:	Unearthing Better Results
Registration Number (CIPO):	TMA758094
Application Number (CIPO):	1395721

Trademark:	Mulchmax
Registration Number (CIPO):	TMA833996
Application Number (CIPO):	1539033


Trademark:	GOOD STUFF FOR THE EARTH
Registration Number (CIPO):	TMA521260
Application Number (CIPO):	0884022

Trademark:	 <p>(Square with slanted triangle in the middle)</p>
Registration Number (CIPO):	TMA757659
Application Number (CIPO):	1395720

Trademark:	NILEX
Registration Number (CIPO):	TMA521575
Application Number (CIPO):	0884024


Trademark:	NRS
Registration Number (CIPO):	TMA513690
Application Number (CIPO):	0884023



Trademark:	 <p>(NILEX & DESIGN)</p>
Registration Number (CIPO):	TMA508923
Application Number (CIPO):	0834754

Patent:	Reinforced networked polymer/clay alloy composite
Registration Number (United States Patent and Trademarks Office ("USPTO")):	6,737,472
Application Number (USPTO):	10/413,679

Patent:	Reinforced networked polymer/clay alloy composite
Registration Number (USPTO):	6,610,781
Application Number (USPTO):	09/579,701


Trademark:	
Serial Number (USPTO):	85393629



Trademark:	GEORIDGE
Serial Number (USPTO):	85023247
Registration Number (USPTO):	3877087

Trademark:	UNEARTHING BETTER RESULTS
Serial Number (USPTO):	85012084
Registration Number (USPTO):	3899606

Trademark:	GEO-RIDGE
Serial Number (USPTO):	85010781
Registration Number (USPTO):	3877000

Trademark:	
Serial Number (USPTO):	85010716
Registration Number (USPTO):	3879662



Trademark:	NILEX
Serial Number (USPTO):	85010663
Registration Number (USPTO):	3879659



This is Exhibit "K" referred to in the Affidavit of Jeff Allen sworn before me this 31st day of October, 2022.



A Commissioner for Oaths in and for Alberta

Justin Bednarowski
Solicitor & Barrister

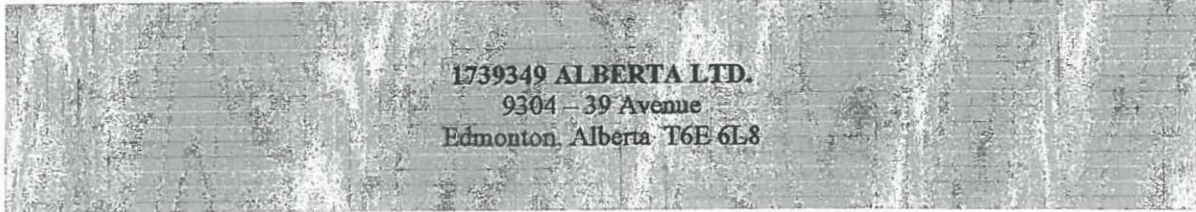


GENERAL SECURITY AGREEMENT

(British Columbia, Alberta, New Brunswick, Nova Scotia, Newfoundland and Labrador, Prince Edward Island)

This General Security Agreement made as of the 30 day of APRIL, 2013

Between:



(the "Debtor")

And:

PEF 2010 Nilex Investment Limited Partnership, a limited partnership under the laws of the Province of British Columbia having a registered office at



(the "Lender")

I Security

- 1.1 For value received, the Debtor grants and creates the security constituted by this General Security Agreement and agrees to the terms, covenants, agreements, conditions, provisos and other matters set out in this General Security Agreement.
- 1.2 As general and continuing security for the Obligations (as defined in clause 2.1 hereof), the Debtor:
- 1.2.1 hereby grants to the Lender, by way of mortgage, charge, assignment and transfer, a security interest in all presently owned and hereafter acquired personal property of the Debtor of whatsoever nature and kind and wheresoever situate and all proceeds thereof and therefrom, renewals thereof, Accessions thereto and substitutions therefor, (all of which are herein collectively called the "Personal Property Collateral"), including, without limiting the generality of the foregoing, all the presently owned or held and hereafter acquired right, title and interest of the Debtor in and to all Goods (including all accessories, attachments, additions and Accessions thereto), Chattel Paper, Documents of Title (whether negotiable or not), Instruments, Intangibles (subject to Clause 1.2.2 hereof), Licences, Money, Securities, Investment Property and all:
- (a) Inventory of whatsoever nature and kind and wheresoever situate;

- (b) Equipment (other than Inventory) of whatsoever nature and kind and wheresoever situate, including, without limitation, all machinery, tools, apparatus, plant, furniture, fixtures and vehicles of whatsoever nature and kind;
- (c) book accounts and book debts and generally all Accounts, debts, dues, claims, choses in action and demands of every nature and kind howsoever arising or secured including letters of credit, letters of guarantee and advices of credit, which are now due, owing or accruing or growing due to or owned by or which may hereafter become due, owing or accruing or growing due to or owned by the Debtor (all of which are herein collectively called the "Debts");
- (d) deeds, documents, writings, papers, books of account and other books relating to or being records of Debts, Chattel Paper or Documents of Title or by which such are or may hereafter be secured, evidenced, acknowledged or made payable;
- (e) contractual rights and insurance claims and all goodwill;
- (f) monies other than trust monies lawfully belonging to others; and
- (g) personal property described in any schedule now or hereafter annexed hereto; and

1.2.2 hereby grants to the Lender, by way of mortgage and charge a security interest in all presently owned and hereafter acquired patents, trade-marks, copyrights, industrial designs and other intellectual property and all proceeds thereof and therefrom, renewals thereof, Accessions thereto and substitutions therefor (all of which is deemed to be included in the definition of "Personal Property Collateral" referred to in Clauses 1.2.1 and 1.3.2 hereof); and

1.2.3 hereby charges as and by way of a floating charge in favour of the Lender all the presently owned or held and hereafter acquired property, assets, effects and undertakings of the Debtor of whatsoever nature and kind and wheresoever situate, other than such of the property, assets, effects and undertakings of the Debtor as are validly and effectively subjected to the security interest granted to the Lender pursuant to clause 1.2.1, (all of which property, assets, effects and undertakings so charged by this clause 1.2.3 are herein collectively called the "Other Collateral") including, without limiting the generality of the foregoing, all presently owned or held and hereafter acquired right, title and interest of the Debtor in and to real and immovable and leasehold property and rights whether in fee or of a less estate and all interest in and rights relating to lands and all easements, rights of way, privilege, benefits, licences, improvements and rights whether connected therewith or appurtenant thereto or separately owned or held and all structures, buildings, plant, machinery, fixtures, apparatus and fixed assets and the charge created by this clause 1.2.3 shall be a floating charge such that the Debtor shall not have power without the prior written consent of the Lender to:

- (a) create or permit to exist any Encumbrance against any of the Other Collateral which ranks or could in any event rank in priority to or pari passu with the security constituted by this General Security Agreement, save for:
 - (1) those Encumbrances shown in the Encumbrance Schedule; and
 - (2) Encumbrances approved in writing by the Lender prior to creation or assumption; or
- (b) grant, sell, exchange, transfer, assign, lease or otherwise dispose of the Other Collateral.

1.3 In this General Security Agreement:

- 1.3.1 any reference to "Premises" shall mean all property owned or leased by the Debtor;
- 1.3.2 the Personal Property Collateral and the Other Collateral are herein together called the "Collateral";
- 1.3.3 any reference to "Collateral" shall, unless the context otherwise requires, be deemed a reference to "Collateral or any part thereof";
- 1.3.4 any reference to "Debtor" and the personal pronoun "it" or "its" and any verb relating thereto and used therewith shall be read and construed as required by and in accordance with the context in which such words are used depending upon whether the Debtor is one or more corporations and, if more than one Debtor executes this General Security Agreement, this General Security Agreement shall apply and be binding upon each of them jointly and severally and all obligations hereunder shall be joint and several;
- 1.3.5 any reference to "Environmental Laws" shall mean any laws, regulations, orders, by-laws, permits or lawful requirements of any governmental authority with respect to environmental protection or regulating hazardous materials;
- 1.3.6 any reference to "General Security Agreement" shall, unless the context otherwise requires, be deemed a reference to this General Security Agreement as amended from time to time by written agreement together with the schedules hereto and any schedules added hereto pursuant to the provisions hereof;
- 1.3.7 any reference to "Hazardous Materials" shall mean any asbestos material, urea formaldehyde, explosives, radioactive materials, pollutants, contaminants, hazardous substances, corrosive substances, toxic substances, special waste or waste of any kind including, without limitation, compounds known as chlorobiphenyls and any substance the storage, manufacture, disposal, treatment, generation, use, transport, remediation or release of which into the environment is prohibited, controlled or licensed under Environmental Laws, all excluding similar or like substances used in the ordinary course of the Debtor's business provided that such excluded substances continue to be used, stored, disposed of or otherwise handled in accordance with Environmental Laws and other applicable laws;
- 1.3.8 any reference to "PPSA" shall mean the Personal Property Security Act of the Province as amended from time to time, including any amendments thereto and any Act substituted therefor and amendments thereto;
- 1.3.9 any reference to the "Province" shall mean the Province of Alberta;
and
- 1.3.10 the terms "Goods", "Chattel Paper", "Documents of Title", "Equipment", "Accounts" "Consumer Goods", "Instruments", "Intangibles", "Licences"(Alberta and British Columbia only), "Money", "Securities", "Investment Property", "Proceeds", "Inventory" and "Accessions" and other words and expressions which have been defined in the PPSA shall be interpreted in accordance with their respective meanings given in the PPSA (either in the singular or plural thereof), as the context requires unless otherwise defined herein or unless the context otherwise requires.
- 1.4 The Lender and the Debtor have not agreed to postpone the time for attachment of the security interests granted hereby.
- 1.5 The security interest in Consumer Goods hereby granted shall not become effective until, but shall become effective immediately when, the Lender notifies the Debtor in writing that it is effective.
- 1.6 The last day of the term of any lease held by the Debtor with respect to any of the Collateral is excluded from the security constituted by this General Security Agreement.

II Obligations Secured

- 2.1 The security constituted by this General Security Agreement is general and continuing security for payment, performance and satisfaction of each and every obligation, indebtedness and liability of the Debtor to the Lender (including interest thereon), present or future, direct or indirect, absolute or contingent, matured or not, extended or renewed, wheresoever and howsoever incurred, and any ultimate unpaid balance thereof, including all future advances and re-advances, and whether the same is from time to time reduced and thereafter increased or entirely extinguished and thereafter incurred again and whether the Debtor be bound alone or with another or others and whether as principal or surety, (all of which obligations, indebtedness and liabilities are herein collectively called the "Obligations").
- 2.2 This General Security Agreement and the security constituted hereby are in addition to and not in substitution for any other security or securities which the Lender may now or from time to time hold or take from the Debtor or from any other person whomsoever.

III Representations and Warranties of the Debtor

- 3.1 The Debtor represents and warrants that, and, so long as this General Security Agreement remains in effect, shall be deemed to continuously represent and warrant that:
- 3.1.1 this General Security Agreement has been authorized, executed and delivered in accordance with resolutions of the directors (and of the shareholders as applicable) of the Debtor and all other matters and things have been done and performed so as to authorize and make the execution and delivery of this General Security Agreement, the creation of the security constituted hereby and the performance of the Debtor's obligations hereunder, legal, valid and binding;
- 3.1.2 the Collateral is genuine and is owned by the Debtor free of all security interests, mortgages, liens, claims, charges and other encumbrances (herein collectively called "Encumbrances"), save for the security constituted by this General Security Agreement, those Encumbrances shown on the Encumbrance Schedule and those Encumbrances approved in writing by the Lender;
- 3.1.3 the Debtor has good and lawful authority to create the security in the Collateral constituted by this General Security Agreement;
- 3.1.4 each Debt, Chattel Paper and Instrument included in Collateral is enforceable in accordance with its terms against the party obligated to pay the same (the "Account Debtor"), and the amount represented by the Debtor to the Lender from time to time as owing by each Account Debtor or by all Account Debtors will be the correct amount actually and unconditionally owing by such Account Debtor or Account Debtors, except for normal cash discounts where applicable, and no Account Debtor will have any defense, set off, claim or counterclaim against the Debtor which can be asserted against the Lender, whether in any proceeding to enforce the Collateral or otherwise;
- 3.1.5 with respect to Goods (including Inventory) comprised in the Collateral, the locations specified in the Location Schedule are accurate and complete (save for Goods in transit to such locations and Inventory on lease or consignment) and all fixtures or Goods about to become fixtures which form part of the Collateral will be situate at one of the locations specified in the Location Schedule;
- 3.1.6 none of the Premises are insulated with urea formaldehyde nor contain any asbestos material or underground tanks;
- 3.1.7 the Premises are free of any Hazardous Materials;

- 3.1.8 the Premises are not currently used in a manner, and, to the Debtor's knowledge, after having made due inquiry, no prior use has occurred, which is contrary to any laws, regulations, orders, bylaws, permits or lawful requirements of any Environmental Laws; and
- 3.1.9 there are no existing or threatened claims, actions, orders or investigations under any Environmental Laws against the Debtor or against the Premises;
- 3.1.10 the Debtor is the owner of any intellectual property applications and registrations and there are no outstanding claims of ownership by third parties in respect of these registrations and applications;
- 3.1.11 all intellectual property applications and registrations are valid and in good standing;
- 3.1.12 all trade-mark and industrial designs have been in continuous use and that the use has been proper in relation to the wares and/or services of Debtor;
- 3.1.13 only the Debtor has used the trade-marks, or if there are any third party users of the Debtor's trade-marks, such third party users are properly licensed to use such trademarks;
- 3.1.14 all assignments and other documents affecting intellectual property rights have been disclosed and provided to the Lender;
- 3.1.15 there are no outstanding or threatened claims or proceedings with respect to the intellectual property; and,
- 3.1.16 all necessary assignments and license agreements have been properly executed by the Debtor for use of third party intellectual property.

IV Covenants of the Debtor

- 4.1 The Debtor covenants and agrees that at all times while this General Security Agreement remains in effect the Debtor will:
 - 4.1.1 defend the Collateral for the benefit of the Lender against the claims and demands of all other persons;
 - 4.1.2 not, without the prior written consent of the Lender:
 - (a) create or permit to exist any Encumbrance against any of the Personal Property Collateral which ranks or could in any event rank in priority to or pari passu with the security constituted by this General Security Agreement, save for:
 - (i) those Encumbrances shown in the Encumbrance Schedule; and
 - (ii) Encumbrances approved in writing by the Lender prior to creation or assumption; or
 - (b) grant, sell, exchange, transfer, assign, lease or otherwise dispose of the Collateral; provided always, that, until default, the Debtor may, in the ordinary course of the Debtor's business, sell or lease Inventory and, subject to clause 5.2 hereof, use monies available to the Debtor;
 - 4.1.3 fully and effectively maintain and keep maintained valid and effective the security constituted by this General Security Agreement;
 - 4.1.4 notify the Lender promptly of:

- (a) any change in the information contained herein or in the Schedules hereto relating to the Debtor, the Debtor's name, the Debtor's business or the Collateral;
 - (b) the details of any significant acquisition of Collateral;
 - (c) the details of any claims or litigation affecting the Debtor or the Collateral;
 - (d) any loss or damage to the Collateral;
 - (e) any default by any Account Debtor in payment or other performance of obligations of the Account Debtor comprised in the Collateral; and
 - (f) the return to, or repossession by, the Debtor of Collateral;
- 4.1.5 keep the Collateral in good order, condition and repair (in the locations specified in the Location Schedule or such other locations as the Lender may approve in writing) and not use the Collateral in violation of the provisions of this General Security Agreement or any other agreement relating to the Collateral or any policy insuring the Collateral or any applicable statute, law, by-law, rule, regulation or ordinance;
- 4.1.6 carry on and conduct the business of the Debtor in a proper and efficient manner and so as to protect and preserve the Collateral and to keep, in accordance with generally accepted accounting principles, consistently applied, proper books of account for the Debtor's business as well as accurate and complete records concerning the Collateral and, at the Lender's request, mark any and all such records and the Collateral so as to indicate the security constituted by this General Security Agreement;
- 4.1.7 forthwith pay:
- (a) all obligations to its employees and all obligations to others which relate to its employees when due, including, without limitation, all taxes, duties, levies, government fees, claims and dues related to its employees;
 - (b) all taxes, assessments, rates, duties, levies, government fees, claims and dues lawfully levied, assessed or imposed upon it or the Collateral when due, unless the Debtor shall in good faith contest its obligations so to pay and shall furnish such security as the Lender may require; and
 - (c) all Encumbrances which rank or could in any event rank in priority to or pari passu with the security constituted by this General Security Agreement, other than the Encumbrances, if any, shown in the Encumbrance Schedule hereto and those approved in writing by the Lender;
- 4.1.8 prevent the Collateral, save Inventory sold or leased as permitted hereby, from being or becoming an Accession to other property not covered by this General Security Agreement;
- 4.1.9 insure the Collateral for such periods, in such amounts, on such terms and against loss or damage by fire and such other risks as the Lender shall reasonably direct (but in any event in accordance with prudent business practice and for not less than the full replacement cost thereof) with loss payable to the Lender and the Debtor, as insureds, as their respective interests may appear, and to pay all premiums for such insurance;
- 4.1.10 deliver to the Lender from time to time promptly upon request:
- (a) any Documents of Title, Instruments, Securities and Chattel Paper comprised in or relating to the Collateral;

- (b) all books of account and all records, ledgers, reports, correspondence, schedules, documents, statements, lists and other writings relating to the Collateral for the purpose of inspecting, auditing or copying the same;
 - (c) all financial statements prepared by or for the Debtor regarding the Debtor's business;
 - (d) all policies and certificates of insurance relating to the Collateral; and
 - (e) such information concerning the Collateral, the Debtor and Debtor's business and affairs as the Lender may reasonably require;
- 4.1.11 forthwith pay all costs, charges, expenses and legal fees and disbursements (on a solicitor and his own client basis) which may be incurred by the Lender in:
- (a) inspecting the Collateral;
 - (b) negotiating, preparing, perfecting and registering this General Security Agreement and other documents, whether or not relating to this General Security Agreement;
 - (c) investigating title to the Collateral;
 - (d) taking, recovering, keeping possession of and insuring the Collateral;
 - (e) connection with any disclosure requirements under the PPSA; and
 - (f) all other actions and proceedings taken in connection with the preservation of the Collateral and the confirmation, perfection and enforcement of this General Security Agreement and of any other security held by the Lender as security for the Obligations;
- 4.1.12 at the Lender's request at any time and from time to time create in favour of the Lender, as security for the Obligations, a fixed charge or charges upon any of the Other Collateral;
- 4.1.13 at the Lender's request at any time and from time to time execute and deliver such further and other documents and instruments and do all other acts and things as the Lender reasonably requires in order to give effect to this General Security Agreement or to confirm and perfect, and maintain perfection of, the security constituted by this General Security Agreement in favour of the Lender;
- 4.1.14 permit the Lender and its representatives, at all reasonable times, access to all the Debtor's property, assets and undertakings and to all its books of account and records for the purpose of inspection and render all assistance necessary for such inspection;
- 4.1.15 comply with the covenants, if any, set out in the Additional Covenants Schedule;
- 4.1.16 develop and use the Premises only in compliance with all Environmental Laws;
- 4.1.17 permit the Lender to investigate the Premises, any goods on the Premises and the Debtor's records at any time and from time to time to verify such compliance with Environmental Laws and this General Security Agreement;
- 4.1.18 upon the request of the Lender, obtain from time to time at the Debtor's cost a report from an independent consultant designated or approved by the Lender verifying compliance with Environmental Laws and this General Security Agreement or the extent of any non-compliance therewith;
- 4.1.19 not store, manufacture, dispose, treat, generate, use, transport, remediate or release Hazardous Materials on or from any of the Premises without notifying the Lender in writing;

- 4.1.20 promptly remove any Hazardous Materials from the Premises in a manner which conforms to Environmental Laws governing their removal; and,
- 4.1.21 notify the Lender in writing of:
- (a) any enforcement, clean-up, removal, litigation or other governmental, regulatory, judicial or administrative action instituted, contemplated or threatened against the Debtor or the Premises pursuant to any Environmental Laws;
 - (b) all claims, actions, orders or investigations, made or threatened by any third party against the Debtor or any of the Premises relating to damage, contribution, cost recovery, compensation, loss or injuries resulting from any Hazardous Materials or any breach of the Environmental Laws; and
 - (c) the discovery of any Hazardous Materials or any occurrence or condition on any of the Premises or any real property adjoining or in the vicinity of any of the Premises which could subject the Debtor or any of the Premises to any fines, penalties, orders or proceedings under any Environmental Laws;
- 4.1.22 apply to file applications and complete registrations on any present intellectual property which is not currently protected by an application or registration where commercially reasonable, including any and all improvements to intellectual property and apply to file registrations on unregistered trade-marks in Canada and the United States;
- 4.1.23 apply to file applications and complete registrations of all after acquired intellectual property in all jurisdictions where commercially reasonable;
- 4.1.24 keep up-to-date witnessed records regarding intellectual property;
- 4.1.25 enter into confidentiality agreements with employees and other third parties who may invent, create, discover, author and/or reduce to practice intellectual property for the Debtor and who may have access to confidential information of the Debtor;
- 4.1.26 ensure that all after acquired intellectual property obtained from third parties is properly acquired by way of a written license agreement or assignment;
- 4.1.27 provide, upon written request by the Lender, a list of all registered and unregistered trade-marks, patent applications, issued patents, copyright, industrial designs and other intellectual property; and,
- 4.1.28 mark all products and advertising appropriately to maintain the validity of all intellectual property rights.

V Payments and Proceeds

- 5.1 Before or after default under this General Security Agreement, the Lender may notify all or any Account Debtors of the security constituted by this General Security Agreement and may also direct such Account Debtors to make all payments on the Collateral to the Lender.
- 5.2 The Debtor acknowledges that any payments on or other proceeds of the Collateral received by the Debtor from Account Debtors, whether before or after notification of the security constituted by this General Security Agreement to Account Debtors and whether before or after default under this General Security Agreement, shall be received and held by the Debtor in trust for the Lender and shall be turned over to the Lender forthwith upon request.

VI Lender Actions

- 6.1 The Debtor hereby authorizes the Lender to:

- (a) file such financing statements and other documents and do such acts, matters and things (including completing and adding schedules hereto identifying the Collateral or any permitted Encumbrances affecting collateral or identifying the locations at which the Debtor's business is carried on and the Collateral and records relating thereto are situate) as the Lender may deem appropriate to perfect and continue the security constituted hereby, to protect and preserve the Collateral and to realize upon the security constituted hereby and the Debtor hereby irrevocably constitutes and appoints the Lender the true and lawful attorney of the Debtor, with full power of substitution, to do any of the foregoing in the name of the Debtor whenever and wherever it may be deemed necessary or expedient by the Lender; and
 - (b) make enquiries from time to time of any governmental authority with respect to the Debtor's compliance with Environmental Laws and the Debtor agrees that the Debtor will from time to time provide to the Lender with such written authorization as the Lender may reasonably require in order to facilitate the obtaining of such information.
- 6.2 The Lender may charge for its reasonable costs incurred in connection with any disclosure requirements under the PPSA.
- 6.3 If the Debtor fails to perform any of its Obligations hereunder, the Lender may, but shall not be obliged to, perform any or all of such Obligations without prejudice to any other rights and remedies of the Lender hereunder, and any payments made and any costs, charges, expenses and legal fees and disbursements (on a solicitor and his own client basis) incurred in connection therewith shall be payable by the Debtor to the Lender forthwith with interest until paid at the highest rate borne by any of the Obligations and such amounts shall form part of the Obligations and constitute a charge upon the Collateral in favour of the Lender prior to all claims subsequent to this General Security Agreement.
- 6.4 The Debtor covenants and agrees that the Lender may, but shall be under no obligation to, at any time or times as the Lender deems necessary and without the concurrence of the Debtor or any other person make such arrangements for the repairing, finishing and putting in order of the Premises, including, without limitation, such repairs, replacements and improvements as are necessary so that the Debtor and the Premises comply with Environmental Laws, and all reasonable costs, charges and expenses including an allowance for the time and services of the Lender, the Lender's servants or agents or any other person or persons appointed for the above purposes including, without limitation, the full amount of all legal fees, disbursements, costs, charges and expenses incurred by the Lender and any amount due hereunder shall be payable forthwith to the Lender, shall be deemed an advance to the Debtor by the Lender, shall be deemed to be Obligations, and shall bear interest at the highest rate per annum from time to time charged by the Lender on any of the other Obligations until paid.

VII Default

- 7.1 The Debtor shall be in default under this General Security Agreement, unless otherwise agreed in writing by the Lender, upon the occurrence of any of the following events:
- 7.1.1 the Debtor makes default in payment when due of any of the Obligations which are indebtedness or liabilities or the Debtor fails to perform or satisfy any other of the Obligations; or
 - 7.1.2 the Debtor is in breach of any term, condition, proviso, agreement or covenant to the Lender, or any representation or warranty given by the Debtor to the Lender is untrue,

whether or not any such term, condition, proviso, agreement or covenant, representation or warranty is contained in this General Security Agreement; or

- 7.1.3 the Debtor makes an assignment for the benefit of its creditors, is declared bankrupt, makes a proposal or otherwise takes advantage of provisions for relief under the Bankruptcy and Insolvency Act (Canada), the Companies Creditors' Arrangement Act (Canada) or similar legislation in any jurisdiction, or makes an authorized assignment; or
- 7.1.4 there is instituted by or against the Debtor any formal or informal proceeding for the dissolution or liquidation of, settlement of claims against, or winding-up of affairs of, the Debtor; or
- 7.1.5 the Debtor ceases or threatens to cease to carry on business or makes or agrees to make a bulk sale of assets or commits or threatens to commit an act of bankruptcy; or
- 7.1.6 a receiver, receiver and manager or receiver-manager of all or any part of the Collateral or of any other property, assets or undertakings of the Debtor is appointed; or
- 7.1.7 any execution, sequestration, extent or other process of any court becomes enforceable against the Debtor or a distress or analogous process is levied upon the Collateral or any part thereof; or
- 7.1.8 an order is made or an effective resolution is passed for winding-up the Debtor; or
- 7.1.9 without the prior written consent of the Lender, the Debtor creates or permits to exist any Encumbrance against any of the Collateral which ranks or could in any event rank in priority to or pari passu with the security constituted by this General Security Agreement; or
- 7.1.10 the holder of any Encumbrance against any of the Collateral does anything to enforce or realize on such Encumbrance; or
- 7.1.11 the Debtor enters into any reconstruction, reorganization, amalgamation, merger or other similar arrangement with any other person; or
- 7.1.12 the Lender in good faith believes and has commercially reasonable grounds to believe that the prospect of payment or performance of any of the Obligations is impaired or that any of the Collateral is or is about to be placed in jeopardy; or
- 7.1.13 any certificate, statement, representation, warranty or audit report herewith, heretofore or hereafter furnished by or on behalf of the Debtor to the Lender, whether in connection with this General Security Agreement or otherwise, and whether furnished as an inducement to the Lender to extend any credit to or to enter into this or any other agreement with the Debtor or not:
 - (a) proves to have been false in any material respect at the time as of which the facts therein set forth were stated or certified; or
 - (b) proves to have omitted any substantial contingent or unliquidated liability or claim against the Debtor;

or, upon the date of execution of this General Security Agreement, there shall have been any material adverse change in any of the facts disclosed by any such certificate, statement, representation, warranty or audit report, which change was not disclosed to the Lender at or prior to the time of such execution.

- 7.2 For the purposes of Section 203 of the Land Title Act of British Columbia, the floating charge created by this General Security Agreement over land shall become a fixed charge thereon upon the earliest of:

- 7.2.1 the occurrence of an event described in any of clauses 7.1.3, 7.1.4, 7.1.5, 7.1.6, 7.1.7, or 7.1.8; or
- 7.2.2 the Lender taking any action to enforce and realize on the security constituted by this General Security Agreement.

VIII Enforcement

- 8.1 The Lender may make demand for payment at any time of any or all of the Obligations which are payable upon demand (whether or not there is any default under this General Security Agreement) and, upon any default under this General Security Agreement, the Lender may declare any or all of the Obligations which are not payable on demand to become immediately due and payable.
- 8.2 Upon default under this General Security Agreement, the security hereby constituted will immediately become enforceable.
- 8.3 To enforce and realize on the security constituted by this General Security Agreement, the Lender may take any action permitted by law or in equity, as it may deem expedient, and in particular, without limiting the generality of the foregoing, the Lender may do any one or more of the following:
 - 8.3.1 appoint by instrument a receiver, receiver and manager or receiver-manager (the person so appointed is herein called the "Receiver") of the Collateral, with or without bond as the Lender may determine, and from time to time in its sole discretion remove such Receiver and appoint another in its stead;
 - 8.3.2 enter upon any of the Premises and take possession of the Collateral with power to exclude the Debtor, its agents and its servants therefrom, without becoming liable as a mortgagee in possession;
 - 8.3.3 preserve, protect and maintain the Collateral and make such replacements thereof and repairs and additions thereto as the Lender may deem advisable;
 - 8.3.4 sell, lease or otherwise dispose of or concur in selling, leasing or otherwise disposing of all or any part of the Collateral, whether by public or private sale or lease or otherwise, in such manner, at such price as can be reasonably obtained therefor and on such terms as to credit and with such conditions of sale and stipulations as to title or conveyance or evidence of title or otherwise as to the Lender may seem reasonable, provided that the Debtor will not be entitled to be credited with the proceeds of any such sale, lease or other disposition until the monies therefor are actually received; and
 - 8.3.5 exercise all of the rights and remedies of a secured party under the PPSA.
- 8.4 A Receiver appointed pursuant to this General Security Agreement shall be the agent of the Debtor and not of the Lender and, to the extent permitted by law or to such lesser extent permitted by its appointment, shall have all the powers of the Lender hereunder, and in addition shall have power to carry on the business of the Debtor and for such purpose from time to time to borrow money either secured or unsecured, and if secured by a security on any of the Collateral, any such security may rank in priority to or pari passu with or behind the security constituted by this General Security Agreement, and if it does not so specify such security shall rank in priority to the security constituted by this General Security Agreement.
- 8.5 Subject to applicable law and the claims, if any, of the creditors of the Debtor ranking in priority to the security constituted by this General Security Agreement, all amounts realized from the disposition of the Collateral pursuant to this General Security Agreement will be applied as the Lender, in its sole discretion, may direct as follows:

- Firstly:** in or toward payment of all costs, charges and expenses (including legal fees and disbursements on a solicitor and his own client basis) incurred by the Lender in connection with or incidental to:
- (a) the exercise by the Lender of all or any of the powers granted to it pursuant to this General Security Agreement; and
 - (b) the appointment of the Receiver and the exercise by the Receiver of all or any of the powers granted to the Receiver pursuant to this General Security Agreement, including the Receiver's reasonable remuneration and all outgoings properly payable by the Receiver;
- Secondly:** in or toward payment to the Lender of all principal and other monies (except interest) due in respect of the Obligations;
- Thirdly:** in or toward payment to the Lender of all interest remaining unpaid in respect of the Obligations; and
- Fourthly:** any surplus will be paid to the Debtor.

IX Deficiency

- 9.1 If the amounts realized from the disposition of the Collateral are not sufficient to pay the Obligations in full to the Lender, the Debtor will immediately pay to the Lender the amount of such deficiency.

X Rights Cumulative

- 10.1 All rights and remedies of the Lender set out in this General Security Agreement are cumulative and no right or remedy contained herein is intended to be exclusive but each will be in addition to every other right or remedy contained herein or in any existing or future general security agreement or now or hereafter existing at law or in equity or pursuant to any other agreement between the Debtor and the Lender that may be in effect from time to time.

XI Appointment of Attorney

- 11.1 The Debtor hereby irrevocably appoints the Lender or the Receiver, as the case may be, with full power of substitution, to be the attorney of the Debtor for and in the name of the Debtor to sign, endorse or execute under seal or otherwise any deeds, documents, transfers, cheques, instruments, demands, assignments, assurances or consents that the Debtor is obliged to sign, endorse or execute and generally to use the name of the Debtor and to do all things as may be necessary or incidental to the exercise of all or any of the powers conferred on the Lender or the Receiver, as the case may be, pursuant to this General Security Agreement.

XII Liability of Lender

- 12.1 The Lender shall not be responsible or liable for any debts contracted by it, for damages to persons or property or for salaries or non-fulfilment of contracts during any period when the Lender shall manage the Collateral upon entry of the business of the Debtor, as herein provided, nor shall the Lender be liable to account as mortgagee in possession or for anything except actual receipts or be liable for any loss or realization or for any default or omission for which a mortgagee in possession may be liable.
- 12.2 The Lender shall not be bound to do, observe or perform or to see to the observance or performance by the Debtor of any obligations or covenants imposed upon the Debtor nor shall the Lender, in the case of Securities, Instruments or Chattel Paper, be obliged to reserve rights against other persons, nor shall the Lender be obliged to keep any of the Collateral identifiable.
- 12.3 The Lender shall not be obliged to inquire into the right of any person purporting to be entitled under the PPSA to information and materials from the Lender by making a demand upon the

Lender for such information and materials and the Lender shall be entitled to comply with such demand and shall not be liable for having complied with such demand notwithstanding that such person may in fact not be entitled to make such demand.

- 12.4 The Debtor will indemnify the Lender and hold the Lender harmless from and against any and all claims, costs, losses, demands, actions, causes of action, lawsuits, damages, penalties, judgments and liabilities of whatsoever nature and kind in connection with or arising out of any representation or warranty given by the Debtor, being untrue, the breach of any term, condition, proviso, agreement or covenant to the Lender, or the exercise of any of the rights and or remedies of the Lender, or any transaction contemplated in this General Security Agreement.
- 12.5 The Debtor hereby waives any applicable provision of law permitted to be waived by it which imposes higher or greater obligations upon the Lender than provided in this General Security Agreement.
- 12.6 The Debtor shall indemnify, reimburse and save harmless the Lender, any receiver, its directors, officers, employees, agents, and successors and assigns, from any and all liabilities, actions, damages, claims, losses, costs and expenses whatsoever (including without limitation, the full amount of all legal fees, costs, charges and expenses and the cost of removal, treatment, storage and disposal of any Hazardous Materials and remediation of the Premises) which may be paid, incurred or asserted against the Lender for, with respect to or as a direct or indirect result of the presence on or under, or the escape, seepage, leakage, spillage, discharge, emission or release from the Premises or into or upon any other land, the atmosphere or any watercourse, body of water or wetland of any Hazardous Materials.
- 12.7 Any amount owing by the Debtor hereunder shall, from the date of disbursement until the date the Lender receives reimbursement, be deemed advanced to the Debtor by the Lender, shall be deemed to be Obligations and shall bear interest at the highest rate per annum from time to time charged by the Lender on any of the other Obligations until paid.
- 12.8 The Debtor agrees that the indemnity obligations hereunder shall survive the release of the security of this General Security Agreement and the payment and satisfaction of the indebtedness and liabilities hereby secured.

XIII Appropriation of Payments and Offset

- 13.1 Subject to any applicable provisions of the PPSA, any and all payments made in respect of the Obligations from time to time and monies realized from any security held therefor (including monies collected in accordance with or realized on any enforcement of this General Security Agreement) may be applied to such part or parts of the Obligations as the Lender may see fit, and the Lender may at all times and from time to time change any appropriation as the Lender may see fit or, at the option of the Lender, such payments and monies may be held unappropriated in a collateral account or released to the Debtor, all without prejudice to the liability of the Debtor or to the rights of the Lender hereunder.
- 13.2 Without limiting any other right of the Lender, whenever any of the Obligations is immediately due and payable or the Lender has the right to declare any of the Obligations to be immediately due and payable (whether or not it has so declared), the Lender may, in its sole discretion, set off against any of the Obligations any and all monies then owed to the Debtor by the Lender in any capacity, whether or not due and to do so even though any charge therefor is made or entered on the Lender's records subsequent thereto, and the Lender shall be deemed to have exercised such right to set off immediately at the time of making its decision.

XIV Liability to Advance, Etc.

- 14.1 Except to the extent that the Lender:

- 14.1.1 by accepting bills of exchange drawn on it by the Debtor; or
- 14.1.2 by issuing letters of credit or letters of guarantee on the application of the Debtor, is required to advance monies on the maturity of such bills or pursuant to such letters of credit or letters of guarantee, as the case may be, none of the preparation, execution, perfection and registration of this General Security Agreement or the advance of any monies shall bind the Lender to make any advance or loan or further advance or loan, or renew any note or extend any time for payment of any indebtedness or liability of the Debtor to the Lender or extend any term for performance or satisfaction of any obligation of the Debtor to the Lender.

14.2 Nothing herein contained shall in any way oblige the Lender to grant, continue, renew, extend time for payment of or accept anything which constitutes or would constitute Obligations or any of them.

XV Waiver

- 15.1 No delay or omission by the Lender in exercising any right or remedy hereunder or with respect to any of the Obligations shall operate as a waiver thereof or of any other right or remedy, and no single or partial exercise thereof shall preclude any other or further exercise thereof or the exercise of any other right or remedy.
- 15.2 The Lender may from time to time and at any time waive in whole or in part any right, benefit or default under any clause of this General Security Agreement but any such waiver of any right, benefit or default on any occasion shall be deemed not to be a waiver of any such right, benefit or default thereafter, or of any other right, benefit or default, as the case may be.

XVI Extensions

- 16.1 The Lender may grant extensions of time and other indulgences, take and give up security, accept compositions, compound, compromise, settle, grant releases and discharges, refrain from perfecting or maintaining perfection of security, and otherwise deal with the Debtor, Account Debtors of the Debtor, sureties and others and with the Collateral and other security as the Lender may see fit without prejudice to the liability of the Debtor or the Lender's right to hold and realize on the security constituted by this General Security Agreement.

XVII Assignment

- 17.1 The Lender may, without further notice to the Debtor, at any time mortgage, charge, assign, transfer or grant a security interest in this General Security Agreement and the security constituted hereby.
- 17.2 The Debtor expressly agrees that the assignee, transferee or secured party of the Lender, as the case may be, shall have all of the Lender's rights and remedies under this General Security Agreement and the Debtor will not assert any defence, counterclaim, right of set-off or otherwise any claim which it now has or hereafter acquires against the Lender in any action commenced by such assignee, transferee or secured party, as the case may be, and will pay the Obligations to the assignee, transferee or secured party, as the case may be, as the Obligations become due.

XVIII Satisfaction and Discharge

- 18.1 Any partial payment or satisfaction of the Obligations, or any ceasing by the Debtor to be indebted to the Lender, shall be deemed not to be redemption or discharge of the security constituted by this General Security Agreement.

- 18.2 The Debtor shall be entitled to a release and discharge of the security constituted by this General Security Agreement upon full payment, performance and satisfaction of all Obligations, or the securing of the Obligations to the satisfaction of the Lender, and upon written request by the Debtor and payment to the Lender of all costs, charges, expenses and legal fees and disbursements (on a solicitor and his own client basis) incurred by the Lender in connection with the Obligations and such release and discharge.

XIX No Merger

- 19.1 This General Security Agreement shall not operate so as to create any merger or discharge of any of the Obligations, or any assignment, transfer, guarantee, lien, contract, promissory note, bill of exchange or security in any form held or which may hereafter be held by the Lender from the Debtor or from any other person whomsoever.
- 19.2 The taking of a judgment with respect to any of the Obligations will not operate as a merger of any of the terms, conditions, covenants, agreements or provisos contained in this General Security Agreement.
- 19.3 The release and discharge of the security constituted by this General Security Agreement by the Lender shall not operate as a release or discharge of any right of the Lender to be indemnified and held harmless by the Debtor pursuant to clause 12.4 hereof or of any other right of the Lender against the Debtor arising under this General Security Agreement prior to such release and discharge.

XX Interpretation

- 20.1 In this General Security Agreement:
- 20.1.1 the invalidity or unenforceability of the whole or any part of any clause shall not affect the validity or enforceability of any other clause or the remainder of such clause;
- 20.1.2 the headings have been inserted for reference only and shall not define, limit, alter or enlarge the meaning of any provision of this General Security Agreement; and
- 20.1.3 when the context so requires, the singular shall be read as if the plural were expressed and the provisions hereof shall be read with all grammatical changes necessary dependent upon the person referred to being a male, female, firm or corporation.

XXI Notice

- 21.1 Whenever either the Lender or the Debtor is required or entitled to notify or direct the other or to make a demand upon or request of the other relating to the Collateral, this General Security Agreement or the PPSA, such notice, direction, demand or request shall be sufficiently given if given in writing and delivered to the party for whom it is intended at the address of such party herein or as changed pursuant hereto or if sent by prepaid registered mail addressed to the party for whom it is intended at the address of such party herein set forth or as changed pursuant hereto.
- 21.2 Either the Lender or the Debtor may notify the other in accordance herewith of any change in its principal address to be used for the purposes hereof.

XXII Variation

- 22.1 Save for any schedules which may be added hereto pursuant to the provisions hereof, no modification, variation or amendment of any provision of this General Security Agreement shall be made except by written agreement, executed by the parties hereto and no waiver of any provision hereof shall be effective unless in writing.

XXIII Enurement

23.1 This General Security Agreement shall enure to the benefit of the Lender and its successors and assigns and shall be binding upon the respective heirs, executors, personal representatives, successors and permitted assigns of the Debtor.

XXIV Copy of Agreement and Financing Statement

24.1 The Debtor hereby:

24.1.1 acknowledges receiving a copy of this General Security Agreement; and

24.1.2 waives all rights to receive from the Lender a copy of any financing statement, financing change statement or verification statement filed at any time or from time to time in respect of this General Security Agreement.

XXV Governing Law

25.1 This General Security Agreement shall be governed by and construed in accordance with the laws of the Province.

25.2 For the purpose of legal proceedings this General Security Agreement shall be deemed to have been made in the Province and to be performed there and the courts of the Province shall have jurisdiction over all disputes which may arise under this General Security Agreement and the Debtor hereby irrevocably and unconditionally submits to the non-exclusive jurisdiction of such courts, provided always that nothing herein contained shall prevent the Lender from proceeding at its election against the Debtor in the courts of any other Province, country or jurisdiction.

In Witness Whereof the Debtor has executed this General Security Agreement as of the day and year first above written.

FOR BRITISH COLUMBIA

Officer Signature(s)

Execution Date

Debtor(s) Signature(s)

(For Corporation)

Y	M	D

(Corporation Name) by its authorized signatories

Officer Signature

Signature

Name

Name

Address

Title

Signature

(For Individual)

Officer Signature

Name

Address

--	--	--

Name

Title

Debtor Signature

Name

Officer Certification: Your signature constitutes a representation that you are a solicitor, notary public or other person authorized by the Evidence Act, R.S.B.C. 1996, c. 124, to take affidavits for use in British Columbia and certifies the matters set out in Part 5 of the Land Title Act as they pertain to the execution of this instrument.



FOR ALBERTA, NEW BRUNSWICK, NOVA SCOTIA, NEWFOUNDLAND AND LABRADOR

(For Corporation)

1739349 ALBERTA LTD.

Name of Corporation

Per: _____
Signature

_____ *IAN WILSON*
Name

_____ *AUTHORIZED SIGNATORY*
Title

Per: _____
Signature

_____ *Name*

_____ *Title*

} C/S

FOR INDIVIDUAL

DEBTOR'S SIGNATURE

Per: _____
Signature

_____ *Name*

_____ *Address*

_____ *Occupation*

_____ *Signature of Debtor*

_____ *Name*

Encumbrance Schedule

Prior Encumbrances:

Any and all mortgages, charges, liens, encumbrances and security interests granted by the Debtor to PEF 2010 Nilex Investment Limited Partnership.



Location Schedule**Address(es) for Location of the Collateral****Prior to the amalgamation of the Debtor and Nilex Inc. to form Nilex Inc. (amalgamated):**

1. 9304 – 39 Avenue NW, Edmonton, AB T6E 6L8

Subsequent to the amalgamation of the Debtor and Nilex Inc. to form Nilex Inc. (amalgamated):

1. 1781 Clearbrook Road, Abbotsford, BC V2T 5X5
2. 3963 and 3981 Phillips Avenue, Burnaby, BC V5A 3K4
3. 9222 – 40 Street SE, Calgary, AB T2C 2P3
4. 15253 East Fremont Drive, Centennial, CO 80112 (Lot 1, 5th Filing, Cherry Creek Business Center)
5. 9304 – 39 Avenue NW, Edmonton, AB T6E 6L8
6. 315, 845 Broad Street, Regina, SK S4R 8G9
7. 130 Yorkland Boulevard, Toronto, ON M2J 1R5
8. VERNON, BC (P: 250.260.3300, F: 250.260.3520)



Additional Covenants Schedule**Additional Covenants of the Debtor further to Clause 4.1.15**

Comply with all terms, conditions and covenants set forth in any and all offer of credit letters executed by the Lender and the Debtor, as such letters may be amended, extended, renewed, altered, modified, substituted or replaced from time to time.



This is Exhibit "L" referred to in the Affidavit of Jeff Allen sworn before me this 31st day of October, 2022.



A Commissioner for Oaths in and for Alberta

Luke Budzinski
Barrister & Solicitor



GENERAL SECURITY AGREEMENT

(British Columbia, Alberta, New Brunswick, Nova Scotia, Newfoundland and Labrador, Prince Edward Island)

This General Security Agreement made as of the 30 day of APRIL, 2013

Between:

NILEX CONSTRUCTION INC.
9304 - 39 Avenue
Edmonton, Alberta T6E 6L8

(the "Debtor")

And:

PEF 2010 Nilex Investment Limited Partnership, a limited partnership under the laws of the Province of British Columbia having a registered office at

1020 - 885 West Georgia Street
Vancouver, British Columbia V6C 3E8

(the "Lender")

I Security

- 1.1 For value received, the Debtor grants and creates the security constituted by this General Security Agreement and agrees to the terms, covenants, agreements, conditions, provisos and other matters set out in this General Security Agreement.
- 1.2 As general and continuing security for the Obligations (as defined in clause 2.1 hereof), the Debtor:
- 1.2.1 hereby grants to the Lender, by way of mortgage, charge, assignment and transfer, a security interest in all presently owned and hereafter acquired personal property of the Debtor of whatsoever nature and kind and wheresoever situate and all proceeds thereof and therefrom, renewals thereof, Accessions thereto and substitutions therefor, (all of which are herein collectively called the "Personal Property Collateral"), including, without limiting the generality of the foregoing, all the presently owned or held and hereafter acquired right, title and interest of the Debtor in and to all Goods (including all accessories, attachments, additions and Accessions thereto), Chattel Paper, Documents of Title (whether negotiable or not), Instruments, Intangibles (subject to Clause 1.2.2 hereof), Licences, Money, Securities, Investment Property and all:
- (a) Inventory of whatsoever nature and kind and wheresoever situate;

- (b) Equipment (other than Inventory) of whatsoever nature and kind and wheresoever situate, including, without limitation, all machinery, tools, apparatus, plant, furniture, fixtures and vehicles of whatsoever nature and kind;
- (c) book accounts and book debts and generally all Accounts, debts, dues, claims, choses in action and demands of every nature and kind howsoever arising or secured including letters of credit, letters of guarantee and advices of credit, which are now due, owing or accruing or growing due to or owned by or which may hereafter become due, owing or accruing or growing due to or owned by the Debtor (all of which are herein collectively called the "Debts");
- (d) deeds, documents, writings, papers, books of account and other books relating to or being records of Debts, Chattel Paper or Documents of Title or by which such are or may hereafter be secured, evidenced, acknowledged or made payable;
- (e) contractual rights and insurance claims and all goodwill;
- (f) monies other than trust monies lawfully belonging to others; and
- (g) personal property described in any schedule now or hereafter annexed hereto; and

1.2.2 hereby grants to the Lender, by way of mortgage and charge a security interest in all presently owned and hereafter acquired patents, trade-marks, copyrights, industrial designs and other intellectual property and all proceeds thereof and therefrom, renewals thereof, Accessions thereto and substitutions therefor (all of which is deemed to be included in the definition of "Personal Property Collateral" referred to in Clauses 1.2.1 and 1.3.2 hereof); and

1.2.3 hereby charges as and by way of a floating charge in favour of the Lender all the presently owned or held and hereafter acquired property, assets, effects and undertakings of the Debtor of whatsoever nature and kind and wheresoever situate, other than such of the property, assets, effects and undertakings of the Debtor as are validly and effectively subjected to the security interest granted to the Lender pursuant to clause 1.2.1, (all of which property, assets, effects and undertakings so charged by this clause 1.2.3 are herein collectively called the "Other Collateral") including, without limiting the generality of the foregoing, all presently owned or held and hereafter acquired right, title and interest of the Debtor in and to real and immovable and leasehold property and rights whether in fee or of a less estate and all interest in and rights relating to lands and all easements, rights of way, privilege, benefits, licences, improvements and rights whether connected therewith or appurtenant thereto or separately owned or held and all structures, buildings, plant, machinery, fixtures, apparatus and fixed assets and the charge created by this clause 1.2.3 shall be a floating charge such that the Debtor shall not have power without the prior written consent of the Lender to:

- (a) create or permit to exist any Encumbrance against any of the Other Collateral which ranks or could in any event rank in priority to or pari passu with the security constituted by this General Security Agreement, save for:
 - (1) those Encumbrances shown in the Encumbrance Schedule; and
 - (2) Encumbrances approved in writing by the Lender prior to creation or assumption; or
- (b) grant, sell, exchange, transfer, assign, lease or otherwise dispose of the Other Collateral.

1.3 In this General Security Agreement:

1.3.1 any reference to "Premises" shall mean all property owned or leased by the Debtor;

- 1.3.2 the Personal Property Collateral and the Other Collateral are herein together called the "Collateral";
- 1.3.3 any reference to "Collateral" shall, unless the context otherwise requires, be deemed a reference to "Collateral or any part thereof";
- 1.3.4 any reference to "Debtor" and the personal pronoun "it" or "its" and any verb relating thereto and used therewith shall be read and construed as required by and in accordance with the context in which such words are used depending upon whether the Debtor is one or more corporations and, if more than one Debtor executes this General Security Agreement, this General Security Agreement shall apply and be binding upon each of them jointly and severally and all obligations hereunder shall be joint and several;
- 1.3.5 any reference to "Environmental Laws" shall mean any laws, regulations, orders, by-laws, permits or lawful requirements of any governmental authority with respect to environmental protection or regulating hazardous materials;
- 1.3.6 any reference to "General Security Agreement" shall, unless the context otherwise requires, be deemed a reference to this General Security Agreement as amended from time to time by written agreement together with the schedules hereto and any schedules added hereto pursuant to the provisions hereof;
- 1.3.7 any reference to "Hazardous Materials" shall mean any asbestos material, urea formaldehyde, explosives, radioactive materials, pollutants, contaminants, hazardous substances, corrosive substances, toxic substances, special waste or waste of any kind including, without limitation, compounds known as chlorobiphenyls and any substance the storage, manufacture, disposal, treatment, generation, use, transport, remediation or release of which into the environment is prohibited, controlled or licensed under Environmental Laws, all excluding similar or like substances used in the ordinary course of the Debtor's business provided that such excluded substances continue to be used, stored, disposed of or otherwise handled in accordance with Environmental Laws and other applicable laws;
- 1.3.8 any reference to "PPSA" shall mean the Personal Property Security Act of the Province as amended from time to time, including any amendments thereto and any Act substituted therefor and amendments thereto;
- 1.3.9 any reference to the "Province" shall mean the Province of Alberta;
- and
- 1.3.10 the terms "Goods", "Chattel Paper", "Documents of Title", "Equipment", "Accounts" "Consumer Goods", "Instruments", "Intangibles", "Licences"(Alberta and British Columbia only), "Money", "Securities", "Investment Property", "Proceeds", "Inventory" and "Accessions" and other words and expressions which have been defined in the PPSA shall be interpreted in accordance with their respective meanings given in the PPSA (either in the singular or plural thereof), as the context requires unless otherwise defined herein or unless the context otherwise requires.
- 1.4 The Lender and the Debtor have not agreed to postpone the time for attachment of the security interests granted hereby.
- 1.5 The security interest in Consumer Goods hereby granted shall not become effective until, but shall become effective immediately when, the Lender notifies the Debtor in writing that it is effective.
- 1.6 The last day of the term of any lease held by the Debtor with respect to any of the Collateral is excluded from the security constituted by this General Security Agreement.

II Obligations Secured

- 2.1 The security constituted by this General Security Agreement is general and continuing security for payment, performance and satisfaction of each and every obligation, indebtedness

and liability of the Debtor to the Lender (including interest thereon), present or future, direct or indirect, absolute or contingent, matured or not, extended or renewed, wheresoever and howsoever incurred, and any ultimate unpaid balance thereof, including all future advances and re-advances, and whether the same is from time to time reduced and thereafter increased or entirely extinguished and thereafter incurred again and whether the Debtor be bound alone or with another or others and whether as principal or surety, (all of which obligations, indebtedness and liabilities are herein collectively called the "Obligations").

- 2.2 This General Security Agreement and the security constituted hereby are in addition to and not in substitution for any other security or securities which the Lender may now or from time to time hold or take from the Debtor or from any other person whomsoever.

III Representations and Warranties of the Debtor

- 3.1 The Debtor represents and warrants that, and, so long as this General Security Agreement remains in effect, shall be deemed to continuously represent and warrant that:

- 3.1.1 this General Security Agreement has been authorized, executed and delivered in accordance with resolutions of the directors (and of the shareholders as applicable) of the Debtor and all other matters and things have been done and performed so as to authorize and make the execution and delivery of this General Security Agreement, the creation of the security constituted hereby and the performance of the Debtor's obligations hereunder, legal, valid and binding;
- 3.1.2 the Collateral is genuine and is owned by the Debtor free of all security interests, mortgages, liens, claims, charges and other encumbrances (herein collectively called "Encumbrances"), save for the security constituted by this General Security Agreement, those Encumbrances shown on the Encumbrance Schedule and those Encumbrances approved in writing by the Lender;
- 3.1.3 the Debtor has good and lawful authority to create the security in the Collateral constituted by this General Security Agreement;
- 3.1.4 each Debt, Chattel Paper and Instrument included in Collateral is enforceable in accordance with its terms against the party obligated to pay the same (the "Account Debtor"), and the amount represented by the Debtor to the Lender from time to time as owing by each Account Debtor or by all Account Debtors will be the correct amount actually and unconditionally owing by such Account Debtor or Account Debtors, except for normal cash discounts where applicable, and no Account Debtor will have any defense, set off, claim or counterclaim against the Debtor which can be asserted against the Lender, whether in any proceeding to enforce the Collateral or otherwise;
- 3.1.5 with respect to Goods (including Inventory) comprised in the Collateral, the locations specified in the Location Schedule are accurate and complete (save for Goods in transit to such locations and Inventory on lease or consignment) and all fixtures or Goods about to become fixtures which form part of the Collateral will be situate at one of the locations specified in the Location Schedule;
- 3.1.6 none of the Premises are insulated with urea formaldehyde nor contain any asbestos material or underground tanks;
- 3.1.7 the Premises are free of any Hazardous Materials;
- 3.1.8 the Premises are not currently used in a manner, and, to the Debtor's knowledge, after having made due inquiry, no prior use has occurred, which is contrary to any laws, regulations, orders, bylaws, permits or lawful requirements of any Environmental Laws; and

- 3.1.9 there are no existing or threatened claims, actions, orders or investigations under any Environmental Laws against the Debtor or against the Premises;
- 3.1.10 the Debtor is the owner of any intellectual property applications and registrations and there are no outstanding claims of ownership by third parties in respect of these registrations and applications;
- 3.1.11 all intellectual property applications and registrations are valid and in good standing;
- 3.1.12 all trade-mark and industrial designs have been in continuous use and that the use has been proper in relation to the wares and/or services of Debtor;
- 3.1.13 only the Debtor has used the trade-marks, or if there are any third party users of the Debtor's trade-marks, such third party users are properly licensed to use such trademarks;
- 3.1.14 all assignments and other documents affecting intellectual property rights have been disclosed and provided to the Lender;
- 3.1.15 there are no outstanding or threatened claims or proceedings with respect to the intellectual property; and,
- 3.1.16 all necessary assignments and license agreements have been properly executed by the Debtor for use of third party intellectual property.

IV Covenants of the Debtor

- 4.1 The Debtor covenants and agrees that at all times while this General Security Agreement remains in effect the Debtor will:
 - 4.1.1 defend the Collateral for the benefit of the Lender against the claims and demands of all other persons;
 - 4.1.2 not, without the prior written consent of the Lender:
 - (a) create or permit to exist any Encumbrance against any of the Personal Property Collateral which ranks or could in any event rank in priority to or pari passu with the security constituted by this General Security Agreement, save for:
 - (i) those Encumbrances shown in the Encumbrance Schedule; and
 - (ii) Encumbrances approved in writing by the Lender prior to creation or assumption; or
 - (b) grant, sell, exchange, transfer, assign, lease or otherwise dispose of the Collateral; provided always, that, until default, the Debtor may, in the ordinary course of the Debtor's business, sell or lease Inventory and, subject to clause 5.2 hereof, use monies available to the Debtor;
 - 4.1.3 fully and effectively maintain and keep maintained valid and effective the security constituted by this General Security Agreement;
 - 4.1.4 notify the Lender promptly of:
 - (a) any change in the information contained herein or in the Schedules hereto relating to the Debtor, the Debtor's name, the Debtor's business or the Collateral;
 - (b) the details of any significant acquisition of Collateral;
 - (c) the details of any claims or litigation affecting the Debtor or the Collateral;
 - (d) any loss or damage to the Collateral;

- (e) any default by any Account Debtor in payment or other performance of obligations of the Account Debtor comprised in the Collateral; and
 - (f) the return to, or repossession by, the Debtor of Collateral;
- 4.1.5 keep the Collateral in good order, condition and repair (in the locations specified in the Location Schedule or such other locations as the Lender may approve in writing) and not use the Collateral in violation of the provisions of this General Security Agreement or any other agreement relating to the Collateral or any policy insuring the Collateral or any applicable statute, law, by-law, rule, regulation or ordinance;
- 4.1.6 carry on and conduct the business of the Debtor in a proper and efficient manner and so as to protect and preserve the Collateral and to keep, in accordance with generally accepted accounting principles, consistently applied, proper books of account for the Debtor's business as well as accurate and complete records concerning the Collateral and, at the Lender's request, mark any and all such records and the Collateral so as to indicate the security constituted by this General Security Agreement;
- 4.1.7 forthwith pay:
- (a) all obligations to its employees and all obligations to others which relate to its employees when due, including, without limitation, all taxes, duties, levies, government fees, claims and dues related to its employees;
 - (b) all taxes, assessments, rates, duties, levies, government fees, claims and dues lawfully levied, assessed or imposed upon it or the Collateral when due, unless the Debtor shall in good faith contest its obligations so to pay and shall furnish such security as the Lender may require; and
 - (c) all Encumbrances which rank or could in any event rank in priority to or pari passu with the security constituted by this General Security Agreement, other than the Encumbrances, if any, shown in the Encumbrance Schedule hereto and those approved in writing by the Lender;
- 4.1.8 prevent the Collateral, save Inventory sold or leased as permitted hereby, from being or becoming an Accession to other property not covered by this General Security Agreement;
- 4.1.9 insure the Collateral for such periods, in such amounts, on such terms and against loss or damage by fire and such other risks as the Lender shall reasonably direct (but in any event in accordance with prudent business practice and for not less than the full replacement cost thereof) with loss payable to the Lender and the Debtor, as insureds, as their respective interests may appear, and to pay all premiums for such insurance;
- 4.1.10 deliver to the Lender from time to time promptly upon request:
- (a) any Documents of Title, Instruments, Securities and Chattel Paper comprised in or relating to the Collateral;
 - (b) all books of account and all records, ledgers, reports, correspondence, schedules, documents, statements, lists and other writings relating to the Collateral for the purpose of inspecting, auditing or copying the same;
 - (c) all financial statements prepared by or for the Debtor regarding the Debtor's business;
 - (d) all policies and certificates of insurance relating to the Collateral; and
 - (e) such information concerning the Collateral, the Debtor and Debtor's business and affairs as the Lender may reasonably require;

- 4.1.11 forthwith pay all costs, charges, expenses and legal fees and disbursements (on a solicitor and his own client basis) which may be incurred by the Lender in:
- (a) inspecting the Collateral;
 - (b) negotiating, preparing, perfecting and registering this General Security Agreement and other documents, whether or not relating to this General Security Agreement;
 - (c) investigating title to the Collateral;
 - (d) taking, recovering, keeping possession of and insuring the Collateral;
 - (e) connection with any disclosure requirements under the PPSA; and
 - (f) all other actions and proceedings taken in connection with the preservation of the Collateral and the confirmation, perfection and enforcement of this General Security Agreement and of any other security held by the Lender as security for the Obligations;
- 4.1.12 at the Lender's request at any time and from time to time create in favour of the Lender, as security for the Obligations, a fixed charge or charges upon any of the Other Collateral;
- 4.1.13 at the Lender's request at any time and from time to time execute and deliver such further and other documents and instruments and do all other acts and things as the Lender reasonably requires in order to give effect to this General Security Agreement or to confirm and perfect, and maintain perfection of, the security constituted by this General Security Agreement in favour of the Lender;
- 4.1.14 permit the Lender and its representatives, at all reasonable times, access to all the Debtor's property, assets and undertakings and to all its books of account and records for the purpose of inspection and render all assistance necessary for such inspection;
- 4.1.15 comply with the covenants, if any, set out in the Additional Covenants Schedule;
- 4.1.16 develop and use the Premises only in compliance with all Environmental Laws;
- 4.1.17 permit the Lender to investigate the Premises, any goods on the Premises and the Debtor's records at any time and from time to time to verify such compliance with Environmental Laws and this General Security Agreement;
- 4.1.18 upon the request of the Lender, obtain from time to time at the Debtor's cost a report from an independent consultant designated or approved by the Lender verifying compliance with Environmental Laws and this General Security Agreement or the extent of any non-compliance therewith;
- 4.1.19 not store, manufacture, dispose, treat, generate, use, transport, remediate or release Hazardous Materials on or from any of the Premises without notifying the Lender in writing;
- 4.1.20 promptly remove any Hazardous Materials from the Premises in a manner which conforms to Environmental Laws governing their removal; and,
- 4.1.21 notify the Lender in writing of:
- (a) any enforcement, clean-up, removal, litigation or other governmental, regulatory, judicial or administrative action instituted, contemplated or threatened against the Debtor or the Premises pursuant to any Environmental Laws;
 - (b) all claims, actions, orders or investigations, made or threatened by any third party against the Debtor or any of the Premises relating to damage, contribution, cost



recovery, compensation, loss or injuries resulting from any Hazardous Materials or any breach of the Environmental Laws; and

- (c) the discovery of any Hazardous Materials or any occurrence or condition on any of the Premises or any real property adjoining or in the vicinity of any of the Premises which could subject the Debtor or any of the Premises to any fines, penalties, orders or proceedings under any Environmental Laws;
- 4.1.22 apply to file applications and complete registrations on any present intellectual property which is not currently protected by an application or registration where commercially reasonable, including any and all improvements to intellectual property and apply to file registrations on unregistered trade-marks in Canada and the United States;
- 4.1.23 apply to file applications and complete registrations of all after acquired intellectual property in all jurisdictions where commercially reasonable;
- 4.1.24 keep up-to-date witnessed records regarding intellectual property;
- 4.1.25 enter into confidentiality agreements with employees and other third parties who may invent, create, discover, author and/or reduce to practice intellectual property for the Debtor and who may have access to confidential information of the Debtor;
- 4.1.26 ensure that all after acquired intellectual property obtained from third parties is properly acquired by way of a written license agreement or assignment;
- 4.1.27 provide, upon written request by the Lender, a list of all registered and unregistered trade-marks, patent applications, issued patents, copyright, industrial designs and other intellectual property; and,
- 4.1.28 mark all products and advertising appropriately to maintain the validity of all intellectual property rights.

V Payments and Proceeds

- 5.1 Before or after default under this General Security Agreement, the Lender may notify all or any Account Debtors of the security constituted by this General Security Agreement and may also direct such Account Debtors to make all payments on the Collateral to the Lender.
- 5.2 The Debtor acknowledges that any payments on or other proceeds of the Collateral received by the Debtor from Account Debtors, whether before or after notification of the security constituted by this General Security Agreement to Account Debtors and whether before or after default under this General Security Agreement, shall be received and held by the Debtor in trust for the Lender and shall be turned over to the Lender forthwith upon request.

VI Lender Actions

- 6.1 The Debtor hereby authorizes the Lender to:
 - (a) file such financing statements and other documents and do such acts, matters and things (including completing and adding schedules hereto identifying the Collateral or any permitted Encumbrances affecting collateral or identifying the locations at which the Debtor's business is carried on and the Collateral and records relating thereto are situate) as the Lender may deem appropriate to perfect and continue the security constituted hereby, to protect and preserve the Collateral and to realize upon the security constituted hereby and the Debtor hereby irrevocably constitutes and appoints the Lender the true and lawful attorney of the Debtor, with full power of substitution, to do any of the foregoing in the name of the Debtor whenever and wherever it may be deemed necessary or expedient by the Lender; and

- (b) make enquiries from time to time of any governmental authority with respect to the Debtor's compliance with Environmental Laws and the Debtor agrees that the Debtor will from time to time provide to the Lender with such written authorization as the Lender may reasonably require in order to facilitate the obtaining of such information.
- 6.2 The Lender may charge for its reasonable costs incurred in connection with any disclosure requirements under the PPSA.
- 6.3 If the Debtor fails to perform any of its Obligations hereunder, the Lender may, but shall not be obliged to, perform any or all of such Obligations without prejudice to any other rights and remedies of the Lender hereunder, and any payments made and any costs, charges, expenses and legal fees and disbursements (on a solicitor and his own client basis) incurred in connection therewith shall be payable by the Debtor to the Lender forthwith with interest until paid at the highest rate borne by any of the Obligations and such amounts shall form part of the Obligations and constitute a charge upon the Collateral in favour of the Lender prior to all claims subsequent to this General Security Agreement.
- 6.4 The Debtor covenants and agrees that the Lender may, but shall be under no obligation to, at any time or times as the Lender deems necessary and without the concurrence of the Debtor or any other person make such arrangements for the repairing, finishing and putting in order of the Premises, including, without limitation, such repairs, replacements and improvements as are necessary so that the Debtor and the Premises comply with Environmental Laws, and all reasonable costs, charges and expenses including an allowance for the time and services of the Lender, the Lender's servants or agents or any other person or persons appointed for the above purposes including, without limitation, the full amount of all legal fees, disbursements, costs, charges and expenses incurred by the Lender and any amount due hereunder shall be payable forthwith to the Lender, shall be deemed an advance to the Debtor by the Lender, shall be deemed to be Obligations, and shall bear interest at the highest rate per annum from time to time charged by the Lender on any of the other Obligations until paid.

VII Default

- 7.1 The Debtor shall be in default under this General Security Agreement, unless otherwise agreed in writing by the Lender, upon the occurrence of any of the following events:
- 7.1.1 the Debtor makes default in payment when due of any of the Obligations which are indebtedness or liabilities or the Debtor fails to perform or satisfy any other of the Obligations; or
- 7.1.2 the Debtor is in breach of any term, condition, proviso, agreement or covenant to the Lender, or any representation or warranty given by the Debtor to the Lender is untrue, whether or not any such term, condition, proviso, agreement or covenant, representation or warranty is contained in this General Security Agreement; or
- 7.1.3 the Debtor makes an assignment for the benefit of its creditors, is declared bankrupt, makes a proposal or otherwise takes advantage of provisions for relief under the Bankruptcy and Insolvency Act (Canada), the Companies Creditors' Arrangement Act (Canada) or similar legislation in any jurisdiction, or makes an authorized assignment; or
- 7.1.4 there is instituted by or against the Debtor any formal or informal proceeding for the dissolution or liquidation of, settlement of claims against, or winding-up of affairs of, the Debtor; or
- 7.1.5 the Debtor ceases or threatens to cease to carry on business or makes or agrees to make a bulk sale of assets or commits or threatens to commit an act of bankruptcy; or
- 7.1.6 a receiver, receiver and manager or receiver-manager of all or any part of the Collateral or of any other property, assets or undertakings of the Debtor is appointed; or

- 7.1.7 any execution, sequestration, extent or other process of any court becomes enforceable against the Debtor or a distress or analogous process is levied upon the Collateral or any part thereof; or
- 7.1.8 an order is made or an effective resolution is passed for winding-up the Debtor; or
- 7.1.9 without the prior written consent of the Lender, the Debtor creates or permits to exist any Encumbrance against any of the Collateral which ranks or could in any event rank in priority to or pari passu with the security constituted by this General Security Agreement; or
- 7.1.10 the holder of any Encumbrance against any of the Collateral does anything to enforce or realize on such Encumbrance; or
- 7.1.11 the Debtor enters into any reconstruction, reorganization, amalgamation, merger or other similar arrangement with any other person; or
- 7.1.12 the Lender in good faith believes and has commercially reasonable grounds to believe that the prospect of payment or performance of any of the Obligations is impaired or that any of the Collateral is or is about to be placed in jeopardy; or
- 7.1.13 any certificate, statement, representation, warranty or audit report herewith, heretofore or hereafter furnished by or on behalf of the Debtor to the Lender, whether in connection with this General Security Agreement or otherwise, and whether furnished as an inducement to the Lender to extend any credit to or to enter into this or any other agreement with the Debtor or not:
 - (a) proves to have been false in any material respect at the time as of which the facts therein set forth were stated or certified; or
 - (b) proves to have omitted any substantial contingent or unliquidated liability or claim against the Debtor;

or, upon the date of execution of this General Security Agreement, there shall have been any material adverse change in any of the facts disclosed by any such certificate, statement, representation, warranty or audit report, which change was not disclosed to the Lender at or prior to the time of such execution.

- 7.2 For the purposes of Section 203 of the Land Title Act of British Columbia, the floating charge created by this General Security Agreement over land shall become a fixed charge thereon upon the earliest of:
 - 7.2.1 the occurrence of an event described in any of clauses 7.1.3, 7.1.4, 7.1.5, 7.1.6, 7.1.7, or 7.1.8; or
 - 7.2.2 the Lender taking any action to enforce and realize on the security constituted by this General Security Agreement.

VIII Enforcement

- 8.1 The Lender may make demand for payment at any time of any or all of the Obligations which are payable upon demand (whether or not there is any default under this General Security Agreement) and, upon any default under this General Security Agreement, the Lender may declare any or all of the Obligations which are not payable on demand to become immediately due and payable.
- 8.2 Upon default under this General Security Agreement, the security hereby constituted will immediately become enforceable.

8.3 To enforce and realize on the security constituted by this General Security Agreement, the Lender may take any action permitted by law or in equity, as it may deem expedient, and in particular, without limiting the generality of the foregoing, the Lender may do any one or more of the following:

8.3.1 appoint by instrument a receiver, receiver and manager or receiver-manager (the person so appointed is herein called the "Receiver") of the Collateral, with or without bond as the Lender may determine, and from time to time in its sole discretion remove such Receiver and appoint another in its stead;

8.3.2 enter upon any of the Premises and take possession of the Collateral with power to exclude the Debtor, its agents and its servants therefrom, without becoming liable as a mortgagee in possession;

8.3.3 preserve, protect and maintain the Collateral and make such replacements thereof and repairs and additions thereto as the Lender may deem advisable;

8.3.4 sell, lease or otherwise dispose of or concur in selling, leasing or otherwise disposing of all or any part of the Collateral, whether by public or private sale or lease or otherwise, in such manner, at such price as can be reasonably obtained therefor and on such terms as to credit and with such conditions of sale and stipulations as to title or conveyance or evidence of title or otherwise as to the Lender may seem reasonable, provided that the Debtor will not be entitled to be credited with the proceeds of any such sale, lease or other disposition until the monies therefor are actually received; and

8.3.5 exercise all of the rights and remedies of a secured party under the PPSA.

8.4 A Receiver appointed pursuant to this General Security Agreement shall be the agent of the Debtor and not of the Lender and, to the extent permitted by law or to such lesser extent permitted by its appointment, shall have all the powers of the Lender hereunder, and in addition shall have power to carry on the business of the Debtor and for such purpose from time to time to borrow money either secured or unsecured, and if secured by a security on any of the Collateral, any such security may rank in priority to or pari passu with or behind the security constituted by this General Security Agreement, and if it does not so specify such security shall rank in priority to the security constituted by this General Security Agreement.

8.5 Subject to applicable law and the claims, if any, of the creditors of the Debtor ranking in priority to the security constituted by this General Security Agreement, all amounts realized from the disposition of the Collateral pursuant to this General Security Agreement will be applied as the Lender, in its sole discretion, may direct as follows:

Firstly: in or toward payment of all costs, charges and expenses (including legal fees and disbursements on a solicitor and his own client basis) incurred by the Lender in connection with or incidental to:

(a) the exercise by the Lender of all or any of the powers granted to it pursuant to this General Security Agreement; and

(b) the appointment of the Receiver and the exercise by the Receiver of all or any of the powers granted to the Receiver pursuant to this General Security Agreement, including the Receiver's reasonable remuneration and all outgoings properly payable by the Receiver;

Secondly: in or toward payment to the Lender of all principal and other monies (except interest) due in respect of the Obligations;

Thirdly: in or toward payment to the Lender of all interest remaining unpaid in respect of the Obligations; and

Fourthly: any surplus will be paid to the Debtor.

IX Deficiency

- 9.1 If the amounts realized from the disposition of the Collateral are not sufficient to pay the Obligations in full to the Lender, the Debtor will immediately pay to the Lender the amount of such deficiency.

X Rights Cumulative

- 10.1 All rights and remedies of the Lender set out in this General Security Agreement are cumulative and no right or remedy contained herein is intended to be exclusive but each will be in addition to every other right or remedy contained herein or in any existing or future general security agreement or now or hereafter existing at law or in equity or pursuant to any other agreement between the Debtor and the Lender that may be in effect from time to time.

XI Appointment of Attorney

- 11.1 The Debtor hereby irrevocably appoints the Lender or the Receiver, as the case may be, with full power of substitution, to be the attorney of the Debtor for and in the name of the Debtor to sign, endorse or execute under seal or otherwise any deeds, documents, transfers, cheques, instruments, demands, assignments, assurances or consents that the Debtor is obliged to sign, endorse or execute and generally to use the name of the Debtor and to do all things as may be necessary or incidental to the exercise of all or any of the powers conferred on the Lender or the Receiver, as the case may be, pursuant to this General Security Agreement.

XII Liability of Lender

- 12.1 The Lender shall not be responsible or liable for any debts contracted by it, for damages to persons or property or for salaries or non-fulfilment of contracts during any period when the Lender shall manage the Collateral upon entry of the business of the Debtor, as herein provided, nor shall the Lender be liable to account as mortgagee in possession or for anything except actual receipts or be liable for any loss or realization or for any default or omission for which a mortgagee in possession may be liable.
- 12.2 The Lender shall not be bound to do, observe or perform or to see to the observance or performance by the Debtor of any obligations or covenants imposed upon the Debtor nor shall the Lender, in the case of Securities, Instruments or Chattel Paper, be obliged to reserve rights against other persons, nor shall the Lender be obliged to keep any of the Collateral identifiable.
- 12.3 The Lender shall not be obliged to inquire into the right of any person purporting to be entitled under the PPSA to information and materials from the Lender by making a demand upon the Lender for such information and materials and the Lender shall be entitled to comply with such demand and shall not be liable for having complied with such demand notwithstanding that such person may in fact not be entitled to make such demand.
- 12.4 The Debtor will indemnify the Lender and hold the Lender harmless from and against any and all claims, costs, losses, demands, actions, causes of action, lawsuits, damages, penalties, judgments and liabilities of whatsoever nature and kind in connection with or arising out of any representation or warranty given by the Debtor, being untrue, the breach of any term, condition, proviso, agreement or covenant to the Lender, or the exercise of any of the rights and or remedies of the Lender, or any transaction contemplated in this General Security Agreement.
- 12.5 The Debtor hereby waives any applicable provision of law permitted to be waived by it which imposes higher or greater obligations upon the Lender than provided in this General Security Agreement.
- 12.6 The Debtor shall indemnify, reimburse and save harmless the Lender, any receiver, its directors, officers, employees, agents, and successors and assigns, from any and all liabilities, actions, damages, claims, losses, costs and expenses whatsoever (including without limitation, the full

amount of all legal fees, costs, charges and expenses and the cost of removal, treatment, storage and disposal of any Hazardous Materials and remediation of the Premises) which may be paid, incurred or asserted against the Lender for, with respect to or as a direct or indirect result of the presence on or under, or the escape, seepage, leakage, spillage, discharge, emission or release from the Premises or into or upon any other land, the atmosphere or any watercourse, body of water or wetland of any Hazardous Materials.

- 12.7 Any amount owing by the Debtor hereunder shall, from the date of disbursement until the date the Lender receives reimbursement, be deemed advanced to the Debtor by the Lender, shall be deemed to be Obligations and shall bear interest at the highest rate per annum from time to time charged by the Lender on any of the other Obligations until paid.
- 12.8 The Debtor agrees that the indemnity obligations hereunder shall survive the release of the security of this General Security Agreement and the payment and satisfaction of the indebtedness and liabilities hereby secured.

XIII Appropriation of Payments and Offset

- 13.1 Subject to any applicable provisions of the PPSA, any and all payments made in respect of the Obligations from time to time and monies realized from any security held therefor (including monies collected in accordance with or realized on any enforcement of this General Security Agreement) may be applied to such part or parts of the Obligations as the Lender may see fit, and the Lender may at all times and from time to time change any appropriation as the Lender may see fit or, at the option of the Lender, such payments and monies may be held unappropriated in a collateral account or released to the Debtor, all without prejudice to the liability of the Debtor or to the rights of the Lender hereunder.
- 13.2 Without limiting any other right of the Lender, whenever any of the Obligations is immediately due and payable or the Lender has the right to declare any of the Obligations to be immediately due and payable (whether or not it has so declared), the Lender may, in its sole discretion, set off against any of the Obligations any and all monies then owed to the Debtor by the Lender in any capacity, whether or not due and to do so even though any charge therefor is made or entered on the Lender's records subsequent thereto, and the Lender shall be deemed to have exercised such right to set off immediately at the time of making its decision.

XIV Liability to Advance, Etc.

- 14.1 Except to the extent that the Lender:
- 14.1.1 by accepting bills of exchange drawn on it by the Debtor; or
- 14.1.2 by issuing letters of credit or letters of guarantee on the application of the Debtor; is required to advance monies on the maturity of such bills or pursuant to such letters of credit or letters of guarantee, as the case may be, none of the preparation, execution, perfection and registration of this General Security Agreement or the advance of any monies shall bind the Lender to make any advance or loan or further advance or loan, or renew any note or extend any time for payment of any indebtedness or liability of the Debtor to the Lender or extend any term for performance or satisfaction of any obligation of the Debtor to the Lender.
- 14.2 Nothing herein contained shall in any way oblige the Lender to grant, continue, renew, extend time for payment of or accept anything which constitutes or would constitute Obligations or any of them.

XV Waiver

- 15.1 No delay or omission by the Lender in exercising any right or remedy hereunder or with respect to any of the Obligations shall operate as a waiver thereof or of any other right or remedy,

and no single or partial exercise thereof shall preclude any other or further exercise thereof or the exercise of any other right or remedy.

- 15.2 The Lender may from time to time and at any time waive in whole or in part any right, benefit or default under any clause of this General Security Agreement but any such waiver of any right, benefit or default on any occasion shall be deemed not to be a waiver of any such right, benefit or default thereafter, or of any other right, benefit or default, as the case may be.

XVI Extensions

- 16.1 The Lender may grant extensions of time and other indulgences, take and give up security, accept compositions, compound, compromise, settle, grant releases and discharges, refrain from perfecting or maintaining perfection of security, and otherwise deal with the Debtor, Account Debtors of the Debtor, sureties and others and with the Collateral and other security as the Lender may see fit without prejudice to the liability of the Debtor or the Lender's right to hold and realize on the security constituted by this General Security Agreement.

XVII Assignment

- 17.1 The Lender may, without further notice to the Debtor, at any time mortgage, charge, assign, transfer or grant a security interest in this General Security Agreement and the security constituted hereby.
- 17.2 The Debtor expressly agrees that the assignee, transferee or secured party of the Lender, as the case may be, shall have all of the Lender's rights and remedies under this General Security Agreement and the Debtor will not assert any defence, counterclaim, right of set-off or otherwise any claim which it now has or hereafter acquires against the Lender in any action commenced by such assignee, transferee or secured party, as the case may be, and will pay the Obligations to the assignee, transferee or secured party, as the case may be, as the Obligations become due.

XVIII Satisfaction and Discharge

- 18.1 Any partial payment or satisfaction of the Obligations, or any ceasing by the Debtor to be indebted to the Lender, shall be deemed not to be redemption or discharge of the security constituted by this General Security Agreement.
- 18.2 The Debtor shall be entitled to a release and discharge of the security constituted by this General Security Agreement upon full payment, performance and satisfaction of all Obligations, or the securing of the Obligations to the satisfaction of the Lender, and upon written request by the Debtor and payment to the Lender of all costs, charges, expenses and legal fees and disbursements (on a solicitor and his own client basis) incurred by the Lender in connection with the Obligations and such release and discharge.

XIX No Merger

- 19.1 This General Security Agreement shall not operate so as to create any merger or discharge of any of the Obligations, or any assignment, transfer, guarantee, lien, contract, promissory note, bill of exchange or security in any form held or which may hereafter be held by the Lender from the Debtor or from any other person whomsoever.
- 19.2 The taking of a judgment with respect to any of the Obligations will not operate as a merger of any of the terms, conditions, covenants, agreements or provisos contained in this General Security Agreement.
- 19.3 The release and discharge of the security constituted by this General Security Agreement by the Lender shall not operate as a release or discharge of any right of the Lender to be indemnified and held harmless by the Debtor pursuant to clause 12.4 hereof or of any other right of the

Lender against the Debtor arising under this General Security Agreement prior to such release and discharge.

XX Interpretation

20.1 In this General Security Agreement:

- 20.1.1 the invalidity or unenforceability of the whole or any part of any clause shall not affect the validity or enforceability of any other clause or the remainder of such clause;
- 20.1.2 the headings have been inserted for reference only and shall not define, limit, alter or enlarge the meaning of any provision of this General Security Agreement; and
- 20.1.3 when the context so requires, the singular shall be read as if the plural were expressed and the provisions hereof shall be read with all grammatical changes necessary dependent upon the person referred to being a male, female, firm or corporation.

XXI Notice

- 21.1 Whenever either the Lender or the Debtor is required or entitled to notify or direct the other or to make a demand upon or request of the other relating to the Collateral, this General Security Agreement or the PPSA, such notice, direction, demand or request shall be sufficiently given if given in writing and delivered to the party for whom it is intended at the address of such party herein or as changed pursuant hereto or if sent by prepaid registered mail addressed to the party for whom it is intended at the address of such party herein set forth or as changed pursuant hereto.
- 21.2 Either the Lender or the Debtor may notify the other in accordance herewith of any change in its principal address to be used for the purposes hereof.

XXII Variation

- 22.1 Save for any schedules which may be added hereto pursuant to the provisions hereof, no modification, variation or amendment of any provision of this General Security Agreement shall be made except by written agreement, executed by the parties hereto and no waiver of any provision hereof shall be effective unless in writing.

XXIII Enurement

- 23.1 This General Security Agreement shall enure to the benefit of the Lender and its successors and assigns and shall be binding upon the respective heirs, executors, personal representatives, successors and permitted assigns of the Debtor.

XXIV Copy of Agreement and Financing Statement

24.1 The Debtor hereby:

- 24.1.1 acknowledges receiving a copy of this General Security Agreement; and
- 24.1.2 waives all rights to receive from the Lender a copy of any financing statement, financing change statement or verification statement filed at any time or from time to time in respect of this General Security Agreement.

XXV Governing Law

- 25.1 This General Security Agreement shall be governed by and construed in accordance with the laws of the Province.
- 25.2 For the purpose of legal proceedings this General Security Agreement shall be deemed to have been made in the Province and to be performed there and the courts of the Province shall have

jurisdiction over all disputes which may arise under this General Security Agreement and the Debtor hereby irrevocably and unconditionally submits to the non-exclusive jurisdiction of such courts, provided always that nothing herein contained shall prevent the Lender from proceeding at its election against the Debtor in the courts of any other Province, country or jurisdiction.

In Witness Whereof the Debtor has executed this General Security Agreement as of the day and year first above written.

FOR BRITISH COLUMBIA

Officer Signature(s)

Execution Date

Debtor(s) Signature(s)

(For Corporation)

Y	M	D

(Corporation Name) by its authorized signatories

Officer Signature

Signature

Name

Name

Address

Title

Signature

Name

Title

(For Individual)

Officer Signature

Debtor Signature

Name

Address

Name

Officer Certification: Your signature constitutes a representation that you are a solicitor, notary public or other person authorized by the Evidence Act, R.S.B.C. 1996, c. 124, to take affidavits for use in British Columbia and certifies the matters set out in Part 5 of the Land Title Act as they pertain to the execution of this instrument.

FOR ALBERTA, NEW BRUNSWICK, NOVA SCOTIA, NEWFOUNDLAND AND LABRADOR

(For Corporation)

NILEX CONSTRUCTION INC.

Per: _____
Name of Corporation

Per: _____
Signature *IAN WILSON*

_____ *Name* *MISDCJT*

_____ *Title*

Per: _____
Signature

_____ *Name*

_____ *Title*

} C/S

FOR INDIVIDUAL

DEBTOR'S SIGNATURE

Per: _____
Signature

_____ *Name*

_____ *Address*

_____ *Occupation*

_____ *Signature of Debtor*

_____ *Name*



Encumbrance Schedule

Prior Encumbrances:

1. General:

- a. Any and all mortgages, charges, liens, encumbrances and security interests granted by the Debtor to PEF 2010 Nilex Investment Limited Partnership

2. Alberta:

- a. Registration No. 09120724118 in favour of JIM PEPLINSKI'S AUTO LEASING LTD. and JIM PEPLINSKI'S LEASEMASTER NATIONAL
- b. Registration No. 10010720861 in favour of TRANSPORTACTION LEASE SYSTEMS INC.



Location Schedule**Address(es) for Location of the Collateral**

1. 1781 Clearbrook Road, Abbotsford, BC V2T 5X5
2. 3963 and 3981 Phillips Avenue, Burnaby, BC V5A 3K4
3. 9222 – 40 Street SE, Calgary, AB T2C 2P3
4. 15253 East Fremont Drive, Centennial, CO 80112 (Lot 1, 5th Filing, Cherry Creek Business Center)
5. 9304 – 39 Avenue NW, Edmonton, AB T6E 6L8
6. 315, 845 Broad Street, Regina, SK S4R 8G9
7. 130 Yorkland Boulevard, Toronto, ON M2J 1R5
8. VERNON, BC (P: 250.260.3300, F: 250.260.3520)



Additional Covenants Schedule**Additional Covenants of the Debtor further to Clause 4.1.15**

Comply with all terms, conditions and covenants set forth in any and all offer of credit letters executed by the Lender and the Debtor, as such letters may be amended, extended, renewed, altered, modified, substituted or replaced from time to time.



This is Exhibit "M" referred to in the Affidavit of Jeff Allen
sworn before me this 31st day of October, 2022.



A Commissioner for Oaths in and for Alberta

Luca Bondkowski
Lawyer - Solicitor



SUBORDINATION AND POSTPONEMENT AGREEMENT

THIS SUBORDINATION AND POSTPONEMENT AGREEMENT is dated June 1, 2018 and made between:

- (1) **CANADIAN IMPERIAL BANK OF COMMERCE**, (the “**Senior Party**”);
- (2) **NILEX INC. and NILEX USA INC.** (each an “**Obligor**” and collectively, the “**Obligors**”);
and
- (3) **PEF 2010 NILEX INVESTMENT LIMITED PARTNERSHIP** (the “**Subordinated Party**”).

RECITALS:

- (A) The Senior Party has agreed to make certain credit facilities available to the Obligors upon the terms and conditions contained in a credit agreement among the Obligors, and the Senior Party, dated as of as of the date hereof (as the same may be amended, restated, supplemented, or otherwise modified from time to time, the “**Credit Agreement**”).
- (B) The Obligors granted to the Senior Party security over certain of their property, assets and undertakings as security for the payment and performance of their respective obligations to the Senior Party under the Credit Agreement and all credit documents relating thereto.
- (C) The Obligors are or may become indebted or liable to the Subordinated Party pursuant to or in respect of the Subordinated Indebtedness.
- (D) The parties are entering into this Agreement to confirm the subordination and postponement of the Subordinated Indebtedness to the Senior Indebtedness and the Junior Security to the Senior Security.

NOW THEREFORE in consideration of the foregoing premises and other good and valuable consideration, the receipt and sufficiency of which are acknowledged, the parties agree as follows.

Article 1 – Definitions

1.1 Definitions

In this Agreement, unless the context otherwise requires, words and expressions have the following meanings:

“**Agreement**” means this subordination and postponement agreement, as it may be amended, revised, restated or replaced from time to time in accordance with its terms.

“**Enforcement Action**” means any one or more of the following actions: (a) enforcement of obligations owed to a Person by the exercise of any right or remedy under any document securing such obligations, or the exercise of any other right or remedy available to such Person at law or in equity or under any other agreement including any right of set-off or compensation, (b) enforcement of hypothecary rights, foreclosure upon, levy against, quit claim or acceptance of a debt in lieu of foreclosure

upon, or any other exercise of rights or remedies against, or in respect of, the Collateral pursuant to any security, by way of judicial action or otherwise, or (c) the initiation of any Insolvency Proceeding involving the Obligor.

"Insolvency Proceeding" means (a) any case, action or proceeding before any court or other Governmental Authority relating to bankruptcy, reorganization, insolvency, liquidation, receivership, dissolution, winding-up or relief of debtors, or (b) any general assignment for the benefit of creditors, composition, marshalling of assets for creditors or other similar arrangement in respect of its creditors generally or any substantial portion of its creditors; in each case covered by clauses (a) and (b) undertaken under the *Bankruptcy and Insolvency Act* (Canada), the *Companies' Creditors Arrangement Act* (Canada), the *Winding-up and Restructuring Act* (Canada), Title 11 of the *United States Code*, each as now or hereafter in effect or any successor thereto, as well as all other liquidation, conservatorship, bankruptcy, assignment for benefit of creditors, moratorium, rearrangement, receivership, insolvency, reorganization, or similar debtor relief laws of Canada or provincial law or of any applicable foreign law from time to time in effect affecting the rights of creditors generally.

"Junior Security" means any and all present and future security, security interests, hypothecs, mortgages, prior claims, liens or charges, now or hereafter held by or for the account of the Subordinated Party as security for the Subordinated Indebtedness, or any part thereof, including without limitation, any hypothecs now or hereafter published under the Civil Code of Quebec or security interests now or hereafter registered under the *Personal Property Security Act* (Alberta) (or any other applicable personal property security legislation in other provinces or territories of Canada or in any state in the United States of America).

"Senior Documents" shall have the meaning ascribed to the term "Loan Documents" in the Credit Agreement, and shall include the Credit Agreement, all security and guarantee documents related thereto and all other agreements, instruments, documents and certificates delivered by the Obligors to the Senior Party in connection with the Credit Agreement or the transactions contemplated thereby.

"Senior Indebtedness" means all Obligations (as defined in the Credit Agreement) of the Obligors.

"Senior Security" means any and all present and future security, security interests, hypothecs, mortgages, prior claims, liens or charges now or hereafter held by or for the account of the Senior Party or the Senior Party as security for the Senior Indebtedness, or any part thereof, including without limitation, any hypothecs now or hereafter published under the Civil Code of Quebec or security interests now or hereafter registered under the *Personal Property Security Act* (Ontario) (or any other applicable personal property security legislation in other provinces or territories of Canada or in any state in the United States of America).

"Subordinated Documents" means the Junior Security and all guarantee and security agreements and all other agreements, instruments, documents and certificates delivered to a Subordinated Party in connection therewith, including without limitations, the subordinated promissory notes made by the Obligor to the Subordinated Party dated

June 14, 2017 and April 30, 2013 (each as amended, restated, supplemented or otherwise modified from time to time).

“Subordinated Indebtedness” means any present and future Indebtedness owed by an Obligor to the Subordinated Party, whether alone or with another or others and whether as principal or surety, including, without limitation, under any Subordinated Documents.

1.2 Credit Agreement

Unless otherwise defined herein or the context otherwise requires, terms used in this Agreement, including its preamble and recitals, have the meanings provided in the Credit Agreement.

1.3 Gender and Number

Any reference in this Agreement to gender includes all genders, and words importing the singular include the plural and *vice versa*.

1.4 Headings, etc.

The division of this Agreement into articles and sections and the insertion of headings are for convenient reference only and are not to affect or be used in the construction or interpretation of this Agreement.

Article 2 – Consents and Subordination

2.1 Subordination of Indebtedness

- (a) The Subordinated Party hereby consents to the existence of the Senior Indebtedness and the Senior Security. The Senior Party hereby consents to the existence of the Subordinated Indebtedness and the Junior Security.
- (b) The Subordinated Indebtedness shall and at all times remain, inferior, junior and subordinate to the Senior Indebtedness in the manner and to the extent provided in this Agreement.
- (c) Except as permitted under the Credit Agreement, no payments shall be made by the Obligor to the Subordinated Party or received by the Subordinated Party from an Obligor on account of, or in respect of, the Subordinated Indebtedness (whether as principal, interest, fees or otherwise) until the Senior Indebtedness has been indefeasibly paid in full, all Commitments under the Senior Documents have terminated and the Credit Agreement has been terminated in writing or unless otherwise permitted in writing by the Senior Party.
- (d) All payments or distributions on account of, or in respect of, the Subordinated Indebtedness which are received by the Subordinated Party contrary to the provisions hereof shall be received in trust for the benefit of the Senior Party, shall be segregated from other funds and property held by the Subordinated Party and shall be promptly paid over to the Senior Party in the same form as received (with any necessary endorsement) to be applied (in the case of cash)

to, or held as collateral (in the case of non-cash or securities) for, the payment or prepayment of the Senior Indebtedness in accordance with the terms of the Credit Agreement.

2.2 Subordination of Security

If the Subordinated Party holds any Junior Security, such Junior Security shall for all purposes be, and at all times remain, inferior, junior and subordinate to the Senior Security and no amounts shall be payable or any action taken under the Junior Security except as permitted by this Agreement, the Credit Agreement or the other Senior Documents. Without limiting the generality of the foregoing, the foregoing priority shall prevail in all circumstances and irrespective of: (i) the priorities otherwise accorded to the Senior Security and the Junior Security by any applicable law; (ii) the time or order of the creation, granting, execution or delivery of the Senior Indebtedness, the Senior Documents or any other deed, document, instrument, act or notice; (iii) the time or order of the opposability of the hypothecs, or the attachment or perfection of the security interests, constituted by the Senior Security and the Junior Security; (iv) the time or order of registration, notification or publication of the Senior Security and the Junior Security or the publication of hypothecs or filing of financing statements or other instruments and documents with respect thereto; (v) the time of the making of advances and other credits under the Senior Indebtedness or of any Subordinated Indebtedness; or (vi) the giving of, or the failure to give, any notice to an Obligor or to any other Person or the time of giving of any such notice. Without limiting the foregoing, the Subordinated Party cedes priority and preference of rank of the Junior Security to the Senior Security and cede priority and preference of payment to the Senior Party in all respects to the extent necessary to give full effect to the foregoing.

2.3 No Acceleration; No Realization

Without limiting the foregoing postponement and subordination provisions, the Subordinated Party further acknowledges and agrees that it shall not, take or authorize to be taken any action by way of suit, foreclosure, sale, quit claim or acceptance of a deed in lieu of foreclosure or take any enforcement action whatsoever or otherwise take any steps, actions or proceedings against an Obligor or to commence realization against the assets or properties of an Obligor, including without limitation by issuing any demand, exercise any right of acceleration of any indebtedness or obligations, issuance of statutorily required notices (including to account debtors of an Obligor) or commencement of any proceedings whatsoever in respect of the Subordinated Indebtedness or the Junior Security until such time as the Senior Party has notified the Subordinated Party in writing that the Senior Indebtedness has been indefeasibly paid in full, all Revolving Loan commitments under the Senior Documents have terminated and the Credit Agreement has been terminated. Notwithstanding the foregoing, the Subordinated Party may file a proof of claim or similar instrument with respect to the Subordinated Indebtedness in any Insolvency Proceeding related to the Obligors or commence or initiate any action required to comply with statutory limitation periods (provided that such proceeding is then stayed).



2.4 Postponement and Trust

In the event of any Insolvency Proceedings in connection with or relating to the Obligor, the Senior Party shall be entitled to receive payment of the Senior Indebtedness in full before the Subordinated Party shall be entitled to receive any payment on account of the Subordinated Indebtedness. Except as provided in the Senior Documents and this Agreement, the Senior Party shall be entitled to receive, for application in payment of the Senior Indebtedness in accordance with the Credit Agreement, any payment or distribution of any kind or character, whether in cash, property or securities, which may be payable or deliverable to the Subordinated Party in respect of the Subordinated Indebtedness. All payments or distributions upon, or with respect to, the Subordinated Indebtedness which is received by the Subordinated Party contrary to these provisions shall be received in trust and as a mandatary for the benefit of the Senior Party, shall be segregated from other funds and property held by the Subordinated Party and shall be promptly paid over to the Senior Party in the same form as received (with any necessary endorsement) to be applied (in the case of cash) to, or held as collateral (in the case of non-cash property or securities) for, the payment or prepayment of the Senior Indebtedness in accordance with its terms.

2.5 Preservation of Senior Party's Rights

The Senior Party shall not be prejudiced in any way in the right to enforce this Agreement by any act or failure to act on the part of the Obligors or the Subordinated Party. The Senior Party may, at any time and from time to time, without any consent of, or notice to, the Subordinated Party and without impairing or releasing the obligations of the Subordinated Party under this Agreement (i) change the manner, place or terms of payment or change or extend the time of payment of or renew or alter, the Senior Indebtedness (including any change in the rate of interest), or amend in any manner any of the Senior Documents; (ii) sell, exchange, release, cancel, render opposable, not render opposable, perfect, not perfect, alter, renew or otherwise deal with any of the Senior Security; (iii) release any Person liable in any manner under, or in respect of, any of the Senior Documents; (iv) exercise or refrain from exercising any rights against an Obligor, any other guarantor of the Senior Indebtedness, or any other Person; or (v) apply any sums from time to time received to the Senior Indebtedness.

2.6 No Contest of Senior Security

The Subordinated Party will not: (i) assert in any action, suit or proceeding whatsoever in respect of the invalidity, unenforceability or ineffectiveness of this Agreement or any of the Senior Indebtedness or the Senior Documents; or (ii) participate in or co-operate with any other party to pursue any such action, suit or proceeding, it being understood and agreed that, regardless of the validity, effectiveness or enforceability of any Senior Documents, as between a Subordinated Party and the Senior Party, the Senior Party shall have first and prior rights of payment as contemplated in this Agreement.

Other than as permitted under the Credit Agreement, the Subordinated Party hereby agrees that it will not, without the prior written consent of the Senior Party, amend or modify all or any portion of the Subordinated Indebtedness or any other agreement, instrument or security granted by an Obligor in respect of the Subordinated

Indebtedness for any reason whatsoever. Prior to any transfer by a Subordinated Party of any rights or interest under the Subordinated Indebtedness or the Junior Security to another Person, the Subordinated Party agrees to obtain from the transferee such transferee's written agreement to the terms and provisions of this Agreement and to all obligations arising hereunder.

2.7 Compensation; Set-Off

The Subordinated Party hereby covenants and agrees that, during the term of this Agreement:

- (a) any amounts owing at any time by the Subordinated Party to an Obligor (whether before or after default, termination or insolvency of such Obligor) shall be due and payable without any rights of compensation, deduction, dispute, set-off (legal or equitable), defence, claim, counterclaim or proceeding whatsoever, including, without limitation, any claims or damages arising from any breach or termination of any Subordinated Indebtedness (collectively, the "Set-Off");
- (b) it waives any Set-Off which it may have or claim to have or may in the future claim to have; and
- (c) the agreement provided in (a) and (b) above may be pleaded by the Senior Party as a *fin de non-recevoir*, bar or an estoppel in the event the Subordinated Party claims or asserts any Set-Off, whether against an Obligor and/or the Senior Party in any proceedings.

2.8 Precedence

All agreements, documents and instruments evidencing the Subordinated Indebtedness and the Junior Security (if any) are subject to the terms of this Agreement notwithstanding anything to the contrary contained therein. In the event of any conflict between the terms hereof and the terms thereof, the terms of this Agreement shall govern and control, provided that if any conflict or inconsistency exists between this Agreement and the Credit Agreement, the terms of the Credit Agreement shall govern and prevail.

Article 3 Enforcement and Realization

3.1 Enforcement Event, etc.

- (a) In the event of a distribution, division or application, partial or complete, voluntary or involuntary, by operation of law or otherwise, of all or any part of the Collateral or the proceeds thereof to lenders in connection with an Enforcement Action, the Senior Party shall receive payment in full (including fees and interest accruing to the date of receipt of such payment at the applicable rate whether or not allowed as a claim in any such proceeding) of the Senior Indebtedness before the Subordinated Party is entitled to receive any direct or indirect payment or distribution on account of the Subordinated Indebtedness. The Senior Party shall receive directly, for application in payment of such Senior Indebtedness (to the extent necessary to pay all Senior Indebtedness in full after giving effect to any

payment or distribution to the Senior Party in respect of the Senior Indebtedness), any payment or distribution of any kind or character, whether in cash or other Collateral, which is payable or deliverable upon or with respect to the Subordinated Indebtedness; provided that the Subordinated Party may receive proceeds arising from any scheme of arrangement under a plan for which the Senior Party has voted favourably. Subject to Applicable Law, if any payment of Senior Indebtedness is declared to be a fraudulent preference or otherwise preferential, set aside or required to be paid to a trustee, receiver or other similar Person under any insolvency legislation or otherwise, then the Senior Indebtedness or part thereof originally intended to be satisfied shall be deemed to be reinstated and outstanding as if such payment had not occurred.

- (b) In order to enable the Senior Party to enforce its rights in any Enforcement Action, if the Subordinated Party fails to make and present on a timely basis a proof of claim against the Obligor on account of the Subordinated Indebtedness or other motion or pleading as may be expedient or proper to establish the Subordinated Party's entitlement to payment of any Subordinated Indebtedness, the Senior Party is hereby irrevocably authorized and empowered, in its sole discretion, to make and present, for and on behalf of the Subordinated Party, such proofs of claim or other motions or pleadings and demand, receive and collect any and all disbursements made thereon in whatever form the same may be paid or issued and apply the same on account of the Senior Indebtedness.

3.2 No Objection

The Subordinated Party shall not take, or cause or permit any other Person to take, any steps whatsoever whereby the priority or validity of the Senior Security or the rights of the Senior Party are delayed, defeated, impaired or diminished, it being understood that, regardless of the validity, effectiveness or enforceability of this Agreement or any of the Senior Documents, as between the Subordinated Party and the Senior Party, the Senior Party shall have first and prior right in connection with the Collateral and its realization. Without limiting the generality of the foregoing, the Subordinated Party shall not challenge, object to, compete with or impede in any manner any Enforcement Action or other action taken by or on behalf of the Senior Party in connection with the Senior Security or contest the price obtained for any Collateral.

3.3 Realization by Senior Party

- (a) If any Collateral subject to the Senior Security is sold by or for the benefit of the Senior Party, such Collateral shall be sold free of any rights held by the Subordinated Party under the Junior Security or otherwise (other than the right to receive any excess proceeds upon repayment in full of the Senior Indebtedness). Upon a Senior Party's request, the Subordinated Party shall grant a discharge of its rights under the Junior Security on such Collateral at the time of such sale.
- (b) Any receiver or receiver and manager or Persons with similar authority with respect to all or any part of the Collateral appointed by or on behalf of the Senior Party shall have exclusive custody and control of such Collateral and may dispose of same in accordance with the Senior Security. The Senior Party will

instruct any such Person to provide the Subordinated Party with all information reasonably requested by the Subordinated Party and otherwise to act in accordance with this Agreement.

- (c) No loss of, or in respect of, the Senior Security, the Collateral or, including the loss by operation of law of any right of any Senior Party against an Obligor or the destruction of any Senior Security or Collateral shall in any way impair or release the subordination and other benefits provided to the Senior Party under this Agreement unless such loss results from the gross negligence or wilful misconduct of any of the Senior Party.
- (d) The Subordinated Party agree that all payments received by the Senior Party shall be applied, in whole or in part, to the Senior Indebtedness in accordance with the Credit Agreement.

Article 4 – General Provisions

4.1 Notices, Etc.

All notices and other communications provided for hereunder shall be in writing and mailed, delivered or transmitted by facsimile or email to each party hereto at the addresses set out on the signature page hereof, or at such other address as may be communicated to the other parties hereto from time to time in accordance with the provisions hereof. All such notices, demands and requests that any party is required or elects to give to any other shall become effective (a) upon personal delivery thereof, including, but not limited to, delivery by overnight courier service, or (b) in the case of notice telecopier or email, when properly transmitted (or if after 4:00 p.m., on the next business day).

4.2 No Waiver

No failure on the part of the Senior Party to exercise, and no delay in exercising, any right under this Agreement shall operate as a waiver of such right; nor shall any single or partial exercise of any right preclude any other or further exercise of the right or the exercise of any other right.

4.3 No Merger, etc.

Neither the making of any judgment nor the exercise of any power of seizure or sale shall operate to extinguish the liability of an Obligor or the Subordinated Party under this Agreement nor shall the acceptance of any payment or alternate security constitute or create any novation and it is further agreed that the making of a judgment or judgments under any of the covenants contained in this Agreement shall not operate as a merger of such covenants.

4.4 Obligors Bound

By executing this Agreement, each Obligor acknowledges its existence and agrees to be bound by its terms. Nothing in this Agreement shall confer or be deemed to confer any right, benefit or advantage on an Obligor or any Affiliate of an Obligor. The consent of

theObligors or any Affiliate of an Obligor to any amendment to this Agreement shall not be required.

4.5 No Third Party Beneficiaries.

This Agreement is solely for the benefit of the Senior Party and the Subordinated Party. No other Person (including the Obligors or any Affiliate of an Obligor or any other creditor of any of them) shall be deemed to be a third party beneficiary of this Agreement.

4.6 Senior Loan Agreement

The Subordinated Party hereby acknowledges that it has received and taken cognizance of an executed copy of the Credit Agreement and is familiar with all the provisions thereof.

4.7 Further Assurances

Each of the parties shall execute all such further deeds, agreements, instruments, assignments and other documents and shall do all such further acts and things as the Senior Party, acting reasonably, may consider necessary or advisable from time to time to give full force and effect to this Agreement and the subordination and postponement provided for herein. The parties hereto authorize each other or their respective counsel to prepare, execute and file all applications and financing statements or financing change statements as may be required to give effect to the subordination and postponement provided herein, including, without limitation, to register or publish any subordination or postponement as required by law.

4.8 Successors and Assigns

This Agreement shall be binding upon the Obligors, the Senior Party and the Subordinated Party and their respective successors and assigns, and shall enure to the benefit of the Senior Party and the Subordinated Party and their respective successors and assigns.

4.9 Authority of Subordinated Party

The Subordinated Party acknowledges and confirms that it (by and through the general partner) is the sole Person which hold legal and beneficial interest in the Subordinated Indebtedness and that no other Person has any rights or interest therein.

4.10 Additional Rights and Remedies

The rights and remedies hereby created are in addition to and not in substitution for any other right, remedy or security held by the Senior Party. The exercise by the Senior Party of any of their rights and remedies shall not prevent them from exercising any other right or remedy conferred upon them by this Agreement or any other agreement, security or by law.



4.11 Severability

If any provision of this Agreement shall be deemed by any court of competent jurisdiction to be invalid or void, the remaining provisions shall remain in full force and effect.

4.12 Attornment

Each of parties hereto irrevocably and unconditionally attorn to the non-exclusive jurisdiction of the courts of the Province of Alberta.

4.13 Governing Law

This Agreement shall be governed by and interpreted and enforced in accordance with the laws of the Province of Alberta and the federal laws of Canada applicable therein.

4.14 Counterparts and Electronic Delivery

This Agreement may be executed in any number of separate counterparts and all such signed counterparts constitute one and the same agreement. Delivery by facsimile or other electronic means of an originally executed signature page to this Agreement by a party is as effective as personal delivery of such signature page.

4.15 Language

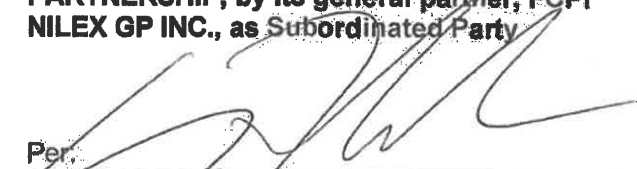
The parties hereto confirm that it is their wish that this Agreement and any other document executed in connection with the transactions contemplated herein be drawn up in the English language only and that all other documents contemplated thereunder or relating thereto, including notices, may also be drawn up in the English language only. *Les parties aux présentes confirment que c'est leur volonté que cette convention et les autres documents y reliés soient rédigés en langue anglaise seulement et que tous les documents, y compris tous avis, envisagés par cette convention et les autres documents peuvent être rédigés en la langue anglaise seulement.*

[Signature pages follow]



IN WITNESS WHEREOF the parties have executed and delivered this Agreement.

**PEF 2010 NILEX INVESTMENT LIMITED
PARTNERSHIP, by its general partner, FCPI
NILEX GP INC., as Subordinated Party**

Per: 

Name: Gregoire FLEURY

Title:

Per: 

Name: PAUL ROUVE

Title:



**CANADIAN IMPERIAL BANK OF
COMMERCE, as Senior Party**

Per: 
Name: _____
Title: **Geoff Golding**
Authorized Signatory

Per: 
Name: _____
Title: **Anthony Tsuen**
Authorized Signatory




Each of the undersigned hereby acknowledges that it has actual knowledge of the terms and conditions of this Agreement, that the terms and conditions of this Agreement are for the sole benefit of the Senior Party and that nothing in this Agreement shall be construed as conferring any rights upon it or any third party. Each of the undersigned irrevocably consents to the Subordinated Party and the Senior Party exchanging information they have from time to time concerning it and its undertaking, property and assets and the Senior Indebtedness and the Subordinated Indebtedness.

EXECUTED this ____ day of _____, 2018.


NILEX INC., as Obligor

Per: 
Name: Jeff Allen
Title: Director, Finance

Per: 
Name: Glenn Keroux
Title: President & CEO

NILEX USA INC., as Obligor

Per: 
Name: Jeff Allen
Title: Director, Finance

Per: 
Name: Glenn Keroux
Title: President & CEO

This is Exhibit "N" referred to in the Affidavit of Jeff Allen
sworn before me this 31st day of October, 2022.



A Commissioner for Oaths in and for Alberta

Luke Bondkowski
Barrister & Solicitor





September 15, 2022

Sent By Facsimile (1 (780) 463-1773)

Nilex Inc. & Nilex USA Inc.
6810 8th Street
Edmonton, AB T6P 0C5

Attention: Director, Finance

Norton Rose Fulbright Canada LLP
222 Bay Street, Suite 3000, P.O. Box 53
Toronto, Ontario M5K 1E7 Canada

F: +1 416.216.3930
nortonrosefulbright.com

Evan Cobb
+1 416.216.1929
Evan.Cobb@nortonrosefulbright.com

Our reference
1001018108

Dear Sirs/Mesdames:

Re: Credit Agreement dated June 1, 2018 between Nilex Inc. and Nilex USA Inc. as borrowers (together, the “Borrowers”), the guarantors party thereto from time to time, and Canadian Imperial Bank of Commerce as lender (the “Lender”) (as amended, restated, supplemented or otherwise modified from time to time, the “Credit Agreement”)

We are counsel to the Lender under the Credit Agreement and write to you in connection with the Borrowers' indebtedness thereunder.

We refer to the above-noted Credit Agreement pursuant to which the Lender has made certain credit facilities available to the Borrowers. Capitalized terms used in this letter without definition have the meanings given to them in the Credit Agreement.

Notice is hereby given that various Events of Default under the Credit Agreement have occurred, including without limitation:

1. under Sections 7.1 (d), 7.1(k) and 7.1(l), resulting from (i) an unopposed judgment issued by the Court of Queen's Bench of Alberta on March 21, 2022 against Nilex Inc. in favour of Hugh Watt, (ii) a consent judgment issued by the Court of Queen's Bench of Alberta on June 2, 2022 against Nilex Inc. in favour of Ian Wilson, and (iii) a Garnishee Summons filed at the Court of Queen's Bench of Alberta by Hugh Watt against Nilex Inc. and delivered to the Lender; and
2. under Section 7.1(d) resulting from the failure of the Borrowers and their Subsidiaries, on a consolidated basis in accordance with GAAP, to have EBITDA for the cumulative current fiscal year-to-date period ended July 31, 2022 of not less than \$(800,000).

As a consequence, the Lender hereby declares all of the Loans, together with accrued interest, fees and other obligations under the Credit Agreement and other Loan Documents to be immediately due and payable, without further demand or notice of any kind.

CAN_DMS: \147819626\2

Norton Rose Fulbright Canada LLP is a limited liability partnership established in Canada.

Norton Rose Fulbright Canada LLP, Norton Rose Fulbright LLP, Norton Rose Fulbright Australia, Norton Rose Fulbright South Africa Inc and Norton Rose Fulbright US LLP are separate legal entities and all of them are members of Norton Rose Fulbright Verein, a Swiss verein. Norton Rose Fulbright Verein helps coordinate the activities of the members but does not itself provide legal services to clients. Details of each entity, with certain regulatory information, are at nortonrosefulbright.com.

September 15, 2022



As of September 15, 2022, the amount outstanding and owing the Lender under the Credit Agreement, inclusive of accrued interest was Cdn \$16,348,464.34, calculated as set out on **Schedule A** hereto (the "**Outstanding Indebtedness**"), plus interest and expenses that shall continue to accrue thereon.

Pursuant to the Credit Agreement and on behalf of the Lender, we hereby demand that the Borrowers remit payment to the Lender of the Outstanding Indebtedness, together with interest thereon, which interest shall accrue from the date hereof until the date the Outstanding Indebtedness has been repaid in full.

All reasonable legal fees and all other costs and expenses which may be incurred by the Lender in enforcement of the Loan Documents up to and including the date of repayment in full of the Outstanding Indebtedness shall also be added to the Outstanding Indebtedness.

If payment of the Outstanding Indebtedness (including any accrued and unpaid interest thereon) is not received by the Lender immediately, the Lender expressly reserves the right to take all steps or legal proceedings it considers necessary or appropriate to enforce and recover the payment thereof. These steps may include exercising all rights and remedies granted to the Lender pursuant to the Security Documents, including the right to appoint a receiver and manager.

Enclosed with this demand is a Notice of Intention to Enforce Security (the "**Notice**") issued in respect of the Borrowers pursuant to subsection 244(1) of the *Bankruptcy and Insolvency Act* (Canada). The Lender expressly reserves its right to proceed with the enforcement of its security at any time prior to the date specified in the Notice if it becomes aware of any circumstances which might affect its position.

If you consent to the Lender taking earlier enforcement, please return the consent to earlier enforcement (a copy of which is enclosed with the Notice), executed by a duly authorized representative each of the Borrowers.

We advise you that no failure on the part of the Lender to exercise and no delay in exercising and no course of dealing with respect to any right, power or privilege under any Loan Document shall operate as a waiver thereof, nor shall any single or partial exercise of any right, power or privilege thereunder preclude any other or further exercise thereof or the exercise of any other right, power or privilege. The Lender reserves all of its rights against the Borrowers under the Credit Agreement, the other Loan Documents (including the Security Documents) and at law.

Yours truly,

A handwritten signature in black ink, appearing to read "Evan Cobb".

Evan Cobb

Copies to: Michael O'Brien, Blake, Cassels & Graydon LLP

A handwritten signature in blue ink, consisting of a stylized, cursive mark.

SCHEDULE A

The Lenders records indicate that, as at September 15, 2022, the Borrowers were indebted under the Credit Agreement as follows:

	CAD\$
Principal Loan Balance	16,307,482.80
Interest outstanding	
Interest and fees paid to:	August 31, 2022
Days to Calculate interest	15
Interest to September 15, 2022	39,191.41
Unused Line Fee	590.13
Monthly Collateral Management Fee	1,200.00
Total balances owing	16,348,464.34



FORM 86
Notice of Intention to Enforce a Security
 (Rule 124)

TO: Nilex Inc. and Nilex USA Inc. (together, the "**Borrowers**"), each an insolvent person;

Take notice that:

1. Canadian Imperial Bank of Commerce (the "**Secured Creditor**"), a secured creditor, intends to enforce its security on the Borrowers' property described below:

All of each Borrower's present and after acquired real and personal property now owned or hereafter acquired by or on behalf of such Borrower, subject to any exclusions set out in the Security Agreements (as defined below).

2. The security that is to be enforced is in the form of, *inter alia*, the agreements referred to in Schedule "A" (the "**Security Agreements**").
3. The total amount of indebtedness secured by the above described security as at September 15, 2022 was the sum of CDN \$16,348,464.34, plus additional interest, costs, fees and expenses.
4. The Secured Creditor will not have the right to enforce the security until after the expiry of the 10-day period after this notice is sent unless the Borrowers consent to an earlier enforcement.

DATED at Toronto, Ontario this 15th day of September, 2022.

**CANADIAN IMPERIAL BANK OF
 COMMERCE**, by its counsel, Norton Rose
 Fulbright Canada LLP

Per: 

 Name: Evan Cobb

Title: Partner



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Schedule "A"

1. Credit Agreement dated as of June 1, 2018 between Nilex Inc. and Nilex USA Inc. (together, the "**Borrowers**"), as borrowers, the guarantors from time to time party thereto, Canadian Imperial Bank of Commerce (the "**Lender**"), as lender, as amended pursuant to a First Amendment dated March 7, 2019, a Second Amendment dated January 17, 2020, a Third Amendment dated May 29, 2020, a Fourth Amendment dated December 24, 2020, a Fifth Amendment dated August 16, 2021, and a Sixth Amendment dated March 7, 2022 (and as may be further amended, restated, supplemented or otherwise modified from time to time);
2. Guarantee dated as of June 1, 2018 between the Borrowers and the Lender;
3. General Security Agreement dated as of June 1, 2018 between the Borrowers and the Lender;
4. Intellectual Property Security Agreement dated as of June 1, 2018 between the Borrowers and the Lender;
5. Section 427 *Bank Act* security consisting of (i) a Notice of Intention to Give Security under Section 427 of the *Bank Act* dated May 24, 2018; (ii) an application for credit and promise to give bills of lading, warehouse receipts or security dated June 1, 2018, (iii) an agreement as to powers dated June 1, 2018, and (iv) a special security in respect of specified property or classes of property dated June 1, 2018, in each case, given by Nilex Inc. to the Lender;
6. Deposit Account Control Agreement dated June 1, 2018 between CIBC Bank USA, Nilex USA Inc. and the Lender.
7. Blocked Accounts Agreement dated June 27, 2018 between Nilex Inc., Canadian Imperial Bank of Commerce, as account bank, and the Lender; and
8. Security Agreement dated as of June 1, 2018 between the Borrowers and the Lender governed by the laws of New York.



CONSENT

TO: Canadian Imperial Bank of Commerce (the “**Secured Creditor**”)

FROM: Nilex Inc. and Nilex USA Inc., each an insolvent person (the “**Insolvent Persons**”)

Each of the Insolvent Persons acknowledges receipt of a Notice of Intention to Enforce Security dated September ____, 2022 delivered by the Secured Creditor.

For consideration received, the receipt and sufficiency of which are hereby acknowledged, each Insolvent Person hereby consents to the immediate enforcement by the Secured Creditor of the security held by the Secured Creditor from such Insolvent Person, and for the same consideration waives any further notice from the Secured Creditor with respect to the enforcement of its security and the exercise of the other remedies of the Secured Creditor against such Insolvent Person.

DATED this ____ day of _____, 2022

NILEX INC.

Per: _____

Name:

Title:

Per: _____

Name:

Title:

I/We have the authority to bind the corporation

NILEX USA INC.

Per: _____

Name:

Title:

Per: _____

Name:

Title:

I/We have the authority to bind the corporation

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This is Exhibit "O" referred to in the Affidavit of Jeff Allen sworn before me this 31st day of October, 2022.



A Commissioner for Oaths in and for Alberta

Luke Bendkowski
Barrister & Solicitor

A

FORBEARANCE AGREEMENT

THIS AGREEMENT is dated as of October 17, 2022.

AMONG:

NILEX INC. and NILEX USA INC. (each a "Borrower" and, collectively, the "Borrowers")

- and -

THE GUARANTORS FROM TIME TO TIME PARTY HERETO

- and -

CANADIAN IMPERIAL BANK OF COMMERCE
(the "Lender")

CONTEXT:

- A. The Lender has provided certain financing arrangements under a Credit Agreement dated as of June 1, 2022 among the Lender, the Borrowers, and the guarantors from time to time party thereto (as amended, restated or replaced, from time to time to the date hereof, the "Existing Credit Agreement").
- B. As of the date of this Agreement, the Borrowers are in default under the Existing Credit Agreement and the other Loan Documents, which default constitutes one or more events of default thereunder as stipulated in the letter from the Lender to the Borrowers dated September 15, 2022 (the "Demand Letter").
- C. Nilex Inc. ("Nilex Canada") is considering filing a Notice of Intention to Make a Proposal (the "NOI") under Division I of Part III of the *Bankruptcy and Insolvency Act* (Canada) (the "BIA") and in connection therewith anticipates applying to the Court of King's Bench of Alberta (the "Court") for an order (as amended, restated, supplemented or otherwise modified from time to time, the "Preliminary Order") under the BIA in the proceedings commenced in connection with the NOI (the "NOI Proceedings"), and Nilex Canada has requested the ongoing support of the Lender during the NOI Proceedings. The primary purpose of the NOI Proceedings is to complete a sale process for the assets and business of Nilex Canada and Nilex USA Inc. and to effect a sale transaction identified through that process or, in the alternative, a liquidation of the assets, property and undertaking of the Borrowers and, in each case, the orderly distribution of the proceeds thereof, as more fully described herein (the "Sale Process").
- D. The Borrowers have concluded that the Lender is the most cost effective and timely source of working capital funds that is available and appropriate in the circumstances for Nilex Canada in the NOI Proceedings.
- E. The Borrowers have requested that the Lender continue to make available to the Borrowers certain credit facilities to meet their working capital requirements during the NOI Proceedings and to forbear from exercising the Lender's rights as a result of the Existing Defaults and the commencement and existence of the NOI Proceedings, and that the Lender extend credit and make advances (collectively, the "Loans") to the Borrowers despite those Existing Defaults in order to support the ongoing working capital needs of Nilex Canada and to permit it to give effect to the Sale Process.

- F. The Lender is willing to forbear from exercising its rights and remedies and to provide certain Loans to the Borrowers during the Forbearance Period on the terms and conditions set out in this Agreement.

THEREFORE, the Parties agree as follows:

ARTICLE 1 INTERPRETATION

1.1 Credit Agreement Definitions

Each capitalized term used and not otherwise defined in this Agreement will have the meaning assigned to it in the Existing Credit Agreement.

1.2 Other Definitions

In this Agreement the following terms have the following meanings:

- (a) **"Accrued Statutory Claims"** is defined in Section 2.3(k).
- (b) **"Additional Default"** means: (i) a Credit Party's default or failure to comply with any of the terms, conditions or covenants under this Agreement, or (ii) a Default by a Credit Party under the Credit Agreement or any other Loan Document prior to or on or after the date of this Agreement (other than an Existing Default).
- (c) **"Agreement"** means this agreement, including all Schedules, as it may be modified, amended, revised, restated, replaced, supplemented or otherwise changed from time to time and at any time hereafter, in writing, by the Parties.
- (d) **"Anticipated Defaults"** means any Events of Default arising or caused solely as a result of (i) the commencement or continuation of the NOI Proceedings or any acknowledgement of insolvency made in connection therewith, and (ii) the Sale Process.
- (e) **"Approved Cash Flow"** means the approved cash flow forecast of the Borrowers as attached as Schedule 2 hereto, which forecast shall also include the forecasted inventory, forecasted Borrowings and forecasted Borrowing Base for each week.
- (f) **"BIA"** is defined under "Context", above.
- (g) **"Blocked Accounts Order"** is defined in Section 4.1(h).
- (h) **"Court"** is defined under "Context", above.
- (i) **"Claims"** and **"Claim"** are defined in Section 8.3(a).
- (j) **"Communication"** means any notice, demand, request, consent, approval or other communication, which is required or permitted by this Agreement to be given or made by a Party.
- (k) **"Conditions Precedent"** is defined in Section 7.1.
- (l) **"Consultant"** is defined in Section 2.3(g).
- (m) **"Credit Agreement"** means the Existing Credit Agreement as modified and amended by this Agreement and as may be further modified, amended, revised, restated, replaced, supplemented or otherwise changed from time to time and at any time hereafter, in writing, by the Parties.

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- (n) **"Credit Facilities"** is defined in Section 2.3(b).
- (o) **"Demand Letter"** is defined under "Context" above.
- (p) **"Existing Credit Agreement"** is defined under "Context" above.
- (q) **"Existing Defaults"** means the Defaults or Events of Default under the Existing Credit Agreement set out in the Demand Letter and as specified in Schedule 4 attached hereto, and the Anticipated Defaults.
- (r) **"Existing Indebtedness"** means the outstanding Obligations existing as at the date hereof as more particularly described in Schedule 1.
- (s) **"Existing Security"** is defined in Section 2.4.
- (t) **"Expiry Date"** is defined in Section 5.3.
- (u) **"Forbearance Fee"** is defined in Section 3.3(a).
- (v) **"Forbearance Period"** is defined in Section 3.1(a).
- (w) **"Lender Priority Charge"** is defined in Section 4.1(j)(ii).
- (x) **"Loan Documents"** has the meaning given thereto in the Credit Agreement and includes, without limitation, this Agreement.
- (y) **"Loans"** is defined under "Context" above.
- (z) **"NOI"** is defined under "Context" above.
- (aa) **"NOI Date"** means the date of filing of the NOI by Nilex Canada;
- (bb) **"NOI Proceedings"** is defined under "Context" above.
- (cc) **"Parties"** means, collectively, the Credit Parties and the Lender; and **"Party"** means any one of them.
- (dd) **"Post-Filing Advances"** is defined in Section 4.1(f).
- (ee) **"Pre-Filing Payments Order"** is defined in Section 4.1(f).
- (ff) **"Preliminary Order"** is defined in the "Context" above.
- (gg) **"Purchase Agreement"** is defined in Section 4.1(i)(iii).
- (hh) **"Releasees"** and **"Releasee"** are defined in Section 8.3(a).
- (ii) **"Sale Process"** is defined under "Context" above.
- (jj) **"Terminating Event"** is defined in Section 6.5.
- (kk) **"Total Availability From Eligible Inventory"** means at any time the amount determined in accordance with subparagraph (ii) of the definition of "Borrowing Base" in the Existing Credit Agreement.

- (ll) **"Transaction Approval Order"** is defined in Section 4.1(i)(v).
- (mm) **"Trustee"** is defined in Section 2.3(h).

1.3 Entire Agreement

This Agreement, together with the Existing Credit Agreement and the other Loan Documents and the other agreements and documents to be delivered under this Agreement, constitute the entire agreement between the Parties pertaining to the subject matter of this Agreement and supersedes all prior agreements, understandings, negotiations and discussions, whether oral or written, of the Parties, and there are no representations, warranties or other agreements between the Parties in connection with the subject matter of this Agreement except as specifically set out in this Agreement, the Existing Credit Agreement, the other Loan Documents or the other agreements and documents delivered under this Agreement.

1.4 Business Day

Whenever any payment to be made or action to be taken under this Agreement is required to be made or taken on a day other than a Business Day, the payment is to be made or action taken on the next Business Day following.

1.5 Certain Rules of Interpretation

- (a) In this Agreement, words signifying the singular number include the plural and vice versa, and words signifying gender include all genders. Every use of the word "including" in this Agreement is to be construed as meaning "including, without limitation".
- (b) The division of this Agreement into Articles and Sections and the insertion of headings are for convenience of reference only and do not affect the construction or interpretation of this Agreement.
- (c) References in this Agreement to an Article, Section, Schedule or Exhibit are to be construed as references to an Article, Section, Schedule or Exhibit of or to this Agreement unless the context requires otherwise.
- (d) Unless otherwise specified in this Agreement, time periods within which or following which any payment is to be made or act is to be done will be calculated by excluding the day on which the period commences and including the day on which the period ends. If the last day of a time period is not a Business Day, the time period will end on the next Business Day.
- (e) Unless otherwise specified, any reference in this Agreement to any (a) statute includes all regulations made under that statute, and is to be construed as a reference to that statute as amended, supplemented or replaced from time to time, and (b) to any agreement means such agreement as amended, supplemented, restated, or replaced subject to compliance with any restrictions thereon in the Loan Documents.
- (f) Unless otherwise specified, the word "dollar" and the "\$" sign refer to Canadian currency, and all amounts to be advanced, paid, tendered or calculated under this Agreement are to be advanced, paid, tendered or calculated in Canadian currency.



1.6 Schedules and Exhibits

The following is a list of the Schedules and Exhibits attached hereto:

Schedule	Subject Matter
Schedule 1	Existing Indebtedness
Schedule 2	Approved Cash Flow
Schedule 3	Existing Security
Schedule 4	Existing Defaults

ARTICLE 2 ACKNOWLEDGMENT

2.1 Acknowledgement of Obligations

Each Credit Party confirms, acknowledges and agrees that the Existing Indebtedness as of the date of this Agreement is as set out in Schedule 1 attached hereto.

2.2 Continuing Effect of Amendments

The Parties hereto each acknowledge, confirm and agree that the Existing Credit Agreement remains in full force and effect as at the date hereof, except as specifically amended by this Agreement. The Existing Credit Agreement shall henceforth be read and construed in conjunction with this Agreement.

2.3 Other Confirmations and Acknowledgements

Each Credit Party confirms, acknowledges and agrees that:

- (a) each of the recitals in the "Context" is true and correct;
- (b) it has received the Demand Letter and, subject to Section 3.1 of this Agreement, all of the Existing Indebtedness is now payable and that the Lender has the presently exercisable right to receive immediate payment from the Credit Parties of the outstanding Obligations and to immediately terminate the credit facilities provided under the Existing Credit Agreement (the "Credit Facilities");
- (c) the Existing Defaults (other than the Anticipated Defaults) have occurred and are continuing and, as of the date of this Agreement, no Default or Event of Default, other than the Existing Defaults (other than the Anticipated Defaults), exists under the Existing Credit Agreement or any other Loan Document;
- (d) the Lender has not waived the Existing Defaults and nothing contained in this Agreement or the transactions contemplated by this Agreement will be deemed to constitute any such waiver;
- (e) interest and fees continue to accrue on the Existing Indebtedness under the Existing Credit Agreement and the other Loan Documents in accordance with the Existing Credit Agreement and the other Loan Documents and at the rates applicable to the Existing Indebtedness;
- (f) each Credit Party consents to the immediate enforcement of all or any part of the rights and remedies accorded to the Lender under the Existing Credit Agreement and the other Loan

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Documents and Applicable Law in any manner determined by the Lender (including, without limitation, the immediate appointment of a receiver, interim receiver or receiver and manager) upon the expiry of the Forbearance Period;

- (g) KSV Advisory Inc. (the “**Consultant**”) has been retained by the Borrowers and is the financial consultant to the Borrowers in respect of, *inter alia*, this Agreement, the Credit Agreement, the other Loan Documents and the outstanding Obligations and the Lender is entitled to appoint any other consultants, in addition to the Consultant, as the Lender may require at the cost of the Credit Parties;
- (h) KSV Restructuring Inc. (the “**Trustee**”) is the proposed trustee in the NOI Proceedings and has consented to act in such capacity;
- (i) PricewaterhouseCoopers Inc. has been engaged as financial advisor to the Lender in respect of, *inter alia*, this Agreement, the Credit Agreement, the other Loan Documents and the outstanding Obligations.
- (j) each Credit Party will grant all access and provide, on reasonable notice during regular business hours, all information and documentation to, and will otherwise cooperate fully with the Lender, and pay all reasonable fees and disbursements of each consultant appointed by the Lender as the Lender may require, and pay, in accordance with the Approved Cash Flow, all reasonable fees and disbursements of the Trustee and the Trustee’s counsel. The Borrowers will also cause the Consultant to grant full access and provide all information and documentation to, and to otherwise co-operate fully with, the Lender. All such information and documentation provided to the Lender shall be subject to Section 9.12 of the Credit Agreement;
- (k) except for obligations in respect of accrued unpaid sales taxes not to exceed \$325,000 and accruing employee related obligations to employees, including wages and vacation pay, not yet due not to exceed \$650,000 (collectively, the “**Accrued Statutory Claims**”), as at the NOI Date, the Borrowers have paid or caused to be paid and satisfied when due all amounts in respect of income taxes, provincial sales taxes, GST, HST, employee payroll remittances, and other obligations which have or may constitute a Priority Payable;
- (l) the Lender has and will continue to have valid, enforceable and perfected first ranking Liens, subject to Permitted Liens, over and in respect of the Collateral as continuing and collateral security for the Obligations and all other amounts owing from time to time under this Agreement, the Credit Agreement and the other Loan Documents, subject to: (i) any Accrued Statutory Claims which have or may have priority over such Liens; and (ii) any court-ordered charge(s) approved by the Lender and granted by the Court in the NOI Proceedings, which may have priority over such Liens;
- (m) the Existing Credit Agreement, the other Loan Documents to which each Credit Party is party and this Agreement are in full force and effect and constitute legal, valid and binding obligations of each Credit Party, enforceable against each such Credit Party in accordance with their respective terms;
- (n) the Credit Parties do not have any valid claim for set-off, counter-claim, damages or other defence on any basis whatsoever against the Lender and if there are any such claims, then each Credit Party hereby expressly waives and releases them to the fullest extent permitted under Applicable Law;
- (o) the Lender is and will be entitled to the rights, remedies and benefits provided for in this Agreement, the Credit Agreement and the other Loan Documents subject to Applicable Law;
- (p) the Approved Cash Flow existing as at the date hereof covers the period from October 3, 2022 to December 31, 2022; and

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- (q) this Agreement constitutes a Loan Document for all purposes of the Existing Credit Agreement and the other Loan Documents.

2.4 Security

The Credit Parties acknowledge and agree that the Security Documents delivered to, and Liens granted therein to, the Lender as listed in Schedule 3 attached hereto (collectively, the "Existing Security") shall stand as security for the payment and performance of each and every one of the Credit Parties' obligations and indebtedness to the Lender.

ARTICLE 3 FORBEARANCE IN RESPECT OF CERTAIN EVENTS OF DEFAULT

3.1 Forbearance

- (a) In reliance upon the acknowledgments, confirmations, representations, warranties and covenants of the Credit Parties contained in this Agreement, and subject to the terms and conditions of this Agreement and any documents or instruments executed in connection with this Agreement, the Lender agrees to forbear from exercising its rights and remedies under the Existing Credit Agreement and the other Loan Documents and/or Applicable Law in respect of or arising out of or relating to the Existing Defaults, subject to the conditions, amendments and modifications contained in this Agreement, during the period (the "Forbearance Period") commencing on the date of this Agreement and ending on the earlier of:
- (i) the Expiry Date; and
 - (ii) the occurrence or existence of any Terminating Event.
- (b) On the last day of the Forbearance Period, the agreement of the Lender to forbear will automatically and without further action terminate and be of no further force or effect, it being expressly agreed that the effect of that termination will be to permit the the Lender to immediately exercise all or any part of their rights and remedies under this Agreement, the Credit Agreement, the other Loan Documents and Applicable Law (whether against all or any combination of the Credit Parties), including without limitation:
- (i) to immediately terminate each of the Credit facilities and cease to make any further Loans, upon which no further credit will be available thereunder;
 - (ii) to demand immediate payment of all of the Obligations and enforce all of the Lender's rights and remedies under this Agreement, the Credit Agreement, the other Loan Documents and Applicable Law, in each case without any further notice, passage of time or forbearance of any kind; and
 - (iii) to appoint a receiver, interim receiver or receiver and manager of any of the Credit Parties pursuant to this Agreement, the Credit Agreement, the other Loan Documents or Applicable Law (or apply to a court of competent jurisdiction to do so).

3.2 No Other Waivers; Reservation of Rights

The Lender has not waived, and is not by this Agreement or the implementation of this Agreement waiving, any Existing Default or any Additional Default (whether the same or similar to the Existing Defaults or otherwise), and the Lender has not agreed to forbear with respect to any of its rights or remedies concerning any Additional Default (whether the same or similar to the Existing Defaults or otherwise) which may have occurred or be continuing as of the date of this Agreement or which may occur or be continuing after the date of this Agreement. The Lender has not waived any of such rights or remedies, and nothing in this

Agreement, and no delay on their part in exercising any such rights or remedies, should be construed as a waiver of those rights or remedies.

3.3 Fees and Interest

- (a) In consideration of the agreements set out in this Agreement, the Borrowers agree to pay to the Lender, an amendment and forbearance fee in the amount of \$50,000 which shall be fully earned as at the date of this Agreement and is to be paid immediately upon the execution and delivery of this Agreement (the "Forbearance Fee").
- (b) The Forbearance Fee is in addition to all other fees (including legal fees), interest, costs, expenses and other amounts payable in connection with this Agreement, the Credit Agreement and the other Loan Documents (including fees contemplated in the Existing Credit Agreement to the extent that payment has not been received by the Lender as at the date hereof) and may be charged by the Lender to any account of the Borrowers maintained by the Lender. The Forbearance Fee will be fully earned by the Lender despite any failure by any Credit Party to comply with any other term of this Agreement.

ARTICLE 4 OBLIGATIONS OF THE CREDIT PARTIES DURING FORBEARANCE PERIOD

4.1 Covenants of the Credit Parties

During the Forbearance Period, each Credit Party covenants and agrees as follows:

- (a) **Loan Document Obligations:** each Credit Party will strictly adhere to all the terms, conditions and covenants of this Agreement, the Credit Agreement and the other Loan Documents including, without limitation, terms requiring prompt payment to the Lender of principal and interest amounts when due, except to the extent that those terms, conditions and covenants are otherwise specifically amended by this Agreement, or modified and agreed to in writing by the parties to such agreement and acknowledged and approved in writing by the Lender;
- (b) **Asset Sales and Payments:** notwithstanding anything to the contrary contained in this Agreement, the Credit Agreement or any other Loan Document:
 - (i) the Credit Parties will not transfer, lease, sell or otherwise dispose of all or any part of their property, assets or undertaking (excluding dispositions of inventory in the ordinary course of business) other than the transfer, lease, sale or other disposition of property, assets or undertaking not exceeding \$50,000 for any single transaction or \$100,000 in the aggregate; provided, however, that the foregoing shall not apply with respect to any sales or dispositions of property, assets or undertaking effected by the Borrowers in accordance with the terms of the Sale Process as consented to and approved by the Lender in writing, which includes e-mail communication from the Lender's legal or financial advisors;
 - (ii) notwithstanding Section 6.6 and 6.15 of the Credit Agreement, each Credit Party agrees that no Restricted Payment or Capital Expenditure shall be paid, in each case without the prior written consent of the Lender given on or after the date hereof;
 - (iii) unless otherwise agreed to by the Lender in writing on or after the date hereof, the Credit Parties shall not pay any key employee any bonus, incentive or retention payments, whether such payment was an obligation arising from a contract executed prior to the commencement of the NOI Proceedings or otherwise; and

- (iv) notwithstanding Section 6.8 of the Credit Agreement, no Credit Party shall make any payment in respect of principal or interest on, or on account of, Indebtedness, other than Indebtedness owing to the Lender.
- (c) **Information Sharing:** The Credit Parties will forthwith provide to the Lender:
- (i) a copy of any notice that it is required to give to any Person (including, without limitation, any landlord) pursuant to the NOI Proceedings at the same time any such notice is required to be given to such Person;
 - (ii) a copy of all reports and information respecting the business, financial condition or prospects of the Credit Parties (including, without limitation, all unredacted reports and information provided to the Credit Parties by the Consultant as the Lender may, from time to time, reasonably request), which reports and information shall be subject to Section 9.12 of the Credit Agreement;
 - (iii) not less than two (2) Business Days' prior to filing (unless circumstances do not permit such notice, in which case, such notice as may be reasonably practicable in the circumstances), copies of draft court documents, including any proposal, in respect of any application, motion or other contemplated actions or steps made or taken by or in respect of a Credit Party in the NOI Proceedings or other similar or ancillary proceedings in any other jurisdiction (excluding drafts of any report of the Trustee), and not less than one (1) Business Day prior to filing or when received by a Credit Party (if not received earlier), copies of any draft Trustee report to be filed in connection with the NOI Proceedings; subject in all cases to confidentiality restrictions (provided, however, the Lender is permitted to share and provide copies of all such information and materials to the Lender's counsel, consultants and advisors who have been advised of and agree to be subject to the same confidentiality restrictions), and all draft orders and any proposal in the NOI Proceedings must be filed in a form which is confirmed by the Lender to be satisfactory to the Lender;
 - (iv) the following reporting information certified by the respective Chief Financial Officer (unless otherwise specified) of the applicable Credit Party and in form and substance satisfactory to the Lender:
 - a. the reporting information required under the Credit Agreement (and, in particular, Section 5.1 thereof), including, without limitation, effective immediately, (a) the financial information pursuant to Section 5.1(b) of the Credit Agreement on a consolidated and consolidating basis, and (ii) a separate Borrowing Base Report for each of the Borrowers (it being also acknowledged and agreed by the Credit Parties that the Weekly Reporting Trigger Period has commenced and is continuing) with a manual adjustment to the balance of Accounts arising from progress billing to reflect, (i) the collections of progress billing Accounts that have occurred, and (ii) the accrual of unbilled progress billing, both since the last business day of the preceding calendar month;
 - b. promptly after a Credit Party learns of the receipt or occurrence thereof, a certificate of such Credit Party, signed by a senior officer of such Credit Party specifying:
 - (i) notice of the institution of or any material adverse development in any action, suit or proceeding or any governmental investigation or any arbitration before any court or arbitrator or any Governmental Authority or official against such Credit Party which would reasonably be expected to have a Material Adverse Effect;

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- (ii) any official notice of any violation, possible violation, non-compliance or possible non-compliance, or claim made by any Governmental Authority or licensor pertaining to all or any part of the properties or Intellectual Property Rights of such Credit Party which would reasonably be expected to have a Material Adverse Effect;
 - (iii) except for the Existing Defaults, any event which constitutes a Default or Event of Default, together with a detailed statement specifying the nature thereof and the steps being taken to cure such Default or Event of Default;
 - (iv) the receipt of any notice from, or the taking of any other action by, the holder of any promissory note, debenture or other evidence of Indebtedness of such Credit Party with respect to an actual or alleged default, together with a detailed statement specifying the notice given or other action taken by such holder and the nature of the claimed default and what action such Credit Party is taking or proposes to take with respect thereto; and
 - (v) any other event, development or condition which may reasonably be expected to have a Material Adverse Effect;
- (v) promptly:
 - a. after receipt by a Credit Party, a copy of any notice received by such Credit Party in which any creditor, landlord, licensor or other third party delivers a notice of defect, default, demand, acceleration or enforcement in respect of any obligation of such Credit Party,
 - b. any written restructuring, liquidation or sale proposal that is received by a Credit Party, the Trustee, the Consultant or their respective advisors, which written proposals shall be subject to Section 9.12 of the Credit Agreement;
- (vi) on a biweekly basis, and also promptly following each of the milestone dates set out in Section 4.1(i), a written report of the Consultant or the Trustee, as applicable, on the status of the Sale Process, followed by a conference call with the Consultant (or the Trustee, as applicable) and the Credit Parties to respond to any inquiries regarding the Sale Process from the Lender; and
- (vii) promptly, all other reports and information required to be provided under this Agreement, the Credit Agreement or any other Loan Document or as may be otherwise reasonably required by the Lender from time to time.
- (d) **Security:** The Credit Parties will from time to time execute and deliver additional Guarantees and such supplements, amendments or additions as may be requested by the Lender to any of the existing Liens held by the Lender (together with supporting resolutions, certificates and other documentation as may be reasonably required) in order to better effect the intent of this Agreement, the Credit Agreement and the other Loan Documents.
- (e) **No Non-arm's Length Payments:** Without derogation to any negative covenants contained in the Credit Agreement, no Credit Party shall make any payments of interest, principal, bonuses, management fees, incentives, payments or salary or other distributions of cash or assets to any Person with which it does not deal with at arm's length except for payments of salaries in the ordinary course of business and consistent with historical salary payments (excluding bonuses).

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- (f) **Pre-Filing Borrowings:** The Borrowers shall seek and obtain, as part of the Preliminary Order, an order of the Court, in form and substance satisfactory to the Lender, authorizing the Borrowers to pay, in accordance with the Credit Agreement, as amended hereby, any and all amounts owing by the Borrowers to the Lender from time to time, whether such obligations arose prior to or after the NOI Date, provided that no advances of funds made by the Lender to the Borrowers under the Credit Agreement (as amended) made on or after the granting of the Preliminary Order (the "Post-Filing Advances") shall be used to pay the Borrowers' pre-filing outstanding Borrowings under the Credit Agreement (as amended) (the "Pre-filing Payments Order"). The Lender shall be entitled to apply any receipts and deposits made to the Borrowers' bank accounts, other than the Post-Filing Advances, against the Obligations arising prior to the NOI Date or following the NOI Date in the Lender's discretion.
- (g) **Cash Flow Reporting:** The Borrowers agree that they will: (i) by 12:00 p.m. (Edmonton time) on the fourth Business Day of each week during the Forbearance Period, provide the Lender with an updated Borrowing Base calculation and a variance report that shows the actual cash receipts and actual cash disbursements against the Approved Cash Flow on both a trailing weekly period basis and cumulative basis over the entirety of the Approved Cash Flow period to date, as well as an explanation of the variances from the Approved Cash Flow; and (ii) deliver to the Lender promptly such additional information as the Lender may from time to time reasonably request respecting any such Approved Cash Flow.
- (h) **Blocked Accounts:** Each Credit Party agrees as follows:
- (i) that it will enforce, collect and receive at its expense all amounts owing on its Accounts in the ordinary course of its business and any proceeds it so receives shall be subject to the terms of the Credit Agreement and this Section 4.1(h);
 - (ii) that, on the NOI Date and at all times thereafter: (a) each of the Credit Parties' deposit accounts that receive proceeds of property subject to a Lien in favour of the Lender or otherwise are and shall be Blocked Accounts subject to duly executed and delivered Blocked Account Agreements and complying in all respects with the terms set forth in the Credit Agreement, (b) each of the Credit Parties shall have delivered to the Lender evidence satisfactory to the Lender that blocked account and cash management systems with all such Persons complying in all respects with the terms set forth in the Credit Agreement have been established and are currently being maintained in the manner set forth in the Credit Agreement, and (c) it shall have delivered to the Lender copies of duly executed tri-party blocked account and other control agreements satisfactory to the Lender, acting reasonably, with all such other Persons as required by the Lender in its sole discretion; and
 - (iii) that it will seek and obtain, as part of the Preliminary Order, an order of the Court, in form and substance satisfactory to the Lender, authorizing and directing the Borrowers to enter into the above described Blocked Accounts arrangements (the "Blocked Accounts Order").

The Parties hereto hereby acknowledge, confirm and agree that the continuing implementation of the cash management arrangements is a contractual right provided to the Lender hereunder and under the Credit Agreement in order for the Lender to manage and monitor its collateral position and not a proceeding for enforcement or recovery of a claim, or pursuant to, or an enforcement of, any security or remedies whatsoever, that the cash management arrangements contemplated herein are critical to the structure of the lending arrangements contemplated herein, that the Lender is relying on this acknowledgement, confirmation and agreement with respect to such cash management arrangements in making accommodations of credit available to the Borrowers and in particular that any accommodations of credit are being provided by the Lender to the Borrowers strictly on the basis of a borrowing base calculation to fully support and collateralize any such accommodations of credit hereunder.

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- (i) **Sale Process Milestones:** The Credit Parties agree to continue the Sale Process and agree as follows, subject to any subsequent amendment with the consent of the Lender:
- (i) on or before October 24, 2022, Nilex Canada shall provide a report to the Lender setting out its anticipated approach and timeline for implementation of a transaction identified in the Sale Process, on terms and with deadlines acceptable to the Lender in its sole discretion, and will update the Lender, in a timely manner, on any change to such approach and timelines, which must be acceptable to the Lender in its sole discretion;
 - (ii) the Credit Parties shall have selected prospective purchasers who will be invited to submit definitive binding offers, and so advised such prospective purchasers by no later than October 24, 2022;
 - (iii) the Credit Parties shall have selected a successful binding offer, in the form of a mark-up to a template asset purchase agreement (the "**Purchase Agreement**") to be posted in the data room, which must offer cash consideration sufficient to repay all obligations owing to the Lender in full on closing and be in form and substance acceptable to the Lender (the "**Successful Bid**"), on or before November 8, 2022;
 - (iv) the Credit Parties shall have entered into the Purchase Agreement by no later than November 15, 2022;
 - (v) On or before November 25, 2022, Nilex Canada shall obtain an order approving a transaction entered into pursuant the Purchase Agreement, in form and substance satisfactory to the Lender (the "**Transaction Approval Order**");
 - (vi) On or before November 30, 2022, the Borrowers shall complete the transaction entered into pursuant to the Purchase Agreement and the Transaction Approval Order and shall have received the cash consideration payable thereunder to be forthwith distributed to the Lender up to the full amount of obligations owing to the Lender by the Credit Parties;
 - (vii) the Credit Parties shall ensure that the Lender is promptly provided with copies of all marketing materials, any letters of interest or definitive agreements provided, any other communications in respect of the foregoing and any details of the foregoing reasonably requested by the Lender, all of which shall be subject to Section 9.12 of the Credit Agreement;
 - (viii) If Nilex Canada determines to commence NOI Proceedings, then within fourteen days following the filing of such NOI by Nilex Canada, Nilex Canada shall obtain the Preliminary Order; and
 - (ix) all other terms of the above described Sale Process, and any amendments to the Sale Process, must be acceptable to the Lender.
- (j) **Preliminary Order:** the Preliminary Order shall be in form and substance satisfactory to the Lender and shall, *inter alia*:
- (i) provide that the Lender shall at all times be treated as an "unaffected creditor" in the NOI Proceedings and in any proposal filed pursuant thereto and/or in any other insolvency, restructuring, reorganization and/or arrangement proceeding with respect to the Credit Parties thereafter including, without limitations, proceedings under the *Companies' Creditors Arrangement Act* (Canada) or the *Bankruptcy and Insolvency Act* (Canada) and any stay of proceedings ordered by the Court in the NOI Proceedings shall not apply to the Lender, provided the Lender shall give not less than five (5) Business Days' prior written notice to the Credit Parties and the Trustee of its intention to cease making advances under



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this Agreement and the Credit Agreement, and during such notice period the Lender shall continue to fund only the payment of employee wages, Priority Payables and, provided there is sufficient availability, such expenditures as are contemplated in the then current Approved Cash Flows and reasonably requested by the Borrowers and as agreed to by the Lender acting in its sole and unfettered discretion;

- (ii) provide that the aggregate of any and all advances of funds by the Lender to the Borrowers under the Credit Agreement (as amended by this Agreement) made on or after NOI Date and all interest and other fees and costs accruing after the NOI Date shall be secured by a Court ordered security and charge in favour of the Lender (the "Lender Priority Charge") which security and charge shall rank in priority to every other claim, Lien and security interest against the Borrowers' property, assets and undertaking, other than the Administration Charge (as defined in the Preliminary Order), and any charge expressly consented to by the Lender and granted by the Court in the NOI Proceedings, without any need or requirement for any further steps for attachment, perfection, opposability against third parties, registration, publication or other notice thereof required to be taken by the Lender;
 - (iii) include the Pre-filing Payments Order; and
 - (iv) include the Blocked Accounts Order.
- (k) **Post-Filing Rent Payments:** the Credit Parties must maintain as current all payments accruing from and after the NOI Date under any lease or any mortgage of any premises out of which any Credit Party operates, or contracts for storage or bailment, and will otherwise not permit any default or event of default under any such lease, mortgage or contract for storage or bailment after the NOI Date, or forthwith obtain a waiver in writing from the relevant landlord, storer or bailee; provided, however, that the foregoing shall not apply with respect to any assignments, disclaimers or resiliations of contracts effected by a Credit Party as required by a Purchase Agreement entered into in the Sale Process and the Credit Parties hereby agree to give the Lender concurrent notice thereof, or to payments for goods or services provided or received by a Credit Party before the NOI Date or to any other payment obligations the enforcement of which is stayed by the NOI Proceedings;
- (l) **Further Assurances:** Each Credit Party will provide any further or additional documents, whether provided for in this Agreement, the Credit Agreement, any other Loan Documents or otherwise, that the Lender may require to ensure that the Lender has and continues to have full and complete Guarantees from each Credit Party and a first ranking Lien, subject to Permitted Liens and any court-ordered charge(s) approved by the Lender and granted by the Court in the NOI Proceedings which may have priority over such Lender's Liens, against such assets, properties and undertaking of the Credit Parties as the Lender requires (including all amendments or supplements to any of this Agreement, the Credit Agreement or any other Loan Document (including all Security Documents) and all additional or supplemental debentures, hypothecs, mortgages, charges, assignments, pledges and/or other security deemed necessary or desirable by the Lender).

4.2 Covenants in the Credit Agreement and the other Loan Documents

Except as expressly modified in this Agreement by specific reference, all of the covenants in this Agreement are in addition to and not in substitution for the covenants of the Credit Parties in the Credit Agreement and the other Loan Documents.

**ARTICLE 5
AMENDMENTS TO LENDING ARRANGEMENTS**

5.1 Amendments to Existing Credit Agreement

- (a) From and after the date hereof, the Lender's Revolving Loans shall not exceed the lesser of: (i) the Borrowing Base at that time; and (ii) in the case of any particular week, the Maximum Revolving LOC Balance, as set out in Schedule 2.
- (b) Except to the extent otherwise set forth in this Agreement, the Credit Facilities shall continue in accordance with their terms and conditions as set forth in the Existing Credit Agreement.

5.2 Purpose

- (a) The proceeds of Borrowings by the Borrowers shall, subject to the provisions of this Agreement, be used for funding in the ordinary course their operations and restructuring during the NOI Proceedings, their out-of-pocket costs incurred in connection with the NOI Proceedings (including all reasonable fees and expenses of its counsel, the Consultant, the Trustee and the Trustee's counsel and the Lender's counsel and advisors), and for such other purposes as may be agreed to by the Lender in writing; all in accordance with the Approved Cash Flow.

5.3 Expiry Date

- (a) All amounts owing by the Credit Parties under the Credit Agreement and all amounts owing to the Lender in connection with this Agreement, the Credit Agreement and all other Loan Documents shall be paid by the Credit Parties to the Lender in full on the Expiry Date. The "Expiry Date" shall be the date which is the earliest of:
 - (i) two (2) days following the receipt by the Lender of written notice by any of the Borrowers of termination of any or all of the Credit Facilities;
 - (ii) the date of issuance of a demand by the Lender for repayment of any or all of the Obligations upon the occurrence of a Default or an Event of Default (other than an Existing Default);
 - (iii) the implementation date of any proposal under the NOI Proceedings;
 - (iv) the date on which the stay imposed under the NOI Proceedings is lifted, in whole or in part, is terminated or lapses without extension, unless the Lender consents thereto;
 - (v) November 30, 2022 or such later date as may be agreed to by the Lender; and
 - (vi) the occurrence or existence of any Terminating Event.

**ARTICLE 6
REPRESENTATIONS, WARRANTIES AND TERMINATING EVENTS**

Each of the Credit Parties represents, warrants and covenants with and to the Lender as follows:

6.1 Representations in Loan Documents

Except for any representation and warranty set out in any of the Loan Documents relating to the non-existence of an Existing Default, or stated to be made as at a particular date, each of the representations and warranties made by or on behalf of the Credit Parties to the Lender in the Existing Credit Agreement or any of the other Loan Documents was true and correct when made, and in all material respects is, true

and correct on the date of this Agreement, with the same full force and effect as if each of those representations and warranties had been made by the applicable Credit Parties on the date of, and within, this Agreement.

6.2 Full Effect of Documents

This Agreement, the Existing Credit Agreement and the other Loan Documents are in full force and effect, except as modified by this Agreement.

6.3 No Conflict

The execution and delivery and performance of this Agreement by each Credit Party will not violate any requirement of Applicable Law or any Material Contract of each Credit Party, and will not result in, or require, the creation or imposition of any Lien on any of its properties or revenues except as expressly contemplated herein.

6.4 Lender May Pursue Rights and Remedies

Nothing in this Agreement will prejudice the Lender's rights to pursue any of their rights or remedies including, without limitation, enforcing their rights under any of this Agreement, the Existing Credit Agreement or any of the other Loan Documents or under Applicable Law following the expiry or termination of the Forbearance Period.

6.5 Terminating Events

Other than as provided in this Agreement or as may otherwise be consented to in writing by the Lender, the occurrence of any of the following events (other than any such event that constitutes an Existing Default) will constitute a "Terminating Event" under this Agreement (and, for purposes of greater certainty, a Default or an Event of Default under the Credit Agreement and the other Loan Documents):

- (a) if any Additional Default occurs, that is not waived by the Lender;
- (b) if, calculated on a cumulative basis commencing with the week ended October 7, 2022, in any week during the Forbearance Period the actual Cumulative Net Cash Flow calculated in accordance with Schedule 2 hereto is less than the Minimum Cumulative Net Cash Flow amount as shown in Schedule 2 hereto;
- (c) if, commencing the week ended October 14, 2022, the value of Total Availability From Eligible Inventory at any time exceeds the Maximum Total Availability From Eligible Inventory as shown for each week in Schedule 2 hereto.
- (d) except for any court-ordered charge(s) granted by the Court in the NOI Proceedings that rank in priority to the Liens of the Lender, with the consent of the Lender, or as may otherwise be expressly consented to by the Lender, if any court of competent jurisdiction, including, without limitation the Court, makes any order declaring that all or part of any Credit Party's property is subject to a Lien, security or charge in favour of any party other than the Lender and such court ordered charge purports to rank in any manner whatsoever in priority to any claim of the Lender under its Liens in the Security Documents or the Lender Priority Charge;
- (e) if, on or after the date of this Agreement:
 - (i) the NOI Proceedings are terminated without the prior or concurrent consent of the Lender or any order of the Court is sought by a Credit Party or granted by the Court that could reasonably be expected to materially adversely affect the interests of the Lender; or

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- (ii) the Trustee reports to the Court that there has been a material adverse change in respect of any of the Credit Parties and/or the NOI Proceedings;
- (f) if any Credit Party makes any payment prohibited by the Preliminary Order;
- (g) if any representation, warranty or other statement made or deemed to be made by any Credit Party in this Agreement, the Credit Agreement or any of the other Loan Documents or in any of the documents or instruments to be delivered to the Lender as contemplated by this Agreement is untrue in any material respect (unless stated to be made as at a particular date and subject to applicable cure periods, if any);
- (h) if any Credit Party shall fail to observe or perform any covenant, condition or agreement contained in this Agreement, including (without limitation) a failure to comply with any milestone date in the Sale Process set out in Section 4.1(i);
- (i) if there occurs, except as part of the Sale Process the effect of which is reflected in the Approved Cash Flow and summarized in detailed notes thereto, any: (a) closure of all or any material part of any of the business or operations of any of the Credit Parties or any suspension of all or a material part of the business or operations of any of the Credit Parties and/or (b) disposition or sale of all or any material part of the business or operations of any of the Credit Parties, or any Credit Party enters into any agreement to do so;
- (j) if any action, claim or proceeding is formally commenced, filed or lodged against any of the Credit Parties after the entry of the Preliminary Order, which is not stayed, and the same gives rise to, or could reasonably be expected to give rise to, indebtedness, liabilities or obligations of \$500,000 or more and such action, claim or proceeding continues undismissed or unstayed for a period of 10 calendar days after the institution thereof;
- (k) if any creditor or encumbrancer of any Credit Party takes possession of any of the Credit Parties' property or assets, or if distress or execution or any similar process is levied or enforced against such property or assets, excluding, for certainty, those garnishment actions described in the Existing Events of Default provided that no creditor or encumbrancer takes possession of any of the Credit Parties' property or assets pursuant to those garnishment actions;
- (l) if any of the Credit Parties contests or denies in any manner the legality, validity, binding nature or enforceability of this Agreement, the Existing Credit Agreement or any of the other Loan Documents or any liabilities and obligations to the Lender under or relating to this Agreement, the Existing Credit Agreement or any of the other Loan Documents;
- (m) if the Lender determines that a Material Adverse Change in the financial or business condition, or prospects of, any Credit Party has occurred or that a Material Adverse Change in the value of the Collateral relative to the Obligations has occurred; or
- (n) if any step is taken or event occurs that would materially prejudice or jeopardize Lender's priority rights under this Agreement, the Credit Agreement or the other Loan Documents or the Collateral secured by the Loan Documents.

Upon the occurrence of a Terminating Event, the Forbearance Period will automatically terminate without requirement for any notice to any Credit Party or any other action whatsoever by the Lender, subject to Applicable Law (including, if applicable, the Preliminary Order).

ARTICLE 7
CONDITIONS PRECEDENT TO THIS AGREEMENT

7.1 Conditions Precedent

- (a) The forbearance and other accommodations granted by the Lender hereunder shall only be granted by the Lender if the following conditions precedent (the "Conditions Precedent") have been complied with in a manner satisfactory to the Lender on or before 5:00 p.m. (Edmonton Time) on October 17, 2022, or such other time or date as specified below:
- (i) the Lender has received a duly authorized, executed and delivered PDF copy of this Agreement executed by each of the Credit Parties;
 - (ii) the payment of: (i) the Forbearance Fee owing to the Lender payable under Section 3.3, and (ii) all fees, disbursements and taxes owing to Lender's legal counsel at such time pursuant to a delivered invoice; it being acknowledged and agreed by the Credit Parties that, in satisfying this condition precedent, each such amount shall be automatically debited by the Lender from the operating accounts of the Borrowers without any further consent or agreement of the Credit Parties being required in respect thereof;
 - (iii) the Lender shall have received the Approved Cash Flow, which must be satisfactory to the Lender; and
 - (iv) all other documentation reasonably required by the Lender and its counsel in connection with this Agreement (including, without limitation, such further assurances, resolutions, opinions and additional confirmations or other agreements relating to the Lender's Liens), all duly authorized, executed and delivered in form and substance satisfactory to the Lender in its sole discretion.

The Conditions Precedent are for the sole benefit of the Lender and may be waived only by the Lender in writing. If the Conditions Precedent are not complied with to the satisfaction of the Lender as provided for above, and the Lender will not waive satisfaction thereof at its sole discretion, then the forbearance and other accommodations granted by the Lender hereunder shall be terminated.

ARTICLE 8
GENERAL

8.1 Effect of this Agreement

Except as modified by this Agreement, no other changes or modifications to the Existing Credit Agreement or the other Loan Documents are intended or implied, and in all other respects the Existing Credit Agreement and the other Loan Documents are specifically acknowledged, ratified and confirmed by the Credit Parties. To the extent of conflict between the terms of this Agreement, the Existing Credit Agreement and the other Loan Documents, the terms of this Agreement will govern.

8.2 Costs and Expenses

The Credit Parties hereby absolutely and unconditionally jointly and severally agree to pay to and fully indemnify the Lender, on demand by the Lender at any time and as often as may be required, whether or not all or any of the transactions contemplated by this Agreement are consummated, all fees and disbursements of the Lender, all counsel to the Lender, any financial advisor retained by the Lender, all other consultants to and agents of the Lender and all other expenses incurred by the Lender in connection with this Agreement, the Credit Agreement and the other Loan Documents including without limitation:

(a) legal expenses in connection with the preparation, negotiation and interpretation of this Agreement, the other agreements or documents contemplated by this Agreement, the Credit Agreement and the other Loan



Documents and the administration of this Agreement, the Credit Agreement and the other Loan Documents generally; (b) all documented expenses of advisors and consultants to and agents of the Lender (including legal expenses on a full indemnity basis) incurred in connection with the protection and enforcement of this Agreement, the Credit Agreement or any of the other Loan Documents or in connection with any proceeding in respect of bankruptcy, insolvency, winding up, receivership, dissolution, reorganization, liquidation, moratorium, arrangement or assignment for the benefit of creditors involving any Credit Party; in each of the foregoing events whether under the laws of Canada, Alberta or other applicable jurisdiction, or any local or foreign bankruptcy, insolvency, reorganization, receivership or similar law. Each Credit Party specifically authorizes the Lender to debit from any of its accounts with the Lender the amount of any such existing and future fees and disbursements, and other expenses and the Lender agrees to use commercially reasonable efforts to notify such Credit Party of such anticipated debit and the amount thereof at least two (2) Business Days in advance.

8.3 Release

- (a) In consideration of this Agreement and for other good and valuable consideration, each Credit Party, on their own behalf and on behalf of their respective successors, assigns, and other legal representatives, absolutely, unconditionally and irrevocably releases the Lender, and their present and former affiliates, subsidiaries, divisions, predecessors, directors, officers, legal counsel, consultants, employees, agents and other representatives, and their successors and assigns (all of which are 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 (individually, a "Claim" and collectively, "Claims") known or unknown, both at law or in equity, that such Credit Party or any of their respective successors, assigns, or other legal representatives may now or later have or claim against any of the Releasees by reason of any circumstance, action, cause or thing which arises at any time on or prior to the date of this Agreement, including for or on account of, or in relation to, or in any way in connection with this Agreement, the Credit Agreement or any of the other Loan Documents or any transactions under or related to, this Agreement, the Credit Agreement or any of the other Loan Documents, excepting Claims arising from gross negligence or wilful misconduct;
- (b) each Credit Party understands, acknowledges and agrees that the release set out in Section 8.3(a) may be pleaded as a full and complete defence and may be used as a basis for an injunction against any action, suit or other proceeding which may be instituted, prosecuted or attempted in breach of the provisions of that release; and
- (c) each Credit Party agrees that no fact, event, circumstance, evidence or transaction which could now be asserted or which may later be discovered will affect in any manner the final, absolute and unconditional nature of the release set out in Section 8.3(a).

8.4 Survival of Representations and Warranties

All representations and warranties made in this Agreement or any other document delivered in connection with this Agreement will survive the execution and delivery of this Agreement and the other documents and no investigation by the Lender or any closing will affect the representations and warranties or the right of the Lender to rely upon them.

8.5 Governing Law

This Agreement is governed by, and is to be construed and interpreted in accordance with, the laws of the Province of Alberta and the federal laws of Canada effective therein.

8.6 Reviewed by Legal Counsel

Each Credit Party represents and warrants to the Lender that it:

- (a) understands fully the terms of this Agreement and the consequences of the execution and delivery of this Agreement;
- (b) has been afforded an opportunity to have this Agreement reviewed by, and to discuss this Agreement and any documents executed in connection herewith with, such lawyers and other persons as such Credit Party may wish; and
- (c) has entered into this Agreement and executed and delivered all documents in connection herewith of its own free will and accord and without threat, duress or other coercion of any kind by any Person.

The Parties hereto acknowledge and agree that neither this Agreement nor the other documents or instruments executed pursuant hereto will be construed more favourably in favour of one than the other based upon which Party drafted the same, it being acknowledged that all Parties hereto contributed substantially to the negotiation and preparation of this Agreement and the other documents and instruments executed pursuant hereto or in connection herewith.

8.7 Submission to Jurisdiction

Without prejudice to the ability of any Party to enforce this Agreement in any other proper jurisdiction, each of the Parties irrevocably submits and attorns to the non-exclusive jurisdiction of the courts of Alberta to determine all issues, whether at law or in equity arising from this Agreement. To the extent permitted by Applicable Law, each of the Parties irrevocably waives any objection (including any claim of inconvenient forum) to the venue of any legal proceeding arising out of or relating to this Agreement in the courts of that province, or that the subject matter of this Agreement may not be enforced in those courts, and irrevocably agrees not to seek, and hereby waives any right to, judicial review by any court which may be called upon to enforce the judgment of the courts referred to in this Section 8.7, of the substantive merits of any such suit, action or proceeding. To the extent a Party has or hereafter may acquire any immunity from the jurisdiction of any court or from any legal process (whether through service or notice, attachment prior to judgment, attachment in aid of execution, execution or otherwise) with respect to itself or its property, that Party irrevocably waives that immunity in respect of its obligations under this Agreement.

8.8 Mutual Waiver of Jury Trial

Because disputes arising in connection with complex financial transactions are most quickly and economically resolved by an experienced and expert person and the Parties wish applicable provincial and federal laws to apply (rather than arbitration rules), the Parties desire that their disputes be resolved by a judge applying those Applicable Laws. Therefore, to achieve the best combination of the benefits of the judicial system, the Parties waive all rights to trial by jury in any action, suit, or proceeding brought to resolve any dispute, whether arising in contract, tort, or otherwise between the Lender and any Credit Party, arising out of, connected with, or related or incidental to, the relationship established between them in connection with this Agreement, the Credit Agreement or any of the other Loan Documents or the transactions related to this Agreement, the Credit Agreement or any of the other Loan Documents.

8.9 Time of Essence

Time is of the essence in all respects of this Agreement.



8.10 Unaffected Creditor Status of the Lender

The Lender shall at all times be treated as an "unaffected creditor" in the NOI Proceedings and in any proposal filed pursuant thereto and/or in any other insolvency, restructuring, reorganization and/or arrangement proceeding with respect to any Credit Party thereafter including, without limitation, proceedings under the *Bankruptcy and Insolvency Act* (Canada). The Credit Parties acknowledge that the Lender has relied on this covenant in entering into this Agreement.

8.11 Notices

Any Communication or notice must be in writing and delivered in accordance with the Credit Agreement.

8.12 Further Assurances

Each Credit Party will, at its own cost, execute and deliver all further agreements and documents and provide all further assurances as may be reasonably required by the Lender to give effect to this Agreement and, without limiting the generality of the foregoing, will do or cause to be done all acts and things, execute and deliver or cause to be executed and delivered all agreements and documents and provide such assurances, undertakings and information as may be required from time to time by all regulatory or governmental bodies or stock exchanges having jurisdiction over the affairs of a Party or as may be required from time to time under applicable securities legislation.

8.13 Confirmation of Documents and Terms

Each of the Credit Parties hereby agrees to the terms of this Agreement and confirms to and agrees with the Lender that its liabilities and obligations, and the Liens created under or pursuant to all Security Documents, Loan Documents and other documents and instruments executed in connection with the Credit Facilities and accommodations provided for or contemplated in the Credit Agreement continue in full force and effect in accordance with their respective terms and that all Security Documents and other Loan Documents executed by it secure and shall continue to secure the Obligations.

8.14 No Merger or Novation

All Security Documents, other Loan Documents and other documents and instruments provided to the Lender or otherwise entered into by the Credit Parties prior to the date hereof in connection with the Credit Facilities and accommodations provided for or contemplated in the Existing Credit Agreement, there being no novation or merger of the Existing Credit Agreement (as amended pursuant to this Agreement), any of the Lender's Liens under the Security Documents or any of the other Loan Documents, and all Obligations continue under the Existing Credit Agreement (as amended by this Agreement) and the other Loan Documents.

8.15 Amendment and Waiver

No supplement, modification, amendment, waiver, discharge or termination of this Agreement is binding unless it is executed in writing by the Party to be bound. No waiver of, failure to exercise or delay in exercising, any provision of this Agreement constitutes a waiver of any other provision (whether or not similar) nor does such waiver constitute a continuing waiver unless otherwise expressly provided.

8.16 Assignment and Enurement

No Credit Party will be entitled to assign this Agreement or any right or obligation under this Agreement without the prior consent of the Lender. The Lender may assign this Agreement and any of their rights and obligations under this Agreement without the consent of or notice to any Credit Party. This Agreement enures to the benefit of and is binding upon the Parties and their respective successors and permitted assigns.

8.17 Severability

Each provision of this Agreement is distinct and severable. If any provision of this Agreement, in whole or in part, is or becomes illegal, invalid or unenforceable in any jurisdiction by a court of competent jurisdiction, the illegality, invalidity or unenforceability of that provision will not affect:

- (a) the legality, validity or enforceability of the remaining provisions of this Agreement; or
- (b) the legality, validity or enforceability of that provision in any other jurisdiction.

8.18 Counterparts

This Agreement may be executed and delivered by the Parties in one or more counterparts, each of which when so executed and delivered will be an original and such counterparts will together constitute one and the same instrument.

8.19 Electronic Signatures

Delivery of this Agreement by facsimile or other electronic transmission (including through "pdf" format via email) constitutes valid and effective delivery.

8.20 Paramountcy

In the event of any conflict or inconsistency between the provisions of this Agreement and the provisions of the Existing Credit Agreement or any other Loan Document, the provisions of this Agreement shall prevail.

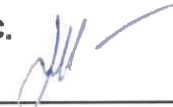
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Each of the Parties has executed and delivered this Agreement effective as of the 17th day of October, 2022.

NILEX INC.

Per



Name: Jeff Allen
Title: VP Finance

NILEX USA INC.

Per



Name: Jeff Allen
Title: VP Finance



**CANADIAN IMPERIAL BANK OF COMMERCE, as
Lender**

Per



Name: **Anthony Tsuen**
Title: **Authorized Signatory**

Per



Name: **Mauricio Echeverri**
Title: **Authorized Signatory**



SCHEDULE 1
EXISTING INDEBTEDNESS UNDER THE CREDIT AGREEMENT – AS AT OCTOBER 17, 2022

SEE ATTACHED



Nilex Inc**Payout statement to CIBC Asset Based Lending****Total Revolver Commitment is Cad 20,000,000****BDC BCAP Facility is Cad\$ 2,500,000****Payout date is October 17 2022**

	CAD\$	US\$
1 <u>Principal Loan Balance: Revolving Loan</u>	15,253,748.54	(346,004.40)
2 <u>Principal Loan Balance: BCAP Loan</u>	2,500,000.02	0
3 <u>Interest and fees outstanding</u>		
Interest charged on Revolving Loan	Prime + 0.25%	Base + 0.25%
Interest charged on BCAP Loan	Prime + 2.50%	
Current Prime Base	5.45%	6.75%
Interest and fees paid to:	30-Sep	30-Sep
Days to Calculate interest	17	17
Interest - Revolving Loan	38,455.99	-
Interest - BCAP Loan	9,256.85	
Unused Line fee	642.10	-
Wire Fee	12.00	
Monthly Collateral Management fee	1,200.00	-
Legal, Appraisal & other fees outstanding	43,177.57	-
Total Interest and Fees	92,744.51	-
Total Principal, Interest and Fees	17,846,493.07	(346,004.40)
Total amounts due to CIBC	17,846,493.07	(346,004.40)

Calculation of Unused Line Fee

Credit Limit	20,000,000.00
UL Rate	0.250%
Days	17
Days Basis	365
Average Monthly Loan Balance	14,485,487.93
Unused line	5,514,512.07
ULF	642.10

**SCHEDULE 2
APPROVED CASH FLOW**

SEE ATTACHED

A handwritten signature in blue ink, located in the bottom right corner of the page. The signature is stylized and appears to be a single character or a very short word.

Nilex Inc and Nilex USA Inc.
Projected Cash Flow Statement
For the period ending December 31, 2022
(Unaudited; \$CAD Thousands)

Note	Week ending													Total	
	7-Oct-2022	14-Oct-2022	21-Oct-2022	28-Oct-2022	4-Nov-2022	11-Nov-2022	18-Nov-2022	25-Nov-2022	2-Dec-2022	9-Dec-2022	16-Dec-2022	23-Dec-2022	30-Dec-2022		
Receipts															
Accounts receivable collections	1	909	774	1,395	1,453	1,661	1,054	1,261	1,253	1,327	1,054	1,295	1,496	1,144	16,076
Disbursements															
<i>Operating Disbursements</i>															
Vendor payments	2	(1,359)	(884)	(844)	(384)	(865)	(865)	(865)	(865)	(395)	(395)	(395)	(395)	(395)	(8,908)
Payroll		(377)	(161)	(275)	(161)	(275)	(161)	(275)	(161)	(250)	(41)	(370)	(41)	(370)	(2,915)
Rent		(218)	-	-	-	(181)	-	-	-	(181)	-	-	-	-	(579)
Insurance		(10)	(20)	-	(30)	(65)	-	(20)	-	(65)	-	(20)	-	(55)	(285)
Other		(126)	(94)	(20)	-	(601)	(14)	(90)	-	(451)	(14)	(70)	(20)	(250)	(1,751)
		(2,090)	(1,159)	(1,139)	(575)	(1,987)	(1,039)	(1,250)	(1,025)	(1,342)	(450)	(855)	(456)	(1,070)	(14,438)
<i>Other Disbursements</i>															
Interest and fees - CIBC Revolving Line of Credit		(69)	(19)	(19)	(19)	(20)	(20)	(20)	(20)	(16)	(16)	(16)	(16)	(16)	(292)
Interest - CIBC Term Debt		-	-	-	(15)	-	-	-	(15)	-	-	-	-	(19)	(48)
Principal repayments - CIBC Term Debt		-	-	-	-	-	-	-	-	(83)	-	-	-	-	(83)
Restructuring costs	3	-	(100)	-	(225)	-	-	(175)	-	-	-	(175)	-	-	(675)
Total Disbursements		(2,160)	(1,278)	(1,158)	(834)	(2,007)	(1,060)	(1,445)	(1,061)	(1,442)	(466)	(1,047)	(472)	(1,105)	(15,537)
Net Cash Flow		(1,251)	(504)	236	619	(347)	(6)	(185)	193	(115)	588	248	1,024	39	539
Cumulative net cash flow		(1,251)	(1,755)	(1,519)	(901)	(1,248)	(1,254)	(1,439)	(1,246)	(1,361)	(773)	(526)	498	539	
Cumulative allowable variance (15%)		188	263	299	392	444	445	472	501	518	606	644	797	803	
Minimum Cumulative Net Cash Flow		(1,439)	(2,019)	(1,818)	(1,292)	(1,691)	(1,699)	(1,911)	(1,748)	(1,879)	(1,380)	(1,169)	(299)	(263)	
Ending Revolving LOC balance, per KSV's October 9th cash flow		14,514	15,018	14,782	14,163	14,510	14,516	14,700	14,507	14,621	14,033	13,785	12,763	12,724	
Cumulative allowable variance (15%)		188	263	299	392	444	445	472	501	518	606	644	797	803	
Maximum Revolving LOC Balance		14,702	15,281	15,081	14,555	14,954	14,961	15,172	15,008	15,139	14,639	14,429	13,560	13,527	

Notes

- Accounts receivable collections assume average payment terms of 76 days over the course of the Projection, adjusted slightly in November.
- Vendor payment terms are assumed to be paid on 80 days in October 2022, and COD for November and December 2022.
- Represents estimated professional fees of the Company's legal counsel, the Proposal Trustee and its legal counsel and CIBC's legal counsel

Nilex Inc and Nilex USA Inc.
Projected Borrowing Base Calculation
For the period ending December 31, 2022
(Unaudited; \$CAD Thousands)

Note	Week ending												
	7-Oct-2022	14-Oct-2022	21-Oct-2022	28-Oct-2022	4-Nov-2022	11-Nov-2022	18-Nov-2022	25-Nov-2022	2-Dec-2022	9-Dec-2022	16-Dec-2022	23-Dec-2022	30-Dec-2022
Accounts Receivable - Nilex Canada													
Accounts receivable balance	14,257	15,007	15,157	15,282	14,782	14,882	14,782	14,682	13,962	13,442	12,722	11,802	11,220
Less ineligible accounts receivable	(581)	(612)	(618)	(623)	(602)	(606)	(602)	(598)	(569)	(548)	(518)	(481)	(457)
Eligible accounts receivable	13,676	14,395	14,539	14,659	14,180	14,276	14,180	14,084	13,393	12,894	12,204	11,321	10,763
Advance rate	85%	85%	85%	85%	85%	85%	85%	85%	85%	85%	85%	85%	85%
Net eligible accounts receivable collateral - Nilex Canada	11,625	12,236	12,359	12,460	12,053	12,135	12,053	11,971	11,384	10,960	10,373	9,623	9,148
Accounts Receivable - Nilex USA													
Accounts receivable balance	830	857	864	837	877	925	965	1,012	965	992	979	965	964
Less ineligible accounts receivable	(33)	(34)	(35)	(33)	(35)	(37)	(39)	(40)	(39)	(40)	(39)	(39)	(39)
Eligible accounts receivable	797	823	829	804	842	888	926	972	926	952	940	926	925
Advance rate	85%	85%	85%	85%	85%	85%	85%	85%	85%	85%	85%	85%	85%
Net eligible accounts receivable collateral - Nilex USA	677	700	705	683	716	755	788	826	788	810	799	788	787
Inventory - Nilex Canada													
Inventory balance	11,019	10,946	10,834	10,261	10,243	10,226	10,208	10,190	10,173	10,155	10,138	10,120	10,103
Less ineligible inventory	(328)	(326)	(322)	(305)	(305)	(304)	(304)	(303)	(303)	(302)	(302)	(301)	(300)
Eligible inventory	10,691	10,621	10,511	9,956	9,938	9,922	9,904	9,887	9,870	9,853	9,836	9,819	9,803
Advance rate	53%	53%	53%	53%	48%	48%	48%	48%	48%	48%	48%	48%	48%
Net eligible inventory collateral - Nilex Canada	5,707	5,670	5,611	5,314	4,756	4,748	4,740	4,732	4,723	4,715	4,707	4,699	4,691
Inventory - Nilex USA													
Inventory balance	1,697	1,679	1,662	1,644	1,630	1,616	1,602	1,588	1,577	1,567	1,557	1,547	1,537
Less ineligible inventory	(23)	(23)	(23)	(22)	(22)	(22)	(22)	(22)	(22)	(21)	(21)	(21)	(21)
Eligible inventory	1,674	1,656	1,639	1,622	1,608	1,594	1,580	1,566	1,555	1,546	1,536	1,526	1,516
Advance rate	44%	44%	44%	44%	38%	38%	38%	38%	38%	38%	38%	38%	38%
Net eligible inventory collateral - Nilex USA	735	728	720	713	611	606	600	595	591	587	584	580	576
Total net eligible inventory - Canada and USA	6,442	6,398	6,331	6,027	5,367	5,354	5,340	5,327	5,314	5,303	5,291	5,279	5,267
Total net eligible collateral	18,745	19,333	19,395	19,170	18,136	18,242	18,180	18,124	17,486	17,073	16,463	15,689	15,202
Less: availability block and reserves	(1,720)	(1,720)	(1,720)	(1,720)	(1,670)	(1,670)	(1,670)	(1,670)	(1,670)	(1,670)	(1,670)	(1,670)	(1,670)
Total eligible collateral	17,025	17,613	17,675	17,450	16,466	16,572	16,510	16,454	15,816	15,403	14,793	14,019	13,532
Revolver balance	(14,514)	(15,018)	(14,782)	(14,163)	(14,510)	(14,516)	(14,700)	(14,507)	(14,621)	(14,033)	(13,785)	(12,763)	(12,724)
Net availability (shortfall)	2,511	2,595	2,893	3,287	1,956	2,056	1,810	1,947	1,195	1,370	1,008	1,256	808
Maximum Total Availability From Eligible Inventory	7,086	7,038	6,964	6,630	5,904	5,889	5,874	5,860	5,845	5,833	5,820	5,807	5,794

Notes

- Ineligible accounts receivables are projected to be 4% of total receivables for Nilex Canada (as per the August 31, 2022 borrowing base certificate) and 4% for Nilex USA (based on management's estimates).
- Advance rates from November through December 2022 have been adjusted downward in accordance with the prior year and the terms of the credit facility.
- Ineligible inventory includes work in process, a reserve for slow-moving inventory and inventory with outside processors. Ineligible inventories are projected to be 3% for Nilex Canada and 1% for Nilex USA based on the August 31, 2022 borrowing base certificate.
- Includes reserves for priority payroll obligations, sales taxes, rent and a \$1.12 million availability block, based on the most recent borrowing base certificate. The availability block is remains consistent throughout the projection period.

**SCHEDULE 3
EXISTING SECURITY**

1. Canadian law governed General Security Agreement, dated as of June 1, 2018 among Nilex Inc. and Nilex USA Inc., as Debtors, and Canadian Imperial Bank of Commerce, as Lender.
2. US law governed Security Agreement made and entered into as of June 1, 2018 among Nilex Inc. and Nilex USA Inc., as Debtors, and Canadian Imperial Bank of Commerce, as Lender.
3. Guarantee Agreement entered into as of June 1, 2018 by and among each of Nilex Inc. and Nilex USA Inc, as guarantors, in favour of Canadian Imperial Bank of Commerce, as Lender.
4. Intellectual Property Security Agreement dated as of June 1, 2018 by Nilex Inc. and Nilex USA Inc. in favour of Canadian Imperial Bank of Commerce, as Lender.
5. Deposit Account Control Agreement (Pledged Account with Activation), dated as of June 27, 2018, among CIBC Bank USA, Nilex USA Inc. and Canadian Imperial Bank of Commerce, as Lender.
6. Blocked Accounts Agreement dated June 27, 2018 between Nilex Inc. and Canadian Imperial Bank of Commerce, as account bank and as Lender.
7. Intellectual Property Security Agreement dated as of March 7, 2019 by Nilex Inc. in favour of Canadian Imperial Bank of Commerce, as Lender.
8. Application for Credit and Promise to Give Bills of Lading, Warehouse Receipts or Security under Section 427 of the Bank Act (Canada), dated June 1, 2018 from Nilex Inc. to Canadian Imperial Bank of Commerce.
9. Agreement As To Powers of Canadian Imperial Bank of Commerce In Relation To Security Under Section 427 of the Bank Act (Canada), dated June 1, 2018, from Nilex Inc. to Canadian Imperial Bank of Commerce.
10. Special Security In Respect of Specified Property or Classes of Property described in Section 427 of the Bank Act (Canada) dated June 1, 2018 from Nilex Inc. to Canadian Imperial Bank of Commerce.



**SCHEDULE 4
EXISTING DEFAULTS**

1. Under Sections 7.1 (d), 7.1(k) and 7.1(l) of the Credit Agreement, resulting from (i) an unopposed judgment issued by the Court of Queen's Bench of Alberta on March 21, 2022 against Nilex Inc. in favour of Hugh Watt, (ii) a consent judgment issued by the Court of Queen's Bench of Alberta on June 2, 2022 against Nilex Inc. in favour of Ian Wilson, and (iii) a Garnishee Summons filed at the Court of Queen's Bench of Alberta by Hugh Watt against Nilex Inc. and delivered to the Lender; and
2. Under Section 7.1(d) of the Credit Agreement resulting from the failure of the Borrowers and their Subsidiaries, on a consolidated basis in accordance with GAAP, to have EBITDA for the cumulative current fiscal year-to-date period ended July 31, 2022 of not less than \$(800,000).



This is Exhibit "P" referred to in the Affidavit of Jeff Allen sworn before me this 31st day of October, 2022.



A Commissioner for Oaths in and for Alberta

Luke Beathard
Commissioner for Oaths





August 11, 2022

Delivered via QB Filing

Law Courts
1A Sir Winston Churchill Square
Edmonton, AB T5J 0R2
Phone: 780-422-2422
Fax: 780-643-0954

Attention: Q.B. Accounting

Dear Sir/Madam:

Norton Rose Fulbright Canada LLP
400 3rd Avenue SW, Suite 3700
Calgary, Alberta T2P 4H2 Canada

F: +1 403.264.5973
nortonrosefulbright.com

Meghan Parker
+1 403.267.8211
meghan.parker@nortonrosefulbright.com

Assistant
+1 403.267.9580
joanna.vanham@nortonrosefulbright.com

Your reference
1903-07838

Our reference
1001018108

Hugh Watt ("Creditor") v. Nilex Inc. ("Debtor") – Priority of Canadian Imperial Bank of Commerce, (Q.B. Court File No. 1903-07838)

Our offices act as counsel to the Canadian Imperial Bank of Commerce (**CIBC**), the senior secured lender to the Debtor. CIBC received a Garnishee Summons, which was filed on July 21, 2022, and served its Garnishee Response on August 8, 2022.

It has come to CIBC's attention that the Creditor has served Garnishee Summons on the following additional parties:

- Canadian Natural Resources Limited;
- Cenovus Energy Inc.;
- North American Enterprises Ltd.;
- Fraser Crossing Constructors General Partnership;
- Surerus Murphy Joint Venture.

Please be advised that CIBC has a priority secured claim in respect of the Debtor that far exceeds the amount set out in the Garnishee Summons. The security held by CIBC includes a priority security interest over amounts owing to the Debtor, including any amounts owing by the above parties to the Debtor. As such, any funds that may be received by the Court on behalf of the above-noted parties and/or any other Garnishee of the Debtor are subject to the priority security interest of CIBC and should properly be distributed to CIBC.

Should you have any questions or concerns, please do not hesitate to contact me.

CAN_DMS: \147256806\1

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Q.B. Accounting



Yours truly,

Norton Rose Fulbright Canada LLP

Per:

A handwritten signature in black ink, appearing to read "MLP", with a long horizontal flourish extending to the right.

Meghan L. Parker
Associate

MP/jv
Enclosure



This is Exhibit "Q" referred to in the Affidavit of Jeff Allen sworn before me this 31st day of October, 2022.



A Commissioner for Oaths in and for Alberta

Luke Bandkowski
Barrister & Solicitor



The Court of Queen's Bench of Alberta

Accounting Section
Judicial Centre of Edmonton
Law Courts, South Tower
1A Sir Winston Churchill Square
Edmonton, Alberta T5J 0R2
Telephone: 780-422-2422 Fax: 780-643-0954

September 30, 2022

NILEX INC.
6810-8 STREET NW
EDMONTON, AB T6P 0C5

Dear Sir/Madam:

Subject: NILEX INC.
6810-8 STREET NW EDMONTON, AB

Our File No: Q 1903 07838
Your File No:

GARNISHEE PAYMENT RECEIVED ON SEP 12,2022

Enclosed is my proposed distribution amongst the enforcement creditors of the above named debtor, of monies received.

The amounts owing, as listed on this proposed distribution, refer to the amounts owing registered at the Personal Property Registry.

Objection to this distribution must be filed with this office in writing within 15 days from this date in accordance with section 101(1)B of the Civil Enforcement Act.

Yours truly,

Clerk of the Court

Enclosure



Proposed Distribution

September 30, 2022

Page 01

Our File No: Q 1903 07838

NILEX INC.
6810-8 STREET NW
EDMONTON, AB T6P 0C5

CLERKS DISTRIBUTION FEE	AMT OWING	DIVIDEND
File No:	10.00	10.00
Cred:		

\$2000 RULE	AMT OWING	DIVIDEND
File No: 22071219384	2000.00	2000.00
Cred: WATT, HUGH		
Debt: NILEX INC.		

PRO-RATA	AMT OWING	DIVIDEND
File No: 22060620459	639467.26	112892.35
Cred: WILSON, IAN		
Debt: NILEX INC.		

File No: 22071219384	475708.49	83982.18
Cred: WATT, HUGH		
Debt: NILEX INC.		

Ratio: 196874.53 / 1115175.75 = 0.17654126

0.00

Total Dividends 198884.53

* * * End Of Proposed Distribution * * *



This is Exhibit "R" referred to in the Affidavit of Jeff Allen sworn before me this 31st day of October, 2022.



A Commissioner for Oaths in and for Alberta

Luke Burkhardt
Barreau du Québec



The Court of Queen's Bench of Alberta

Accounting Section
Judicial Centre of Edmonton
Law Courts, South Tower
1A Sir Winston Churchill Square
Edmonton, Alberta T5J 0R2
Telephone: 780-422-2422 Fax: 780-643-0954

October 07, 2022

NILEX INC.
6810-8 STREET NW
EDMONTON, AB T6P 0C5

Dear Sir/Madam:

Subject: NILEX INC.
6810-8 STREET NW EDMONTON, AB

Our File No: Q 1903 07838
Your File No:

GARNISHEE PAYMENT RECEIVED SEPTEMBER 19, 2022

Enclosed is my proposed distribution amongst the enforcement creditors of the above named debtor, of monies received.

The amounts owing, as listed on this proposed distribution, refer to the amounts owing registered at the Personal Property Registry.

Objection to this distribution must be filed with this office in writing within 15 days from this date in accordance with section 101(1)B of the Civil Enforcement Act.

Yours truly,

Clerk of the Court

Enclosure



Proposed Distribution

October 07, 2022

Page 01

Our File No: Q 1903 07838

NILEX INC.
 6810-8 STREET NW
 EDMONTON, AB T6P 0C5

CLERKS DISTRIBUTION FEE

File No:
 Cred:

AMT OWING
 10.00

DIVIDEND
 10.00

#2000 RULE

File No: 22071219384
 Cred: WATT, HUGH
 Debt: NILEX INC.

AMT OWING
 2000.00

DIVIDEND
 2000.00

PRO-RATA

File No: 22060620459
 Cred: WILSON, IAN
 Debt: NILEX INC.

AMT OWING
 526574.91

DIVIDEND
 39608.52

File No: 22071219384
 Cred: WATT, HUGH
 Debt: NILEX INC.

389726.31

29314.88

Ratio: 68923.40 / 916301.22 = 0.07521915

0.00

Total Dividends

70933.40

* * * End Of Proposed Distribution * * *

This is Exhibit "S" referred to in the Affidavit of Jeff Allen sworn before me this 31st day of October, 2022.



A Commissioner for Oaths in and for Alberta

Luke Bendkowski
Barrister & Solicitor



The Court of Queen's Bench of Alberta

Accounting Section
Judicial Centre of Edmonton
Law Courts, South Tower
1A Sir Winston Churchill Square
Edmonton, Alberta T5J 0R2
Telephone: 780-422-2422 Fax: 780-643-0854

October 21, 2022

NILEX INC.
6810-8 STREET NW
EDMONTON, AB T6P 0C5

Dear Sir/Madam:

Subject: NILEX INC.
6810-8 STREET NW EDMONTON, AB

Our File No: Q 1903 07838
Your File No:

GARNISHEE PAYMENT RECEIVED SEPTEMBER 30, 2022.

Enclosed is my proposed distribution amongst the enforcement creditors of the above named debtor, of monies received.

The amounts owing, as listed on this proposed distribution, refer to the amounts owing registered at the Personal Property Registry.

Objection to this distribution must be filed with this office in writing within 15 days from this date in accordance with section 101(1)B of the Civil Enforcement Act.

Yours truly,

Clerk of the Court

Enclosure



Proposed Distribution

October 21, 2022

Page 01

Our File No: Q 1903 07838NILEX INC.
6810-8 STREET NW
EDMONTON, AB T6P 0C5

CLERKS DISTRIBUTION FEE	AMT OWING	DIVIDEND
File No:	10.00	10.00
Cred:		
 PRO-RATA	 AMT OWING	 DIVIDEND
File No: 22060620459	486966.39	31699.28
Cred: WILSON, IAN		
Debt: NILEX INC.		
 File No: 22071219384	 360411.43	 23461.14
Cred: WATT, HUGH		
Debt: NILEX INC.		
 Ratio: 55160.42 /	 847377.82 = 0.06509543	
		0.00
Total Dividends		55170.42

* * * End Of Proposed Distribution * * *

2CAN23 - IN306321
IN306331

This is Exhibit "T" referred to in the Affidavit of Jeff Allen sworn before me this 31st day of October, 2022.



A Commissioner for Oaths in and for Alberta

Luke Beukhofski
LUB
E -
Barrister & Solicitor





October 13, 2022

Delivered via eFiling

Law Courts
1A Sir Winston Churchill Square
Edmonton, AB T5J 0R2
Phone: 780-422-2422
Fax: 780-643-0954

Attention: Q.B. Accounting

Dear Sir/Madam:

Norton Rose Fulbright Canada LLP
45 O'Connor Street, Suite 1500
Ottawa, Ontario K1P 1A4 Canada

F: +1 613.230.5459
nortonrosefulbright.com

Meghan Parker
+1 613.780.1530
meghan.parker@nortonrosefulbright.com

Assistant
+1 613.780.8620
sarah.goyette@nortonrosefulbright.com

Your reference
1903-07838

Our reference
1001018108

Hugh Watt (“Creditor”) v. Nilex Inc. (“Debtor”) – Priority of Canadian Imperial Bank of Commerce, (Q.B. Court File No. 1903-07838)

This will confirm that our offices act as counsel to the Canadian Imperial Bank of Commerce (CIBC), the senior secured lender to the Debtor. CIBC received a Garnishee Summons, which was filed on July 21, 2022, and served its Garnishee Response on August 8, 2022.

It has come to CIBC’s attention that a large sum of money has been paid into Court in accordance with the Garnishee Summons. As previously indicated in its Garnishee Response of August 8, 2022, and further correspondence to the Court of August 11, 2022, CIBC has a priority secured claim in respect of the Debtor that far exceeds the amount set out in the Garnishee Summons. The security held by CIBC includes a priority security interest over amounts owing to the Debtor, including any amounts owing by the above parties to the Debtor, and all proceeds thereof including the proceeds paid into Court.

CIBC therefore objects to the clerk’s Proposed Distribution List, dated September 30, 2022 in accordance with s. 101(1)(b) of the *Civil Enforcement Act*. Any funds received by the Court on behalf of the above-noted parties and/or any other Garnishee of the Debtor are subject to the priority security interest of CIBC and should properly be distributed to CIBC.

CIBC’s Application pursuant to s. 101(1)(d) of the *Civil Enforcement Act* will follow in due course.

Yours truly,

Norton Rose Fulbright Canada LLP
Per:

Meghan L. Parker
Associate

MP/kh

CAN_DMS: 11482602181

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This is Exhibit "U" referred to in the Affidavit of Jeff Allen
sworn before me this 31st day of October, 2022.



A Commissioner for Oaths in and for Alberta

Lukr Luke Bandrowski
Bar Bandrowski a notary





October 18, 2022

Delivered via eFiling

Law Courts
1A Sir Winston Churchill Square
Edmonton, AB T5J 0R2
Phone: 780-422-2422
Fax: 780-643-0954

Attention: Q.B. Accounting

Dear Sir/Madam:

Norton Rose Fulbright Canada LLP
45 O'Connor Street, Suite 1500
Ottawa, Ontario K1P 1A4 Canada

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+1 613.780.8620
sarah.goyette@nortonrosefulbright.com

Your reference
1903-07838

Our reference
1001018108

Hugh Watt ("Creditor") v. Nilex Inc. ("Debtor") – Priority of Canadian Imperial Bank of Commerce, (Q.B. Court File No. 1903-07838)

Further to our correspondence, dated October 13, 2022, this will again confirm that our offices act as counsel to the Canadian Imperial Bank of Commerce (CIBC), the senior secured lender to the Debtor. CIBC received the Garnishee Summons, which was filed on July 21, 2022 and served its Garnishee Response on August 8, 2022.

It has come to CIBC's attention that a further sum of money has been paid into Court in accordance with the Garnishee Summons. **CIBC therefore objects to the clerk's Proposed Distribution List, dated October 7, 2022 in accordance with s. 101(1)(b) of the Civil Enforcement Act.** For the reasons indicated in our letter of October 12, 2022, CIBC takes the position that any funds received by the Court on behalf of the above-noted parties and/or any other Garnishee of the Debtor are subject to the priority security interest of CIBC and should properly be distributed to CIBC.

CIBC's Application pursuant to s. 101(1)(d) of the *Civil Enforcement Act* will follow in due course.

Yours truly,

Norton Rose Fulbright Canada LLP
Per:

Meghan L. Parker
Associate

MP/kh

CAN_DMS: 11483238661

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This is Exhibit "V" referred to in the Affidavit of Jeff Allen
sworn before me this 31st day of October, 2022.



A Commissioner for Oaths in and for Alberta

L. M. Dandkowsky
Barrister & Solicitor



Form 27
[Rules 6.3 and
10.52(1)]

COURT FILE NUMBER 1903-07838
COURT COURT OF KING'S BENCH OF ALBERTA
JUDICIAL CENTRE EDMONTON
PLAINTIFF HUGH WATT
DEFENDANTS PEF 2010 NILEX INVESTMENT LIMITED
PARTNERSHIP and NILEX INC.
DOCUMENT **APPLICATION BY CIBC, GARNISHEE**



E104366
50-

ADDRESS FOR SERVICE AND CONTACT INFORMATION OF PARTY FILING THIS DOCUMENT
Norton Rose Fulbright Canada LLP
400 3rd Avenue SW, Suite 3700
Calgary, Alberta T2P 4H2 CANADA
Meghan Parker
meghan.parker@nortonrosefulbright.com
Tel: +1 613.780.1530
Fax: +1 613.230.5459

Lawyers for Canadian Imperial Bank of Commerce, Garnishee
File no.: 1001018108

NOTICE TO RESPONDENT(S): Hugh Watt

This application is made against you. You are a respondent. You have the right to state your side of this matter before the Court.

To do so, you must be in Court when the application is heard as shown below:

Date: **November 18, 2022**
Time: **10:00 a.m.** IN PERSON
Where: **Edmonton Court of King's Bench**
Before Whom: **Presiding Applications Judge** AJ2

Go to the end of this document to see what else you can do and when you must do it.

Remedy claimed or sought:

1. An Order that the Security Interest of Canadian Imperial Bank of Commerce ("**CIBC**") takes priority over the Writs of Enforcement which have been registered at the Alberta Personal Property Registry (the "**PPR**") against the Defendant, Nilex Inc.

2. An Order that all funds paid into Court in accordance with the Garnishee Summons, filed July 21, 2022 against Nilex Inc. are to be paid out in order of priority, beginning with the Security Interest of CIBC.

Grounds for making this application:

3. Canadian Imperial Bank of Commerce ("**CIBC**") is the holder of valid Security properly registered at the Personal Property Registry of Alberta against the Defendant, Nilex Inc.
4. CIBC's Security includes, among other things, a General Security Agreement, dated June 1, 2018, with Nilex Inc. and Nilex USA Inc., as Debtors, and CIBC, as Lender.
5. In addition, CIBC is party to a Subordination and Postponement Agreement, dated June 1, 2018, as made between CIBC, as Senior Party, Nilex Inc. and Nilex USA Inc., as Obligors, and PEF 2010 Nilex Investment Limited Partnership, as Subordinated Party, whereby the parties agreed that any and all existing and future security interests registered under the *Personal Property Security Act* (Alberta) shall be subordinate to the Security of CIBC.
6. CIBC was served with a Garnishee Summons, filed in this action on July 21, 2022 which listed Nilex Inc. as the debtor. CIBC filed its Certificate of Service on the Debtor and Reply to Garnishee Summons on August 9, 2022.
7. CIBC subsequently filed a letter on August 12, 2022 advising of its priority interest over any funds paid into Court in accordance with this Garnishee Summons, pursuant to s. 35(6) of the *Personal Property Security Act*.
8. On September 30, 2022 the Clerk of the Court prepared a Proposed Distribution List (the "**September 30 List**") relating to funds paid into Court pursuant to the Garnishee Summons. According to the September 30 List, all funds paid into Court will be distributed to Hugh Watt and Ian Wilson, both unsecured writ holders (the "**Writ Holders**"). CIBC was not included in the September 30 List.
9. On October 7, 2022 the Clerk of the Court prepared another Proposed Distribution List (the "**October 7 List**") relating to additional funds paid into Court pursuant to the Garnishee Summons. According to the October 7 List, all funds paid into Court will be distributed to the Writ Holders. CIBC was not included in the October 7 List.
10. Pursuant to s. 101(1)(b) of the *Civil Enforcement Act* (the "**CEA**"), CIBC filed its Notice of Objection to the September 30 List with the accounting department of the Court of King's Bench and advised of its position that it holds priority over the Writ Holders to the funds paid into Court.
11. Pursuant to s. 101(1)(b) of the *CEA*, CIBC filed its Notice of Objection to the October 7 List with the accounting department of the Court of King's Bench and once again advised of its position that it holds priority over the Writ Holders to the funds paid into Court.
12. Such further and other reasons as counsel may advise and as this Honourable Court may allow.



Material or evidence to be relied on:

13. Affidavit of Katie Hayes, to be filed.

Applicable rules:

14. Rule 6.3 of the *Alberta Rules of Court*.

Applicable Acts and regulations:

15. *Civil Enforcement Act*, RSA 2000, c C-15.

16. *Civil Enforcement Regulation*, Alta Reg 276/1995.

17. *Personal Property Security Act*, RSA 2000, c P-7.

18. *Personal Property Security Regulation*, Alta Reg 95/2001.

Any irregularity complained of or objection relied on:

19. None.

How the application is proposed to be heard or considered:

20. Before the presiding Applications Judge.

WARNING

If you do not come to Court either in person or by your lawyer, the Court may give the applicant(s) what they want in your absence. You will be bound by any order that the Court makes. If you want to take part in this application, you or your lawyer must attend in Court on the date and at the time shown at the beginning of the form. If you intend to give evidence in response to the application, you must reply by filing an affidavit or other evidence with the Court and serving a copy of that affidavit or other evidence on the applicant(s) a reasonable time before the application is to be heard or considered.

Schedule "A"

COURT FILE NUMBER 1903-07838
 COURT COURT OF KING'S BENCH OF ALBERTA
 JUDICIAL CENTRE EDMONTON
 PLAINTIFF HUGH WATT
 DEFENDANTS PEF 2010 NILEX INVESTMENT LIMITED
 PARTNERSHIP and NILEX INC.
 DOCUMENT **ORDER**



ADDRESS FOR SERVICE AND CONTACT INFORMATION OF PARTY FILING THIS DOCUMENT Norton Rose Fulbright Canada LLP
 400 3rd Avenue SW, Suite 3700
 Calgary, Alberta T2P 4H2 CANADA

Meghan Parker
 meghan.parker@nortonrosefulbright.com
 Tel: +1 613.780.1530
 Fax: +1 613.230.5459

Lawyers for Canadian Imperial Bank of Commerce, Garnishee
 File no.: 1001018108

DATE ON WHICH ORDER WAS PRONOUNCED: November 18, 2022.

NAME OF APPLICATIONS JUDGE WHO MADE THIS ORDER:

LOCATION OF HEARING: Edmonton, Alberta.

UPON THE APPLICATION of the Applicant/Garnishee, Canadian Imperial Bank of Commerce ("**CIBC**") in relation to the amounts held in Court (the "**Funds**"); AND UPON having heard representations of counsel for the Applicant and counsel for the Respondent; AND UPON proof of service of the within Application upon the Respondent; AND UPON having read the Affidavit of Katie Hayes, filed;

IT IS HEREBY ORDERED THAT:

Funds in Court

1. CIBC has priority over the funds which were paid into Court pursuant to the Garnishee Summons, filed July 21, 2022.
2. The Clerk of the Court shall release and distribute the funds in full to CIBC.

Future Funds

3. In the event that additional funds are paid into Court pursuant to the Garnishee Summons, filed July 21, 2022, CIBC shall have priority over such funds and they shall be distributed in full to CIBC until such time that the secured indebtedness owing to CIBC has been paid in full.
4. Costs of this application.

Applications Judge of the Court of Queen's
Bench of Alberta



Certificate of Commissioning by Videoconference

I, Luke Bendkowski, Commissioner of Oaths in and for Alberta, took the affidavit of Jeff Allen via videoconference on October 31, 2022 (the "**Affidavit**").

The affiant and I followed the process outlined by the Alberta Court of Queen's Bench in Notice to the Profession and Public #2020-02 dated March 25, 2020. In addition to the steps described in the Affidavit, I compared each page of the copy I received from the affiant with the initialed copy that was before me while I was linked by videoconference with the affiant. Upon being satisfied that the two copies were identical, I affixed my name to the jurat.

On March 17, 2020, the Government of Alberta declared a state of public health emergency pursuant to the Alberta *Public Health Act* in response to the COVID-19 pandemic. The Government of Alberta also strongly recommends that all individuals stay home and avoid contact with others whenever possible. Therefore, I am satisfied that this process was necessary because it was unsafe for the deponent and I to be physically present together.



Luke Bendkowski
Commissioner of Oaths in and for Alberta
Barrister & Solicitor

Clerk's Stamp

COURT/ESTATE FILE NUMBER 24-2878531

COURT COURT OF KING'S BENCH OF ALBERTA
 JUDICIAL CENTRE EDMONTON

IN THE MATTER OF THE NOTICE OF
 INTENTION TO MAKE A PROPOSAL
 UNDER SECTION 50.4(1) OF THE
BANKRUPTCY AND INSOLVENCY ACT,
 RSC 1985, c B-3, AS AMENDED

APPLICANT NILEX INC.
 DOCUMENT **AFFIDAVIT OF JEFF ALLEN**

ADDRESS FOR SERVICE AND
 CONTACT INFORMATION OF PARTY
 FILING THIS DOCUMENT

BLAKE, CASSELS & GRAYDON LLP
 3500, 855 – 2nd Street S.W.
 Calgary, Alberta T2P 4J8

Attention: Kelly Bourassa / James Reid
 Telephone: 403-260-9697 / 403-260-9731
 Facsimile: 403-260-9700
 E-mail: kelly.bourassa@blakes.com /
james.reid@blakes.com

File Ref.: 99580/8

AFFIDAVIT OF Jeff Allen
Sworn October 31, 2022

I, Jeff Allen, of the City of Edmonton, in the Province of Alberta, **MAKE OATH AND SWEAR THAT:**

INTRODUCTION

1. I am the Vice President, Finance of the Applicant, Nilex Inc. (the "**Company**" or the "**Applicant**"). In this capacity, I am responsible for overseeing the financial operations of the Company and its liquidity management. I have also been assisting in a sale process (the "**Sale Process**") (as discussed below) and preparing for the NOI Proceeding (each as defined herein).



- 2 -

2. I have personal knowledge of the matters in this Affidavit, except where I state that my knowledge is based on information and belief, in which case I believe my statements to be true.
3. In preparing this Affidavit, I have consulted with members of the Applicant's board of directors, senior management team, and financial and legal advisors.
4. On October 27, 2022, the Company filed a notice of intention to make a proposal (the "**NOI**") under section 50.4(1) of the *Bankruptcy and Insolvency Act* (Canada) (the "**BIA**"). The NOI was filed in consultation with the Company's professional advisors in order to try and restructure or sell the Company as a going concern for the benefit of its stakeholders and after identifying no viable alternative process due to the Company's insolvency (the "**NOI Proceeding**").
5. On October 27, 2022, KSV Restructuring Inc. ("**KSV**") was appointed as the proposal trustee of the Applicant (the "**Proposal Trustee**") in the NOI Proceeding. Attached as Exhibit "**A**" is a copy of the certificate of filing issued by the official receiver.
6. All references to monetary amounts in this Affidavit are in Canadian dollars, unless noted otherwise.

NATURE OF APPLICATION AND OVERVIEW OF RELIEF SOUGHT

7. This Affidavit is sworn in support of the Company's application returnable on November 9, 2022 (the "**Application**") before the Court of King's Bench of Alberta (the "**Court**") for an order, among other things:
 - (a) extending the time by which the Company may file a proposal to its creditors pursuant to section 50.4(9) the BIA for a 45-day period from the date following the current deadline to do so, such that the Company may file a proposal up to and including 11:59 pm (local Calgary time) on January 10, 2023 or such other date as this Honourable Court may order;
 - (b) granting an Administration Charge (as defined below) in the amount of \$350,000 as security for the payment of professional fees and disbursements incurred and to be incurred by counsel for the Company, the Proposal Trustee and the Proposal Trustee's counsel;

- 3 -

- (c) approving the Company's ability to continue to use the Central Cash Management system currently in place (as defined below) or any similar alternative cash management system, and granting the Lender Priority Charge (defined below) in the principal amount of \$20,000,000 plus interest, fees and expenses, in respect of the same;
 - (d) granting the D&O Charge (defined below) in the amount of \$925,000 as security for the Company's obligations to indemnify its directors and officers for obligations and liabilities they may be subject to in carrying out their duties in the NOI Proceedings;
 - (e) approving the key employee retention plan (the "**KERP**") as described in the First Report of the Proposal Trustee dated October 31, 2022 (the "**First Report**") and granting the KERP Charge (defined below) in the amount of \$800,000 in respect of the same;
 - (f) approving the Company's ongoing Sale Process, and authorizing and directing the Company to continue implementing and performing the Sale Process;
 - (g) directing the release to the Company of the Garnished Funds (defined below) held by the Court of King's Bench of Alberta in Court file number 1903-07838; and
 - (h) sealing confidential appendix "1" (the "**Confidential Appendix**") to the First Report.
- (collectively, the "**Relief Sought**").

BACKGROUND

Operations and Organization

- 8. Nilex Inc. is a private company incorporated pursuant to the *Business Corporations Act*, RSA 2000, c B-9.
- 9. The Company's registered office is located at 855-2 Street SW, Suite 3500, Calgary, Alberta. An Alberta Corporate Profile Report for the Company is attached as Exhibit "**B**".
- 10. Nilex USA Inc. ("**Nilex USA**") is a wholly owned subsidiary of the Company, incorporated in Colorado, United States. Nilex USA is a much smaller business than the Company and

is not subject to the NOI Proceeding. A Corporate Profile Report for Nilex USA is attached as Exhibit "C".

11. The Company has been operating in the geosynthetics industry providing civil environmental products and technologies since 1977. The Company provides environmental solutions that are used in road building, erosion and sediment control, water management and containment. The Company also offers conversion and fabrication options, customization of standards products to site, and project-specific requirements.
12. The Company holds exclusive rights to several premium brand suppliers and works closely with these suppliers for significant periods of time.
13. The Company leases and organizes its operations into seven branches spread out across four Canadian provinces. Nilex USA operates from two American states. The Company's workforce consists of approximately 70 full-time employees and 44 seasonal employees, which does not include Nilex USA.
14. The Company leases facilities in Calgary, Edmonton, Saskatoon, Surrey and Toronto. Nilex USA leases facilities in Salt Lake City and Denver.

Directors and Officers

15. The officers of the Company are as follows:

Name	Title
Trevor Derksen	President and CEO
Jeff Allen	Vice President, Finance

16. The directors of the Company are:

Name
Trevor Derksen
Graham Flater
David LeMay
Larry Maker

Financial Circumstances

17. The Company's revenues have exhibited a consistent seasonal pattern over time. Due to the nature of the Company's operations, winter is usually the slowest season, with revenues gradually increasing in the later months of spring and peaking in the summer months.

18. Factors outside of the Company's control have caused liquidity challenges for the Company. In particular, consistent winter cash flow deficits, rising storage costs, rising inventory costs, high operating expenses, increasing low cost competition, decreased customer capital spending due to the COVID-19 pandemic, and increased debt servicing costs have resulted in the Company facing serious liquidity challenges.
19. To combat its liquidity challenges, the Company is actively reducing slow-moving inventory to mitigate the effects of the Company's seasonality. The Company has also explored new opportunities to support operations in the winter months to help mitigate the effects of revenue seasonality but has not been in a position to implement any such opportunities.
20. From 2016 to 2019, the Company has reduced its operating expenses through numerous cost reduction initiatives. These have resulted in cost savings ranging from \$2,000,000 to \$4,000,000 annually for the Company. Notwithstanding these cost saving initiatives, the Company has continued to incur significant financial losses.

ASSETS

21. As of July 31, 2022, inventory was the Company's largest asset, followed by accounts receivable. Other long-term assets are made up of intangible assets, which include brand customer relationships, supplier relationships, proprietary technology and royalty contracts.
22. The Company's fixed assets represent approximately 2.8% of the Company's total assets. The Company's business model is capital light. The book value of the Company's assets as at August 31, 2022 is as set out in the chart below:

Description	Book Value (\$000s)
Accounts receivable	12,853
Inventory	10,863
Other assets	300
Fixed assets	851
Intercompany receivable – Nilex USA	5,201
Goodwill and intangible assets	3,393
Total	33,461

23. Further details in respect of the Company's assets and financial position are set out in the First Report.

LIABILITIES

The Credit Agreement

24. The Company and Nilex USA, as borrowers, and Canadian Imperial Bank of Commerce ("**CIBC**"), as lender, entered into a credit agreement dated June 1, 2018, whereby CIBC made available to the Company a revolving credit facility and term loan (as amended, collectively, the "**Credit Agreement**"). A copy of the Credit Agreement is attached as Exhibit "**D**".
25. The Company's primary account bank is CIBC. The Company manages a centralized cash management system wherein accounts receivable are paid into blocked accounts and applied to the CIBC loan facilities (the "**Cash Management System**"). The Company anticipates continuing to use the existing Cash Management System, including the existing bank accounts and arrangements in place with CIBC throughout the NOI Proceedings. This approach will minimize disruption to business operations as the Company seeks to restructure.
26. The Company's obligations under the Credit Agreement are secured pursuant to, among other things, a general security agreement among the Company, Nilex USA, and CIBC dated June 1, 2018 (the "**GSA**"). The GSA grants CIBC security over all present and after-acquired personal property of the Company. A copy of the GSA is attached as Exhibit "**E**".
27. CIBC has registered its security interests against the personal property of the Company in the Alberta personal property security registry. A copy of an Alberta personal property registry search on the Company from September 27, 2022, is attached as Exhibit "**F**".
28. As of October 17, 2022, the Company owes CIBC \$17,846,493.07 in principal and interest, plus costs and expenses pursuant to the Credit Agreement.

The Fulcrum Loan

29. In addition to the Credit Agreement, the Company and its predecessor, 1739349 Alberta Ltd., have granted certain subordinated promissory notes to PEF 2010 Nilex Investment Limited Partnership ("**Fulcrum**"), in the aggregate principal amount of \$28,183,150 (the "**Fulcrum Promissory Notes**"). A copy of a corporate search for 1739349 Alberta Ltd. is attached as Exhibit "**G**". Copies of the Fulcrum Promissory Notes are attached as Exhibits "**H**" and "**I**".

30. Predecessors to the Company by way of amalgamation have granted general security agreements in favour of Fulcrum giving Fulcrum security over all present and after-acquired personal property of the Company. Copies of those general security agreements granted to Fulcrum are attached as Exhibits "J", "K" and "L".
31. As of September 30, 2022, the amounts owing by Nilex to Fulcrum under the Fulcrum Promissory Notes was approximately \$44,981,769 plus interest and costs which continue to accrue.
32. The Company, Nilex USA, CIBC, and Fulcrum have entered into a subordination and postponement agreement dated June 1, 2018 (the "**Subordination Agreement**"), whereby, among other things, Fulcrum has agreed to subordinate the priority of its secured indebtedness owing to it by the Company and Nilex USA to the indebtedness owing to CIBC by the Company and Nilex USA. A copy of the Subordination Agreement is attached as Exhibit "M".

Other Secured Interests

33. As of September 27, 2022, the Company has 20 registrations against it at the Alberta personal property registry by 7 parties.
34. Other than the CIBC and Fulcrum registrations, these other registrations primarily relate to serial numbered goods used by the Company, with the exceptions of the writs registered in respect of the Watt Action and Wilson Action (each defined and discussed below).

EVENTS LEADING TO THE FILING OF THE NOI

The CIBC Demand and Forbearance Agreement

35. On September 15, 2022, CIBC served the Company with a demand for payment (the "**Demand Letter**") and a notice of intention to enforce its security pursuant to section 244 of the BIA (the "**Enforcement Notice**"). Copies of the Demand Letter and Enforcement Notice are collectively attached hereto as Exhibit "N".
36. The Demand Letter provided notice that the Company had engaged in various events of default under the Credit Agreement (the "**Events of Default**"). The Events of Default include, but are not limited to, certain financial covenant breaches and judgments issued by the Court in respect of the Watt Action and the Wilson Action.

37. The Demand Letter required that the Company pay all amounts due and owing to CIBC pursuant to the Credit Agreement.
38. The Company is unable to satisfy the obligations owing to CIBC pursuant to the Credit Agreement as required by the Demand Letter.
39. On October 17, 2022, CIBC and the Company entered into a forbearance agreement (the "**Forbearance Agreement**"). A copy of the Forbearance Agreement is attached as Exhibit "**O**".
40. Pursuant to the Forbearance Agreement, CIBC has agreed, subject to the terms and conditions of the Forbearance Agreement, to allow the Company to continue to access the credit facilities under the Credit Agreement and to continue to use the Cash Management System to meet its working capital requirements while the Company carries out the Sale Process and the NOI Proceeding. CIBC has also agreed to temporarily forbear from enforcing on its rights, including pursuant to the Demand Letter and Enforcement Notice.

Civil Enforcement Steps Taken Against the Company

41. The Company is a judgment debtor in certain civil actions, including in Court File Nos. 1903-07838 (the "**Watt Action**") and 2203-04447 (the "**Wilson Action**").
42. The judgment creditor in the Watt Action has taken certain steps to enforce on his judgment by issuing garnishee summons to CIBC and to certain customers of the Company to garnish accounts receivable owing to the Company.
43. As a result of these enforcement steps, the Court is holding certain funds and may have additional funds paid into Court (the "**Garnished Funds**") which belong to the Company and are subject to the CIBC security.
44. On August 11, 2022, counsel to CIBC wrote to the Court advising of CIBC's priority secured claim over the Garnished Funds. A copy the August 11, 2022, letter is attached as Exhibit "**P**".
45. On September 30, 2022, October 7, 2022 and October 21, 2022 the Clerk of the Court sent out notices of proposed distributions of certain of the Garnished Funds, advising that the Court intended to make such distributions to, among others, the judgment creditors in



the Watt Action and Wilson Action. Copies of the Court's distribution notices are attached as Exhibits "Q", "R" and "S".

46. On October 13, 2022, and October 18, 2022, counsel to CIBC provided the Court with notices of objection to the proposed distributions of the Garnished Funds pursuant to section 101(1)(d) of the *Civil Enforcement Act*, RSA 2000, c C-15. The grounds for the notices of objection were on account of the Garnished Funds being subject to CIBC's priority security interest (the "**CIBC Objections**"). Copies of the notices of objection are attached as Exhibits "T" and "U".
47. On October 26, 2022, CIBC filed an application in the Watt Action returnable November 18, 2022, in respect of the CIBC Objections. A copy of the application is attached as Exhibit "V".

The Sale Process

48. On October 11, 2021, the Company retained Valitas Capital Partners ("**Valitas**") to conduct the Sale Process. On December 20, 2021, the Company retained KSV Advisory Inc. ("**KSV Advisory**") to provide financial advisory services, including consulting with the Company's investment banker, Valitas, to oversee a going-concern Sale Process. The Sale Process was commenced by the Company in January 2022.
49. The Sale Process is designed be flexible, such that any proposed transaction structure will be considered, whether it be for shares, or assets of the Company, or any combination of these transactions.
50. Interested parties were initially requested to submit non-binding letters of intent in March 2022; however, none of the offers received by that deadline were acceptable to the Company.
51. Based on the Company's expectation of improved financial results in the spring and summer of 2022, Valitas re-engaged interested parties in respect of the Sale Process.
52. The Sale Process has since resulted in several letters of intent from potential purchasers or investors in the Company. It is clear from the letters of intent that any transaction with the Company will need to be completed through a Court process.



53. As a result, the Company, with the assistance of the Proposal Trustee and Valitas, seeks to complete the Sale Process in these proceedings, and to later return to this Court for approval of a transaction or transactions pursuant to the Sale Process. Key milestones in the Sale Process are set out below:

Milestone	Date
Selection of Successful Bidder/Bid Deadline	November 8, 2022
Execution of Asset Purchase Agreement	November 15, 2022
Court Application to Approve Sale	November 25, 2022
Closing	November 30, 2022

The Company's Insolvency and the NOI Proceeding

54. While the Company has significant business operations and assets, a combination of factors outside of the Company's control have caused liquidity challenges. As a result, the Company is in default in respect of certain loans, including the Credit Agreement, and the Company is generally unable to meet its obligations as they come due.
55. Although the Company is currently in a challenging financial position, it continues to benefit from a strong market reputation, an excellent track record of performance on large-scale projects across Canada, and a valuable project portfolio.
56. Given a reasonable period of time to reorganize its financial affairs and continue with the Sale Process with the protections afforded by the BIA, the Company's management is optimistic that the overall value of the Company's business will likely be enhanced to the benefit of all of its stakeholders.
57. The Company is of the view that preserving the going concern value of the Company's business through the NOI Proceeding will likely achieve a better long-term result for the Company's stakeholders as compared to a forced liquidation of the Company's assets.

RELIEF REQUESTED

Extension of Time to File a Proposal

58. An extension of the time for the Company to file a proposal is a material component of the NOI Proceeding to allow the Company to restructure its affairs, including completing the Sale Process.
59. Since filing the NOI, the Company has been diligently complying with various requirements under the BIA including:
- (a) preparing and analyzing the list of creditors;
 - (b) providing the Proposal Trustee with access to the Company's senior employees and books and records;
 - (c) completing a cash flow forecast to the week ending January 13, 2023; and
 - (d) working with the Proposal Trustee and Valitas to review and analyse the letters of intent submitted in the Sale Process and to otherwise advance the Sale Process.
60. The Company is working in good faith in pursuing the Sale Process to maximize value for the Company's creditors and other stakeholders.
61. I understand that in order to continue to work toward the formulation and filing of a proposal, the Company requires an extension of the time period within which it may file a proposal to its creditors. In this regard:
- (a) the Company has acted and is acting in good faith and with due diligence both in the period prior to and since the filing of the NOI; and
 - (b) an extension will enhance the Company's ability to make a viable proposal following the completion of the Sale Process.

Administration Charge

62. The Company requests that this Honourable Court grant a charge in favour of the Proposal Trustee, counsel to the Proposal Trustee, and counsel to the Company (collectively, the "**Administrative Professionals**") to secure payment of their reasonable fees and disbursements, in each case, incurred by the Company at their standard rates and charges as part of the costs of these proceedings.



63. I understand that given the insolvency of the Company, providing such professionals with security for payment of their services will be necessary to effect the completion of the Sale Process and the restructuring of the Company as a going concern.
64. Accordingly, the Company seeks to ensure that the Administrative Professionals are entitled to the benefit of and granted a charge (the "**Administration Charge**") on all of the Company's present and future assets, undertakings and property of every nature and kind whatsoever and wherever situate, including all proceeds thereof (collectively, the "**Property**"), which charge shall not exceed an aggregate amount of \$350,000, as security for payment of their respective professional fees and disbursements incurred in respect of the NOI Proceeding.
65. The Company requests that the Administration Charge form a first priority charge on the Property in priority to all security interests, trusts, deemed trusts, liens, charges and encumbrances, claims of secured creditors statutory or otherwise, in favour of any Person (collectively the "**Encumbrances**").
66. The Company has sought and obtained guidance from the Proposal Trustee on the proposed amount of the Administration Charge and the Proposal Trustee has indicated it is supportive.

Cash Management System and Lender Priority Charge

67. As described above, CIBC has agreed to allow the Company to use the Cash Management System to continue to fund its ongoing operations without the need for the Company to obtain other interim financing.
68. The Company seeks approval from the Court to continue to utilize the Cash Management System.
69. In addition, the Company is seeking a charge on the Property in favour of CIBC, which charge shall not exceed an aggregate principal amount of \$20,000,000, as security for any advances made under the Credit Agreement, plus interest, fees and expenses, from and after the commencement of the NOI Proceeding (the "**Lender Priority Charge**").
70. CIBC has indicated that, absent the approval of the Lender Priority Charge and confirmation that it will be an unaffected creditor in the NOI Proceeding and unaffected by any stay of proceedings that may be granted, it is not willing to permit the Company

continued advances under the Credit Agreement and access to the Cash Management System for its liquidity needs.

71. The Company requests that the Lender Priority Charge form a second ranking charge on the Property in priority to all Encumbrances except the Administration Charge.
72. The Company has sought and obtained guidance from the Proposal Trustee on the proposed amount of the Lender Priority Charge and the Proposal Trustee is supportive.

D&O Charge

73. The Company is seeking a charge on the Property in favour of the Company's directors and officers, which charge shall not exceed an aggregate amount of \$925,000 (the "**D&O Charge**").
74. The D&O Charge is required to ensure that the directors and officers of the Company will continue to serve in such capacity and have assurance that they will have indemnification for liabilities which they may incur in the fulfillment of their duties in these NOI proceedings. The directors and officers have significant knowledge of the restructuring efforts of the Company that cannot be easily replicated or replaced.
75. The directors and officers have the benefit of insurance policies (the "**D&O Policies**") in respect of their potential liability. Although, the D&O Policies insure the directors and officers for certain claims that may arise against them in their capacity as directors and/or officers of the Company, coverage is subject to several exclusions and limitations and there is a potential for insufficient coverage in respect of potential director and officer liabilities. The directors and officers have expressed their desire for certainty with respect to potential personal liability if they continue in their current capacities in the context of the NOI Proceeding.
76. The D&O Charge would only be in respect of amounts not covered by the Company's directors and officers insurance policy.
77. The Company requests that the D&O Charge form a third ranking charge on the Property in priority to all Encumbrances except the Administration Charge and Lender Priority Charge.



78. The Company has sought and obtained guidance from the Proposal Trustee on the proposed amount of the D&O Charge and I believe the Proposal Trustee is supportive.

KERP and KERP Charge

79. The Company is also seeking approval of a key employee retention plan ("**KERP**") for certain of the Company's key employees. The KERP is described in the First Report and Confidential Appendix.
80. The Company believes the terms of the KERP, which have been developed in consultation with KSV Advisory, are reasonable and critical to ensuring that certain of the Company's key employees continue in their employment with the Company and to incentivize executives as they continue with the Sale Process and a restructuring in the NOI Proceeding.
81. The Company is seeking a charge over Property in an amount not to exceed \$800,000 for the Company's obligations pursuant to the KERP (the "**KERP Charge**").
82. The Company requests that the KERP Charge form a fourth ranking charge on the Property in priority to all Encumbrances except the Administration Charge, Interim Lender Charge, and the D&O Charge.

The Sale Process

83. As noted above, the Company, with the assistance of Valitas and under the oversight of KSV Advisory (as more fully described in the First Report), has been carrying out the Sale Process since January 2022.
84. The Sale Process has since resulted in several letters of intent from potential purchasers or investors in the Company.
85. The Company, with the assistance of of the Proposal Trustee and Valitas, seeks to complete the Sale Process in these proceedings, and to later return to this Court for approval of a transaction or transactions pursuant to the Sale Process.

Funds Paid Out of Court

86. As noted above, the Court is holding the Garnished Funds pursuant to civil enforcement remedies in the Watt Action.

87. The Garnished Funds are subject to the security granted in favour of CIBC and Fulcrum, in priority to the judgment creditors in the Watt Action and Wilson Action.
88. The Company is seeking a direction that the Clerk of the Court distribute any present or future Garnished Funds to it to be applied in accordance with the provisions of the Credit Agreement and the Cash Management System.
89. This will reduce the amounts outstanding to CIBC as first priority secured creditor and in turn will reduce the overall interest charges payable by the Company to CIBC for the benefit of all stakeholders.
90. The Company is also seeking a direction in respect of any person who has received a garnishee summons directing them to pay funds to the Clerk of the Court to pay any such funds directly to the Company to be applied in accordance with the provisions of the Credit Agreement and the Cash Management System.
91. CIBC has scheduled its application filed in the Watt Action for a date later than the return date of this Application.
92. CIBC and Fulcrum have agreed to support the distribution of the Garnished Funds to the Company to be applied as set out above.

Conclusion

93. I swear this Affidavit in support of the Application and for any other proper purpose in connection with the NOI Proceeding.

SWORN BEFORE ME on the ____ day of
October, 2022 at the City of _____,
Alberta.

A Commissioner for Oaths in and for
Alberta

Jeff Allen



This is Exhibit "A" referred to in the Affidavit of Jeff Allen sworn before me this 31st day of October, 2022.

A Commissioner for Oaths in and for Alberta





Industry Canada
Office of the Superintendent
of Bankruptcy Canada

Industrie Canada
Bureau du surintendant
des faillites Canada

District of Alberta
Division No. 01 - Edmonton
Court No. 24-2878531
Estate No. 24-2878531

In the Matter of the Notice of Intention to make a proposal of:

Nilex Inc.

Insolvent Person

KSV RESTRUCTURING INC.

Licensed Insolvency Trustee

Date of the Notice of Intention:

October 27, 2022

CERTIFICATE OF FILING OF A NOTICE OF INTENTION TO MAKE A PROPOSAL
Subsection 50.4 (1)

I, the undersigned, Official Receiver in and for this bankruptcy district, do hereby certify that the aforementioned insolvent person filed a Notice of Intention to Make a Proposal under subsection 50.4 (1) of the Bankruptcy and Insolvency Act;

Pursuant to subsection 69. (1) of the Act, all proceedings against the aforementioned insolvent person are stayed as of the date of filing of the Notice of Intention.

Date: October 27, 2022, 10:45

E-File/Dépôt Electronique

Official Receiver

Canada Place Building, 9700 Jasper Avenue NW, Suite 725, Edmonton, Alberta, Canada, T5J4C3, (877)376-9902

Canada

- 17 -

This is Exhibit "B" referred to in the Affidavit of Jeff Allen sworn before me this 31st day of October, 2022.

A Commissioner for Oaths in and for Alberta

A handwritten signature in cursive script, appearing to be the initials 'AB', located in the bottom right corner of the page.

Government Corporation/Non-Profit Search of Alberta ■ Corporate Registration System

Date of Search: 2022/09/27
 Time of Search: 12:48 PM
 Search provided by: BLAKE CASSELS & GRAYDON LLP
 Service Request Number: 38356334
 Customer Reference Number: 99580/8 JMRD

Corporate Access Number: 2019907027
Business Number: 103886032
Legal Entity Name: NILEX INC.

Legal Entity Status: Active
Alberta Corporation Type: Named Alberta Corporation
Method of Registration: Amalgamation
Registration Date: 2016/09/01 YYYY/MM/DD

Registered Office:

Street: 855 - 2 STREET SW, SUITE 3500
City: CALGARY
Province: ALBERTA
Postal Code: T2P4J8

Records Address:

Street: 855 - 2 STREET SW, SUITE 3500
City: CALGARY
Province: ALBERTA
Postal Code: T2P4J8

Email Address: ANNUALRETURNS@BLAKES.COM

Primary Agent for Service:

Last Name	First Name	Middle Name	Firm Name	Street	City	Province	Postal Code	Email
MCLEOD	DANIEL	J.	BLAKE, CASSELS & GRAYDON	855 - 2 STREET SW, SUITE	CALGARY	ALBERTA	T2P4J8	AGENTFORSE

			LLP	3500			
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Directors:

Last Name: DERKSEN
First Name: TREVOR
Street/Box Number: 91 CORMACK CRESCENT NW
City: EDMONTON
Province: ALBERTA
Postal Code: T6R2E5

Last Name: FLATER
First Name: GRAHAM
Street/Box Number: 885 WEST GEORGIA STREET, SUITE 1020
City: VANCOUVER
Province: BRITISH COLUMBIA
Postal Code: V6C3E8

Last Name: LEMAY
First Name: DAVID
Street/Box Number: 7 TIMBERLINE GATE SW
City: CALGARY
Province: ALBERTA
Postal Code: T3H0W3

Last Name: MAKER
First Name: LAWRENCE
Street/Box Number: 72 LAURELEAF ROAD
City: THORNHILL
Province: ONTARIO
Postal Code: L3T2T1

Voting Shareholders:

Last Name: LEMAY
First Name: DAVID
Street: 7 TIMBERLINE GATE SW
City: CALGARY
Province: ALBERTA
Postal Code: T3H0W3
Percent Of Voting Shares: .62

Last Name: PEF 2010 NILEX INVESTMENT LIMITED PARTNERSHIP
Street: 925 WEST GEORGIA STREET, SUITE 1600
City: VANCOUVER
Province: BRITISH COLUMBIA
Postal Code: V6C3L2
Percent Of Voting Shares: 93.48

Last Name: SEKHON
First Name: GURCHATE
Street: 7383 - 147A STREET
City: SURREY
Province: BRITISH COLUMBIA
Postal Code: V3S9L7
Percent Of Voting Shares: 5.9

Details From Current Articles:

The information in this legal entity table supersedes equivalent electronic attachments

Share Structure: SEE ATTACHED SCHEDULE "A"
Share Transfers Restrictions: SEE ATTACHED SCHEDULE "B"
Min Number Of Directors: 1
Max Number Of Directors: 15
Business Restricted To: NONE
Business Restricted From: NONE
Other Provisions: SEE ATTACHED SCHEDULE "C"

Associated Registrations under the Partnership Act:

Trade Partner Name	Registration Number
NILEX CIVIL ENVIRONMENTAL GROUP	TN20013116

Other Information:

Amalgamation Predecessors:

Corporate Access Number	Legal Entity Name
206832966	NILEX CONSTRUCTION INC.



2017455896	NILEX INC.
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Last Annual Return Filed:

File Year	Date Filed (YYYY/MM/DD)
2022	2022/09/22

Filing History:

List Date (YYYY/MM/DD)	Type of Filing
2016/09/01	Amalgamate Alberta Corporation
2020/02/22	Update BN
2020/03/05	Change Address
2021/06/25	Change Director / Shareholder
2021/11/29	Change Agent for Service
2022/09/22	Enter Annual Returns for Alberta and Extra-Provincial Corp.

Attachments:

Attachment Type	Microfilm Bar Code	Date Recorded (YYYY/MM/DD)
Share Structure	ELECTRONIC	2016/09/01
Restrictions on Share Transfers	ELECTRONIC	2016/09/01
Other Rules or Provisions	ELECTRONIC	2016/09/01
Statutory Declaration	10000007114945504	2016/09/01

The Registrar of Corporations certifies that, as of the date of this search, the above information is an accurate reproduction of data contained in the official public records of Corporate Registry.



SCHEDULE "A"

ARTICLES OF AMALGAMATION

OF NILEX INC.

(the "Corporation")

1. AUTHORIZED CAPITAL

The Corporation is authorized to issue:

(a) an unlimited number of Class A Common Shares;

(b) an unlimited number of Class B Common Shares;

(with the shares in (a) and (b) above being the "Common Shares")

(c) an unlimited number of Class A Preferred Shares;

(d) an unlimited number of Class B Preferred Shares; and

(e) an unlimited number of Class C Preferred Shares

(with the shares in (c), (d) and (e) above being the "Preferred Shares")

all of which shares shall have the following rights, restrictions, privileges and conditions, and all such rights, restrictions, privileges and conditions attaching to the shares of any class shall be subject to the rights, restrictions, privileges and conditions attaching to any other class of shares now existing or hereafter created or amended.

2. COMMON SHARE RIGHTS AND RESTRICTIONS

The Common Shares shall have the following rights, restrictions, privileges and conditions attached thereto:

2.1 Voting

The holders of the Common Shares shall be entitled to notice of and to attend at meetings of the shareholders of the Corporation (the "Shareholders"), and shall be entitled to one (1) vote in respect of each such share so held and the holder shall also be entitled to consent to and sign a resolution in writing to be signed by the Shareholders of the Corporation.

2.2 Dividends

(a) Subject to the rights of the holders of the Preferred Shares to receive dividends, the holders of the Common Shares shall be entitled to receive, equally on a share for share basis among all issued and outstanding Common Shares, a dividend when, as, and if declared by the directors of the Corporation (the "Directors").

(b) Notwithstanding anything to the contrary herein contained, no dividends or other payment or distribution of assets or property of the Corporation shall be made to the holders, as

such, of shares of the Corporation, if (i) prohibited by the Business Corporations Act (Alberta) (the "Act") or other applicable law, or (ii) the payment thereof would result in the fair market value of the Corporation's assets, net of liabilities owed by the Corporation and the stated capital of all the classes of shares of the Corporation (except the stated capital of the Preferred Shares) being less than the aggregate of the Redemption Price of all of the classes of Preferred Shares then outstanding and all unpaid dividends, whether declared or not, accrued thereon.

2.3 Dissolution

In the event of a liquidation, dissolution, or winding up of the Corporation or other distribution of assets of the Corporation among its shareholders for the purposes of winding-up its affairs, the holders of Common Shares, subject to the prior rights of the holders of the Preferred Shares, shall be entitled to share, equally on a share for share basis, in the distribution of any remaining property or assets of the Corporation.

2.4 Amendment

(a) The special rights and restrictions attached to the Class A Common Shares shall not be modified, abrogated or amended unless consented to by the holders of the Class A Common Shares in a separate resolution, with such consent to be obtained by (i) a resolution in writing signed by holders of all the issued and outstanding Class A Common Shares or (ii) a resolution passed by at least 75 percent of the votes cast at a separate meeting of the holders of the Class A Common Shares who are present in person or represented by proxy.

(b) The special rights and restrictions attached to the Class B Common Shares shall not be modified, abrogated or amended unless consented to by the holders of the Class B Common Shares in a separate resolution, with such consent to be obtained by (i) a resolution in writing signed by holders of all the issued and outstanding Class B Common Shares or (ii) a resolution passed by at least 80 percent of the votes cast at a separate meeting of the holders of the Class B Common Shares who are present in person or represented by proxy.

3. PREFERRED SHARE RIGHTS AND RESTRICTIONS

The Preferred Shares shall have the following rights, restrictions, privileges and conditions attached thereto:

3.1 Voting

Except as provided in the Act as amended from time to time, the holders of the Preferred Shares shall not, as such, be entitled to vote at, nor to receive notice of or attend Shareholders meetings nor shall the holders be entitled to consent to or sign a resolution in writing to be signed by the shareholders of the Corporation.

3.2 Dividends

(a) The holders of the Preferred Shares shall be entitled to receive as and when declared by the Directors out of funds or assets of the Corporation properly available for the payment of dividends, in preference and priority to any dividends being declared and paid on any other classes of shares in the Corporation, a cumulative, non-compounding dividend at a rate of 15.830 percent per annum on the Redemption Price of each such share. Dividends on the Preferred Shares shall be deemed to accrue on a daily basis, whether or not declared, from and including the date of issuance of each such share until such dividends are declared and paid in full.

(b) Any dividends declared and paid on any Preferred Shares must be declared and paid proportionately on the Class A Preferred Shares, the Class B Preferred Shares and the Class C Preferred Shares based on the aggregate accrued and unpaid dividends attributable to each such Class A Preferred Share, Class B Preferred Share or Class C Preferred Share as compared to the aggregate accrued and unpaid dividends attributable to all of the Preferred Shares at the time of such declaration.

(c) The Directors shall be entitled to declare part of such cumulative dividends at anytime and from time to time notwithstanding that such cumulative dividend may not be declared in full. The holders of the Preferred Shares shall not, as such, be entitled to receive any dividends other than or in excess of the dividends herein provided.

(d) No dividends shall be declared and paid at any time on any other class of shares in any fiscal year of the Corporation unless and until all unpaid dividends, whether declared or not, that have accrued to the holders of the Preferred Shares have been declared and paid.

3.3 Dissolution

In the event of a liquidation, dissolution, or winding up of the Corporation or other distribution of assets of the Corporation among its shareholders for the purposes of winding-up its affairs:

(a) the holders of the Class A Preferred Shares shall be entitled to receive an aggregate amount of CDN\$1.00 distributed pro rata among the holders of the Class A Preferred Shares (or as nearly thereto as the Directors may in good faith determine) before any amount shall be paid or any property or assets of the Corporation distributed to the holders of any other class of shares;

(b) the holders of the Class B Preferred Shares shall be entitled to receive an aggregate amount of CDN\$1.00 distributed pro rata among the holders of the Class B Preferred Shares (or as nearly thereto as the Directors may in good faith determine) before any amount shall be paid or any property or assets of the Corporation distributed to the holders of any other class of shares, other than the payment to the holders of the Class A Preferred Shares as provided in subsection (a) above;

(c) the holders of the Class C Preferred Shares shall be entitled to receive an aggregate amount of CDN\$1.00 distributed

pro rata among the holders of the Class C Preferred Shares (or as nearly thereto as the Directors may in good faith determine) before any amount shall be paid or any property or assets of the Corporation distributed to the holders of any other class of shares, other than the payments to the holders of the Class A Preferred Shares and the Class B Preferred Shares as provided in subsection (a) and (b) above.

(d) subject to the prior rights of the holders of the Preferred Shares to receive distributions pursuant to subsections (a), (b) and (c) above, the holders of the Preferred Shares shall be entitled to receive, before any amount is paid or any property or assets of the Corporation is distributed to the holders of any other class of shares of the Corporation:

(i) firstly, an amount equal to the Redemption Price of each share; and

(ii) secondly, an amount equal to all unpaid dividends, whether declared or not, which shall have accrued thereon.

If the amount of remaining property or assets of the Corporation is less than the aggregate of the Redemption Price of all issued Preferred Shares, then the remaining property or assets of the Corporation shall be distributed to the holders of those shares equally on a share for share basis. If the amount of remaining property or assets of the Corporation is greater than the aggregate of the Redemption Price of all issued Preferred Shares but less than the amount required to satisfy all unpaid dividends, whether declared or not, which have accrued thereon, then the amount of the Corporation's remaining property or assets in excess of the aggregate Redemption Price of those shares shall be distributed to the holders of those shares proportionately, based on the amount of unpaid dividends, whether declared or not, accrued on the shares held by each particular holder as compared to the aggregate of all unpaid dividends, whether declared or not, which shall have accrued on all the issued Preferred Shares. For greater certainty, upon payment of the Redemption Price in respect of all issued Preferred Shares and all unpaid dividends, whether declared or not, which have accrued thereon, the holders of the Preferred Shares shall not, as such, have any other right to participate or share in the remaining property of the Corporation whether in a liquidation, dissolution, winding up or a reduction, redemption, or purchase by the Corporation of its shares.

3.4 Redemption of Preferred Shares

(a) The redemption price for each Preferred Share shall be the sum of CDN\$1.00 (the "Redemption Price").

(b) Subject to the provisions of the Act, the Corporation may, by resolution of the Directors and upon giving notice as hereinafter provided, from time to time redeem or purchase the whole or any part of any of the Preferred Shares of any one or more holders, without redeeming or purchasing the whole or any part of the Preferred Shares of any other holder or holders of the same or any other class, by paying for each share to be redeemed or purchased the Redemption Price thereof, together with all unpaid dividends, whether declared or not, accrued

thereon. Not less than ten (10) clear days' notice in writing, signed by any Director or officer of the Corporation, of such redemption or purchase (each a "Redemption Notice") shall be given by personal delivery or by mailing such notice to the registered holder(s) of the shares to be redeemed at the last address as they appear in the records of the Corporation or its transfer agent, provided that accidental failure to give a Redemption Notice to one or more of such holders shall not affect the validity of such redemption. In the case of each Redemption Notice so delivered or mailed, delivery thereof shall be deemed to have been received on the day of delivery if delivered and on the fifth business day following the day of mailing if mailed.

(c) The Redemption Notice shall specify the number of Preferred Shares to be redeemed, the aggregate Redemption Price and the amount of all unpaid dividends, whether declared or not, accrued on each share to be redeemed and the date and place of redemption or purchase which may be a Canadian Chartered Bank or a trust company. On or after the date so specified in the Redemption Notice, the Corporation shall pay to the order of each holder of the Preferred Shares to be redeemed, by way of certified cheque, bank draft or wire transfer or direct deposit of immediately available funds at the place of redemption or to an account specified by each holder of shares to be redeemed on or before the date fixed for redemption or purchase, an amount sufficient to redeem or purchase such shares thereof on presentation and surrender of the certificate or certificates representing such shares to be redeemed and such shares shall thereupon, without any further action on the part of the Corporation or the holder of such shares, be redeemed. Surrender of the certificate or certificates for such shares to be redeemed or purchased is sufficient only if such certificate or certificates are duly and properly endorsed in blank for transfer or accompanied by a form of transfer acceptable to the Corporation and duly executed in blank.

(d) If share certificates representing any or all of the Preferred Shares to be redeemed have not been surrendered to the Corporation as required in the foregoing provisions on or before the time specified in the Redemption Notice for doing so, the Corporation may, at its option, at any time on or after such time, deposit the amount required to redeem or purchase such shares to a special account with any chartered bank or any trust company in Canada, with such amount to be paid without interest to or to the order of the holders of the Preferred Shares for which such deposit is being made, and such holders' rights shall be limited to receiving without interest their proportionate part of the total amount required to redeem such shares so deposited against presentation and surrender of the said certificates held by them respectively. Any interest accrued on such amounts shall belong to the Corporation.

(e) From and after the date specified in any Redemption Notice, the holders of the Preferred Shares to be redeemed shall not be entitled to exercise any of the rights of shareholders in respect thereof unless payment of the amount required to redeem the shares has not been made upon presentation of the certificates in accordance with the foregoing provisions, in which case the rights of the holders shall remain unaffected.

Unless otherwise determined by the Directors, all Preferred Shares redeemed by the Corporation in accordance with the provisions hereof shall be cancelled and returned to the status of authorized but unissued shares in the capital of the Corporation.

3.5 Liquidity

Notwithstanding anything to the contrary herein contained, no dividends, redemptions, share purchases, capital reductions or other payments or distributions of assets or property of the Corporation shall be made or paid on or with respect to shares of the Corporation which rank subordinate to any of the Preferred Shares on a liquidation, dissolution or winding up, if the payment in respect thereof would result in the fair market value of the Corporation's assets, net of liabilities owed by the Corporation, being less than the aggregate of the Redemption Price for all of the then outstanding Preferred Shares and all unpaid dividends, whether declared or not, accrued thereon, and the Redemption Price or amount payable on redemption or purchase for all other shares then outstanding which rank equal to or in priority to the Preferred Shares on a liquidation, dissolution or winding up, or would otherwise be a breach of the Act.

3.6 Specified Amount

For the purposes of subsection 191(4) of the Income Tax Act (Canada), the specified amount for each Preferred Share shall be equal to CDN\$1.00.



SCHEDULE "B"

ARTICLES OF AMALGAMATION

OF NILEX INC. (the "Corporation")

Restrictions on Share Transfers

The right to transfer shares of the Corporation is restricted in that no shareholder shall be entitled to transfer any share or shares in the capital of the Corporation unless the transfer has been approved by the directors of the Corporation, such approval to be signified by a resolution of the Board of Directors of the Corporation.



SCHEDULE "C"

ARTICLES OF AMALGAMATION

OF NILEX INC.

(the "Corporation")

Other Rules or Provisions)

1. The number of shareholders of the Corporation, exclusive of persons who are in its employment and are shareholders of the Corporation and exclusive of persons who, having been formerly in the employment of the Corporation, were, while in that employment, shareholders of the Corporation, and have continued to be shareholders of the Corporation after termination of that employment, is limited to not more than fifty persons, two or more persons who are the joint registered owners of one or more shares being counted as one shareholder.

2. Any invitation to the public to subscribe for securities of the Corporation is prohibited.

3. The Corporation has a lien on the shares of a shareholder or his legal representative for a debt of that shareholder to the Corporation, provided that such lien shall be released in respect of shares transferred by such shareholder (or his legal representative) as permitted pursuant to the terms of these Articles or any unanimous shareholders agreement in respect of the Corporation.

4. The directors may, between annual general meetings, appoint one or more additional directors of the Corporation to serve until the next annual meeting, but the number of additional directors shall not at any time exceed one-third of the number of directors who held office at the expiration of the last annual meeting of the Corporation.

- 18 -

This is Exhibit "C" referred to in the Affidavit of Jeff Allen sworn before me this 31st day of October, 2022.

A Commissioner for Oaths in and for Alberta

A handwritten signature in cursive script, appearing to be the initials 'AB', located in the bottom right corner of the page.



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FAQs, Glossary and Information

Summary

Details			
Name	Nilex USA Inc.		
Status	Good Standing	Formation date	03/28/2013
ID number	20131201335	Form	Corporation
Periodic report month	March	Jurisdiction	Colorado
Principal office street address	15354 E Hinsdale Circle, Centennial, CO 80112, United States		
Principal office mailing address	15354 E Hinsdale Circle, Centennial, CO 80112, United States		

Registered Agent	
Name	Jeff Allen
Street address	15354 E Hinsdale Circle, Centennial, CO 80112, United States
Mailing address	15354 E Hinsdale Circle, Centennial, CO 80112, United States

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This is Exhibit "D" referred to in the Affidavit of Jeff Allen sworn before me this 31st day of October, 2022.

A Commissioner for Oaths in and for Alberta

A handwritten signature in cursive script, appearing to be the initials 'LB', located in the bottom right corner of the page.

CREDIT AGREEMENT

dated as of

June 1, 2018

among

NILEX INC. and NILEX USA INC.

as Borrowers

and

THE GUARANTORS FROM TIME TO TIME PARTY HERETO

and

CANADIAN IMPERIAL BANK OF COMMERCE

as Lender



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CREDIT AGREEMENT

THIS CREDIT AGREEMENT is dated as of June 1, 2018 and is entered into among Nilex Inc. and Nilex USA Inc., as borrowers (each, a "**Borrower**" and collectively, the "**Borrowers**"), and Canadian Imperial Bank of Commerce, as Lender.

RECITALS

- A. The Lender has agreed to provide certain credit facilities to the Borrowers.
- B. The Guarantors have agreed to guarantee the obligations of the Borrowers in connection herewith.

NOW THEREFORE, in consideration of the mutual conditions and agreements set forth in this Agreement and for good and valuable consideration, the receipt of which is hereby acknowledged, the parties hereto agree as follows:

ARTICLE 1 DEFINITIONS

1.1 Defined Terms.

As used in this Agreement, the following terms have the meanings specified below:

"Acceptable Bailee Letter" means, in respect of each bailee, a bailee letter, substantially in the form of Exhibit D or otherwise satisfactory to the Lender in its reasonable discretion, executed by the relevant bailee.

"Acceptable Credit Support" means, with respect to any Account, either, (a) export/import insurance provided by EDC (or such other provider of letters of credit or import/export insurance as shall be agreed to in writing by the Lender and with security provided to the Lender in respect thereof (all to the satisfaction of the Lender), or (b) a letter of credit issued by a financial institution acceptable to the Lender and otherwise on terms acceptable to Lender in its sole discretion, each on terms and in a manner reasonably satisfactory to the Lender;

"Acceptable Landlord Waiver" means, in respect of each premises, a landlord waiver, substantially in the form of Exhibit C or otherwise satisfactory to the Lender in its reasonable discretion, executed by the landlord of the relevant premises.

"Acceptance Fee" means a fee payable by a Borrower to the Lender in Canadian Dollars with respect to the acceptance of a Bankers Acceptance or the making of a BA Equivalent Loan, calculated on the face amount of the Bankers Acceptance or the BA Equivalent Loan at a rate per annum equal to the Applicable Margin from time to time in effect on the basis of the actual number of days in the applicable Contract Period (including the date of acceptance and excluding the date of maturity) and a year of 365 days, (it being agreed that the Applicable Margin in respect of a BA Equivalent Loan is equivalent to the Applicable Margin otherwise applicable to the BA Borrowing which has been replaced by the making of such BA Equivalent Loan pursuant to Section 2.11 (h)).

"Accounts" means, in respect of each Credit Party, all of such Credit Party's now existing and future: (a) claims, accounts (including as defined in the PPSA or the UCC, as applicable), and any and all other receivables (whether or not specifically listed on schedules furnished to the

Lender), including all claims or accounts created by, or arising from, all of such Credit Party's sales, leases, loans, rentals of goods or renditions of services to its customers, including those accounts arising under any of such Credit Party's trade names or styles, or through any of such Credit Party's divisions; (b) any and all instruments, documents, bills of exchange, notes or any other writing that evidences a monetary obligation and chattel paper (including electronic chattel paper) (all as defined in the PPSA or the UCC, as applicable); (c) unpaid seller's or lessor's rights (including rescission, replevin, reclamation, repossession and stoppage in transit) relating to the foregoing or arising therefrom; (d) rights to any goods represented by any of the foregoing, including rights to returned, reclaimed or repossessed goods; (e) reserves and credit balances arising in connection with or pursuant hereto; (f) guarantees, indemnification rights, supporting obligations, payment intangibles, tax refunds and letter of credit rights; (g) insurance policies or rights relating to any of the foregoing; (h) intangibles pertaining to any and all of the foregoing (including all rights to payment, including those arising in connection with bank and non-bank credit cards), and including books and records and any electronic media and software relating thereto; (i) notes, deposits or property of borrowers or other account debtors securing the obligations of any such borrowers or other account debtors to such Credit Party; (j) cash and non-cash proceeds (including as defined in the PPSA or the UCC, as applicable) of any and all of the foregoing; and (k) all monies and claims for monies now or hereafter due and payable in connection with any and all of the foregoing or otherwise.

"Acquisition" means any transaction, or any series of related transactions, consummated after the Effective Date, by which any Credit Party, directly or indirectly, by means of a take-over bid, tender offer, amalgamation, consolidation, merger, purchase of assets or otherwise (a) acquires any business or all or substantially all of the assets of any Person engaged in any business, (b) acquires control of securities of a Person engaged in a business representing more than 50% of the ordinary voting power for the election of directors or other governing position if the business affairs of such Person are managed by a board of directors or other governing body, (c) acquires control of more than 50% of the ownership interest in any Person engaged in any business that is not managed by a board of directors or other governing body, or (d) otherwise acquires Control of a Person engaged in a business.

"Action Request" means any request received by any Credit Party or any of its Subsidiaries from any Governmental Authority under any Environmental Law whereby such Governmental Authority requests that it take action or steps or do acts or things in respect of any property or assets in the charge, management or control of such Credit Party to remediate a matter which is not or is alleged not to be in compliance with all Environmental Laws.

"Affiliate" means, (a) any Person which, directly or indirectly, Controls, is Controlled by or is under common Control with any other Person; (b) any Person which beneficially owns or holds, directly or indirectly, 10% or more of any class of voting stock or equity interest (including partnership interests) of any other Person; (c) any Person, 10% or more of any class of the voting stock (or if such Person is not a corporation, 10% or more of the equity interest, including partnership interests) of which is beneficially owned or held, directly or indirectly, by any other Person; or (d) any Person related within the meaning of the ITA to any such Person and includes any "Affiliate" within the meaning specified in the *Canada Business Corporations Act* on the date hereof.

"Agreement" means this credit agreement and the schedules and exhibits hereto and any amendments, restatements, supplements or other modifications to this credit agreement or the schedules or exhibits made at any time and from time to time.

"Applicable Law" means all federal, state, provincial, municipal, foreign and international statutes, acts, codes, ordinances, decrees, treaties, rules, regulations, municipal by-laws, judicial or arbitral or administrative or ministerial or departmental or regulatory judgments, orders, decisions,

rulings or awards or any provisions of the foregoing, including general principles of common and civil law and equity, and all policies, practices and guidelines of any Governmental Authority binding on or affecting the Person referred to in the context in which such word is used (including, in the case of tax matters, any accepted practice or application or official interpretation of any relevant taxation authority).

"Applicable Margin" means, with respect to any Loan, the applicable rate per annum, expressed as a percentage, set forth in the relevant column of the table below:

Revolving Loan BA Borrowing or Revolving Loan LIBO Rate Loan Applicable Margin	Revolving Loan Canadian Prime Loan or Revolving Loan Base Rate Loan Applicable Margin	Term Loan Canadian Prime Loan or Term Loan Base Rate Loan Applicable Margin	Term Loan BA Borrowing or Term Loan LIBO Rate Loan Applicable Margin
1.75%	0.25%	3.75%	5.25%

"Assignment and Assumption" means an assignment and assumption entered into by the Lender and an assignee (with the consent of any party whose consent is required by Section 9.4), and accepted by the Lender, in the form of Exhibit I or any other form approved by the Lender.

"Authorization" means, with respect to any Person, any authorization, order, permit, approval, grant, licence, consent, right, franchise, privilege, certificate, judgment, writ, injunction, award, determination, direction, decree, by-law, rule or regulation of any Governmental Authority having jurisdiction over such Person, whether or not having the force of Law.

"Availability Reserves" means, as of any date of determination and without duplication, such amounts as the Lender may from time to time establish and revise in its sole discretion reducing the Borrowing Base which would otherwise be available to the Borrowers under the lending formulas provided for herein (a) to reflect criteria, events, conditions, contingencies or risks which, as determined by the Lender in its sole discretion, do or may affect either (i) any component of the Borrowing Base or its value (including with respect to dilution), (ii) the assets, business, operations, industry, financial performance, financial condition or prospects of the Credit Parties, or (iii) the security interests and other rights of the Lender in the Collateral (including the enforceability, perfection and priority thereof, or the realization thereon), or (b) to reflect the Lender's reasonable belief that any collateral report or financial information furnished by or on behalf of the Borrowers to the Lender is or may have been incomplete, inaccurate or misleading, or (c) in respect of any state of facts which the Lender determines constitutes a Default or an Event of Default. Without limiting the foregoing, the Lender, in its sole discretion, may establish and/or increase Availability Reserves (but without duplication) in respect of: (a) (i) rental payments or similar charges for any of the leased premises of any Credit Party or other collateral locations for which the relevant Credit Party has not delivered to the Lender a landlord's waiver or bailee's letter substantially in the form attached hereto as Exhibits G and H, respectively, plus (ii) Rent Reserves for each leased premises at which Collateral is located, unless an Acceptable Landlord Waiver has been obtained for the relevant leased premises, plus (iii) any other fees or charges owing by any Credit Party to any applicable warehousemen or third party processor (all as determined by the Lender in its reasonable business judgement), (b) any reserve established by the Lender on account of statutory claims, deemed trusts, or inventory subject to rights of suppliers under Section 81.1 of the BIA (generally known as the "30-day goods" rule) or similar rights of reclamation under Section 81.2 of the BIA, or under any other Applicable Law, (c) liabilities of any Credit Party under any Blocked Account Agreement, (d) employee or employee benefit related liabilities and any other claims which may have priority

over the claims of the Lender, including Priority Payables, (e) liabilities arising under or in respect of any Pension Plan which, if not paid, could result in a Lien on any of the assets of any Credit Party, or liabilities arising under or in respect of ad valorem, excise, sales, or other taxes which, if not paid, could result in a Lien on any of the assets of any Credit Party, (f) claims by Her Majesty in Right of Canada made pursuant to Section 224(1.2) or 224(1.3) of the ITA, (g) claims pursuant to any provision of the *Canada Pension Plan* or the *Employment Insurance Act* (Canada) that refers to subsection 224(1.2) of the ITA and provides for the collection of a contribution (as defined in the *Canada Pension Plan*), or employee's premium or employer's premium (as defined in the *Employment Insurance Act* (Canada)), or a premium under Part VII.1 of that Act, and of any related interest, penalties or other amounts, (h) claims pursuant to any provision of provincial legislation that has a similar purpose to subsection 224(1.2) of the ITA, or that refers to that subsection, to the extent that it provides for the collection of a sum, and of any related interest, penalties or other amounts, where the sum has been withheld or deducted by a person from a payment to another person and is in respect of a tax similar in nature to the income tax imposed on individuals under the ITA or is of the same nature as a contribution under the *Canada Pension Plan* if the province is a "province providing a comprehensive pension plan" as defined in subsection 3(1) of the *Canada Pension Plan* and the provincial legislation establishes a "provincial pension plan" as defined in that subsection, (i) Cash Management Reserves, (j) Bank Product Reserves, (k) royalties payable to Persons who are not Credit Parties in respect of licensed merchandise forming part of the Collateral, (l) F/X Exposure and (m) and such other reserves as the Lender may at any time or times deem necessary in its sole discretion as a result of (x) negative forecasts and/or trends in the Borrowers' business, operations, industry, prospects, profits, operations or financial condition or assets or (y) other issues, circumstances or facts that could otherwise negatively impact the Credit Parties, their business, operations, industry, prospects, profits, operations or financial condition or assets.

"BA Borrowing" means a Borrowing comprised of one or more Bankers Acceptances or BA Equivalent Loans. For greater certainty, unless the context requires otherwise, all provisions of this Agreement which are applicable to Bankers Acceptances are also applicable, *mutatis mutandis*, to BA Equivalent Loans.

"BA Equivalent Loan" is defined in Section 2.11(h).

"Bankers Acceptance" and **"B/A"** mean an instrument denominated in Canadian Dollars, drawn by a Borrower and accepted by the Lender in accordance with this Agreement, and includes a "depository note" within the meaning of the *Depository Bills and Notes Act* (Canada) and a bill of exchange within the meaning of the *Bills of Exchange Act* (Canada).

"Bank Products" means any services or facilities provided to any Credit Party by the Lender or any of its Affiliates on account of (a) each Swap Transaction that is entered into after the Effective Date with any counterparty that is a Credit Party at the time such Swap Transaction is entered into, (b) leasing (but only to the extent that the relevant Borrower and the Credit Party furnishing such lease notify the Lender in writing that such leases are to be deemed Bank Products hereunder), and (c) factoring arrangements, but excluding Cash Management Services.

"Bank Product Reserves" means such reserves as the Lender may from time to time determine in its sole discretion as being appropriate to reflect the liabilities and obligations of the Credit Parties with respect to Bank Products then provided or outstanding; provided that in the event that any counterparty to a Swap Transaction requires that the Credit Parties provide cash collateral to secure such Swap Transaction, the amount of the Bank Product Reserve imposed by the Lender with respect to such Swap Transaction shall take into consideration the amount of such cash collateral.

"Base Rate" means, on any day, the annual rate of interest equal to the greater of (i) the annual rate of interest announced from time to time by CIBC and in effect as its base rate at its principal office in Toronto, Ontario on such day for determining interest rates on U.S. Dollar-denominated commercial loans made in Canada, and (ii) the Federal Funds Effective Rate plus 1.00%. The Base Rate is a rate set by CIBC based upon various factors including CIBC's cost and desired return, general economic conditions and other factors, and is used as a reference point for pricing some loans; however, CIBC may price loans at, above or below such announced rate.

"Base Rate Borrowing" means a Borrowing comprised of one or more Base Rate Loans.

"Base Rate Loan" means a Loan denominated in U.S. Dollars made by the Lender to a Borrower hereunder pursuant to a drawdown, rollover or conversion of a Loan on which interest is payable upon the Base Rate.

"BIA" means the *Bankruptcy and Insolvency Act (Canada)*, as amended from time to time (or any successor statute).

"Blocked Account Agreement" has the meaning set out in Section 2.17(c).

"Blocked Accounts" has the meaning set out in Section 2.17(c).

"Borrower" means, collectively, Nilex Inc., an Alberta corporation and Nilex USA Inc., a Colorado corporation.

"Borrowing" means any availing of the Credit, which includes a Loan and the issuance of a Letter of Credit in accordance with Section 2.18, the entry into an F/X Contract in accordance with Section 2.19, and a Borrowing includes a rollover or conversion of any outstanding Loan and the provision of any Loan as required for the Lender to honour any obligations pursuant to any Letter of Credit or F/X Contract.

"Borrowing Base" means, at any time, an amount (which may not be less than zero) equal to the sum of:

- (i) 85% of the aggregate amount of all Eligible Accounts provided that such percentage shall be increased to 90% in the case of (A) any Investment Grade Account, or (B) that portion of any Eligible Account subject to Acceptable Credit Support,
- (ii) plus, the lesser of (A) 70% of the lower of cost or fair market value of all Eligible Inventory, and (B) 85% of the appraised Net Orderly Liquidation Value of all Eligible Inventory (or for the months of January to March 2019, inclusive, the average of the appraised low season and high season Net Orderly Liquidation Values as disclosed in the most recent appraisal at the time of determination),
- (iii) minus, an amount equal to all Priority Payables, and
- (iv) minus, an amount equal to all other Availability Reserves;

"Borrowing Base Report" means the report of the Borrowers concerning the amount of the Borrowing Base, to be delivered pursuant to Section 5.1, substantially in the form attached as Exhibit A.

"Borrowing Request" means a request by a Borrower for a Borrowing substantially in the form of Exhibit B.

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

"Canadian Dollars", "Dollars", Cdn.\$" and "\$" refer to lawful currency of Canada.

"Canadian \$ Equivalent" means, on any day, the amount of Canadian Dollars that the Lender could purchase, in accordance with its normal practice, with a specified amount of another currency based on the spot rate at which Canadian Dollars are offered at the start of such day by CIBC in Toronto, Ontario.

"Canadian Prime Borrowing" means a Borrowing comprised of one or more Canadian Prime Loans.

"Canadian Prime Loan" means a Loan denominated in Canadian Dollars made by the Lender to a Borrower hereunder pursuant to a drawdown, rollover or conversion of a Loan which bears interest at a rate based upon the Canadian Prime Rate.

"Canadian Prime Rate" means, the rate of interest equal to the greater of (i) the annual rate of interest publicly announced from time to time by CIBC as its reference rate of interest for loans made in Canadian Dollars to Canadian customers and designated as its "prime" rate, and (ii) the 30-day CDOR Rate plus 1.00%. The Canadian Prime Rate is a rate set by CIBC based upon various factors including CIBC's costs and desired return, general economic conditions and other factors and is used as a reference point for pricing some loans. However, CIBC may price loans at, above or below such announced rate.

"Capital Expenditures" means all payments due or accruing due (whether or not paid) during a Fiscal Year in respect of the cost (including expenditures on materials, contract labour and direct labour, but excluding expenditures properly chargeable to repairs and maintenance in accordance with GAAP) of any fixed asset or improvement, or replacement, substitution, or addition thereto, which have a useful life of more than one (1) year, including, without limitation, those arising in connection with the direct or indirect acquisition of such assets by way of increased product or service charges or offset items or in connection with Capital Leases.

"Capital Lease" means any lease of Property that, in accordance with GAAP, is required to be capitalized on the consolidated balance sheet of the Credit Parties.

"Capital Lease Obligations" of any Person means the obligations of such Person to pay rent or other amounts under any lease of (or other arrangement conveying the right to use) real or personal property, or a combination thereof, which obligations are required to be classified and accounted for as Capital Leases on a balance sheet of such Person under GAAP, and the amount of such obligations shall be the capitalized amount thereof determined in accordance with GAAP.

"Cash Management Obligations" means obligations of any Credit Party to the Lender or any Affiliate of the Lender in respect of any Cash Management Services.

"Cash Management Reserves" means such reserves as the Lender, from time to time, determines in its sole discretion as being appropriate to reflect the reasonably anticipated liabilities and obligations of the Credit Parties with respect to Cash Management Services then provided or outstanding.

"Cash Management Services" means any one or more of the following types of services or facilities provided to any Credit Party by the Lender or any of its Affiliates: (a) automated clearing house processing or electronic funds transfer transactions, (b) cash management services, including controlled disbursement services, treasury, depository, overdraft, and electronic funds transfer services, (c) foreign exchange facilities, (d) credit card processing services, (e) credit or debit cards, including credit support for third party credit card providers, and (f) purchase cards (but only to the extent that, prior to the occurrence and continuance of any Default or Event of Default, the Borrowers and the Credit Party issuing such purchase cards notify the Lender in writing that such purchase cards are to be deemed Cash Management Services hereunder).

"CCAA Plan" has the meaning set out in Section 5.20.

"CDOR Rate" means, on any day and for any period, an annual rate of interest equal to the average rate applicable to Canadian Dollar bankers' acceptances for the applicable period appearing on the "Reuters Screen CDOR Page" (as defined in the International Swaps and Derivatives Association, Inc. 2000 definitions, as modified and amended from time to time), rounded to the nearest 1/100th of 1% (with .005% being rounded up), at approximately 10:00 a.m., Toronto time, on such day, or if such day is not a Business Day, then on the immediately preceding Business Day, provided that if such rate does not appear on the Reuters Screen CDOR Page on such day as contemplated, then the CDOR Rate on such day shall be calculated as the rate for such period applicable to Canadian Dollar bankers' acceptances quoted by CIBC as of 10:00 a.m., Toronto time, on such day or, if such day is not a Business Day, then on the immediately preceding Business Day, and provided further that, in the event such rate is less than zero, such rate shall be deemed to be zero for the purposes hereof.

"CFC" means a "controlled foreign corporation" within the meaning of Section 957 of the Code.

"Change in Control" means (a) the acquisition of ownership, directly or indirectly, beneficially or of record, by any Person or group of Persons acting jointly or otherwise in concert, other than the Permitted Holders, of Equity Securities representing more than 50% of the aggregate ordinary voting power represented by the issued and outstanding Equity Securities of a Borrower; (b) with respect to any Credit Party that is, at any time, a wholly owned direct or indirect Subsidiary of a Borrower, when any such Credit Party ceases to be a wholly owned direct or indirect Subsidiary of a Borrower, (c) the occupation of a majority of the seats (other than vacant seats) on the board of directors of a Borrower by Persons who were neither (i) nominated by the board of directors of such Borrower nor (ii) appointed by directors so nominated; or (d) the acquisition of direct or indirect Control of a Borrower by any Person or group of Persons acting jointly or otherwise in concert, other than the Permitted Holders.

"Change in Law" means (i) the adoption of any new Applicable Law after the date of this Agreement, (ii) any change in any existing Applicable Law or in the interpretation or application thereof by any Governmental Authority after the date of this Agreement, or (iii) compliance by the Lender or the Issuing Bank (or, for purposes of Section 2.12(b), by any lending office of the Lender or Issuing Bank) with any request, guideline or directive (whether or not having the force of law, but in the case of a request, guideline or directive not having the force of law, being a request, guideline or directive with which persons customarily comply) of any Governmental Authority made or issued after the date of this Agreement.

"CIBC" means Canadian Imperial Bank of Commerce and its successors.

"Code" means the United States Internal Revenue Code of 1986, as amended.

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"**Collateral**" means the property described in and subject to the Liens, privileges, priorities and security interests purported to be created by any Security Document, which shall include all assets and undertakings of each Credit Party.

"**Commitment**" means, with respect to the Lender, the commitment of the Lender to make Loans hereunder as such commitment may be reduced from time to time pursuant to Section 2.6. The initial amount of the Lender's Commitment is set forth on Schedule A. The Effective Date amount of the Commitment for the Term Loan is Cdn.\$4,000,000 and the aggregate amount of the Commitment for Revolving Loans is Cdn.\$20,000,000.

"**Commodity Exchange Act**" means the *Commodity Exchange Act* (7 U.S.C. § 1 et seq.), as amended from time to time, and any successor statute.

"**Consolidated Net Income**" means, for any period, the net income on a consolidated basis of the Borrowers and their consolidated Subsidiaries; provided, however, that Consolidated Net Income shall not include or take into account:

- (i) any net income (or loss) of any Subsidiary that is not a Credit Party, except that (subject to the exclusions contained in clauses (iii) and (iv) below), the Borrowers' equity in the net income of any such Person for such period shall be included in such Consolidated Net Income up to the aggregate amount of cash actually distributed by such Person during such period to the Borrowers or a Subsidiary as a dividend or other distribution (subject, in the case of a dividend or other distribution paid to a Subsidiary, to the limitations contained in clause (ii) below);
- (ii) any net income of any Subsidiary which is subject to restrictions, directly or indirectly, on the payment of dividends or the making of distributions, directly or indirectly, to the Borrowers, except that (A) subject to the exclusion contained in clauses (iii) and (iv) below, the Borrowers' equity in the net income of any such Subsidiary for such period shall be included in such Consolidated Net Income up to the aggregate amount of cash that could have been distributed by such Subsidiary consistent with such restriction during such period to the Borrowers or another Subsidiary as a dividend or other distribution (subject, in the case of a dividend or other distribution paid to another Subsidiary, to the limitation contained in this clause), and (B) the Borrowers' equity in a net loss of any such Subsidiary for such period shall be included in determining such Consolidated Net Income;
- (iii) any gain (or loss) realized upon the sale or other disposition of any assets of the Borrowers or any Subsidiary (including pursuant to any sale-and-leaseback arrangement) which is not sold or otherwise disposed of in the ordinary course of business and any gain (or loss) realized upon the sale or other disposition of any capital stock of any Person;
- (iv) extraordinary or nonrecurring gains;
- (v) extraordinary or nonrecurring losses excluded with the prior written consent of the Lender; and
- (vi) the effect of a change in GAAP.

"Contract Period" means the term of any BA Borrowing selected by a Borrower in accordance with Section 2.3 (a)(iv) commencing on the date of such BA Borrowing and expiring on a Business Day which shall be either one month, two months, or three months thereafter (or such other terms as may be requested by a Borrower and approved by the Lender); provided that (i) subject to clause (ii) below, each such period shall be subject to such extensions or reductions as may be determined by the Lender to ensure that each Contract Period will expire on a Business Day, and (ii) no Contract Period shall extend beyond the Maturity Date.

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

"Cover" means, at any time, an amount equal to the amount of Bankers Acceptances plus 105% of the aggregate amount of Letter of Credit Exposure and F/X Exposure at such time and required to be paid by the Borrowers to the Lender in accordance with Section 2.9 and retained by the Lender in a collateral account maintained by the Lender at its Payment Office and collaterally assigned to the Lender as security until such time as the applicable Bankers Acceptances, Letters of Credit or F/X Contracts shall have expired or matured and Reimbursement Obligations, if any, with respect thereto shall have been fully satisfied; provided that if any such Reimbursement Obligations are not satisfied when due hereunder, the Lender may apply any or all amounts in such collateral account in satisfaction of any or all such Reimbursement Obligations.

"Credit Party" means each Borrower, each Guarantor and any other Person which is a party to a Loan Document (other than the Lender).

"Credit" means the Cdn.\$20,000,000 revolving credit facility and the Cdn.\$4,000,000 Term Loan established pursuant to the Commitment of the Lender.

"DBRS" shall mean Dominion Bond Rating Service Limited, or its successor.

"Default" means any event or condition which constitutes an Event of Default or which, upon notice, lapse of time or both, would, unless cured or waived, become an Event of Default.

"Defined Benefit Plan" has the meaning set out in Section 3.11.

"Discount Proceeds" means, for any Bankers Acceptance (or, as applicable, any BA Equivalent Loan), an amount (rounded to the nearest whole cent, and with one-half of one cent being rounded up) calculated on the applicable date of Borrowing by multiplying:

- (vii) the face amount of the Bankers Acceptance (or, as applicable, the undiscounted amount of the BA Equivalent Loan); by
- (viii) the quotient of one divided by the sum of one plus the product of:
 - (A) the Discount Rate (expressed as a decimal) applicable to such Bankers Acceptance (or as applicable, such BA Equivalent Loan), multiplied by
 - (B) a fraction, the numerator of which is the Contract Period of the Bankers Acceptance (or, as applicable, the BA Equivalent Loan) and the denominator of which is 365 or 366, as applicable,



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with such quotient being rounded up or down to the nearest fifth decimal place, and with .000005 being rounded up.

"Discount Rate" means, with respect to either a Bankers Acceptance for a particular Contract Period being purchased by the Lender on any day or a BA Equivalent Loan being made by the Lender on any day, (i) for the Lender which is a Schedule I chartered bank under the *Bank Act* (Canada), the CDOR Rate on such day for such Contract Period; and (ii) for any other Lender, the lesser of

(b) the CDOR Rate on such day for such Contract Period, plus 0.10%, and

(c) the percentage discount rate quoted by the Lender as the percentage discount rate at which the Lender would, in accordance with its normal practices, at or about 10:00 a.m. on such date, be prepared to purchase bankers' acceptances or make BA Equivalent Loans having a face amount and term comparable to the face amount and term of such Bankers Acceptance or a BA Equivalent Loan, as applicable.

"Disclosed Matters" means the actions, suits and proceedings and the environmental matters disclosed in Schedule 3.19.

"EBITDA" means, for the Credit Parties on a consolidated basis and for any period, without duplication, an amount equal to the Consolidated Net Income for such period less any non-cash income included in Consolidated Net Income, plus to the extent deducted from Consolidated Net Income, Interest Expense, depreciation, depletion and impairment, amortization expense and income tax expenses. For greater certainty, EBITDA for any period shall be determined after the payment of all management and employee bonuses and non-arm's length consulting fees for such period.

"EDC" means Export Development Corporation (Canada) and its successors and assigns.

"Effective Date" means the date on which all of the conditions specified in Section 4.1 are satisfied or waived in accordance with Section 9.2, as confirmed by the making of the first Loans under this Agreement.

"Eligible Account" means, at any time, the invoice amount (which shall be the Canadian \$ Equivalent at such time of any amount denominated in U.S.\$) owing on each Account of a Borrower (net of any credit balance, returns, trade discounts, contras, unapplied cash, unbilled amounts, tax refunds that have not yet been received or retention or finance charges or any other dilutive factors) which meet such standards of eligibility as the Lender shall establish from time to time in its sole and absolute discretion; provided that, in any event, no account shall be deemed an Eligible Account unless each of the following statements is accurate and complete (and by including such Account in any computation of the applicable Borrowing Base, the Borrowers shall be deemed to represent and warrant to the Lender the accuracy and completeness of such statements and the compliance of each such Account with each such other eligibility standard established by the Lender):

(1) Such Account is a binding and valid obligation of the obligor thereon and is in full force and effect;

(2) Such Account is evidenced by an invoice and is payable in either Canadian Dollars or U.S. Dollars;

(3) Such Account is genuine as appearing on its face or as represented in the books and records of the Borrowers;

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(4) Such Account is free from claims regarding rescission, cancellation or avoidance, whether by operation of Applicable Law or otherwise;

(5) Payment of such Account is less than 120 days past the original invoice date thereof and less than 90 days past the original due date thereof, provided that, Accounts outstanding between 91 to 120 days past the original invoice date shall only be deemed Eligible Accounts up to a maximum aggregate amount of (a) \$2,500,000 during the months of October to March, and (b) \$1,000,000 at all other times;

(6) Such Account is net of concessions, offset, deduction, contras, returns, chargebacks or understandings with the obligor thereon that in any way could reasonably be expected to adversely affect the payment of, or the amount of, such Account;

(7) The Lender has a first-priority perfected Lien covering such Account and such Account is, and at all times will be, free and clear of all other Liens or claims (including any claim by the issuer of any performance bond, surety bond, appeal bond, completion guarantee or like instrument arising as a result of any failure of performance by a Borrower);

(8) The obligor on such Account is not an Affiliate or a director, officer or employee of any Credit Party;

(9) Such Account arose in the ordinary course of business of a Borrower out of the sale of goods or services by such Borrower;

(10) Such Account is not payable by an obligor in respect of which 50% or more (by amount) of the total aggregate Accounts owed to the Borrowers by such obligor or any of its Affiliates are ineligible by reason of clause (5) of this definition;

(11) All consents, licenses, approvals or authorizations of, or registrations or declarations with, any Governmental Authority required to be obtained, effected or given in connection with the execution, delivery and performance of such Account by each party obligated thereunder, or in connection with the enforcement and collection thereof by the Borrowers, have been duly obtained, effected or given and are in full force and effect;

(12) The obligor on such Account is not an individual, and is not the subject of any bankruptcy or insolvency proceeding, does not have a trustee, receiver or interim receiver appointed for all or a substantial part of its property, has not made an assignment for the benefit of creditors, admitted its inability to pay its debts as they mature, suspended its business or initiated negotiations regarding a compromise of its debt with its creditors, and the Lender, in its reasonable discretion, is otherwise satisfied with the credit standing of such obligor;

(13) The chief executive office of the obligor of such Account is located in the United States of America or Canada and the obligor of such Account is organized and existing under the laws of the United States of America or a state thereof or the federal laws of Canada, or a province or territory thereof, or if the obligor is not so organized and existing, such Account is covered by Acceptable Credit Support;

(14) The obligor of such Account is not a Governmental Authority, if the enforceability or effectiveness against such Governmental Authority of an assignment of such Account is subject to any precondition which has not been fulfilled;

(15) In respect of an Account arising from the sale of goods, the subject goods have been completed, sold and shipped, on a true sale basis on open account, or subject to contract, and not

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on consignment, on approval, on a "sale or return" basis, or on a "bill and hold" or "pre-sale" basis or subject to any other repurchase or return agreement; no material part of the subject goods has been returned, rejected, lost or damaged; and such Account is not evidenced by chattel paper or a promissory note or an instrument of any kind, unless such chattel paper, promissory note or other instrument has been delivered to the Lender and is subject to a Lien under the Security Documents;

(16) Each of the representations and warranties set forth herein and in the Loan Documents with respect to such Account is true and correct on such date;

(17) Such Account is not in respect of a volume rebate;

(18) Such Account is not a pre-billed account;

(19) Such Account is not an account arising from progress billing, provided that, Accounts arising from progress billing shall be deemed Eligible Accounts up to a maximum aggregate amount of \$2,000,000 so long as they are in respect of projects to be completed within 60 days of the date of such progress billing;

(20) The assignment (whether absolutely or by way of security) of such Account is not limited or restricted by the terms of the contract evidencing or relating to such Account or, if assignment of such Account is so restricted, such limitation or restriction has been complied with and the laws of the jurisdiction(s) governing the validity of such assignment do not provide that such limitation or restriction is ineffective as against the secured creditor with a security interest therein; and

(21) Such Account is not an Account which the Lender, in the exercise of its good faith credit discretion, has determined to be ineligible for any other reason, including the Lender's determination that the prospect of the collection of such Account is impaired or that the Account may not be paid because of the account debtor's inability to pay or any other reason as may be customary either in the asset based lending industry or in the asset based lending practices of the Lender.

provided that, if at any time the aggregate amount of all Eligible Accounts owed to the Borrowers by a particular obligor or its Affiliates exceeds 20% of the aggregate amount of all Eligible Accounts at such time owed to the Borrowers (determined without giving effect to any reduction in Eligible Accounts pursuant to this proviso), then, unless the Accounts of such obligors and its Affiliates are insured pursuant to credit insurance acceptable to the Lender which has been assigned to the Lender in form acceptable to the Lender, the amount of such Accounts in excess of 20% of such aggregate amount of all Eligible Accounts shall be excluded in determining the aggregate amount of all Eligible Accounts at such time.

"Eligible Inventory" means, at any time with respect to a Borrower, all Inventory of such Borrower valued in Canadian Dollars or U.S. Dollars, in either case on a lower of Standard Cost or market basis in accordance with GAAP, with detailed calculations of lower of cost or market to occur on at least a monthly basis, which meets such standards of eligibility as the Lender shall establish from time to time in its sole and absolute discretion; provided that, in any event, no Inventory shall be deemed Eligible Inventory unless each of the following statements is accurate and complete (and by including such Inventory in any computation of the applicable Borrowing Base, the Borrowers shall be deemed to represent and warrant to the Lender and each Issuing Bank the accuracy and completeness of such statements and the compliance of such Inventory with each such other eligibility standard established by the Lender):

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(1) Such Inventory is in good condition, merchantable, meets all standards imposed by any Governmental Authority having regulatory authority over it or its use and/or sale and is not obsolete and is either currently usable or currently saleable in the normal course of business the Borrowers;

(2) Such Inventory is

(a) in the possession of the Borrowers and located on real property owned or leased by a Borrower within Canada or the United States of America (provided that if such Inventory is located on real property leased by a Borrower, the Lender shall have been so advised and the landlord of such real property shall have executed and delivered to the Lender an Acceptable Landlord Waiver, or the Lender shall have been given the opportunity to establish Availability Reserves in respect thereof), or

(b) in the possession of a bailee within Canada or the United States of America and such bailee shall have executed and delivered to the Lender, an Acceptable Bailee Letter, or the Lender shall have been advised that such Inventory is in the possession of a bailee and been given the opportunity to establish Availability Reserves in respect thereof;

(3) Each of the representations and warranties set forth in the Loan Documents with respect to such Inventory is true and correct on such date;

(4) The Lender has a first-priority perfected Lien covering such Inventory, and such Inventory is, and at all times will be, free and clear of all Liens other than Permitted Liens;

(5) Such Inventory does not include goods (i) that are not owned by a Borrower, (ii) that are held by a Borrower pursuant to a consignment agreement, (iii) that a Borrower has delivered to customers on consignment terms, or (iv) that are special order goods or discontinued goods;

(6) Such Inventory does not include goods that are subject to licensing agreements that restrict the sale of such goods;

(7) Such Inventory is not subject to repossession under the BIA except to the extent the applicable vendor has entered into an agreement with the Lender, in form and substance reasonably satisfactory to the Lender, waiving its right to repossession;

(8) Such Inventory does not consist of store room materials, supplies, parts, samples, prototypes, or packing and shipping materials;

(9) Such Inventory does not consist of goods that are work in process, discontinued, obsolete, expired, slow-moving or returned, rejected or repossessed or used goods taken in trade;

(10) Such Inventory is not evidenced by negotiable documents of title unless delivered to the Lender with endorsements and insurance, as applicable, on all terms and conditions satisfactory to the Lender;

(11) Such Inventory does not constitute Hazardous Materials;

(12) Such Inventory is covered by property insurance in accordance with Section 5.9, subject to applicable deductibles;

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(13) Such Inventory is located on real or immoveable property where there is Inventory of a Borrower in the aggregate amount of at least Cdn.\$25,000;

(14) Such Inventory is not Inventory which the Lender has determined in the exercise of its reasonable discretion that the Lender may not sell or otherwise dispose of in accordance with the terms of the applicable Security Documents without infringing upon the rights of another Person or violating any contract with any other;

(15) Such Inventory is not covered by a negotiable document of title, unless such document has been delivered to the Lender with all necessary endorsements, free and clear of all Liens except those in favour of the Lender; and

(16) Such Inventory is not Inventory which the Lender, in the exercise of its good faith credit discretion, determines to be not acceptable for any other reasons, including those which are customary either in the asset based lending industry or in the asset based lending practices of the Lender.

"Employee Benefit Plan" means an "employee benefit plan" within the meaning of Section 3(3) of ERISA which covers employees of any Credit Party or with respect to which any Credit Party has an obligation to make contributions, including as the result of being an ERISA Affiliate, other than a Multiemployer Plan or any plan that is exclusively governed by the laws of Canada.

"Environmental Laws" means all Applicable Laws relating in any way to the environment, preservation or reclamation of natural resources, the generation, use, handling, collection, treatment, storage, transportation, recovery, recycling, release, threatened release or disposal of any Hazardous Material, or to health and safety matters.

"Environmental Liability" means any liability, contingent or otherwise (including any liability for damages, costs of environmental remediation, fines, penalties or indemnities), of any Credit Party directly or indirectly resulting from or based upon (a) violation of any Environmental Laws, (b) the generation, use, handling, collection, treatment, storage, transportation, recovery, recycling or disposal of any Hazardous Materials, (c) exposure to any Hazardous Materials, (d) the Release or threatened Release of any Hazardous Materials into the environment, or (e) any contract, agreement or other consensual arrangement pursuant to which liability is assumed or imposed with respect to any of the foregoing.

"Equity Securities" means, with respect to any Person, any and all shares, interests, participations, rights in, or other equivalents (however designated and whether voting and non-voting) of, such Person's capital, whether outstanding on the date hereof or issued after the date hereof, including any interest in a partnership, limited partnership or other similar Person and any beneficial interest in a trust, and any and all rights, warrants, debt securities, options or other rights exchangeable for or convertible into any of the foregoing.

"ERISA" means the United States Employee Retirement Income Security Act of 1974, as amended from time to time, and any regulations promulgated thereunder.

"ERISA Affiliate" means, with respect to any Credit Party, any trade or business (whether or not incorporated) that, together with such Credit Party, are treated as a single employer within the meaning of Sections 414(b), (c), (m) or (o) of the Code.

"ERISA Event" means, with respect to any Credit Party or any ERISA Affiliate, (a) any event described in Section 4043(c) of ERISA with respect to a Pension Plan; (b) the withdrawal of any Credit Party or ERISA Affiliate from a Pension Plan subject to Section 4063 of ERISA during a plan

year in which it was a substantial employer, as defined in Section 4001(a)(2) of ERISA; (c) the complete or partial withdrawal of any Credit Party or any ERISA Affiliate from any Multiemployer Plan; (d) the filing of a notice of intent to terminate a Pension Plan or the treatment of a plan amendment as a termination under Section 4041 of ERISA; (e) the institution of proceedings to terminate a Pension Plan or Multiemployer Plan by the Pension Benefit Guaranty Corporation; (f) the failure by any Credit Party or ERISA Affiliate to make when due required contributions to a Multiemployer Plan or Pension Plan unless such failure is cured within thirty (30) days and such failure could not give rise to the imposition of a Lien under Section 303(k) of ERISA or Section 430(k) of the Code; (g) any other event or condition that might reasonably be expected to constitute grounds under Section 4042 of ERISA for the termination of, or the appointment of a trustee to administer, any Pension Plan or Multiemployer Plan or for the imposition of liability under Section 4069 or 4212(c) of ERISA; (h) the termination of a Multiemployer Plan under Section 4041A of ERISA or the insolvency of a Multiemployer Plan under ERISA; or (i) the loss of the tax exempt status of Employee Benefit Plan intended by a Credit Party to be qualified under Section 401 of the Code.

"**ETA**" means Part IX of the *Excise Tax Act* (Canada) as amended from time to time (or any successor statute).

"**Event of Default**" has the meaning set out in Section 7.1.

"**Excess Availability**" means, as of any date, the remainder of (a) the Borrowing Base as of such date, less (b) the aggregate Exposure as of such date. Excess Availability shall always be determined on the basis that all debts and obligations shall be current, and all accounts payable shall be handled in the normal course of the Credit Parties' business consistent with their past practices, it being acknowledged that the Credit Parties' past practice has been to pay accounts payable due on 30 day terms within 45 days of the invoice date.

"**Excess Availability Trigger**" means Excess Availability at any time is in an amount equal to less than 15% of the Borrowing Base for three (3) consecutive Business Days.

"**Excess Cash Flow**" unadjusted consolidated EBITDA for the applicable Fiscal Year, less the aggregate for such fiscal year of (a) unfunded capital expenditures; (b) cash income taxes; (c) cash interest payments; (d) scheduled or voluntary principal payments (excluding mandatory excess cash flow payments required under Section 2.9(b) of this Agreement) on any term loan, and (e) capital lease payments.

"**Excluded Swap Obligation**" means, with respect to any Guarantor, any Swap Obligation if, and solely to the extent that, all or a portion of the Guarantee of such Guarantor of, or the grant by such Guarantor of a security interest to secure, such Swap Obligation (or any Guarantee thereof) is or becomes illegal under the *Commodity Exchange Act* or any rule, regulation or order of the Commodity Futures Trading Commission (or the application or official interpretation of any thereof) by virtue of such Guarantor's failure for any reason to constitute an "eligible contract participant" as defined in the *Commodity Exchange Act* and the regulations thereunder at the time the Guarantee of such Guarantor or the grant of such security interest becomes effective with respect to such Swap Obligation. If a Swap Obligation arises under a master agreement governing more than one swap, such exclusion shall apply only to the portion of such Swap Obligation that is attributable to swaps for which such Guarantee or security interest is or becomes illegal.

"**Excluded Taxes**" means, with respect to the Lender or any other recipient (in this definition, (a "recipient") of any payment to be made by or on account of any obligation of the Credit Parties hereunder or any other Loan Document: (a) income or franchise Taxes imposed on (or measured by) such recipient's taxable income or capital Taxes imposed on (or measured by) such recipient's

taxable capital, in each case by Canada, or by the jurisdiction under the Applicable Laws of which such recipient is organized or in which its principal office is located or in which its applicable lending office for the Loans hereunder are made; (b) in the case of a Lender, U.S. federal and Canadian federal withholding Taxes imposed on amounts payable to or for the account of such Lender with respect to an applicable interest in a Loan or Commitment pursuant to the applicable law in effect on the date on which (i) such Lender acquires such interest in the Loan or Commitment (other than pursuant to an assignment request by any Credit Party) or (ii) such Lender changes its lending office (other than a change made at the request of any Credit Party), except in each case to the extent that, pursuant to Section 2.14, amounts with respect to such Taxes were payable either to such Lender's assignor immediately before such Lender became a party hereto or to such Lender immediately before it changed its lending office; (c) U.S. federal withholding Taxes solely attributable to the recipient's failure to comply with Section 2.14(f)(ii); and (d) U.S. federal withholding Taxes imposed under FATCA.

"Exposure" means, with respect to the Lender at any time, the sum of the outstanding principal amount of the Lender's Revolving Loans and, without duplication, its Letter of Credit Exposure, and F/X Exposure at such time.

"FATCA" means Sections 1471 through 1474 of the Code, as of the date of this Agreement (or any amended or successor version that is substantively comparable and not materially more onerous to comply with), any current or future regulations or official interpretations thereof, any agreements entered into pursuant to Section 1471(b)(1) of the Code and any fiscal or regulatory legislation, rules or practices adopted pursuant to any intergovernmental agreement, treaty or convention of the United States and implementing such Sections of the Code.

"Federal Funds Effective Rate" means, for any day, the per annum rate equal to the weighted average of the rates on overnight Federal funds transactions with members of the Federal Reserve System of the United States of America arranged by Federal funds brokers, as published for such day (or, if such day is not a Business Day, for the next preceding Business Day) by the Federal Reserve Board of New York, or, if such rate is not so published for any day which is a Business Day, the average of the quotations for such day on such transactions received by the Lender from three Federal funds brokers of recognized standing selected by it.

"Financial Officer" means the chief financial officer, vice president – finance, director – finance, principal accounting officer, treasurer or controller of a Borrower.

"Fiscal Month" means any fiscal month of a Borrower.

"Fiscal Quarter" means any fiscal quarter of a Borrower.

"Fiscal Year" means any fiscal year of a Borrower.

"Fixed Charge Coverage Ratio" means, as of the last day of any calendar month, the ratio of (a) without duplication, the sum of (i) EBITDA of the Borrowers and their respective Subsidiaries on a consolidated basis for the Rolling Period ended on that date minus non-financed Capital Expenditures (for greater certainty, Capital Expenditures financed by Revolving Loans shall be deemed to be non-financed) made by the Borrowers and their respective Subsidiaries on a consolidated basis during such Rolling Period to (b) the sum of (i) Interest Expense of the Borrowers and their respective Subsidiaries paid in cash or cash equivalents on a consolidated basis for such Rolling Period (provided that from the Effective Date to the 1st Anniversary of the Effective Date, the Interest Expense during such period shall be calculated on an annualized basis from the Effective Date and shall, in any event and for greater certainty, exclude any Interest Expense owed to HSBC Bank under the Borrowers' prior lending arrangements with HSBC Bank)) plus (ii) the aggregate of

all Restricted Payments and regularly scheduled principal payments on Indebtedness (including, without limitation, capital lease obligations, but excluding principal payments on Indebtedness refinanced with the proceeds of Revolving Loans) made by the Borrowers and their respective Subsidiaries on a consolidated basis during such Rolling Period plus (iii) income taxes paid in cash or cash equivalents by the Borrowers and their respective Subsidiaries on a consolidated basis during such Rolling Period.

"F/X Bank" means the Lender.

"F/X Contract" means a currency exchange transaction or agreement or any option with respect to any such transaction now existing or hereafter entered into between a Borrower and the F/X Bank in accordance with Section 2.19.

"F/X Contract Sub-Line" means the amount of the commitment by the Lender hereunder, in an aggregate amount of up to but not exceeding US\$2,000,000 (or the Canadian Dollar Equivalent thereof) to assist a Borrower in obtaining F/X Contracts from the F/X Bank pursuant to Section 2.19.

"F/X Exposure" means, at any time, and subject to the F/X Contract Sub-Line, the sum of: (a) the amount determined by the Lender (acting reasonably with consideration given to any determinations provided to the Lender by the F/X Bank) to be the credit risk associated with all outstanding F/X Contracts, plus (b) the aggregate amount of all Reimbursement Obligations in respect of all F/X Contracts at such time. The F/X Exposure of the Lender shall not exceed the F/X Contract Sub-Line. Any F/X Exposure denominated in any currency other than Canadian Dollars shall be the Canadian Dollar Equivalent thereof.

"GAAP" means at any particular time with respect to any Credit Party, generally accepted accounting principles as in effect at such time in Canada or (as the case may be) International Financial Reporting Standards as applied in Canada, in either case, consistently applied; provided, however, that, if employment of more than one principle shall be permissible at such time in respect of a particular accounting matter, "GAAP" shall refer to the principle which is then employed by the applicable Credit Party with the concurrence of its independent chartered professional accountants, who are acceptable to the Lender provided further that, for the purposes of determining compliance with the financial covenants herein, "GAAP" means GAAP as at the date hereof.

"Governmental Authority" means the Governments of Canada and the United States of America, any other nation or any political subdivision thereof, whether provincial, state, territorial, municipal or local, and any agency, authority, instrumentality, regulatory body, court, central bank, fiscal or monetary authority or other authority regulating financial institutions, and any other entity exercising executive, legislative, judicial, taxing, regulatory or administrative powers or functions of or pertaining to any such government, including the Bank Committee on Banking Regulation and Supervisory Practices of the Bank of International Settlements.

"GST" means the goods and services tax and all other amounts payable under the ETA or any similar legislation in any other jurisdiction of Canada, including QST and HST.

"Guarantee" of or by any Person (in this definition, the **"guarantor"**) means any obligation, contingent or otherwise, of the guarantor guaranteeing or having the economic effect of guaranteeing any Indebtedness or other obligation of any other Person (in this definition, the **"primary credit party"**) in any manner, whether directly or indirectly, and including any obligation of the guarantor, direct or indirect, (a) to purchase or pay (or advance or supply funds for the purchase or payment of) such Indebtedness or other obligation or to purchase (or to advance or supply funds for the purchase of) any security for the payment thereof (whether in the form of a loan, advance, stock purchase, capital contribution or otherwise), (b) to purchase or lease property, securities or

services for the purpose of assuring the owner of such Indebtedness or other obligation of the payment thereof, (c) to maintain working capital, equity capital solvency, or any other balance sheet, income statement or other financial statement condition or liquidity of the primary credit party so as to enable the primary credit party to pay such Indebtedness or other obligation, (d) as an account party in respect of any letter of credit or letter of guarantee issued to support such Indebtedness or other obligation, or (e) to purchase, sell or lease (as lessor or lessee) property, or to purchase or sell services, primarily for the purpose of enabling the debtor to make payment of such Indebtedness or to assure the holder of such Indebtedness against loss.

"Guarantor" means each Person which has executed and delivered to the Lender a Guarantee guaranteeing the Obligations of each Borrower and the other Credit Parties.

"Hazardous Materials" means any substance, product, liquid, waste, pollutant, chemical, contaminant, insecticide, pesticide, gaseous or solid matter, organic or inorganic matter, fuel, micro-organism, ray, odour, radiation, energy, vector, plasma, constituent or material which (a) is or becomes listed, regulated or addressed under any Environmental Laws, or (b) is, or is deemed to be, alone or in any combination, hazardous, hazardous waste, toxic, a pollutant, a deleterious substance, a contaminant or a source of pollution or contamination under any Environmental Laws, including, asbestos or asbestos-containing materials, petroleum and polychlorinated biphenyls, including petroleum or petroleum distillates, polychlorinated biphenyls, radon gas, infectious or medical wastes and all other substances or wastes of any nature regulated pursuant to any Environmental Laws.

"HST" means all amounts payable as harmonised sales tax in the Provinces of Ontario, Nova Scotia, Newfoundland and New Brunswick under the ETA.

"Indebtedness" of any Person means, without duplication, (a) all obligations of such Person for borrowed money or with respect to deposits or advances of any kind, (b) all obligations of such Person evidenced by bonds, debentures, notes or similar instruments, (c) all obligations of such Person upon which interest charges are customarily paid, (d) all obligations of such Person under conditional sale or other title retention agreements relating to property acquired by such Person, (e) all obligations of such Person in respect of the deferred purchase price of property or services (excluding accounts payable incurred in the ordinary course of business and not past due more than 30 days), (f) all Indebtedness of others secured by (or for which the holder of such Indebtedness has an existing right, contingent or otherwise, to be secured by) any Lien on property owned or acquired by such Person, whether or not the Indebtedness secured thereby has been assumed, (g) all Guarantees by such Person of Indebtedness of others, (h) all Capital Lease Obligations of such Person, (i) all obligations, contingent or otherwise, of such Person as an account party in respect of letters of credit and letters of guarantee, (j) all obligations, contingent or otherwise, of such Person in respect of bankers' acceptances, (k) the net amount of obligations of such Person (determined on a mark-to-market basis) on account of foreign exchange transactions or interest rate swap transactions, and (l) all obligations of such Person to purchase, redeem, retire, defease or otherwise acquire for value (other than for other Equity Securities) any Equity Securities of such Person, valued, in the case of redeemable Equity Securities, at the greater of voluntary or involuntary liquidation preference, plus accrued and unpaid dividends. The Indebtedness of any Person shall include the Indebtedness of any other entity (including any partnership in which such Person is a general or limited partner) to the extent such Person is liable therefor as a result of such Person's ownership interest in or other relationship with such entity, except to the extent the terms of such Indebtedness provide that such Person is not liable therefor.

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

"Indemnitee" has the meaning set out in Section 9.3(b).

"Information Certificate" means a certificate executed by each Credit Party containing disclosure relating to each Credit Party in form and substance satisfactory to the Lender.

"Interest Expense" shall mean, for any period, the total interest expense of the Borrowers and their Subsidiaries on a consolidated basis, plus, to the extent not included in such total interest expense, and to the extent incurred by a Borrower or any of their Subsidiaries, (i) interest expense attributable to Capital Lease Obligations of the Borrowers or any of their Subsidiaries, (ii) amortization of debt discount or financing fees, (iii) capitalized interest, (iv) non-cash interest expense, (v) commissions, discounts and other fees and charges owed with respect to letters of credit and bankers' acceptance financing, (vi) net costs associated with Swap Transactions (including amortization of fees), (vii) standby fees, (viii) preferred stock dividends in respect of all preferred stock issued by the Borrowers or their Subsidiaries and held by Persons other than a Borrower or a Subsidiary, and (ix) interest actually paid by the Borrowers or any Subsidiary on any Indebtedness of any other Person.

"Interest Payment Date" means, (a) in the case of any Loan (including the Term Loan) other than LIBO Rate Borrowing, the first Business Day of each month, and (b) in the case of a LIBO Rate Borrowing, the last day of each Interest Period relating to such LIBO Rate Borrowing, provided that if an Interest Period for any LIBO Rate Borrowing is of a duration exceeding 90 days, then "Interest Payment Date" shall also include each date which occurs at each 90-day interval during such Interest Period.

"Interest Period" means, with respect to a LIBO Rate Borrowing, the period commencing on the date of such Borrowing and ending on the numerically corresponding day in the calendar month that is 30, 60 or 90 days thereafter, as the applicable Borrower may elect; provided that (i) if any Interest Period would end on a day other than a Business Day, such Interest Period shall be extended to the immediately succeeding Business Day unless such next succeeding Business Day would fall in the next calendar month, in which case such Interest Period shall end on the next preceding Business Day, (ii) any Interest Period that commences on the last Business Day of a calendar month (or on a day for which there is no numerically corresponding day in the last calendar month of such Interest Period) shall end on the last Business Day of the last calendar month of such Interest Period, (iii) no Interest Period shall extend beyond any date that any principal payment or prepayment is scheduled to be due unless the aggregate principal amount of (A) Canadian Prime Borrowings and Base Rate Borrowings and (B) BA Borrowings and LIBO Rate Borrowings which have Interest Periods or Contract Periods which will expire on or before such date, less the aggregate amount of any other principal payments or prepayments due during such Interest Period, is equal to or in excess of the amount of such principal payment or prepayment, and (iv) no Interest Period shall extend beyond the Maturity Date. For purposes hereof, the date of a Borrowing initially shall be the date on which such Borrowing is made and, in the case of a converted or continued Borrowing, thereafter shall be the effective date of the most recent conversion or continuation of such Borrowing.

"Inventory" means, in respect of each Credit Party, all of such Credit Party's present and hereafter acquired inventory (as defined in the PPSA or the UCC, as applicable) and including all raw materials, merchandise, inventory and goods, and all additions, substitutions and replacements thereof, wherever located, together with all goods and materials used or usable in manufacturing, processing, packaging or shipping same in all stages of production from raw materials through work in process to finished goods, and all "stores" inventory or "operating and maintenance supplies" inventory, and all proceeds of any thereof (of whatever sort).

"Investment" means, as applied to any Person (the "investor"), any direct or indirect purchase or other acquisition by the investor of, or a beneficial interest in, Equity Securities of any other Person, including any exchange of Equity Securities for Indebtedness, or any direct or indirect

loan, advance (other than advances to employees for moving, entertainment or travel expenses, drawing accounts and similar expenditures in the ordinary course of business) or capital contribution by the investor to any other Person, including all Indebtedness and Accounts owing to the investor from such other Person that did not arise from sales or services rendered to such other Person in the ordinary course of the investor's business, or any direct or indirect purchase or other acquisition of bonds, notes, debentures or other debt securities of, any other Person. The amount of any Investment shall be the original cost of such Investment plus the cost of all additions thereto, without any adjustments for increases or decreases in value, or write-ups, write-downs or write-offs with respect to such Investment minus any amounts (a) realized upon the disposition of assets comprising an Investment (including the value of any liabilities assumed by any Person other than the Borrowers or any Credit Party in connection with such disposition), (b) constituting repayments of Investments that are loans or advances or (c) constituting cash returns of principal or capital thereon (including any dividend, redemption or repurchase of equity that is accounted for, in accordance with GAAP, as a return of principal or capital).

"Investment Grade Account" means an Eligible Account owing to a Borrower by an obligor that is (i) rated an investment grade or higher rating from any of the Recognized Rating Agencies, minimum investment grade rating being (a) BBB- for S&P, (b) BBB(low) for DBRS, and (c) Baa3 for Moody's, or (ii) otherwise designated as "investment grade" by the Lender in writing.

"Issuing Bank" means the Lender, in its capacity as the bank issuing a Letter of Credit for a Borrower in accordance with Section 2.18.

"ITA" means the *Income Tax Act* (Canada) as amended from time to time (or any successor statute).

"Lender" means CIBC (and includes its Affiliates, successors and permitted assigns). Unless the context otherwise requires, the term "Lender" includes the Issuing Bank and F/X Bank.

"Lender Affiliate" means, with respect to the Lender, an Affiliate of the Lender.

"Letter of Credit" means a letter of credit issued by the Issuing Bank for or on behalf of a Borrower in accordance with Section 2.18.

"Letter of Credit Exposure" means, at any time and subject to the Letter of Credit Sub-Line, the aggregate face amount of all outstanding Letters of Credit at such time. The total of all Letter of Credit Exposure of the Lender shall not exceed the Letter of Credit Sub-Line. Any Letter of Credit Exposure denominated in U.S. Dollars shall be the Canadian Dollar Equivalent thereof.

"Letter of Credit Sub-Line" means the amount of the commitment by the Lender in an aggregate amount up to but not exceeding \$2,000,000, to assist the Borrowers in obtaining Letters of Credit.

"LIBO Rate" means, for any Interest Period, the rate for U.S. Dollar borrowings appearing on Page 3750 of the Telerate Service or Page LIBOR01 of the Reuters Service (or on any successor or substitute page of such Service, or any successor to or substitute for such Service providing rate quotations comparable to those currently provided on such page of such Service, as determined by the Lender from time to time for purposes of providing quotations of interest rates applicable to U.S. Dollar deposits in the London interbank market) at approximately 11:00 a.m., London time, two Business Days prior to the commencement of such Interest Period, as the rate for U.S. Dollar deposits with a maturity comparable to such Interest Period, provided that, in the event such rate is less than zero, such rate shall be deemed to be zero for the purposes hereof. In the event that such rate is not available at such time for any reason, then the "LIBO Rate" for such Interest Period shall

be the rate at which U.S. Dollar deposits of \$5,000,000 and for a maturity comparable to such Interest Period are offered by the principal London office of CIBC in immediately available funds in the London interbank market at approximately 11:00 a.m., London time, two Business Days prior to the commencement of such Interest Period.

"LIBO Rate Borrowing" means a Borrowing comprised of one or more LIBO Rate Loans.

"LIBO Rate Loan" means a Loan denominated in U.S. Dollars made by the Lender to a Borrower hereunder pursuant to a drawdown, rollover or conversion of a Loan which bears interest at a rate based upon the LIBO Rate.

"Lien" means, (a) with respect to any asset, any mortgage, deed of trust, lien, pledge, hypothec, hypothecation, encumbrance, charge, security interest, royalty interest, trust, deemed trust, adverse claim, prior claim, defect of title or right of set off in, on or of such asset, (b) the interest of a vendor or a lessor under any conditional sale agreement, capital lease, title retention agreement or consignment agreement (or any financing lease having substantially the same economic effect as any of the foregoing) relating to any asset, (c) in the case of securities, any purchase option, call or similar right of a third party with respect to such securities, (d) any netting arrangement, defeasance arrangement or reciprocal fee arrangement, and (e) any other arrangement having the effect of providing security.

"Loan" means any loan made by the Lender to a Borrower pursuant to this Agreement.

"Loan Documents" means this Agreement, the Security Documents, the Guarantees, the Blocked Account Agreement, the Borrowing Requests, the Borrowing Base Reports, and any other document, instrument or agreement (other than participation, agency or similar agreements among the Lender or between the Lender and any other bank or creditor with respect to any indebtedness or obligations of any Credit Party hereunder or thereunder) now or hereafter entered into in connection with this Agreement (including any F/X Contracts), as such documents, instruments or agreements may be amended, modified or supplemented from time to time.

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

"Material Adverse Effect" means a material adverse effect on (a) the business, assets, operations, or condition, financial or otherwise, of the Credit Parties, or (b) the validity or enforceability of any of the Loan Documents, the priority of the Liens created thereby or the rights and remedies of the Lender thereunder or (c) any Material Contract, or (d) the amount which the Lender would be likely to receive (after giving effect to delays in payment and costs of enforcement) upon the liquidation of the Collateral.

"Material Contract" means (a) the contracts, licences and agreements listed and described on Schedule 3.18, and (b) any other contract, licence or agreement (i) to which any Credit Party is a party or bound, (ii) which is material to, or necessary in, the operation of the business of any Credit Party, and (iii) which a Credit Party cannot promptly replace by an alternative and comparable contract with reasonably comparable commercial terms.

"Material Indebtedness" means (a) all Shareholder Subordinated Debt (regardless of the amount of such Indebtedness), and (b) any Indebtedness (other than the Loans and the Shareholder Subordinated Debt) of any one or more of the Credit Parties in an aggregate principal amount exceeding Cdn.\$500,000.

"Maturity Date" means the fourth anniversary of the Effective Date (or, if such fourth anniversary is not a Business Day, the next Business Day thereafter).

"Multiemployer Plan" means a "multiemployer plan" as defined in Section 4001(a)(3) of ERISA, and to which any Credit Party or ERISA Affiliate is making or is obligated to make contributions on behalf of participants who are or were employed by any of them or withdrawal liability payments.

"Moody's" means Moody's Investors Service Limited, or its successor.

"Net Orderly Liquidation Value" means the net orderly liquidation value as disclosed in the most recent appraisal conducted by an appraisal firm acceptable to the Lender in its sole discretion and in form and substance satisfactory to the Lender in its sole discretion, factoring in any seasonal variances identified in such appraisal report, including low season and high season averages.

"Obligations" means, with respect to any Credit Party, all obligations, liabilities and indebtedness of such Credit Party to the Lender with respect to the principal of and interest on the Loans and the payment or performance of all other obligations, liabilities and indebtedness of such Credit Party to the Lender hereunder or arising under or pursuant to any one or more of the other Loan Documents or with respect to the Loans, including (i) all reimbursement and indemnity obligations of such Credit Party to the Lender hereunder or in connection with any Letter of Credit, F/X Contract or otherwise, (ii) all interest (including all interest that accrues after the commencement of any case or proceeding by or against a Credit Party under any federal, provincial or state bankruptcy, insolvency, receivership or similar law, whether or not allowed in such case or proceeding), and all charges, expenses, fees, legal fees, filing fees and any other sums chargeable to such Credit Party hereunder, under another Loan Document, or under any other agreement or instrument with the Lender, F/X Bank or Issuing Bank, and (iii) Cash Management Obligations, but excluding all Excluded Swap Obligations.

"OFAC" has the meaning set out in Section 3.35.

"Out-of-Pocket Expenses" means all of the Lender's present and future expenses incurred relative to this Agreement or any other Loan Documents, whether incurred heretofore or hereafter, which expenses shall include, without being limited to: the reasonable cost of retaining external legal counsel, record searches, all costs and expenses incurred by the Lender in opening bank accounts, depositing cheques, receiving and transferring funds, and wire transfer charges, any charges imposed on the Lender due to returned items and "insufficient funds" of deposited cheques and the Lender's standard fees relating thereto, any amounts paid by, incurred by or charged to, the Lender (including under a Letter of Credit or an F/X Contract) or the reimbursement agreements related thereto, applications for Letters of Credit, F/X Contracts or other like document which pertain either directly or indirectly to such Letters of Credit or F/X Contracts and the Lender's standard fees relating to the Letters of Credit, F/X Contracts and any drafts thereunder, reasonable travel, lodging and similar expenses of the Lender's personnel (or any of its agents) in connection with inspecting and monitoring the Collateral from time to time at reasonable intervals hereunder, any applicable reasonable counsel fees and disbursements, fees and taxes relative to the filing of financing statements, and all expenses, costs and fees set forth incurred by or imposed on the Lender by reason of the exercise of any of its rights and remedies under this Agreement or any of the other Loan Documents.

"Payment Conditions" means, at the time of determination with respect to any transaction, payment or distribution specified in this Agreement as being subject to Payment Conditions: (i) the Term Loan shall be repaid in full, (ii) Excess Availability would be at least 15% of the Borrowing Base on a pro forma basis after giving effect to the applicable transaction or payment, on an average

daily basis for the 30 days immediately prior to the applicable transaction or payment and on a projected average daily basis for the 30 days immediately after the applicable transaction or payment, (iii) the pro forma Fixed Charge Coverage Ratio for the most recently completed Rolling Period after giving effect to any such payment or transaction shall be equal to or greater than 1.00:1.00, and (iv) no Default or Event of Default shall have occurred and be continuing on the date of any such payment or will occur immediately after giving effect thereto.

"Payment Office" means the Lender's office located at 199 Bay Street, 4th Floor, Toronto, Ontario, M5L 1A2, Attention: Senior Director, Portfolio Management, Asset Based Lending Group (or such other office or individual as the Lender may hereafter designate in writing to the other parties hereto).

"Pension Plan" means any pension or other employee benefit plan (including any plan subject to the *Pension Benefits Act* (Ontario), the *Supplemental Pension Plans Act* (Quebec), Title IV of ERISA, or other applicable pension plan minimum standards legislation) which (i) is maintained by any Credit Party or Related Party, (ii) any Credit Party or Related Party makes, has made or is required to make (at any time during the five (5) calendar years preceding the date of this Agreement) contributions in respect of its employees, or (iii) any other pension plan with respect to which any Credit Party or any Related Party has incurred or may incur liability, including contingent liability either to such plan or to any Person, administration or Governmental Authority, but excludes any government sponsored pension plan such as the Canada Pension Plan and the Quebec Pension Plan.

"Permitted Holders" means, (a) with respect to Nilex Inc. and its successors, each of PEF 2010 Nilex Investment Limited Partnership and its Affiliates, Gurchate Sekhon, Hugh Watt, Ian Wilson, David LeMay and their respective successors, heirs and other legal representatives, and (b) with respect to Nilex USA Inc. and its successors, Nilex Inc. and its successors.

"Permitted Investments" means:

- (a) direct obligations of, or obligations the principal of and interest on which are unconditionally guaranteed by, the Governments of Canada, the United States of America or of any Canadian province (or by any agency thereof to the extent such obligations are backed by the full faith and credit of the Governments of Canada, the United States of America or of such Canadian province), in each case maturing within one year from the date of acquisition thereof;
- (b) investments in certificates of deposit, bankers' acceptances and time deposits maturing within 180 days from the date of acquisition thereof issued or guaranteed by or placed with, and money market deposit accounts issued or offered by, any Schedule I bank under the *Bank Act* (Canada);
- (c) obligations insured by the United States Federal Deposit Insurance Corporation; and
- (d) deposits in bank accounts made in the ordinary course of business and otherwise permitted hereunder.

"Permitted Liens" means:

- (a) Liens in favour of the Lender for the obligations of the Borrowers or any other Credit Party under or pursuant to the Loan Documents;

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- (b) Liens granted by a Credit Party (i) in favour of another Credit Party in order to secure any of its indebtedness to such other Credit Party, or (ii) to secure any Shareholder Subordinated Debt of the Credit Parties, in each case, provided that such Liens are subject to assignment, subordination and postponement arrangements satisfactory to the Lender;
- (c) Purchase Money Liens securing Indebtedness and Liens to secure Capital Lease Obligations, in each case only to the extent permitted by Section 6.1(g);
- (d) Liens imposed by any Governmental Authority for Taxes not yet due and delinquent or which are being contested in good faith in compliance with Section 5.3, and, during such period during which such Liens are being so contested, such Liens shall not be executed on or enforced against any of the assets of any Credit Party;
- (e) carrier's, warehousemen's, mechanics', materialmen's, repairmen's, construction and other like Liens arising by operation of Applicable Law, arising in the ordinary course of business, which are not overdue for a period of more than 30 days or which are being contested in good faith and by appropriate proceedings, and, during such period during which such Liens are being so contested, such Liens shall not be executed on or enforced against any of the assets of any Credit Party, provided in each case that the applicable Credit Party shall have set aside on its books reserves deemed adequate therefor and not resulting in qualification by auditors;
- (f) statutory Liens incurred or pledges or deposits made under worker's compensation, unemployment insurance and other social security legislation;
- (g) Liens or deposits to secure the performance of bids, tenders, trade contracts, leases, statutory obligations, surety and appeal bonds, performance bonds and other obligations of a like nature (other than for borrowed money) incurred in the ordinary course of business
- (h) servitudes, easements, rights-of-way, restrictions and other similar encumbrances on real property imposed by Applicable Law or incurred in the ordinary course of business and encumbrances consisting of zoning or building restrictions, easements, licenses, restrictions on the use of property or minor imperfections or minor encroachments in title thereto which, in the aggregate, are not material, and which do not in any case materially detract from the value of the property subject thereto or interfere with the ordinary conduct of the business of the Credit Parties;
- (i) Liens of or resulting from any judgment or award, the time for the appeal or petition for rehearing of which shall not have expired, or in respect of which the Credit Parties shall at any time in good faith be prosecuting an appeal or proceeding for review and in respect of which a stay of execution pending such appeal or proceeding for review shall have been secured;
- (j) undetermined or inchoate Liens and charges arising or potentially arising under statutory provisions which have not at the time been filed or registered in accordance with Applicable Law or of which written notice has not been duly given in accordance with Applicable Law or which although filed or registered, relate to obligations not due or delinquent;
- (k) the rights reserved to or vested in Governmental Authorities by statutory provisions or by the terms of leases, licenses, franchises, grants or permits, which affect any

land, to terminate the leases, licenses, franchises, grants or permits or to require annual or other periodic payments as a condition of the continuance thereof;

- (l) securities to public utilities or to any municipalities or Governmental Authorities or other public authorities when required by such utilities, municipalities or Governmental Authorities or such other public authorities in connection with the supply of services or utilities to a Credit Party;
- (m) Liens or covenants restricting or prohibiting access to or from lands abutting on controlled access highways or covenants affecting the use to which lands may be put; provided that, in the case of a Credit Party such Liens or covenants do not materially and adversely affect the use of such lands by the Credit Party;
- (n) Liens consisting of royalties payable with respect to any asset or property of a Credit Party existing as of the Effective Date; provided that the existence of any such Lien on any material property or asset of a Credit Party shall have been disclosed in writing to the Lender prior to the Effective Date;
- (o) Liens securing reimbursement obligations relating to letters of credit issued pursuant to this Agreement, provided that the value of the collateral subject to any such Lien does not exceed the amount of the related reimbursement obligation;
- (p) statutory Liens incurred or pledges or deposits made in favour of a Governmental Authority to secure the performance of obligations of a Credit Party under Environmental Laws to which any assets of such Credit Party are subject, provided that no Default or Event of Default shall have occurred and be continuing;
- (q) a Lien granted by a Credit Party to a landlord to secure the payment of arrears of rent in respect of leased properties in the Province of Quebec leased from such landlord, provided that such Lien is limited to the assets located at or about such leased properties;
- (r) any Lien on any property or asset of a Credit Party existing on the date hereof and set forth in Schedule 3.9 or Schedule 3.10; provided that (i) such Lien shall not apply to any other property or asset of such Credit Party, and (ii) such Lien shall secure only those obligations which it secures on the date hereof;
- (s) any Lien existing on any property or asset prior to the acquisition thereof by a Credit Party or existing on any property or asset of any Person that becomes a Credit Party after the date hereof prior to the time such Person becomes a Credit Party; provided that (i) such Lien is not created in contemplation of or in connection with such acquisition or such Person becoming a Credit Party, as the case may be, (ii) such Lien shall not apply to any other property or assets of such Credit Party, and (iii) such Lien shall secure only those obligations which it secures on the date of such acquisition or the date such Person becomes a Credit Party, as the case may be;
- (t) any extension, renewal or replacement of any of the foregoing; provided, however, that the Liens permitted hereunder shall not be extended to cover any additional Indebtedness of the Credit Parties or their property (other than a substitution of like property), except Liens in respect of Capital Lease Obligations and Purchase Money Liens as permitted by (c) above;



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- (u) Liens under applicable Pension Plan legislation that relate to contributions not yet due;
- (v) Liens that relate to the reservations in any original grants from the Crown of any lands or interests therein; and
- (w) Liens existing as of the Effective Date that are registered against title to the real property of the Credit Parties and specifically listed as exceptions under the title insurance policies provided to the Lender.

"Person" includes any natural person, corporation, company, limited liability company, unlimited liability company, trust, joint venture, association, incorporated organization, partnership, Governmental Authority or other entity.

"PPSA" means the *Personal Property Security Act* (Alberta), as amended from time to time (or any successor statute) or similar legislation of any other jurisdiction, including, without limitation, the *Civil Code of Quebec*, the laws of which are required by such legislation to be applied in connection with the issue, perfection, enforcement, validity or effect of security interests.

"Priority Payables" means, with respect to any Person, any amount payable by such Person which is secured by a Lien which ranks or is capable of ranking prior to or *pari passu* with the Liens created by the Security Documents in respect of any Eligible Accounts or Eligible Inventory, including an amount as the Lender reasonably determines reflecting the amounts that may become due under the *Wage Earner Protection Program Act* (Canada) with respect to the employees of the Credit Parties employed in Canada which would give rise to a Lien with priority under Applicable Law over the Liens of the Lender, amounts owing for wages, vacation pay, severance pay, employee deductions, sales tax, excise tax, Tax payable pursuant to the ETA (net of GST input credits), income tax, workers compensation, government royalties, pension fund obligations, Canada Pension Plan, Quebec Pension Plan and other Pension Plan obligations, real property or municipal tax and other statutory or other claims that have or may have priority over, or rank *pari passu* with, such Liens created by the Security Documents.

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

"Purchase Money Lien" means a Lien (including hypothecs of the vendor, rights of a lessor under a lease or leasing contract and the reservation of ownership of a seller under an instalment or conditional sale) taken or reserved in equipment to secure payment of all or part of its purchase price, provided that such Lien (i) secures an amount not exceeding the purchase price of such personal property, (ii) extends only to such personal property and its proceeds, and (iii) is granted prior to or within 30 days after the purchase of such personal property.

"QST" means the Quebec sales tax imposed pursuant to an *Act respecting the Québec sales tax*.

"Qualified ECP Guarantor" means, in respect of any Swap Obligation, each Credit Party that has total assets exceeding \$10,000,000 at the time the relevant Guarantee or grant of the relevant security interest becomes effective with respect to such Swap Obligation or such other Person as constitutes an "eligible contract participant" under the *Commodity Exchange Act* or any regulations promulgated thereunder and can cause another Person to qualify as an "eligible contract participant" at such time by entering into a keepwell under Section 1a(18)(A)(v)(II) of the *Commodity Exchange Act*.

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"Recognized Rating Agencies" means S&P, DBRS and Moody's.

"Reimbursement Obligations" means, at any date, the sum of the outstanding obligations of the Borrowers to reimburse the Lender at such time to the extent that the Lender is obligated to be reimbursed (a) in its capacity as the Issuing Bank at such time pursuant to any Letter of Credit and (b) in its capacity as the F/X Bank at such time pursuant to any F/X Contract.

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

"Release" is to be broadly interpreted and shall include an actual or potential discharge, deposit, spill, leak, pumping, pouring, emission, emptying, injection, escape, leaching, seepage or disposal of any Hazardous Materials which is or may be in breach of any Environmental Laws.

"Rent Reserve" means a reserve up to a maximum of one month (or such longer period as the Lender may determine in its reasonable discretion) of rental payments or similar charges payable under the lease for the applicable leased premises of any Credit Party where Collateral is located and for which the relevant Credit Party has not delivered to the Lender an Acceptable Landlord Waiver, plus an amount representing any then outstanding past due rental payments.

"Repayment Notice" means a notice in the form of Exhibit E;

"Responsible Officer" means, with respect to any Person, the chairman, the president, any vice president, the chief executive officer, chief financial officer or the chief operating officer, and, in respect of financial or accounting matters, any Financial Officer of such Person; unless otherwise specified, all references herein to a Responsible Officer mean a Responsible Officer of a Borrower.

"Restricted Payment" shall mean, with respect to any Person, any payment by such Person (i) of any dividends or distributions on any of its Equity Securities, (ii) on account of, or for the purpose of setting apart any property for a sinking or other analogous fund for, the purchase, redemption, retirement or other acquisition of any of its Equity Securities or any warrants, options or rights to acquire any Equity Securities, or the making by such Person of any other distribution in respect of any of its Equity Securities, (iii) of any principal of or interest or premium on or of any amount in respect of a sinking or analogous fund or defeasance fund for any Indebtedness of such Person ranking in right of payment subordinate to any liability of such Person under the Loan Documents, (iv) of any principal of or interest or premium on or of any amount in respect of a sinking or analogous fund or defeasance fund for any Indebtedness of such Person to a direct or indirect shareholder of such Person or to an Affiliate of a direct or indirect shareholder of such Person, (v) in respect of an Investment, (vi) of any management, consulting or similar fee or any bonus payment or comparable payment, or by way of gift or other gratuity, to any Affiliate of such Person or to any director or officer thereof, or (vii) any payment in respect of Subordinated Indebtedness.

"Revolving Loan" has the meaning set out in Section 2.1.

"Rolling Period" means, as at the end of any calendar month, such calendar month taken together with the eleven immediately preceding calendar months.

"S&P" means Standard & Poor's Financial Services LLC, or its successor.

"Security Documents" means the agreements, documents or instruments described or referred to in Section 4.1 and Section 5.11 (including, to the extent such Section describes an amendment, the agreement, document or instrument amended thereby) and any and all other

agreements, documents or instruments now or hereafter executed and delivered by any Credit Party or any other Person as security for the payment or performance of all or part of the obligations of the Borrowers (or such Credit Party or other Person) hereunder or under any other Loan Documents, as any of the foregoing may have been, or may hereafter be, amended, modified or supplemented.

"Shareholder Subordinated Debt" means Indebtedness of the Borrowers to PEF 2010 Nilex Investment Limited Partnership pursuant to: (i) a subordinated promissory note dated April 30, 2013 in the original principal amount of Cdn.\$22,683,150 issued by a predecessor of Nilex Inc. in favour of PEF 2010 Nilex Investment Limited Partnership, as amended by a first amendment to subordinated promissory note dated December 15, 2016; and (ii) a subordinated promissory note dated June 14, 2017 in the principal amount of Cdn.\$2,000,000 issued by Nilex Inc. to PEF 2010 Nilex Investment Limited Partnership.

"Standard Cost" means the standard cost of Inventory determined in accordance with the applicable Credit Party's published GAAP compliant inventory policy, consistently applied, and excludes any portion of cost representing intercompany profit or gain in the case of Inventory acquired from an Affiliate of any Credit Party.

"Subsidiary" means, with respect to any Person (in this definition, the "parent") at any date, any other Person the accounts of which would be consolidated with those of the parent in the parent's consolidated financial statements if such financial statements were prepared in accordance with GAAP as of such date, as well as any other Person (a) of which securities or other ownership interests representing more than 50% of the equity or more than 50% of the ordinary voting power or, in the case of a partnership, more than 50% of the general partnership interests are, as of such date, owned, controlled or held, or (b) that is, as of such date, otherwise Controlled, in each case by the parent or one or more Subsidiaries of the parent or by the parent and one or more Subsidiaries of the parent.

"Subordinated Debt" means Indebtedness of the Credit Parties which, by its terms or by the terms of a subordination, postponement and intercreditor agreement between the holder of such indebtedness and the Lender (which terms of such Indebtedness or such agreement shall be in form and substance satisfactory to the Lender, acting reasonably) is fully subordinated and postponed to the Obligations, and any Lien securing such Indebtedness is fully subordinated to the Liens created by the Security Documents; such Indebtedness to include, without limitation, the Shareholder Subordinated Debt.

"Subordinated Debt Documents" means the loan agreements, promissory notes or other evidences of indebtedness, any guarantees, security documents or other related instruments or agreements evidencing, governing or securing Subordinated Debt.

"Swap Obligation" means, with respect to any Guarantor, any obligation to pay or perform under any agreement, contract or transaction that constitutes a "swap" within the meaning of section 1a(47) of the *Commodity Exchange Act*.

"Swap Transaction" means any transaction or agreement entered into between a Borrower and any other counterparty with respect to any swap, forward, future or derivative transaction or agreement or option or similar agreement involving, or settled by reference to, one or more rates, currencies, commodities, equity or debt instruments or securities, or economic, financial or pricing indices or measures of economic, financial or pricing risk or value or any similar transaction or any combination of these transactions.

"Taxes" means all taxes, charges, fees, levies, imposts and other assessments, including all income, sales, use, goods and services, harmonized, value added, capital, capital gains, alternative,

franchise, net worth, branch transfer, land transfer, profits, withholding, payroll, employer health, excise, stamp, documentary, real property and personal property taxes, and any other taxes, customs duties, fees, assessments, or similar charges in the nature of a tax, including Canada Pension Plan and provincial pension plan contributions, unemployment insurance payments and workers' compensation premiums, together with any instalments with respect thereto, and any interest, fines and penalties with respect thereto, imposed by any Governmental Authority (including federal, state, provincial, territorial, municipal and foreign Governmental Authorities), and whether disputed or not.

"Term Loan" has the meaning set out in Section 2.1(b).

"Transactions" means the execution, delivery and performance by the Borrowers of this Agreement and the other Loan Documents, the borrowing of Loans, the use of the proceeds thereof and the issuance of Letters of Credit and the entering into of F/X Contracts hereunder.

"Type", when used in reference to any Loan or Borrowing, refers to whether the rate of interest on such Loan, or on the Loans comprising such Borrowing, is determined by reference to the Canadian Prime Rate, the CDOR Rate, the Base Rate, the LIBO Rate, or is a Letter of Credit.

"UCC" means the Uniform Commercial Code as in effect from time to time for the applicable State in question.

"U.S. Bank Commercial Card Program" means corporate credit cards issued by U.S. Bank National Association, Canada Branch.

"U.S. Dollars" and **"U.S.\$"** refer to lawful money of the United States of America.

"U.S.\$ Equivalent" means, on any day, the amount of U.S. Dollars that the Lender could purchase, in accordance with its normal practice, with a specified amount of Canadian Dollars based on the spot rate at which U.S. Dollars are offered at the start of such day by CIBC in Toronto, Ontario.

"Violation Notice" means any notice received by any Credit Party from any Governmental Authority under any Environmental Law that the applicable Credit Party or any of its property and assets is not in compliance with the requirements of any Environmental Law.

"Weekly Reporting Trigger Period" means, the period commencing on the day that either (1) an Event of Default occurs, or (2) an Excess Availability Trigger occurs, and continuing until the date that at all times during the preceding thirty (30) consecutive days (1) no Event of Default existed, and (2) there was no Excess Availability Trigger.

1.2 Classification of Loans and Borrowings.

For purposes of this Agreement, Loans may be classified and referred to by Type (*e.g.*, a "Canadian Prime Loan") and Borrowings also may be classified and referred to by Type (*e.g.*, a "Canadian Prime Borrowing").

1.3 Terms Generally.

The definitions of terms herein shall apply equally to the singular and plural forms of the terms defined. Whenever the context may require, any pronoun shall include the corresponding masculine, feminine and neuter forms. The words "include", "includes" and "including" shall be deemed to be followed by the phrase "without limitation". The word "will" shall be construed to have

the same meaning and effect as the word "shall". The word "or" is disjunctive; the word "and" is conjunctive. The word "shall" is mandatory; the word "may" is permissive. The words "to the knowledge of" means, when modifying a representation, warranty or other statement of any Person, that the fact or situation described therein is known by the Person (or, in the case of a Person other than a natural Person, known by the Responsible Officer of that Person) making the representation, warranty or other statement, or with the exercise of reasonable due diligence under the circumstances (in accordance with the standard of what a reasonable Person in similar circumstances would have done) would have been known by the Person (or, in the case of a Person other than a natural Person, would have been known by such Responsible Officer of that Person). Unless the context requires otherwise (a) any definition of or reference to any agreement, instrument or other document herein shall be construed as referring to such agreement, instrument or other document as from time to time amended, supplemented or otherwise modified (subject to any restrictions on such amendments, supplements or modifications set forth herein), (b) any reference herein to any statute or any section thereof shall, unless otherwise expressly stated, be deemed to be a reference to such statute or section as amended, restated or re-enacted from time to time, (c) any reference herein to any Person shall be construed to include such Person's successors and permitted assigns, (d) the words "herein", "hereof" and "hereunder", and words of similar import, shall be construed to refer to this Agreement in its entirety and not to any particular provision hereof, (e) all references herein to Articles, Sections, Exhibits and Schedules shall be construed to refer to Articles and Sections of, and Exhibits and Schedules to, this Agreement, and (f) the words "asset" and "property" shall be construed to have the same meaning and effect and to refer to any and all tangible and intangible assets and properties, including cash, securities, accounts and contract rights.

1.4 Accounting Terms; GAAP.

Except as otherwise expressly provided herein, all terms of an accounting or financial nature shall be construed in accordance with GAAP, as in effect from time to time. All calculations of the components of the financial information for the purposes of determining compliance with the financial ratios and financial covenants contained herein shall be made on a basis consistent with GAAP in existence as at the date of this Agreement and used in the preparation of the consolidated financial statements of the Borrowers and their Subsidiaries referred to in Section 5.1(a), and all calculations with respect to inventory shall use the same method for inventory valuation as used in the preparation of the Borrowers' financial statements on the date hereof. In the event of a change in GAAP, the Borrowers and the Lender shall negotiate in good faith to revise (if appropriate) such ratios and covenants to give effect to the intention of the parties under this Agreement as at the Effective Date, and any new ratio or covenant shall be subject to approval by the Lender. In the event that such negotiation is unsuccessful, all calculations thereafter made for the purpose of determining compliance with the financial ratios and financial covenants contained herein shall be made on a basis consistent with GAAP in existence as at the Effective Date.

1.5 Time.

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

1.6 Permitted Liens.

Any reference in any of the Loan Documents to a Permitted Lien is not intended to subordinate or postpone, and shall not be interpreted as subordinating or postponing, or as any agreement to subordinate or postpone, any Lien created by any of the Loan Documents to any Permitted Lien.

1.7 Joint and Several.

(a) **Joint and Several Liability.** Except as expressly provided otherwise herein, the term "Borrower" as used herein shall include Nilex Inc. and Nilex USA Inc. and each of them or either of them, as the context may require. Each Borrower acknowledges that (i) it is a co-borrower hereunder and shall be jointly and severally, with the other Borrower, directly and primarily liable to the Lender for the Obligations regardless of which Borrower actually receives Loans or other extensions of credit hereunder or the amount of such Loans received or the manner in which the Lender accounts for such Loans or other extensions of credit on its books and records, (ii) each of the Obligations shall be secured by all of the Collateral, (iii) each Borrower shall have the obligations of co-maker and shall be primary obligors with respect to the Loans and the other Obligations, it being agreed that the Loans to each Borrower inure to the benefit of all Borrowers, and (iv) the Lender is relying on such joint and several liability of the Borrowers as co-makers in extending the Loans hereunder. Notwithstanding anything to the contrary contained in this Agreement, the Lender shall be entitled to rely upon any request, notice or other communication received by it from either Borrower on behalf of both Borrowers, and shall be entitled to treat its giving of any notice hereunder pursuant to Section 9.1 hereof as notice to each Borrower.

(b) **Unconditional Liability.** Each Borrower's Obligations arising as a result of the joint and several liability of the Borrowers hereunder with respect to the Loans or any other extensions of credit made to the other Borrower hereunder shall, to the fullest extent permitted by law, be unconditional irrespective of (i) the validity or enforceability, avoidance or subordination of the Obligations of the other Borrower or of any document evidencing all or any part of the Obligations of the other Borrower, (ii) the absence of any attempt to collect the Obligations from the other Borrower, or any other security therefor, or the absence of any other action to enforce the same, (iii) the waiver, consent, extension, forbearance or granting of any indulgence by the Lender with respect to any provision of any instrument evidencing the Obligations of the other Borrower, or any part thereof, or any other agreement now or hereafter executed by the other Borrower and delivered to the Lender, (iv) the failure by the Lender to take any steps to perfect and maintain its security interest in, or to preserve its rights to, any security or Collateral for the Obligations of the other Borrower, or (v) any other circumstances which might constitute a legal or equitable discharge or defense of any other Borrower.

(c) **Waiver of Subordination and Other Rights.** With respect to each Borrower's Obligations arising as a result of the joint and several liability of the Borrowers hereunder with respect to the Loans or other extensions of credit made to any of the other Borrower hereunder, each Borrower waives, until the Obligations shall have been paid in full and this Agreement and the other Loan Documents shall have been terminated, any right to enforce any right of subrogation or any remedy which the Lender now has or may hereafter have against such Borrower, any endorser or any guarantor of all or any part of the Obligations, and any benefit of, and any right to participate in, any security or collateral given to the Lender to secure payment of the Obligations or any other liability of the Borrowers to the Lender.

(d) **No Modification or Release of Obligations.** No payment or payments made by either of the Borrowers or any other Person or received or collected by the Lender from either of the Borrowers or any other Person by virtue of any action or proceeding or any set-off or appropriation or application at any time or from time to time in reduction of or in payment of the Obligations shall be deemed (except to the extent the Obligations are satisfied) to modify, release or otherwise affect the liability of each Borrower under this Agreement, which shall remain liable for the Obligations until the Obligations are paid in full and the Credit is terminated.

1.8 Interpretation Clause (Québec).

For purposes of any assets, liabilities or entities located in the Province of Québec and for all other purposes pursuant to which the interpretation or construction of this Agreement may be subject to the laws of the Province of Québec or a court or tribunal exercising jurisdiction in the Province of Québec, (a) "personal property" shall be deemed to include "movable property", (b) "real property" shall be deemed to include "immovable property", (c) "tangible property" shall be deemed to include "corporeal property", (d) "intangible property" shall be deemed to include "incorporeal property", (e) "security interest", "mortgage" and "lien" shall be deemed to include a "hypothec", "prior claim" and a resolutive clause, (f) all references to filing, registering or recording under the PPSA or UCC shall be deemed to include publication under the Civil Code of Québec, (g) all references to "perfection" of or "perfected" liens or security interest shall be deemed to include a reference to an "opposable" or "set up" lien or security interest as against third parties, (h) any "right of offset", "right of setoff" or similar expression shall be deemed to include a "right of compensation", (i) "goods" shall be deemed to include "corporeal movable property" other than chattel paper, documents of title, instruments, money and securities, (j) an "agent" shall be deemed to include a "mandatary", (k) "construction liens" shall be deemed to include "legal hypothecs"; (l) "joint and several" shall be deemed to include solidary; (m) "gross negligence or wilful misconduct" shall be deemed to be "intentional or gross fault"; (n) "beneficial ownership" shall be deemed to include "ownership on behalf of another as mandatary"; (o) "servitude" shall be deemed to include easement; (p) "priority" shall be deemed to include "prior claim"; (q) "survey" shall be deemed to include "certificate of location and plan"; (r) "state" shall be deemed to include "province"; (s) "fee simple title" shall be deemed to include "absolute ownership". The parties hereto confirm that it is their wish that this Agreement and any other document executed in connection with the transactions contemplated herein be drawn up in the English language only and that all other documents contemplated thereunder or relating thereto, including notices, may also be drawn up in the English language only. Les parties aux présentes confirment que c'est leur volonté que cette convention et les autres documents de crédit soient rédigés en langue anglaise seulement et que tous les documents, y compris tous avis, envisagés par cette convention et les autres documents peuvent être rédigés en la langue anglaise seulement.

ARTICLE 2 THE CREDITS

2.1 Commitment.

(a) Subject to the terms and conditions set forth herein, the Lender commits to make Loans (each such Loan made under this Section 2.1(a), a "**Revolving Loan**") to the Borrowers from time to time during the period commencing on the Effective Date and ending on the Maturity Date (each such commitment, a "**Commitment**") in an aggregate principal amount up to the amount set forth beside the Lender's name in Schedule A under the heading "Commitment" and subheading "Revolving Loans", provided that the Lender shall not be required to extend further credit hereunder if any further extension of credit made by the Lender as requested by the Borrowers would result in (i) the Lender's Exposure exceeding the Lender's Commitment, or (ii) the sum of the total Exposure exceeding either the total Commitment or the Borrowing Base. Within the foregoing limits and subject to the terms and conditions set forth herein, the Borrowers may borrow, repay and reborrow Revolving Loans. In addition, the Borrowers may, subject to the Lender's prior written approval in its sole discretion, on at least ten (10) days' prior written notice to the Lender, from time to time permanently increase the Commitment in an aggregate principal amount of up to \$5,000,000, provided that (i) the Lender may agree to accept or decline a requested Commitment increase in its sole discretion, (ii) no increase in the Commitment shall be made if a Default or an Event of Default shall have occurred and be continuing or would result after giving effect to such increase, (iii) each such increase shall be in a minimum principal amount of \$1,000,000, (iv) the Borrowers shall pay to

the Lender a one-time fee in an amount equal to 0.30% of the amount of each such Commitment increase, and (v) the aggregate principal amount of all such Commitment increases shall not exceed \$5,000,000. The Lender's Commitment hereunder shall automatically increase as a result of any permitted increase in the Commitment hereunder, and Schedule A shall be amended to reflect any such permitted increase.

(b) Subject to the terms and conditions set forth herein, on the Effective Date the Lender commits to make a single term loan advance to the Borrowers (the "**Term Loan**") in the aggregate principal amount set forth beside the Lender's name in Schedule A under the heading "Commitment" and subheading "Term Loan" not exceeding, cumulatively, \$4,000,000 (in multiples of \$50,000). Once repaid, whether such repayment is voluntary or required, the Term Loan may not be reborrowed.

2.2 Loans and Borrowings.

(a) Each Revolving Loan shall be made as part of a Borrowing consisting of Revolving Loans made by the Lender in accordance with its Commitment.

(b) Subject to the Letter of Credit Sub-Line limitation, the F/X Contract Sub-Line limitation, the Borrowing Base limitations and the other limitations on Loans and Borrowings as provided in this Agreement, each Borrowing shall be comprised entirely of Canadian Prime Loans, Bankers Acceptances, BA Equivalent Loans, Base Rate Loans, LIBO Rate Loans and/or the issuance of Letters of Credit or the entry into F/X Contracts.

(c) The Lender may at its option make any LIBO Rate Loan by causing any domestic or foreign branch or Affiliate of the Lender to make such Loan; provided that any exercise of such option shall not result in any increased costs for the Borrowers or affect the obligation of the Borrowers to repay such Loan in accordance with the terms of this Agreement. At the commencement of each Interest Period for any LIBO Rate Borrowing, such Borrowing shall be in an aggregate amount that is an integral multiple of \$100,000 and not less than \$500,000. At the commencement of each Contract Period for any BA Borrowing, such Borrowing shall be in an aggregate amount that is an integral multiple of \$100,000 and not less than \$500,000. Borrowings of more than one Type may be outstanding at the same time; provided that there shall not at any time be more than a total of five BA Borrowings or five LIBO Rate Borrowings outstanding.

2.3 Requests for Borrowings.

(a) The initial Borrowings hereunder on the Effective Date in respect of the Revolving Loans shall be Canadian Prime Borrowings and/or Base Rate Borrowings. The Term Loan shall be in the amount specified in the Borrowing Request on the Effective Date. Thereafter, to request a Borrowing, the relevant Borrower shall notify the Lender of such request by written Borrowing Request (i) in the case of a LIBO Rate Borrowing, not later than 11:00 a.m., Toronto time, three Business Days before the date of the proposed Borrowing, (ii) in the case of a BA Borrowing, not later than 11:00 a.m., Toronto time, two Business Days before the date of the proposed Borrowing, (iii) in the case of a Canadian Prime Borrowing or a Base Rate Borrowing, not later than 10:00 a.m., Toronto time, on the date of the proposed Borrowing; or (iv) in the case of a Letter of Credit in accordance with Section 2.18 or the entry into an F/X Contract in accordance with Section 2.19, not later than 11:00 a.m., Toronto time, five (5) Business Days before the date of the proposed Borrowing. The Lender is entitled to rely and act upon any written Borrowing Request given or purportedly given by a Borrower, and each Borrower hereby waives the right to dispute the authenticity and validity of any such request or resulting transaction once the Lender has advanced funds or the Issuing Bank has issued a Letter of Credit based on such written Borrowing Request.

Each such written Borrowing Request shall be substantially in the form of Exhibit B and shall specify the following information:

- (i) the aggregate amount of each requested Borrowing and the Type thereof;
- (ii) the date of such Borrowing, which shall be a Business Day;
- (iii) whether such Borrowing is to be a Canadian Prime Borrowing, a BA Borrowing, a Base Rate Borrowing, a LIBO Rate Borrowing, or the issuance of a Letter of Credit in accordance with Section 2.18 or the entry into an F/X Contract in accordance with Section 2.19;
- (iv) in the case of a LIBO Rate Borrowing, the initial Interest Period to be applicable thereto, which shall be a period contemplated by the definition of the term "**Interest Period**", and in the case of a BA Borrowing, the initial Contract Period to be applicable thereto, which shall be a period contemplated by the definition of the term "**Contract Period**"; and
- (v) the location and number of the relevant Borrower's account to which funds are to be disbursed, which shall comply with the requirements of this Agreement.

(b) If no election as to the Type of Borrowing is specified, then the requested Borrowing shall be a Canadian Prime Borrowing (if denominated in Canadian Dollars) or a Base Rate Borrowing (if denominated in U. S. Dollars). If no currency is specified, the Borrowing shall be denominated in Canadian Dollars. If no Interest Period is specified with respect to any requested LIBO Rate Borrowing, then the relevant Borrower shall be deemed to have selected an Interest Period of a one month duration. If no Contract Period is specified with respect to any requested BA Borrowing, then the relevant Borrower shall be deemed to have selected a Contract Period of a one month duration.

(c) Each Borrowing initially shall be of the Type specified in the applicable Borrowing Request. Thereafter, the relevant Borrower may elect to convert a Borrowing to a different Type or to continue such Borrowing and, in the case of (i) a LIBO Rate Borrowing, may elect a new Interest Period therefor, or (ii) a BA Borrowing, may elect a new Contract Period therefor, all as provided in this Section 2.3(c). The Borrowers may elect different options with respect to different portions of the affected Borrowing and the Loans comprising each such portion shall be considered a separate Borrowing. To make an election pursuant to this Section 2.3(c), a Borrower shall notify the Lender of such election in the manner and by the time that a Borrowing Request would be required under Section 2.3(a) if such Borrower were requesting a Borrowing of the Type resulting from such election to be made on the effective date of such election. In addition to the information specified in Section 2.3(a), each Borrowing Request shall specify the Borrowing to which such request applies and, if different options are being elected with respect to different portions thereof, the portions thereof to be allocated to each resulting Borrowing.

(d) In the absence of a timely and proper election with regard to (i) LIBO Rate Borrowings, the relevant Borrower shall be deemed to have elected to convert such LIBO Rate Borrowings to Base Rate Borrowings on the last day of the Interest Period of the relevant LIBO Rate Borrowings, and (ii) BA Borrowings, the relevant Borrower shall be deemed to have elected to convert such BA Borrowings to Canadian Prime Borrowings on the last day of the Contract Period of the relevant BA Borrowings.

(e) The Lender shall not incur any liability to the Borrowers as a result of acting in accordance with any notice or request referred to in this Section 2.3, which notice or request the Lender believes in good faith to have been given by an officer duly authorized by the Borrowers to request Loans on its behalf or for otherwise acting in good faith under this Section 2.3, and the crediting of Loans to the relevant Borrower's disbursement accounts, or transmittal to such Person or other bank account as the Borrowers shall direct, shall conclusively establish the obligation of the Borrowers to repay such Loans as provided herein. Nothing herein shall, however, release or be deemed to release the Lender in respect of its gross negligence or willful misconduct.

(f) Except to the extent otherwise permitted to the contrary hereunder, any Borrowing Request made pursuant to in this Section 2.3 shall be irrevocable and the Borrowers shall be bound to borrow the funds requested therein in accordance therewith.

2.4 Funding of Borrowings.

The Lender shall make each Loan to be made by it hereunder on the proposed date thereof by 12:00 noon, Toronto time. The Lender will make such Loans available to the Borrowers by promptly crediting the amounts of such Loan to an account of the relevant Borrower and designated by such Borrower in the applicable Borrowing Request. The Borrowers shall satisfy Reimbursement Obligations promptly as they arise by way of a request for a Loan and all Loans made hereunder to satisfy Reimbursement Obligations: (i) in respect of any Letter of Credit shall be remitted by the Lender to the Issuing Bank in accordance with such Letter of Credit (unless the Issuing Bank has already been fully reimbursed directly by the Borrowers in respect of drawings under the Letter of Credit), and (ii) in respect of any F/X Contract shall be remitted by the Lender to the F/X Bank in accordance with such F/X Contract (unless the F/X Bank has already been fully reimbursed directly by the Borrowers in respect of all such losses in respect of the F/X Contract).

2.5 Interest.

(a) The Loans comprising each Canadian Prime Borrowing shall be made in Canadian Dollars and shall bear interest (computed on the basis of the actual number of days elapsed over a year of 365 days or 366 days, as the case may be) at a rate per annum equal to the Canadian Prime Rate plus the Applicable Margin. The Loans comprising each BA Borrowing shall be made in Canadian dollars and shall bear interest (computed in advance on the basis of the actual number of days in the relevant Contract Period over a year of 365 days or 366 days, as the case may be) at a rate per annum equal to the BA Rate plus the Applicable Margin. The Loans comprising each Base Rate Borrowing shall be made in U.S. Dollars and shall bear interest (computed on the basis of the actual number of days elapsed over a year of 360 days at a rate per annum equal to the Base Rate plus the Applicable Margin. The Loans comprising each LIBO Rate Borrowing shall be made in U.S. Dollars and shall bear interest (computed on the basis of the actual number of days in the relevant Interest Period over a year of 360 days) at the LIBO Rate for the Interest Period in effect for such LIBO Rate Borrowing plus the Applicable Margin. The Loans comprising each BA Borrowing shall be subject to an Acceptance Fee, which shall be payable as set out in Section 2.11.

(b) If a Default or an Event of Default has occurred and is continuing, all amounts outstanding hereunder (including, without duplication, all Loans and all Letter of Credit Exposure and F/X Exposure) shall bear interest, after as well as before judgment, at a rate per annum equal to 2% plus the rate otherwise applicable to such Loan or, in the case of any amount not constituting principal or interest on a Loan, at a rate equal to 2% plus the rate otherwise applicable to, in the case of Canadian Dollar amounts, Canadian Prime Loans, or in the case of U.S. Dollar amounts, Base Rate Loans.

(c) Accrued interest on each Loan shall be payable in arrears on the earlier of (i) each applicable Interest Payment Date, and (ii) the date of termination of the Commitment. In addition, in the event of any repayment or prepayment of any Loan, accrued interest on the principal amount repaid or prepaid shall be payable on the date of such repayment or prepayment.

(d) All interest hereunder shall be payable for the actual number of days elapsed (including the first day but excluding the last day). Any Loan that is repaid on the same day on which it is made shall bear interest for one day. The applicable Canadian Prime Rate, Base Rate, LIBO Rate or BA Rate shall be determined by the Lender, and such determination shall be conclusive absent manifest error.

(e) For the purposes of the *Interest Act* (Canada) and disclosure thereunder, whenever any interest or any fee to be paid hereunder or in connection herewith is to be calculated on the basis of a 360-day or 365-day year, the yearly rate of interest to which the rate used in such calculation is equivalent is the rate so used multiplied by the actual number of days in the calendar year in which the same is to be ascertained and divided by 360 or 365, as applicable. The rates of interest under this Agreement are nominal rates, and not effective rates or yields. The principle of deemed reinvestment of interest does not apply to any interest calculation under this Agreement. Each Credit Party confirms that it fully understands and is able to calculate the rate of interest applicable to Loans based on the methodology for calculating per annum rates provided for in this Agreement. Each Credit Party hereby irrevocably agrees not to plead or assert, whether by way of defence or otherwise, in any proceeding relating to this Agreement or any Loan Documents, that the interest payable under this Agreement and the calculation thereof has not been adequately disclosed to such Credit Party as required pursuant to Section 4 of the *Interest Act* (Canada).

(f) If any provision of this Agreement would oblige the Borrowers to make any payment of interest or other amount payable to the Lender in an amount or calculated at a rate which would be prohibited by any Applicable Law or would result in a receipt by that Lender of "interest" at a "criminal rate" (as such terms are construed under the *Criminal Code* (Canada)), then, notwithstanding such 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 Applicable Law or so result in a receipt by that Lender of "interest" at a "criminal rate", such adjustment to be effected, to the extent necessary (but only to the extent necessary), as follows:

- (i) first, by reducing the amount or rate of interest required to be paid to the affected Lender under Section 2.5; and
- (ii) thereafter, by reducing any fees, commissions, costs, expenses, premiums and other amounts required to be paid to the affected Lender which would constitute interest for purposes of section 347 of the *Criminal Code* (Canada).

(g) Notwithstanding anything to the contrary contained in this Agreement, if, as a result of any restatement or other adjustment to the financial statements delivered under this Agreement (including any adjustment to unaudited financial statements as a result of subsequent audited financial statements) or for any other reason (including without limitation an adjustment on any subsequent Borrowing Base Report delivered hereunder), the Borrowers or the Lender determine that Excess Availability as of any applicable date was inaccurate and, as a result of such inaccuracy, the Applicable Margin applicable to any Loans or any fees for any period was lower than would otherwise be the case had such inaccuracy not occurred, then the Borrowers shall immediately and retroactively be obligated to pay to the Lender, promptly on demand by the Lender (or, if an Event of Default pursuant to any of Sections 7.1(h), (i) or (j) shall have occurred and be continuing,

automatically and without further action by the Lender), an amount equal to the excess of the amount of interest and fees that should have been paid by the Borrowers for such period over the amount of interest and fees actually paid by the Borrowers for such period, plus interest on such amount at the rate otherwise applicable herein. The Borrowers' obligations under this Section 2.5(g) shall survive the termination of the Commitment and the repayment of all Indebtedness hereunder.

2.6 Termination and Reduction of Commitment.

(a) Unless previously terminated and subject to any earlier demand for payment upon the occurrence of an Event of Default, the Revolving Loan Commitment shall terminate on the Maturity Date and the Term Loan Commitment shall terminate upon the making of the Term Loan on the Effective Date.

(b) The Borrowers may, upon five Business Days prior written notice to the Lender, permanently cancel any unused portion of the Commitment. Each notice delivered by a Borrower pursuant to this Section 2.6(b) shall be irrevocable. Notwithstanding the termination of this Agreement, until all Obligations are irrevocably and indefeasibly paid and performed in full, the Credit Parties shall remain bound by the terms of this Agreement and under the Loan Documents and shall not be relieved of any of their Obligations and the Lender shall retain all its rights and remedies hereunder and under the Loan Documents (including, without limitation, in all then existing and after-arising Collateral). Pending a final accounting, the Lender may withhold any balances in the Borrowers' loan account to cover all of the Obligations, whether absolute or contingent, including cash reserves for any contingent Obligations, including an amount equal to 105% of the face amount of any outstanding Letters of Credit with an expiry date on, or within thirty (30) days of the effective date of termination of this Agreement.

(c) Unless the Commitment have been previously terminated, upon the occurrence of the Maturity Date, the Commitment of the Lender shall be permanently reduced to an amount equal to the amount of the Loans made by the Lender at such date and the Commitment shall be permanently reduced by an amount equal to such reduction of such Commitment.

(d) Subject to the other terms and conditions of this Agreement and unless the Commitment have been earlier terminated, the Commitment shall be available hereunder from the Effective Date until the Maturity Date.

2.7 Repayment of Loans.

(a) The Borrowers hereby unconditionally promise to pay to the Lender the then unpaid principal amount of each Revolving Loan and all other Obligations on the earlier of the Maturity Date and the date that the Commitment is terminated pursuant to Section 2.6(b) or Section 7.1.

(b) The Term Loan shall amortize over forty-eight (48) months beginning on the Effective Date, with principal installments in an amount per installment of \$83,333.33, payable on the first day of each Fiscal Month beginning July 1, 2018. The Borrowers hereby unconditionally promise to pay to the Lender the then unpaid principal amount and accrued but unpaid interest on the Term Loan on the earlier of the Maturity Date and the date that the Commitment is terminated pursuant to Section 2.6(b) or Section 7.1.

2.8 Evidence of Debt.

(a) The Lender shall maintain in accordance with its usual practice an account or accounts evidencing the Indebtedness of the Borrowers to the Lender resulting from each Borrowing

made by the Lender hereunder, including the amounts of principal and interest payable and paid to the Lender from time to time hereunder.

(b) The Lender shall maintain accounts in which it shall record (i) the amount of each Borrowing made hereunder, the Type thereof and, in the cases of BA Borrowings and LIBO Rate Loans, the relevant Contract Period or Interest Period, applicable thereto, (ii) the amount of any principal or interest due and payable or to become due and payable from the Borrowers to the Lender hereunder, and (iii) the amount of any sum received by the Lender hereunder.

(c) The entries made in the accounts maintained pursuant to Sections 2.8(a) and (b) shall be conclusive evidence (absent manifest error) of the existence and amounts of the obligations recorded therein and shall be admissible in any action or proceeding arising therefrom; provided that the failure of the Lender to maintain such accounts or any error therein shall not in any manner affect the obligation of the Borrowers to repay the Borrowings in accordance with the terms of this Agreement.

(d) The Lender may request that Loans (other than BA Borrowings) made by it be evidenced by a promissory note. In such event, the Borrowers shall prepare, execute and deliver to the Lender a promissory note payable to the order of the Lender (or, if requested by the Lender, to the Lender and its registered assigns) and in a form approved by the Lender. Thereafter, the Loans evidenced by such promissory note and interest thereon shall at all times be represented by one or more promissory notes in such form payable to the order of the payee named therein (or, if such promissory note is a registered note, to such payee and its registered assigns).

2.9 Prepayments.

(a) Mandatory Borrowing Base Prepayments. If at any time the aggregate Exposure of the Lender is in excess of (i) the Borrowing Base or (ii) the total Commitment (in either case, including any excess arising as a result of fluctuations in exchange rates), the Borrowers shall, immediately pay to the Lender the amount of such excess to be applied (i) first, in satisfaction of all Reimbursement Obligations, if any, outstanding at such time, (ii) second, as a prepayment of the Revolving Loans, and (iii) third, as Cover for any remaining Bankers Acceptances, Letter of Credit Exposure and F/X Exposure in an amount of such remaining excess.

(b) Mandatory Excess Cash Flow Prepayment. Within ten (10) Business Days of delivery to Lender of the annual financial statements pursuant to Section 5.1, commencing with the delivery to Lender of the financial statements for Fiscal Year ended December 31, 2018 or, if such financial statements are not delivered to the Lender on the date such statements are required to be delivered pursuant to Section 5.1, prior to April 30th of such year, the Borrowers shall prepay the outstanding principal amount of the Term Loan in an amount equal to 50% of the Excess Cash Flow of the Borrowers and their Subsidiaries for such Fiscal Year.

(c) Application of Cover Amount. The amount of Cover shall be paid by the Borrowers under Section 2.9(a) to the Lender and retained by the Lender in a collateral account maintained by the Lender at its Payment Office and collaterally assigned to, or charged in favour of, the Lender as security until such time as the applicable Letters of Credit and F/X Contracts shall have expired or matured and Reimbursement Obligations, if any, with respect thereto shall have been fully satisfied; provided that if any such Reimbursement Obligations are not satisfied when due hereunder, the Lender may apply any or all amounts in such collateral account in satisfaction of any or all such Reimbursement Obligations.

(d) Currency Fluctuations. If, at any time, the Canadian \$ Equivalent of the Loans made by the Lender to the Borrowers under any Credit exceeds the Commitment of the Lender under such

Credit (any such excess being referred to in this Section as an "**Excess Amount**"), then the Borrowers will forthwith repay to the Lender an amount equal to the Excess Amount.

(e) Voluntary Prepayment. The Borrowers may, upon delivery of a Repayment Notice to the Lender (delivered in accordance with the notice periods applicable to delivery of a Borrowing Request under Section 2.3(a)), prepay all or any part of a Canadian Prime Borrowing, Base Rate Borrowing, BA Borrowing, LIBO Rate Borrowing (provided that any such prepayment of part of a BA Borrowing or a LIBO Borrowing, and any BA Borrowing or LIBO Borrowing not repaid by such partial payment, shall be in amounts contemplated by Section 2.2(c)) or the Term Loan (provided that any prepayment of less than all of the outstanding balance of the Term Loan shall be applied to the remaining installments of the Term Loan in the inverse order of their maturity), provided that a BA Borrowing or LIBO Rate Borrowing or part thereof may only be repaid on the last day of the Contract Period or Interest Period, as the case may be. Each Repayment Notice delivered hereunder shall be irrevocable. No prepayment under this Section 2.9(e) shall permanently reduce or terminate any of the Commitment in respect of the Revolving Loans.

(f) Repayment Notice. Each Repayment Notice provided by the Borrowers in respect of any permanent repayment or prepayment hereunder shall be in the form of Exhibit E and shall be irrevocable at such time as the Lender has commenced taking any action pursuant to any such prepayment notice.

2.10 Fees.

(a) The Borrowers shall pay to the Lender in Canadian Dollars, an unused line fee (the "**Unused Line Fee**") for the period commencing on the Effective Date to and including the Maturity Date (or such earlier date as the Commitment shall have been terminated entirely) computed at a rate of 0.25% per annum on the average daily excess amount of the Commitment for Revolving Loans over the aggregate Exposure (but excluding, solely for the purpose of this Section 2.10, any F/X Exposure). The Unused Line Fees on the Commitment shall be calculated monthly in arrears on the last Business Day of each calendar month (and on the date on which the Commitment terminate) and each such calculated amount shall be payable on the first Business Day of the immediately following calendar month (or on the date on which the Commitment terminate, as the case may be). All Unused Line Fees shall be computed on the basis of a year of 365 or 366 days, as the case may be, and shall be payable for the actual number of days elapsed (including the first day but excluding the last day).

(b) The Borrowers agree to pay to the Lender a fee (a "**Letter of Credit Fee**") with respect to the provision of Letters of Credit, at the rate of 1.00% per annum on the average daily amount of the Letter of Credit Exposure with respect to documentary Letters of Credit and at the rate of 1.75% per annum on the average daily amount of the Letter of Credit Exposure with respect to standby Letters of Credit, in each case during the period from and including the Effective Date (or the date on which any Letter of Credit Exposure first exists to but excluding the latter of: (i) the date of termination of the Commitment and (ii) the date on which there ceases to be any Letter of Credit Exposure. All such Letter of Credit Fees shall be calculated monthly in arrears on the last Business Day of each calendar month (and on the date on which the Commitment terminate) and each such calculated amount shall be payable on the first Business Day of the immediately following calendar month (or on the date on which the Commitment terminate, as the case may be); provided that all Letter of Credit Fees, together with all Standard Letter of Credit Fees (as defined below), accruing after the date on which the Commitment terminate shall be payable on demand. All Standard Letter of Credit Fees payable pursuant to this Section 2.10(b) shall be computed on the basis of a year of 365 or 366 days, as the case may be, and shall be payable for the actual number of days elapsed (including the first day but excluding the last day). The Borrowers also agree to pay to the Issuing Bank, the Issuing Bank's standard fees (the "**Standard Letter of Credit Fees**") with respect to the

issuing, administration, handling, amendment, renewal or extension of any Letter of Credit or processing of drawings thereunder. Such Standard Letter of Credit Fees shall be payable within 10 days after demand by the Lender or the Issuing Bank. It is acknowledged and agreed by the Lender that the Issuing Bank may charge fees and other amounts directly to the Lender as a condition to issuing Letters of Credit.

(c) The Borrowers agree to pay to the Lender, for its own account, on the Effective Date a loan facility fee of \$72,000, which the Borrowers acknowledge and agree shall be fully earned when paid.

(d) The Borrowers agree to pay to the Lender, for its own account, on the Effective Date and on the first Business Day of each calendar month thereafter a collateral management fee in the amount of \$1,200 per month, which the Borrowers acknowledge and agree shall be fully earned when paid.

(e) The Borrowers agree to pay to the Lender, for its own account, the Lender's standard charges, fees, costs and expenses for its field examinations, verifications and audits in an amount equal to \$1,200 per person per day plus such field examiner's and auditor's out-of-pocket expenses.

(f) The Borrowers agree to pay to the Lender, for its own account, fees payable in the amounts and at the times separately agreed upon in writing between a Borrower and the Lender.

(g) All fees payable hereunder shall be paid on the dates due, in immediately available funds, to the Lender. Fees paid shall not be refundable except in the case of manifest error in the calculation of any fee payment.

2.11 BA Borrowings.

(a) Subject to the terms and conditions of this Agreement, the Borrowers may request a Borrowing by presenting drafts for acceptance and purchase as Bankers Acceptances by the Lender.

(b) No Contract Period with respect to a BA Borrowing shall extend beyond the Maturity Date. The Borrowers shall not be entitled to obtain or roll over any BA Borrowings at any time that a Default or an Event of Default has occurred and is continuing.

(c) To facilitate availment of BA Borrowings, each Borrower hereby appoints the Lender as its attorney to sign and endorse on its behalf (in accordance with a Borrowing Request relating to a BA Borrowing), in handwriting or by facsimile or mechanical signature as and when deemed necessary by the Lender, blank forms of Bankers Acceptances in the form requested by the Lender. Each Borrower recognizes and agrees that all Bankers Acceptances signed and/or endorsed by the Lender on behalf of such Borrower shall bind such Borrower as fully and effectually as if signed in the handwriting of and duly issued by the proper signing officers of such Borrower. The Lender is hereby authorized (in accordance with a Borrowing Request relating to a BA Borrowing) to issue such Bankers Acceptances endorsed in blank in such face amounts as may be determined by the Lender; provided that the aggregate amount thereof is equal to the aggregate amount of Bankers Acceptances required to be accepted and purchased by the Lender. No Lender shall be liable for any damage, loss or other claim arising by reason of any loss or improper use of any such instrument except the gross negligence or willful misconduct of the Lender or its officers, employees, agents or representatives. The Lender shall maintain a record with respect to Bankers Acceptances (i) received by it in blank hereunder, (ii) voided by it for any reason, (iii) accepted and purchased by it hereunder, and (iv) cancelled at their respective maturities. On request by or on behalf of a Borrower, the Lender shall cancel all forms of Bankers Acceptances which have been pre-signed or

pre-endorsed on behalf of such Borrower and which are held by the Lender and are not required to be issued in accordance with such Borrower's irrevocable notice. Alternatively, the Borrowers agree that, at the request of the Lender, each Borrower shall deliver to the Lender a "depository note" which complies with the requirements of the *Depository Bills and Notes Act* (Canada), and consents to the deposit of any such depository note in the book-based debt clearance system maintained by the Canadian Depository for Securities.

(d) Drafts of a Borrower to be accepted as Bankers Acceptances hereunder shall be signed as set out in this Section 2.11. Notwithstanding that any person whose signature appears on any Bankers Acceptances may no longer be an authorized signatory for the Lender or the Borrowers at the date of issuance of a Bankers Acceptances, such signature shall nevertheless be valid and sufficient for all purposes as if such authority had remained in force at the time of such issuance and any such Bankers Acceptances so signed shall be binding on the Borrowers.

(e) The aggregate face amount of the Bankers Acceptances to be accepted by the Lender shall be in a minimum aggregate amount of Cdn.\$200,000 and shall be a whole multiple of Cdn.\$100,000.

(f) The Lender may at any time and from time to time hold, sell, rediscount or otherwise dispose of any or all Bankers Acceptances accepted and purchased by it.

(g) The Lender may, instead of accepting and purchasing Bankers Acceptances, make a Loan (a "**BA Equivalent Loan**") to a Borrower in the amount and for the same term as the draft which the Lender would otherwise have been required to accept and purchase hereunder. Each such BA Equivalent Loan will bear interest at the same rate which would result if the Lender had accepted (and been paid an Acceptance Fee) and purchased (on a discounted basis) a Bankers Acceptance for the relevant Contract Period (it being the intention of the parties that each such BA Equivalent Loan shall have the same economic consequences for the Lender and such Borrower as the Bankers Acceptance which such BA Equivalent Loan replaces). All such interest shall be paid in advance on the date such BA Equivalent Loan is made, and will be deducted from the principal amount of such BA Equivalent Loan in the same manner in which the Discount Proceeds of a Bankers Acceptance would be deducted from the face amount of the Bankers Acceptance. Subject to repayment requirements, on the last day of the relevant Contract Period for such BA Equivalent Loan, the relevant Borrower shall be entitled to convert each such BA Equivalent Loan into another type of Loan, or to roll over each such BA Equivalent Loan into another BA Equivalent Loan, all in accordance with the applicable provisions of this Agreement.

(h) With respect to each BA Borrowing, at or before 10:00 a.m. two Business Days before the last day of the Contract Period of such BA Borrowing, the relevant Borrower shall notify the Lender by telephone notice, followed by a notice in writing if such Borrower intends to issue Bankers Acceptances on such last day of the Contract Period to provide for the payment of such maturing BA Borrowing. If such Borrower fails to notify the Lender of its intention to issue Banker's Acceptances on such last day of the Contract Period, such Borrower shall provide payment to the Lender of an amount equal to the aggregate face amount of such BA Borrowing on the last day of the Contract Period of thereof. If such Borrower fails to make such payment, such maturing Bankers Acceptances shall be deemed to have been converted on the last day of the Contract Period into a Canadian Prime Loan in an amount equal to the face amount of such Bankers Acceptances.

(i) Each Borrower waives presentment for payment and any other defence to payment of any amounts due to the Lender in respect of a Bankers Acceptances accepted and purchased by it pursuant to this Agreement which might exist solely by reason of such Bankers Acceptances being held, at the maturity thereof, by the Lender in its own right, and each Borrower agrees not to claim any days of grace if the Lender, as holder, sues such Borrower on the Bankers Acceptances for

payment of the amount payable by such Borrower thereunder. On the last day of the Contract Period of a Bankers Acceptances, or such earlier date as may be required or permitted pursuant to the provisions of this Agreement, the Borrowers shall pay the Lender the full face amount of such Bankers Acceptances and, after such payment, the Borrowers shall have no further liability in respect of such Bankers Acceptances and the Lender shall be entitled to all benefits of, and be responsible for all payments due to third parties under, such Bankers Acceptances.

(j) If the Lender grants a participation in a portion of its rights under this Agreement to a participant under Section 9.4(b), then, in respect of any BA Borrowing, a portion thereof may, at the option of the Lender, be by way of Bankers Acceptance accepted by such participant. In such event, the Borrowers shall upon request of the Lender granting the participation execute and deliver a form of Bankers Acceptance undertaking in favour of such participant for delivery to such participant.

(k) Except as required by the Lender upon the occurrence of an Event of Default, no BA Borrowing may be repaid by the Borrowers prior to the expiry date of the Contract Period applicable to such BA Borrowing; provided, however, that the Borrowers may defease any BA Borrowing by depositing with the Lender an amount that is sufficient to repay such BA Borrowing on the expiry date of the Contract Period applicable to such BA Borrowing.

2.12 Increased Costs; Illegality; Alternate Rate of Interest.

(a) If any Change in Law shall:

- (i) impose, modify or deem applicable any reserve, special deposit or similar requirement against assets of, deposits with or for the account of, or credit extended by, the Lender; or
- (ii) impose on the Lender or the Issuing Bank or the London interbank market any other condition affecting this Agreement (including the imposition on the Lender of, or any change to, any Indemnified Tax or other charge with respect to its LIBO Rate Loans or any Letter of Credit or participation therein, or its obligation to make LIBO Rate Loans or issue any Letter of Credit);

and the result of any of the foregoing shall be to increase the cost to the Lender of making or maintaining any Loan (or of maintaining its obligation to make any such Loan) or to increase the cost to the Lender of participating in, issuing or maintaining any Letter of Credit or any Loan or to reduce the amount of any sum received or receivable by the Lender hereunder (whether of principal, interest or otherwise), then the Borrowers will pay to the Lender, such additional amount or amounts as will compensate the Lender, for such additional costs incurred or reduction suffered.

(b) If the Lender determines that any Change in Law regarding capital requirements has or would have the effect of reducing the rate of return on the Lender's capital or on the capital of the Lender's holding company, if any, as a consequence of this Agreement or the Loans made by, or participations in Letters of Credit held by the Lender, or the Letters of Credit issued by the Issuing Bank, to a level below that which the Lender's holding company could have achieved but for such Change in Law (taking into consideration the Lender's policies and the policies of the Lender's holding company with respect to capital adequacy) and the Lender's desired return on capital, then from time to time the Borrowers will pay to the Lender, such additional amount or amounts as will compensate the Lender's holding company for any such reduction suffered. Notwithstanding anything herein to the contrary, (a) all requests, rules, guidelines, requirements and directives promulgated by the Bank for International Settlements, and Basel Committee on Banking Supervision (or any successor or similar authority) or by United States, Canadian or foreign regulatory authorities, in each case pursuant to Basel III, and (b) the Dodd-Frank Wall Street Reform

and *Consumer Protection Act* (United States) and all requests, rules, guidelines, requirements and directives thereunder or issued in connection therewith or in implementation thereof, shall in each case be deemed to be a Change in Law for purposes of this Section 2.12(b) regardless of the date enacted, adopted, issued or implemented.

(c) A certificate of the Lender setting forth the amount or amounts necessary to compensate the Lender as specified in Sections 2.12(a) or (b), together with a brief description of the Change of Law, shall be delivered to the Borrowers, and shall be conclusive absent manifest error. In preparing any such certificate, the Lender shall be entitled to use averages and to make reasonable estimates, and shall not be required to "match contracts" or to isolate particular transactions. The Borrowers shall pay the Lender the amount shown as due on any such certificate within 10 days after receipt thereof.

(d) Failure or delay on the part of the Lender to demand compensation pursuant to this Section 2.12 shall not constitute a waiver of the Lender's right to demand such compensation.

(e) In the event that the Lender shall have determined (which determination shall be reasonably exercised and shall, absent manifest error, be final, conclusive and binding upon all parties) at any time that the current or reasonably expected foreign currency markets are unusually unstable or that the making or continuance of any Loan denominated in a currency other than Canadian Dollars has become unlawful or materially restricted as a result of compliance by the Lender in good faith with any Applicable Law, or by any applicable guideline or order (whether or not having the force of law and whether or not failure to comply therewith would be unlawful), then, in any such event, the Lender shall give prompt notice (by telephone and confirmed in writing) to the Borrowers and to the Lender of such determination (which notice the Lender shall promptly transmit to the other Lender). Upon the giving of the notice to the Borrowers referred to in this Section 2.12(e), the Borrowers' right to request (by continuation, conversion or otherwise), and the Lender's obligation to make, Loans denominated in a currency other than Canadian Dollars shall be immediately suspended, and thereafter any requested Borrowing of Loans denominated in a currency other than Canadian Dollars shall, as to the Lender only, be deemed to be a request for a Canadian Prime Loan, and if the affected Loan or Loans are then outstanding, the Borrowers shall immediately, or if permitted by Applicable Law, no later than the date permitted thereby, upon at least one Business Day prior written notice to the Lender and the affected Lender, convert each such Loan denominated in a currency other than Canadian Dollars into a Canadian Prime Loan, provided that if more than one Lender is affected at any time, then all affected Lender must be treated the same pursuant to this Section 2.12(e).

(f) If prior to the commencement of any Interest Period for a LIBO Rate Borrowing the Lender determines (which determination shall be conclusive absent manifest error) :

- (i) that adequate and reasonable means do not exist for ascertaining the LIBO Rate for such Interest Period; or
- (ii) that the LIBO Rate for such Interest Period will not adequately and fairly reflect the cost to the Lender of making or maintaining its Loans included in such Borrowing for such Interest Period;

then the Lender shall give notice thereof to the Borrowers and the Lender by telephone or teletype as promptly as practicable thereafter and, until the Lender notifies the Borrowers and the Lender that the circumstances giving rise to such notice no longer exist, (i) any Borrowing Request that requests the conversion of any Borrowing to, or continuation of any Borrowing as, a LIBO Rate Borrowing shall be ineffective, and (ii) if any Borrowing Request requests a LIBO Rate Borrowing, such

Borrowing shall be made as a Base Rate Borrowing; provided that if the circumstances giving rise to such notice affect only one Type of Borrowings, then the other Type of Borrowings shall be permitted.

(g) If the Lender requests compensation under this Section 2.12, or if the Borrowers are required to pay any additional amount to the Lender or any Governmental Authority for the account of the Lender pursuant to Section 2.14, then the Lender shall use reasonable efforts to designate a different lending office for funding or booking its Loans hereunder or to assign its rights and obligations hereunder to another of its offices, branches or Lender Affiliates, if, in the judgment of the Lender, such designation or assignment (a) would eliminate or reduce amounts payable pursuant to Section 2.12 or Section 2.14, as the case may be, in the future, and (b) would not subject the Lender to any unreimbursed cost or expense and would not otherwise be disadvantageous to the Lender. The Borrowers shall pay all reasonable costs and expenses incurred by the Lender in connection with any such designation or assignment.

2.13 Break Funding Payments.

In the event of (a) the failure by the Borrowers to borrow, convert, continue or prepay any Loan on the date specified in any notice delivered by or to a Borrower pursuant hereto, or (b) the payment or conversion of any principal of any BA Borrowing or LIBO Rate Loan other than on the last day of a Contract Period or, as applicable, Interest Period applicable thereto (including as a result of an Event of Default), or (c) the prepayment or conversion of any BA Borrowing or LIBO Rate Loan other than on the last day of the Interest Period applicable thereto, then, in any such event, the Borrowers shall compensate the Lender for the loss, cost and expense attributable to such event. A certificate of the Lender setting forth any amount or amounts that the Lender is entitled to receive pursuant to this Section 2.13 shall be delivered to the Borrowers and shall be conclusive absent manifest error. The Borrowers shall pay the Lender the amount shown as due on any such certificate within 10 days after receipt thereof.

2.14 Taxes.

(a) Any and all payments by or on account of any obligation of the Credit Parties hereunder or under any other Loan Document shall be made free and clear of and without deduction or withholding for any Indemnified Taxes; provided that if any Credit Party shall be required to deduct or withhold any Indemnified Taxes from such payments, then (i) the sum payable shall be increased as necessary so that, after making all required deductions or withholdings (including deductions or withholdings applicable to additional sums payable under this Section 2.14), the Lender receives an amount equal to the sum it would have received had no such deduction or withholding been made, (ii) the Credit Parties shall make such deduction or withholding, and (iii) the Credit Party shall pay to the relevant Governmental Authority in accordance with Applicable Law the full amount deducted or withheld.

(b) In addition to the payments by the Credit Parties required by Section 2.14(a), the Credit Parties shall pay any and all present or future stamp or documentary Taxes or any other excise or property Taxes, charges or similar levies arising from any payment made hereunder or from the execution, delivery or enforcement of, or otherwise with respect to, this Agreement to the relevant Governmental Authority in accordance with Applicable Law.

(c) The Credit Parties shall indemnify the Lender, within 10 days after written demand therefor, for the full amount of any Indemnified Taxes paid by the Lender, on or with respect to any payment by or on account of any obligation of any Credit Party hereunder or any other Loan Document (including Indemnified Taxes imposed or asserted on or attributable to amounts payable under this Section 2.14) and any penalties, interest and reasonable expenses arising therefrom or

with respect thereto (including reasonable attorneys' and tax advisors' fees and expenses), 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 the Credit Parties shall be conclusive absent manifest error.

(d) As soon as practicable after any payment of Indemnified Taxes by a Credit Party to a Governmental Authority, the Credit Party shall deliver to the Lender the original or a certified copy of a receipt issued by such Governmental Authority evidencing such payment, a copy of the return reporting such payment or other evidence of such payment reasonably satisfactory to the Lender.

(e) If the Lender determines, in its sole discretion, that it has received a refund of any Taxes as to which it has been indemnified by a Credit Party or with respect to which a Credit Party has paid additional amounts pursuant to this Section 2.14 and, in the Lender's opinion, such refund amount is both reasonably identifiable and quantifiable by it without involving it in an unacceptable administrative burden, it shall pay over such refund amount to the Credit Party (but only to the extent of indemnity payments made, or additional amounts paid, by such Credit Party under this Section 2.14 with respect to the Taxes giving rise to such refund, and only to the extent that the Lender is satisfied that it may do so without prejudice to its right, as against the relevant Governmental Authority, to retain such refund), net of all Out-of-Pocket Expenses and without interest (other than any interest paid by the relevant Governmental Authority with respect to such refund); provided, that the Credit Parties, upon the request of the Lender, agree to repay the amount paid over to such Credit Party (plus any penalties, interest or other charges imposed by the relevant Governmental Authority) to the Lender if the Lender is required to repay such refund to such Governmental Authority. Nothing herein contained shall (i) interfere with the right of the Lender to arrange its affairs in whatever manner it thinks fit and, in particular, the Lender shall not be under any obligation to claim relief for tax purposes on its corporate profits or otherwise, or to claim such relief in priority to any other claims, reliefs, credits or deductions available to it, or (ii) require the Lender to make available its tax returns (or any other information relating to its Taxes which it deems confidential) to any Credit Party or any other Person or (iii) require the Lender to make any payment under this Section 2.14(e), the payment of which would place the Lender (or its Affiliates) in a less favorable net after-Tax position than such Person would have been in if the Tax subject to indemnification and giving rise to such refund had not been deducted, withheld or otherwise imposed and the indemnification payments or additional amounts with respect to such Tax had never been paid.

(f) If the Lender is entitled to an exemption from or reduction of withholding Tax with respect to payments made under any Loan Document it shall deliver to the Borrowers, at the time or times reasonably requested by the Borrowers, such properly completed and executed documentation reasonably requested by the Borrowers as will permit such payments to be made without withholding or at a reduced rate of withholding. In addition, the Lender, if reasonably requested by the Borrowers shall deliver such other documentation prescribed by Applicable Law or reasonably requested by the Borrowers as will enable the Borrowers to determine whether or not the Lender is subject to backup withholding or information reporting requirements. Notwithstanding anything to the contrary in the preceding two sentences, the completion, execution and submission of such documentation (other than such documentation set forth in paragraphs (f)(ii)) shall not be required if in the Lender's reasonable judgment such completion, execution or submission would subject the Lender to any unreimbursed cost or expense or would materially prejudice the legal or commercial position of the Lender or its Affiliates.

(g) Prior to becoming a Lender under this Agreement or acquiring any beneficial interest in any Loan, and within fifteen (15) days after a reasonable written request of Borrower, from time to time thereafter, each such Person or Lender that is not in each case a "United States person" (as such term is defined in Section 7701(a)(30) of the Code) for U.S. federal income tax purposes (a "Non-US Lender") shall provide to Nilex USA, Inc., a properly completed and executed IRS Form W

8BEN, Form W-8BEN-E or Form W 8ECI or other applicable form, certificate or document prescribed by the United States Internal Revenue Service, certifying as to such Non-US Lender's entitlement to an exemption from, or reduction in, United States federal withholding tax with respect to payments to be made to such Non-US Lender under this Agreement or any other Loan Document, and if such Non-U.S. Lender is relying on the portfolio interest exception of Code Section 881(c), a certificate to the effect that such Non-U.S. Lender is not a "bank" within the meaning of Section 881(c)(3)(A) of the Code, a "10 percent shareholder" of a Borrower within the meaning of Section 871(h)(3)(B) of the Code, or a "controlled foreign corporation" related to a Borrower as described in Section 881(c)(3)(C) of the Code (a "U.S. Tax Compliance Certificate"). If a payment made to a Lender under this Agreement would be subject to United States federal withholding taxes imposed by FATCA if such Lender were to fail to comply with the applicable reporting requirements of FATCA (including those contained in Section 1471(b) or 1472(b) of the Code, as applicable), such Lender shall deliver to the Borrowers at the time or times prescribed by law and at such time or times reasonably requested by the Borrowers, such documentation prescribed by applicable law (including as prescribed by Section 1471(b)(3)(C)(i) of the Code) and such additional documentation reasonably requested by the Borrowers as may be necessary for Borrowers to comply with their applicable obligations under FATCA, to determine that such Lender has or has not complied with the such Lender's obligations under FATCA, or to determine the amount to deduct and withhold from such payment. Any Lender or other recipient of a payment under this Agreement or any other Loan Document that is a "United States person" within the meaning of Section 7701(a)(30) of the Code shall on or prior to the date it becomes a party to this Agreement or acquires a beneficial interest in any Loan and within 15 days after a reasonable written request of the Borrowers, provide Nilx USA, Inc., with a duly executed Internal Revenue Service Form W-9.

2.15 Payments Generally.

(a) The Borrowers shall make each payment required to be made by it hereunder (whether of principal, interest, fees or amounts payable in respect of amounts payable under any of Sections 2.12, 2.13 or 2.14, or amounts otherwise payable hereunder) prior to 12:00 noon, Toronto time, on the date when due, in immediately available funds, without set-off or counterclaim. Any amounts received after such time on any date may, in the discretion of the Lender, be deemed to have been received on the next succeeding Business Day for purposes of calculating interest thereon. All such payments shall be made to the Lender at the Payment Office, except that payments pursuant to any indemnities contained herein shall be made directly to the Persons entitled thereto. The Lender shall distribute any such payments received by it for the account of any other Person to the appropriate recipient promptly following receipt thereof. If any payment hereunder shall be due on a day that is not a Business Day, the date for payment shall be extended to the next succeeding Business Day, and, in the case of any payment accruing interest, interest thereon shall be payable for the period of such extension, provided that, in the case of any payment with respect to a LIBO Rate Loan, the date for payment shall be advanced to the next preceding Business Day if the next succeeding Business Day is in a subsequent calendar month. All payments under this Section 2.15 in respect of LIBO Rate Loans and Base Rate Loans shall be made in U.S. Dollars. All other payments under this Section 2.15 shall be made in Canadian Dollars. Each Borrower hereby authorizes the Lender to debit the Borrowers' loan account to effect any payment due to the Lender pursuant to this Agreement. Any resulting overdraft in such account shall be payable by the Borrowers to the Lender in same day funds.

(b) Unless an Event of Default has occurred and is continuing (in which case, Section 7.2(d) shall apply), if at any time insufficient funds are received by and available to the Lender to pay fully all amounts of principal, interest, fees, amounts payable in respect of amounts payable under any of Sections 2.12, 2.13 or 2.14 and other amounts payable hereunder, any available funds shall be applied (i) first, to pay any fees, indemnities or expense reimbursements then due to the Lender from the Borrowers, (ii) second, to pay interest due in respect of all Revolving Loans, (iii) third, to pay

or prepay principal of the Revolving Loans and unpaid Reimbursement Obligations, and (iv) fourth, to the payment of any other Obligation due to the Lender by the Borrowers, including amounts payable under any of Sections 2.12, 2.13 or 2.14 and other amounts otherwise payable hereunder.

2.16 Currency Indemnity.

If, for the purposes of obtaining judgment in any court in any jurisdiction with respect to this Agreement or any other Loan Document, it becomes necessary to convert into a particular currency (the "**Judgment Currency**") any amount due under this Agreement or under any other Loan Document in any currency other than the Judgment Currency (the "**Currency Due**"), then conversion shall be made at the rate of exchange prevailing on the Business Day before the day on which judgment is given. For this purpose "rate of exchange" means the rate at which the Lender is able, on the relevant date, to purchase the Currency Due with the Judgment Currency in accordance with its normal practice at its head office in Toronto, Ontario. In the event that there is a change in the rate of exchange prevailing between the Business Day before the day on which the judgment is given and the date of receipt by the Lender of the amount due, the applicable Credit Party will, on the date of receipt by the Lender, pay such additional amounts, if any, or be entitled to receive reimbursement of such amount, if any, as may be necessary to ensure that the amount received by the Lender on such date is the amount in the Judgment Currency which when converted at the rate of exchange prevailing on the date of receipt by the Lender is the amount then due under this Agreement or such other Loan Document in the Currency Due. If the amount of the Currency Due which the Lender is so able to purchase is less than the amount of the Currency Due originally due to it, the Credit Parties shall indemnify and save the Lender harmless from and against all loss or damage arising as a result of such deficiency. This indemnity shall constitute an obligation separate and independent from the other obligations contained in this Agreement and the other Loan Documents, shall give rise to a separate and independent cause of action, shall apply irrespective of any indulgence granted by the Lender from time to time and shall continue in full force and effect notwithstanding any judgment or order for a liquidated sum in respect of an amount due under this Agreement or any other Loan Document or under any judgment or order.

2.17 Collection of Accounts.

(a) Each Credit Party shall, and shall cause each other Credit Party to, at its expense, enforce, collect and receive all amounts owing on its Accounts in the ordinary course of its business and any proceeds it so receives shall be subject to the terms hereof. Any proceeds received by a Credit Party in respect of Accounts, and any cheques, cash, credit card sales and receipts, notes or other instruments or property received by a Credit Party with respect to any Collateral, shall be held by such Credit Party in trust or as mandatary for the Lender, separate from such Credit Party's own property and funds, and promptly turned over to the Lender with proper assignments or endorsements by deposit to the Blocked Accounts.

(b) Each Credit Party shall, and shall cause each other Credit Party to: (i) irrevocably authorize and direct any bank which maintains any Credit Party's initial receipt of cash, cheques and other items to promptly wire transfer all available funds to a Blocked Account; and (ii) advise all such banks of the Lender's security interest in such funds. The Borrowers shall, and shall cause each other Credit Party to, provide the Lender with prior written notice of any and all deposit accounts opened or to be opened subsequent to the Effective Date. All amounts received by the Lender in payment of Accounts will be credited to the Blocked Account when the Lender is advised by its bank of its receipt of "collected funds" at the Lender's bank account in Toronto, Ontario on the Business Day of such advise if advised no later than 12:00 noon, Toronto time, or on the next succeeding Business Day if so advised after 12:00 noon, Toronto time. No cheques, drafts or other instrument received by the Lender shall constitute final payment to the Lender unless and until such instruments have actually been collected.

(c) Upon the request of the Lender, the Borrowers shall, and shall cause each Credit Party to: (i) indicate on all of its invoices that funds should be delivered to and deposited in a Blocked Account; and (ii) direct all of its account debtors to deposit any and all proceeds of Collateral into the Blocked Accounts.

(d) Subject to the requirements of Section 5.15, each, Credit Party shall, and shall cause each other Credit Party to, establish and maintain, in its own respective name and at its expense, deposit accounts and lock boxes with such banks as are acceptable to the Lender (the "**Blocked Accounts**") into which the Credit Parties shall promptly cause to be deposited: (i) all proceeds of Collateral received by any Credit Party, including all amounts payable to any Credit Party from credit card issuers and credit card processors, and (ii) all amounts on deposit in deposit accounts used by any Credit Party at each of its locations, all as further provided in Section 2.17(b). The banks at which the Blocked Accounts are established and the applicable Credit Parties shall enter into three-party agreements, in form and substance satisfactory to the Lender (the "**Blocked Account Agreements**"), providing that, among other things, all cash, cheques and items received or deposited in the Blocked Accounts are subject to Liens in favour of the Lender, that the depository bank has no Lien upon, or right of set off against, the Blocked Accounts and any cash, cheques, items, wires or other funds from time to time on deposit therein, except as otherwise provided in the Blocked Account Agreements, and that on a daily basis the depository bank will wire, or otherwise transfer, in immediately available funds, all funds received or deposited into the Blocked Accounts to such bank account as the Lender may from time to time designate for such purpose. The Borrowers hereby confirm and agree that all amounts deposited in such Blocked Accounts and any other funds received and collected by the Lender, whether as proceeds of Inventory or other Collateral or otherwise, shall be subject to the Liens in favour of the Lender. Concurrently with the establishment by any Credit Party after the date hereof of any bank account, such Credit Party shall provide the Lender with an amended Schedule 3.27 reflecting such new account.

(e) The parties hereto hereby acknowledge, confirm and agree that the implementation of the cash management arrangements is a contractual right provided to the Lender hereunder in order for the Lender to manage and monitor their collateral position and not a proceeding for enforcement or recovery of a claim, or pursuant to, or an enforcement of, any security or remedies whatsoever, that the cash management arrangements contemplated herein are critical to the structure of the lending arrangements contemplated herein, that the Lender is relying on the Borrowers' acknowledgement, confirmation and agreement with respect to such cash management arrangements in making accommodations of credit available to the Borrowers and in particular that any accommodations of credit are being provided by the Lender to the Borrowers strictly on the basis of a borrowing base calculation to fully support and collateralize any such accommodations of credit hereunder.

2.18 Letters of Credit.

Subject to Sections 4.1 and 4.2, a Borrower may request, and the Issuing Bank shall issue, Letters of Credit in accordance with this Section 2.18:

(a) Within the limits of the Commitment and the Borrowing Base, and the other limitations contained in this Agreement, a Borrower may obtain Letters of Credit from the Issuing Bank, denominated in Canadian Dollars or U.S. Dollars, in an amount not to exceed the outstanding amount of the Letter of Credit Sub-Line. The issuance of Letters of Credit for amounts in excess of the limitation set forth herein shall at all times and in all respects be in the Lender's sole discretion. It is understood that the term, form and purpose of each Letter of Credit and all documentation in connection therewith, and any amendments, modifications or extensions thereof, must be mutually acceptable to the Lender, the Issuing Bank and the relevant Borrower. Any and all outstanding Letters of Credit shall be reserved dollar for dollar from the Borrowing Base as an Availability

Reserve. Each Letter of Credit shall expire at or prior to the close of business on the earlier of (i) the date one year after the date of the issuance of such Letter of Credit (or, in the case of any renewal or extension thereof, one year after such renewal or extension) and (ii) the date that is five Business Days prior to the Maturity Date.

(b) By the issuance of a Letter of Credit (or an amendment to a Letter of Credit increasing the amount thereof) and without any further action on the part of the Issuing Bank or the Lender, the Issuing Bank hereby grants to the Lender, and the Lender hereby acquires from the Issuing Bank, a participation in such Letter of Credit equal to the aggregate amount available to be drawn under such Letter of Credit. In consideration and in furtherance of the foregoing, the Lender hereby absolutely and unconditionally agrees to pay to the Issuing Bank, the amount of each disbursement made by the Issuing Bank and not reimbursed by the Borrowers on the date due, or of any reimbursement payment required to be refunded to the Borrowers for any reason. The Lender acknowledges and agrees that its obligation to acquire participations in respect of Letters of Credit is absolute and unconditional and shall not be affected by any circumstance whatsoever, including any amendment, renewal or extension of any Letter of Credit or the occurrence and continuance of a Default or reduction or termination of the Commitment, and that each such payment shall be made without any offset, abatement, withholding or reduction whatsoever. If the Issuing Bank shall make any disbursement in respect of a Letter of Credit, the Borrowers shall reimburse such disbursement by paying to the Lender an amount equal to such disbursement not later than 12:00 noon, on the date that such disbursement is made, if the Borrowers shall have received notice of such disbursement prior to 10:00 a.m., on such date, or, if such notice has not been received by the Borrowers prior to such time on such date, then not later than 12:00 noon, on (i) the Business Day that the Borrowers receive such notice, if such notice is received prior to 10:00 a.m., on the day of receipt, or (ii) the Business Day immediately following the day that the Borrowers received such notice, if such notice is not received prior to such time on the day of receipt. In the alternative, the Lender shall have the right, without notice to the Borrowers, to charge the applicable Borrower's loan account with the amount of any and all indebtedness, liability or obligation of any kind incurred by the Issuing Bank or the Lender under any Letter of Credit at the earlier of (a) payment by the Issuing Bank under any Letter of Credit; or (b) the occurrence and continuance of an Event of Default, unless the Borrowers have provided Cover to the Lender in an amount equal to the face amount of all Letters of Credit. Any amount so charged to the applicable Borrower's loan account shall be deemed a Canadian Prime Loan or a Base Rate Loan hereunder, depending on the currency of the applicable Borrower's payment obligation thereunder, and shall incur interest at the rate provided in Section 2.5.

(c) The Borrowers unconditionally indemnify the Lender and the Issuing Bank and hold the Lender and the Issuing Bank harmless from any and all loss, claim or liability incurred by the Issuing Bank or the Lender arising from any transactions or occurrences relating to Letters of Credit established or opened for the applicable Borrower's account, the collateral relating thereto and any drafts or acceptances thereunder, and all Obligations thereunder, including any such loss or claim due to any errors, omissions, negligence, misconduct or action taken by the Issuing Bank, other than for any such loss, claim or liability arising out of the gross negligence or willful misconduct by the Lender or the Issuing Bank under the Letter of Credit. This indemnity shall survive termination of this Agreement. The Borrowers agree that any charges lawfully incurred by the Issuing Bank or the Lender in respect of any Letter of Credit shall be for the Borrowers' account and may be charged to the Borrowers' loan account.

(d) The Issuing Bank and the Lender shall not be responsible for: (a) the existence, character, quality, quantity, condition, packing, value or delivery of the goods purporting to be represented by any documents; (b) any difference or variation in the character, quality, quantity, condition, packing, value or delivery of the goods from that expressed in the documents; (c) the validity, sufficiency or genuineness of any documents or of any endorsements thereon, even if such

documents should in fact prove to be in any or all respects invalid, insufficient, fraudulent or forged; (d) the time, place, manner or order in which shipment is made; partial or incomplete shipment, or failure or omission to ship any or all of the goods referred to in the Letters of Credit or documents; (e) any deviation from instructions; (f) delay, default, or fraud by the shipper and/or anyone else in connection with the goods or the shipping thereof; or (g) any breach of contract between the shipper or vendors and the relevant Borrower.

(e) Each of the Credit Parties agrees that any action taken by the Issuing Bank or the Lender, if taken in good faith, under or in connection with any Letter of Credit, the drafts or acceptances, or the Collateral, shall be binding on the Credit Parties and shall not result in any liability whatsoever of the Issuing Bank or the Lender to any Credit Party. In furtherance thereof, the Issuing Bank shall have the full right and authority to: (a) clear and resolve any questions of non compliance of documents; (b) give any instructions as to acceptance or rejection of any documents or goods; (c) execute any and all steamship or airways guarantees (and applications therefor), indemnities or delivery orders; (d) grant any extensions of the maturity of, time of payment for, or time of presentation of, any drafts, acceptances, or documents; and (e) agree to any amendments, renewals, extensions, modifications, changes or cancellations of any of the terms or conditions of any of the applications, Letters of Credit, drafts or acceptances; all in the sole discretion of the Issuing Bank. The Issuing Bank shall be entitled to comply with and honor any and all such documents or instruments, all without any consent from any Credit Party. In addition, without the Issuing Bank's express consent and endorsement in writing, each of the Credit Parties agrees: (a) not to (i) execute any applications for steamship or airway guarantees, indemnities or delivery orders; (ii) grant any extensions of the maturity of, time of payment for, or time of presentation of, any drafts, acceptances or documents; or (iii) agree to any amendments, renewals, extensions, modifications, changes or cancellations of any of the terms or conditions of any of the applications, Letters of Credit, drafts or acceptances; and (b) upon the occurrence and during the continuance of an Event of Default, not to (i) clear and resolve any questions of non compliance of documents, or (ii) give any instructions as to acceptances or rejection of any documents or goods.

(f) Each of the Credit Parties shall, and shall cause each other Credit Party to: (a) procure any necessary import, export or other licenses or certificates for the import or handling of the Collateral; (b) comply with all Applicable Law in regard to the shipment and importation of the Collateral, or the financing thereof; and (c) deliver to the Issuing Bank or the Lender any certificates in that regard that the Lender may at any time request to be furnished. In connection herewith, the Borrowers warrant and represent that all shipments made under any such Letters of Credit are in accordance with Applicable Law of the countries in which the shipments originate and terminate, and are not prohibited by any such Applicable Law. Each of the Credit Parties assumes all risk, liability and responsibility for, and agrees to pay and discharge, all present and future local, provincial, state, federal or foreign Taxes, duties, or levies with respect to such Collateral. Any embargo, restriction, laws, customs or regulations of any country, state, city, or other political subdivision, where the Collateral is or may be located, or wherein payments are to be made, or wherein drafts may be drawn, negotiated, accepted, or paid, shall be solely the Borrowers' risk, liability and responsibility.

(g) If any Event of Default shall occur and be continuing, on the Business Day that the Borrowers receive notice from the Lender demanding the deposit of Cover, the Borrowers shall deposit in an account with the Lender, in the name of the Lender, the required amount of Cover. Such deposit shall be held by the Lender as collateral for the payment and performance of the obligations of the Borrowers under this Agreement. The Lender shall have exclusive dominion and control, including the exclusive right of withdrawal, over such account. Other than any interest earned on the investment of such deposits, which investments shall be made at the option and sole discretion of the Lender and at the Borrowers' risk and expense, such deposits shall not bear interest. Interest or profits, if any, on such investments shall accumulate in such account. Moneys in such account shall be applied by the Lender to reimburse the Issuing Bank for disbursements

pursuant to Letters of Credit for which it has not been reimbursed and, to the extent not so applied, shall be held for the satisfaction of the reimbursement obligations of the Borrowers for the Letter of Credit Exposure at such time or, if the maturity of the Loans has been accelerated, be applied to satisfy other obligations of the Borrowers under this Agreement. If the Borrowers are required to provide an amount of cash collateral hereunder as a result of the occurrence of an Event of Default, such amount (to the extent not applied as aforesaid) shall be returned to the Borrowers within three Business Days after all Events of Default have been cured or waived.

2.19 F/X Contracts.

Subject to Sections 4.1 and 4.2, a Borrower may request F/X Contracts in accordance with this Section 2.19:

(a) Within the limits of the Commitment and the Borrowing Base and the other limitations as contained in this Agreement, a Credit Party may obtain F/X Contracts in an amount such that the F/X Exposure does not to exceed the outstanding amount of the F/X Contract Sub-Line. The entry into F/X Contracts for amounts in excess of the limitation set forth herein shall at all times and in all respects be in the Lender's sole discretion. Any F/X Contract will be documented by separate documentation in the form required by the F/X Bank. The term, form and purpose of the F/X Contract and all confirmations and other documentation in connection therewith, and any amendments, modifications or extensions thereof, must be mutually acceptable to the Lender, the F/X Bank and the applicable Borrower.

(b) The Lender shall have the right, without notice to the Borrowers, to charge the applicable Borrower's loan account with the amount of any and all indebtedness, liability or obligation of any kind incurred by the Lender or the F/X Bank under any F/X Contract at such time which is the earlier of (a) payment by the Lender under the F/X Contract; or (b) the occurrence and continuance of an Event of Default, unless the Borrowers have provided Cover to the Lender. Any amount charged to the applicable Borrower's loan account shall be deemed a Canadian Prime Loan or a Base Rate Loan hereunder, depending on the currency of the Credit Party's payment obligation in respect of such F/X Contract, and shall incur interest at the rate provided in Section 2.5.

(c) Each of the Credit Parties unconditionally indemnifies the Lender and the F/X Bank and holds the Lender harmless from any and all loss, claim or liability incurred by the Lender or the F/X Bank arising from any transactions or occurrences relating to F/X Contracts, the collateral relating thereto, and all Obligations thereunder, including any such loss or claim due to any errors, omissions, negligence, misconduct or action taken by the F/X Bank, other than for any such loss, claim or liability arising out of the gross negligence or willful misconduct of the Lender or the F/X Bank, as applicable. This indemnity shall survive termination of this Agreement. The Borrowers agree that any charges incurred by the Lender or the F/X Bank, as applicable, are for the Borrowers' account and may be charged to the Borrowers' loan account.

(d) Each of the Credit Parties agrees that any action taken by the Lender, if taken in good faith, or any action taken by the F/X Bank, under or in connection with the F/X Contracts or the Collateral, shall be binding on the Credit Parties and shall not result in any liability whatsoever of the Lender to any Credit Party.

(e) All rights, remedies, duties and obligations of the Credit Parties in respect of F/X Contracts shall be secured by the Liens arising under the Security Documents.

ARTICLE 3 REPRESENTATIONS AND WARRANTIES

In order to induce the Lender to enter into this Agreement, to make any Loans hereunder, to issue any Letters of Credit hereunder and to permit the Borrowers to obtain F/X Contracts, each Credit Party hereby represents and warrants to the Lender that each statement set forth in this Article 3 is true and correct on the date hereof, and will be true and correct on the date of each Borrowing, on the date each Letter of Credit is requested hereunder and on the date each Letter of Credit is issued hereunder:

3.1 Organization; Powers.

The Borrowers and each other Credit Party is duly organized, validly existing and in good standing under the laws of the jurisdiction of its organization, has all requisite power and authority to carry on its business as now and formerly conducted and, except where the failure to do so, individually or in the aggregate, could not reasonably be expected to result in a Material Adverse Effect, is qualified to do business in, and is in good standing in, every jurisdiction where such qualification is required.

3.2 Authorization; Enforceability.

The Transactions are within each Credit Party's corporate powers and have been duly authorized by all necessary corporate and, if required, shareholder action. This Agreement and the other Loan Documents have been duly executed and delivered by the Borrowers and each other Credit Party party thereto and constitute legal, valid and binding obligations of the Borrowers and each other Credit Party party thereto, enforceable in accordance with their terms, subject to applicable bankruptcy, insolvency, reorganisation, moratorium or other Applicable Laws affecting creditors' rights generally and subject to general principles of equity, regardless of whether considered in a proceeding in equity or at law.

3.3 Governmental Approvals; No Conflicts.

The Transactions (a) do not require any consent or approval of, registration or filing with, or any other action by, any Governmental Authority, except as disclosed in Schedule 3.3, (b) will not violate any Applicable Law or the charter, by-laws or other organizational documents of the Borrowers or any other Credit Party or any order of any Governmental Authority, (c) will not violate or result in a default under any Material Contract binding upon the Borrowers or any other Credit Party or their respective assets, or give rise to a right thereunder to require any payment to be made by the Borrowers or any other Credit Party, and (d) will not result in the creation or imposition of any Lien on any asset of the Borrowers or any other Credit Party, except for any Lien arising in favour of the Lender under the Loan Documents.

3.4 Financial Condition; No Material Adverse Effect.

(a) The Borrowers have furnished to the Lender their consolidated balance sheets and statements of income, retained earnings and changes in financial position (i) as of and for the Fiscal Year ended December 31, 2017, reported on by its auditors, and (ii) as of and for the Fiscal Month and the portion of the Fiscal Year ended April 30, 2018, certified by a Responsible Officer. Such financial statements present fairly, in all material respects, the consolidated financial position and results of operations and cash flows of the Borrowers as of such dates and for such periods in accordance with GAAP, subject to year-end audit adjustments and the absence of footnotes in the case of the statements referred to in clause (ii) above.

(b) The Borrowers have delivered to the Lender their consolidated monthly financial projections for their Fiscal Years ending December 31, 2018 and December 31, 2019, including projected balance sheets and income statements. Such financial projections have been prepared in good faith by the Borrowers, are based on assumptions which are believed by the Borrowers on the date hereof to be reasonable, and are based on the best information available to the Borrowers as of the date of delivery thereof.

(c) Since December 31, 2017, there has been no event, development or circumstance that has had or could reasonably be expected to have a Material Adverse Effect.

(d) All information (including that disclosed in all financial statements) pertaining to the Borrowers and the other Credit Parties (other than projections) (in this Section 3.4(c), the "Information") that has been or will be made available to the Lender by the Borrowers or any representative of the Borrowers and the other Credit Parties, taken as a whole, is or will be, when furnished, complete and correct in all material respects and does not or will not, when furnished, contain any untrue statement of a material fact or omit to state a material fact necessary in order to make the statements contained therein not materially misleading in light of the circumstances under which such statements are made. The projections that have been or will be made available to the Lender by the Borrowers or any representative of the Borrowers have been or will be prepared in good faith based upon reasonable assumptions.

3.5 Litigation.

(a) Except as disclosed in Schedule 3.5, there are no actions, suits, counterclaims or proceedings (including any Tax-related matter) by any Person or investigation by any Governmental Authority pending against or, to the knowledge of the Borrowers, threatened against or affecting the Borrowers or any of the other Credit Parties (i) as to which there is a reasonable possibility of an adverse determination and that, if adversely determined, could reasonably be expected, individually or in the aggregate, to result in a Material Adverse Effect (other than the Disclosed Matters), or (ii) that involve this Agreement, any other Loan Document, or the Transactions.

(b) Since the date of this Agreement, there has been no change in the status of the Disclosed Matters that, individually or in the aggregate, has resulted in, or materially increased the likelihood of, a Material Adverse Effect.

3.6 Compliance with Applicable Laws and Agreements.

Each Borrower and each other Credit Party is in compliance with all Applicable Laws applicable to it or its property and all indentures, agreements and other instruments binding upon it or its property, except where the failure to do so, individually or in the aggregate, could not reasonably be expected to result in a Material Adverse Effect. Neither the Borrowers nor any other Credit Party has violated or failed to obtain any Authorization necessary to the ownership of any of its property or assets or the conduct of its business, which violation or failure could reasonably be expected to have (in the event that such a violation or failure were asserted by any Person through appropriate action) a Material Adverse Effect.

3.7 Ownership.

The registered and beneficial holders of all of the Equity Securities of the Borrowers and the other Credit Parties are as set out on Schedule 3.7.

3.8 Taxes.

Each Borrower and each other Credit Party has timely filed or caused to be filed all Tax returns and reports required to have been filed and has paid or caused to be paid all Taxes required to have been paid by it (including all instalments with respect to the current period) and has made adequate provision for Taxes for the current period, except Taxes that are being contested in good faith by appropriate proceedings and for which the Borrowers or such other Credit Party, as applicable, has set aside on its books adequate reserves.

3.9 Titles to Real Property.

The Borrowers and each other Credit Party have indefeasible fee simple title to their respective owned real properties (or in Quebec, owned immovable properties), and with respect to leased real properties, indefeasible title to the leasehold estate with respect thereto, pursuant to valid and enforceable leases, free and clear of all Liens except Permitted Liens, including the Liens disclosed in Schedule 3.9.

3.10 Titles to Personal Property.

The Borrowers and each other Credit Party have title to their respective owned personal property (or in Quebec, owned movable properties), and with respect to leased personal property, title to the leasehold estate with respect thereto, pursuant to valid and enforceable leases, free and clear of all Liens except Permitted Liens, including the Liens disclosed in Schedule 3.10.

3.11 Pension Plans.

The Pension Plans are, with the exception of a supplemental retirement plan for eligible employees, duly registered under the ITA and any other Applicable Laws which require registration, have been administered in accordance with the ITA and such other Applicable Laws and no event has occurred which could reasonably be expected to cause the loss of such registered status, except to the extent that any failure to do so could not reasonably be expected to have a Material Adverse Effect. All material obligations of the Borrowers and each other Credit Party (including funding, investment and administration obligations) required to be performed in connection with the Pension Plans and the funding agreements therefor and Applicable Laws have been performed on a timely basis, except to the extent that any failure to do so could not reasonably be expected to have a Material Adverse Effect. There are no outstanding disputes concerning the assets of the Pension Plans or any benefit plans other than routine claims for benefits. No promises of benefit improvements under the Pension Plans or any benefit plans have been made except where such improvement could not reasonably be expected to have a Material Adverse Effect. All contributions or premiums required to be made or paid by the Borrowers and each other Credit Party to the Pension Plans or any benefit plans have been made on a timely basis in accordance with the terms of such plans and all Applicable Laws. There have been no improper withdrawals or applications of the assets of the Pension Plans or any benefit plans. No Pension Plan contains a "defined benefit provision" as such term is defined in section 147.1(1) of the ITA. Subject to the matters disclosed in Schedule 3.11, for any Pension Plan or fund, and for any other employee benefit plan, which is a defined contribution plan requiring the Borrowers or any Subsidiary to contribute thereto, or to deduct from payments to any individual and pay such deductions into or to the credit of such Pension Plan or fund, all required employer contributions have been properly withheld by the Borrowers or such Subsidiary and fully paid into the funding arrangements for the applicable Pension Plan or fund.

None of the Credit Parties nor any of their respective Subsidiaries maintains, contributes to, or is liable under any Defined Benefit Plan, or Multiemployer Plan as of the Effective Date.



Except as could not reasonably be expected to have a Material Adverse Effect, (i) each Employee Benefit Plan complies with, and has been operated in accordance with, all applicable laws, including ERISA and the Code, and the terms of such Employee Benefit Plan, (ii) no Credit Party has any liability for a fine, penalty, damage, or excise tax with respect to an Employee Benefit Plan and no Credit Party has received notice from a Governmental Authority, plan administrator, or participant (or any participant's agent) that any such fine, penalty, damage or excise tax may be owing by such Credit Party and (iii) each Employee Benefit Plan intended to be qualified by a Credit Party under Section 401 of the Code is so qualified, and (iv) no ERISA Event has occurred.

3.12 Disclosure.

The Borrowers have disclosed to the Lender all agreements, instruments and corporate or other restrictions to which they or any other Credit Party is subject, and all other matters known to them, that, individually or in the aggregate, could reasonably be expected to result in a Material Adverse Effect. None of the representations or warranties made by any Credit Party in the Loan Documents as of the date such representations and warranties are made or deemed made, and none of the statements contained in any exhibit, report, statement or certificate furnished by or on behalf of any Credit Party in connection with the Loan Documents, contains any untrue statement of a material fact or omits any material fact necessary to be stated therein to make the statements made therein, in light of the circumstances under which they are made, not misleading as of the time when made or delivered.

3.13 Defaults.

No Borrower nor any other Credit Party is in default nor has any event or circumstance occurred which, but for the passage of time or the giving of notice, or both, would constitute a default (in any respect that would have a Material Adverse Effect) under any loan or credit agreement, indenture, mortgage, deed of trust, security agreement or other instrument or agreement evidencing or pertaining to any Indebtedness of or Lien against the Borrowers or any other Credit Party, or under any Material Contract to which the Borrowers or any other Credit Party is a party or by which the Borrowers or any other Credit Party is bound, except as disclosed to the Lender in Schedule 3.13. No Default has occurred and is continuing.

3.14 Casualties; Taking of Properties.

Neither the business nor the properties of the Borrowers or any other Credit Party have been affected in a manner that has had, or could reasonably be expected to have, a Material Adverse Effect as a result of any fire, explosion, earthquake, flood, drought, windstorm, accident, strike or other labour disturbance, embargo, requisition or taking of property or cancellation of contracts, permits or concessions by any domestic or foreign Governmental Authority, riot, activities of armed forces, or acts of God or of any public enemy.

3.15 Subsidiaries.

Schedule 3.15 correctly sets forth the (i) names, (ii) form of legal entity, (iii) Equity Securities issued and outstanding, (iv) Equity Securities owned by each Credit Party or a Subsidiary of such Credit Party (and specifying such owner), and (v) jurisdictions of organization of all Credit Parties and their Subsidiaries. Except as described in Schedule 3.15 the Credit Parties directly or indirectly do not own any Equity Securities or debt security which is convertible, or exchangeable, for Equity Securities of any other Person. Unless otherwise indicated in Schedule 3.15 all of the outstanding Equity Securities of each Credit Party is directly or indirectly owned of record and beneficially by the Borrowers, there are no outstanding options, warrants or other rights to purchase Equity Securities of any such Credit Party, and all such Equity Securities so owned are duly authorized, validly issued,

fully paid and non-assessable, and were issued in compliance with all applicable federal, provincial or foreign securities and other Applicable Laws, and are free and clear of all Liens, except for Permitted Liens.

3.16 Insurance.

All policies of fire, liability, workers' compensation, casualty, flood, business interruption and other forms of insurance owned or held by the Borrowers or any other Credit Party are (a) sufficient for compliance with all requirements of Applicable Law and of all agreements to which the Borrowers or any other Credit Party is a party, (b) are valid, outstanding and enforceable policies, (c) provide adequate insurance coverage in at least such amounts and against at least such risks (but including in any event public liability) as are usually insured against in the same general area by Persons engaged in the same or a similar business to the assets and operations of the Borrowers and each other Credit Party, (d) will not in any way be adversely affected by, or terminate or lapse by reason of, the Transactions, and (e) are held in the name of a Credit Party. All such material policies are in full force and effect, all premiums with respect thereto have been paid in accordance with their respective terms, and no notice of cancellation or termination has been received with respect to any such policy. Neither the Borrowers nor any other Credit Party maintains any formalized self-insurance program with respect to its assets or operations or material risks with respect thereto. The certificate of insurance delivered to the Lender pursuant to Section 4.1(f) contains an accurate and complete description of all material policies of insurance owned or held by the Borrowers and each other Credit Party on the Effective Date.

3.17 Solvency.

No Borrower nor any other Credit Party is an "insolvent person" within the meaning of the BIA and is not "insolvent" within the meaning of Section 101(32) of the *United States Bankruptcy Code*.

3.18 Material Contracts.

Schedule 3.18 sets out all Material Contracts. A true and complete copy of each Material Contract has been delivered to the Lender. Each of the Material Contracts is in full force and effect. No Borrower nor any other Credit Party is in default under or in breach of any term or condition of any Material Contract that would have, either individually or in the aggregate, a Material Adverse Effect, nor is any Borrower or any other Credit Party aware of any material default under or material breach of any term or condition of any Material Contract by any other party thereto. No contract to which a Borrower or any other Credit Party is a party contains any material provisions which impose burdensome or onerous obligations on the Borrowers or such other Credit Party which are inconsistent with prudent commercial activity by the Borrowers or such other Credit Party.

3.19 Environmental Matters.

Except as disclosed to the Lender in the Disclosed Matters schedule (Schedule 3.19):

(a) Environmental Laws. Neither any property of a Borrower or any other Credit Party nor the operations conducted thereon violate any applicable order of any court or Governmental Authority or any Environmental Laws, which violation could reasonably be expected to result in remedial obligations having a Material Adverse Effect, assuming disclosure to the applicable Governmental Authority of all material relevant facts, conditions and circumstances, if any, pertaining to the relevant property.

(b) Notices and Permits. All notices, permits, licenses or similar authorizations, if any, required to be obtained or filed by a Borrower or any other Credit Party in connection with the operation or use of any and all property of the Borrowers or any other Credit Party, including but not limited to past or present treatment, transportation, storage, disposal or Release of Hazardous Materials into the environment, have been duly obtained or filed, except to the extent the failure to obtain or file such notices, permits, licenses or similar authorizations could not reasonably be expected to have a Material Adverse Effect, or which could not reasonably be expected to result in remedial obligations having a Material Adverse Effect, assuming disclosure to the applicable Governmental Authority of all material relevant facts, conditions and circumstances, if any, pertaining to the relevant property.

(c) Hazardous Substances Carriers. All Hazardous Materials generated at any and all property of the Borrowers or any other Credit Party have been treated, transported, stored and disposed of only in accordance with all Environmental Laws applicable to them, except to the extent the failure to have such Hazardous Materials transported, treated or disposed by such carriers could not reasonably be expected to have a Material Adverse Effect, and only at treatment, storage and disposal facilities maintaining valid permits under applicable Environmental Laws, which carriers and facilities have been and are operating in compliance with such permits, except to the extent the failure to have such Hazardous Materials treated, transported, stored or disposed at such facilities, or the failure of such carriers or facilities to so operate, could not reasonably be expected to have a Material Adverse Effect or which could not reasonably be expected to result in remedial obligations having a Material Adverse Effect, assuming disclosure to the applicable Governmental Authority of all material relevant facts, conditions and circumstances, if any, pertaining to the relevant property.

(d) Hazardous Materials Disposal. The Borrowers and the other Credit Parties have taken all reasonable steps necessary to determine and have determined that no Hazardous Materials have been disposed of or otherwise released and there has been no threatened Release of any Hazardous Materials on or to any property of a Borrower or any other Credit Party other than in compliance with Environmental Laws, except to the extent the failure to do so could not reasonably be expected to have a Material Adverse Effect or which could not reasonably be expected to result in remedial obligations having a Material Adverse Effect, assuming disclosure to the applicable Governmental Authority of all material relevant facts, conditions and circumstances, if any, pertaining to the relevant property.

(e) No Contingent Liability. The Borrowers and the other Credit Parties have no material contingent liability in connection with any Release or threatened Release of any Hazardous Materials into the environment other than such contingent liabilities at any one time and from time to time which could reasonably be expected to exceed \$500,000 and for which adequate reserves for the payment thereof as required by GAAP have been provided, or which could reasonably be expected to result in remedial obligations having a Material Adverse Effect, assuming disclosure to the applicable Governmental Authority of all relevant facts, conditions and circumstances, if any, pertaining to such Release or threatened Release.

3.20 Employee Matters.

Except as set forth on Schedule 3.20, none of the Borrowers nor any of the other Credit Parties, nor any of their respective employees, is subject to any collective bargaining agreement. There are no strikes, slowdowns, work stoppages or controversies pending or, to the best knowledge of the Borrowers, threatened against a Borrower or any other Credit Party, or their respective employees, which could reasonably be expected to have, either individually or in the aggregate, a Material Adverse Effect. Except as set forth in Schedule 3.20, none of the Borrowers nor any other Credit Party is subject to an employment contract providing for a fixed term of employment or providing for special payments on termination of employment. Each of the

Borrowers and the other Credit Parties has withheld from each payment to each of their respective officers, directors and employees the amount of all Taxes, including income tax, Canada pension plan, employment insurance and other payments and deductions required to be withheld therefrom, and has paid the same to the proper taxation or other receiving authority in accordance with Applicable Law. None of the Borrowers nor any other Credit Party is subject to any claim by or liability to any of their respective officers, directors or employees for salary (including vacation pay) or benefits which would rank in whole or in part *pari passu* with or prior to the Liens created by the Security Documents, other than Permitted Liens to the extent reserved for as Priority Payables of any Credit Party.

3.21 Fiscal Year.

The Fiscal Year of each Credit Party ends on December 31 of each calendar year.

3.22 Intellectual Property Rights.

Each Borrower and each Credit Party is the registered and beneficial owner of, with good and marketable title, free of all licenses, franchises and Liens other than Permitted Liens, to all patents, patent applications, trademarks, trademark applications, trade names, service marks, copyrights, industrial designs, integrated circuit topographies, or other rights with respect to the foregoing and other similar property, used in or necessary for the present and planned future conduct of its business, without any conflict with the rights of any other Person, other than as listed on Schedule 3.22, or other than for such conflicts as could not reasonably be expected to have a Material Adverse Effect. All material patents, trademarks, trade names, service marks, copyrights, industrial designs, integrated circuit topographies, and other similar rights owned or licensed by a Borrower or any other Credit Party, and all rights of each Borrower and each other Credit Party to the use of any patents, trademarks, trade names, service marks, copyrights, industrial designs, integrated circuit topographies, or other similar rights, are described in Schedule 3.22 (collectively, the "**Intellectual Property Rights**"). Except as set forth in Schedule 3.22, no material claim has been asserted and is pending by any Person with respect to the use by a Borrower or any other Credit Party of any intellectual property or challenging or questioning the validity, enforceability or effectiveness of any intellectual property necessary for the conduct of the business of the Borrowers or any other Credit Party. Except as disclosed in Schedule 3.22 or except as could not reasonably be expected to have a Material Adverse Effect, (i) the Borrowers and each other Credit Party has the exclusive right to use the intellectual property which the Borrowers (or each other Credit Party) owns, (ii) all applications and registrations for such intellectual property are current, and (iii) to the knowledge of the Borrowers and the other Credit Parties, the conduct of each Borrower's and each other Credit Party's business does not infringe the intellectual property rights of any other Person.

3.23 Residency of Borrower for Tax Purposes.

Nilex Inc. is a resident of Canada for income tax purposes and Nilex USA Inc. is a resident of the United States of America for income tax purposes. No Credit Party is a CFC, and no Credit Party is a "United States shareholder" within the meaning of Section 951(b) of the Code.

3.24 Restricted Payments.

No Restricted Payment has been declared, paid, or made upon or in respect of Equity Securities of any Credit Party except as expressly permitted hereby.

3.25 Indebtedness.

None of the Credit Parties has any Indebtedness except (a) the Obligations, (b) the Indebtedness set forth in the most recent financial statements delivered to the Lender, or the notes thereto, (c) Tax obligations (including deferred Taxes), trade payables and other contractual obligations arising in the ordinary course of business as carried on by the Credit Parties and their Subsidiaries since the date of such financial statements, and (d) Indebtedness permitted under Section 6.1.

3.26 Workers' Compensation.

None of the Credit Parties has any unpaid workers' compensation or like obligations except as are being incurred, and paid on a current basis in the ordinary course of business, and there are no proceedings, claims, actions, orders or investigations of any Governmental Authority relating to workers' compensation outstanding, pending or, to their knowledge, threatened relating to them or any of their employees or former employees which could reasonably be expected to have a Material Adverse Effect.

3.27 Bank Accounts and Credit/Debit Card Processing Arrangements.

Schedule 3.27 contains a complete and accurate list of all bank accounts and credit and/or debit card processing arrangements maintained by the Credit Parties with any bank or other financial institution.

3.28 Real Property and Leases.

Schedule 3.28 hereto is a correct and complete list of all real property owned by each Credit Party, all leases and subleases of real property by any Credit Party, as lessee or sublessee, and all leases and subleases of real property by any Credit Party, as lessor or sublessor. Each of such leases and subleases is valid and enforceable in accordance with its terms and is in full force and effect, and no default by any party to any such lease or sublease exists.

3.29 Further Real Property Matters.

(a) Except as advised in writing to the Lender, no investigation or proceeding of any Governmental Authority is pending in respect of real property owned by any of the Credit Parties. No part of any such real property has been condemned, taken or expropriated by any Governmental Authority, federal, state, provincial, municipal or any other competent authority.

(b) Except as advised in writing to the Lender, all present uses in respect of any real property of the Credit Parties may lawfully be continued and all permitted uses are satisfactory for the Credit Parties' current and intended purposes; and

(c) No Inventory is located at any leased real property of the Credit Parties except as indicated in Schedule 3.28.

3.30 Jurisdictions of Credit Parties.

Schedule 3.30 sets out the various jurisdictions in which the Borrowers and the other Credit Parties (i) has its registered office, chief executive office and principal place of business, and (ii) carries on business or has tangible assets having an aggregate value in excess of \$50,000.

3.31 Corporate Name; Prior Transactions.

Except as set forth in Schedule 3.31, none of the Credit Parties has during the five (5) years preceding the Effective Date been known by or used any other corporate or business name, or been a party to any amalgamation, merger or consolidation, or acquired all or substantially all of the assets of any Person or acquired any of its or their Property out of the ordinary course of business. All trade names or styles under which any Credit Party sells Inventory or create Accounts or to which instruments in payment of Accounts may be made payable, are listed on Schedule 3.31.

3.32 Brokers.

Except as set forth on Schedule 3.32, no broker or finder acting on behalf of any Credit Party or Affiliate thereof brought about the obtaining, making or closing of the Commitment or the Loans, and no Credit Party or Affiliate thereof has any obligation to any Person in respect of any finder's or brokerage fees in connection therewith.

3.33 Customer and Trade Relations.

There exists no actual or, to the knowledge of any Credit Party, threatened termination or cancellation of, or any material adverse modification or change in the business relationship of any Credit Party with any customer or group of customers whose purchases during the preceding 12 months caused them to be ranked among the ten largest customers of such Credit Party or the business relationship of any Credit Party with any supplier material to its operations.

3.34 Subordinated Debt.

As of the Effective Date, the Borrowers have delivered to the Lender a complete and correct copy of the Subordinated Debt Documents (including all schedules, exhibits, amendments, supplements, modifications, assignments and all other material documents delivered pursuant thereto or in connection therewith), certified as such by an officer of a Borrower. All Obligations, including any Letter of Credit Exposure and any F/X Exposure, constitute Indebtedness entitled to the benefits of the subordination provisions contained in the Subordinated Debt.

3.35 OFAC

Each Credit Party and each Subsidiary of a Credit Party is and will remain in compliance in all material respects with all U.S. economic sanctions laws, Executive Orders and implementing regulations as promulgated by the U.S. Treasury Department's Office of Foreign Assets Control ("**OFAC**"), and all applicable anti-money laundering and counter-terrorism financing provisions of the *Bank Secrecy Act* and all regulations issued pursuant to it. Neither any Credit Party nor any Subsidiary or Affiliate of a Credit Party (i) is a Person designated by the U.S. government on the list of the Specially Designated Nationals and Blocked Persons (the "**SDN List**") with which a U.S. Person cannot deal with or otherwise engage in business transactions, (ii) is a Person who is otherwise the target of U.S. economic sanctions laws such that a U.S. Person cannot deal or otherwise engage in business transactions with such Person or (iii) is controlled by (including without limitation by virtue of such person being a director or owning voting shares or interests), or acts, directly or indirectly, for or on behalf of, any person or entity on the SDN List or a foreign government that is the target of U.S. economic sanctions prohibitions such that the entry into, or performance under, this Agreement or any other Loan Document would be prohibited under U.S. law.

3.36 USA Patriot Act.

Each Credit Party, each of their Subsidiaries and each of their Affiliates are in compliance with (a) the *Trading with the Enemy Act*, and each of the foreign assets control regulations of the United States Treasury Department (31 CFR, Subtitle B Chapter V, as amended) and any other enabling legislation or executive order relating thereto, (b) the *USA Patriot Act* and (c) other federal or state laws relating to "know your customer" and anti-money laundering rules and regulations. No part of the proceeds of any Loan will be used directly or indirectly for any payments to any government official or employee, political party, official of a political party, candidate for political office, or anyone else acting in an official capacity, in order to obtain, retain or direct business or obtain any improper advantage, in violation of the *United States Foreign Corrupt Practices Act of 1977*.

ARTICLE 4 CONDITIONS

4.1 Effective Date.

The obligations of the Lender to make Loans or to permit the issuance of a Letter of Credit or to permit the Borrowers to obtain an F/X Contract shall not become effective until the date on which each of the following conditions is satisfied (or waived in accordance with Section 9.2):

(a) Credit Agreement. The Lender shall have received from each party hereto either (i) a counterpart of this Agreement signed on behalf of each party hereto, or (ii) written evidence satisfactory to the Lender (which may include facsimile transmission of a signed signature page of this Agreement) that each such party has signed a counterpart of this Agreement.

(b) Legal Opinions. The Lender shall have received a favourable written opinion of counsel to the Borrowers and the other Credit Parties, in a form satisfactory to the Lender, acting reasonably, and covering such other matters relating to the Borrowers, the Credit Parties, this Agreement, the other Loan Documents, or the Transactions as the Lenders shall reasonably request (together with copies of all factual certificates and legal opinions delivered to such counsel in connection with such opinion upon which counsel has relied). The Lender shall also have received favourable written opinions of such special and local counsel as may be required by the Lender (together with copies of all factual certificates and legal opinions delivered to such counsel in connection with such opinion upon which such counsel has relied). The Borrowers hereby request each such counsel to deliver such opinions and supporting materials. All opinions and certificates referred to in this Section 4.1(b) shall be addressed to the Lender and dated the Effective Date.

(c) Corporate Certificates. The Lender shall have received:

- (i) certified copies of the resolutions of the Board of Directors of each Borrower, and each other Credit Party which is a party to any Loan Document, dated as of the Effective Date, and approving, as appropriate, the Loans, this Agreement and the other Loan Documents, and all other documents, if any, to which the Borrowers or such other Credit Party is a party and evidencing corporate authorization with respect to such documents; and
- (ii) a certificate of a Responsible Officer of each Borrower, and each other Credit Party which is a party to any Loan Document, dated as of the Effective Date, and certifying (A) the name, title and true signature of each officer of such Person authorized to execute this Agreement and the other Loan Documents to which it is a party, (B) the name, title and true signature of each officer of

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such Person authorized to provide the certifications required pursuant to this Agreement, including certifications required pursuant to Section 5.1 and Borrowing Requests, and (C) that attached thereto is a true and complete copy of the articles of incorporation and bylaws (or equivalent) of each Borrower, and any other Credit Party which is a party to any Loan Document, as amended to date, and a recent certificate of status, certificate of compliance, good standing certificate or analogous certificate.

(d) Closing Conditions Certificate. The Lender shall have received a certificate, dated the Effective Date and signed by a Responsible Officer of each of the Borrowers, confirming compliance with the financial covenants set forth in Section 5.12 and with the conditions set forth in Section 4.2(a) and (b).

(e) Fees. The Lender shall have received all fees and other amounts due and payable on or prior to the Effective Date, including, to the extent invoiced, reimbursement or payment of all legal fees and other Out-of-Pocket Expenses required to be reimbursed or paid by the Borrowers hereunder or under any other Loan Document.

(f) Insurance. The Lender shall have received a certificate of insurance coverage, naming the Lender as first loss payee dated not more than 30 days prior to the Effective Date, evidencing that the Borrowers and the Credit Parties are carrying insurance in accordance with Section 5.9 hereof.

(g) Inventory Control Systems; Appraisal; Field Audit; Opening Availability. The Lender shall have reviewed and be satisfied with the Collateral, the inventory control systems, the books and records and the reporting capability of the Credit Parties. The Lender shall have received appraisals, completed by a reputable and independent appraisal firm at the expense of the Borrowers, determining the Net Orderly Liquidation Value of the inventory of the Credit Party. In addition, the Lender shall have received the results of an updated field audit, and the Borrowing Base on the Effective Date shall be sufficient in value, as determined by Lender, to provide Borrowers with Excess Availability, after giving effect to the extensions of credit to be made hereunder on the Effective Date (on a pro forma basis, with trade payables being paid currently, and expenses and liabilities being paid in the ordinary course of business and without acceleration of sales or deterioration of working capital) of at least \$1,000,000.

(h) No Cessation of Financing Market. There shall have not been occurred and be continuing on the Effective Date any general banking moratorium or any practical cessation in the bank or private debt financing markets, and there shall not have been introduced any material governmental restrictions imposed on lending institutions, which materially affect the type of lending transactions contemplated by this Agreement.

(i) Execution and Delivery of Documentation. Each Borrower and any other Credit Party which is a party to any Loan Document shall have duly authorized, executed and delivered all documents, including Loan Documents, required hereunder, all in form and substance satisfactory to the Lender, acting reasonably, and all of the Security Documents shall have been registered in all offices in which, in the opinion of the Lender or its counsel, registration is necessary or of advantage to preserve the priority of the Liens intended to be created thereby (or where real property registrations have not yet been completed because of land registry office registration delays, the title insurer has confirmed that gap coverage is in effect under the title insurance policy or commitment to title insure), and duplicate copies of such Security Documents bearing or accompanied by appropriate endorsements or certificates of registration shall have been delivered to the Lender. The Lender shall have received and be satisfied with the results of all personal property, bankruptcy, execution and other searches conducted by, or provided to, the Lender and its counsel with respect

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to the Borrowers and any other Credit Party in all jurisdictions selected by the Lender and its counsel. The Lender shall have received and be satisfied with all estoppel letters, acknowledgements, waivers, subordinations, postponements, discharges, priority agreements and inter-creditor and non-disturbance agreements as the Lender may reasonably require to ensure its first priority, subject to Permitted Liens, over and unfettered access to, the Collateral or, in the sole discretion of the Lender, have implemented Availability Reserves in connection therewith.

- (j) Security Documents. The Lender shall have received:
- (i) a guarantee executed by each Borrower and each other Credit Party in favour of the Lender dated as of the Effective Date;
 - (ii) a general security agreement executed by each Credit Party in favour of the Lender dated as of the Effective Date, constituting a first-priority Lien on all property from time to time of each Credit Party, subject to no Liens except Permitted Liens; together with, but subject to Section 5.15, all stock certificates, instruments and other documents required to be delivered to the Lender pursuant to such general security agreement;
 - (iii) a U.S. security agreement executed by each Borrower in favour of the Lender dated as of the Effective Date, constituting a first-priority Lien on all property from time to time of such Borrower, subject to no Liens except Permitted Liens;
 - (iv) a postponement and subordination agreement in respect of the Shareholder Subordinated Debt; and
 - (v) security under Section 427 of the *Bank Act* (Canada), executed by the Nilex Inc. in favour of the Lender in respect of any amounts owing by such Borrower to the Lender,

provided that if any of the foregoing documents are not suitable for use in any jurisdiction, the applicable Credit Party shall provide to the Lender alternative document(s) with substantially equivalent substantive effect and which are suitable for use in such jurisdiction.

(k) Landlord Waivers; Bailee Letters. The Lender shall have received (i) executed copies of Acceptable Landlord Waivers for each parcel of leased real property where any Collateral of any of the Credit Parties which is included in the Borrowing Base is located or a Rent Reserve shall have been established in respect of such property and (ii) executed copies of Acceptable Bailee Letters from each bailee who is in possession of any Collateral of any of the Credit Parties which is included in the Borrowing Base or an Availability Reserve shall have been established.

(l) Regulatory Approval; Consents; Waivers. The Lender shall be satisfied, acting reasonably, that all material Authorizations required in connection with the Transactions contemplated hereby have been obtained and are in full force and effect (including all approvals listed in Schedule 3.3), and that all consents and waivers required to consummate the Transactions have been obtained, to the extent that consummation of the Transactions would otherwise be restricted or prohibited under the terms of any Material Contract to which any Borrower or any other Credit Party is a party, or by which it is bound, in each case without the imposition of any burdensome provisions.

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(m) Delivery of Financial Statements. The Lender shall have received and be satisfied with the financial statements and projections described in Section 3.4(a) and unaudited consolidated and consolidating balance sheets of the Borrowers and their Subsidiaries (*pro forma* as of the Effective Date).

(n) No Material Adverse Change. The Lender shall be satisfied that, since December 31, 2017, there has not been a Material Adverse Change.

(o) Indebtedness. The Transactions contemplated in this Agreement and the other Loan Documents shall not have caused any event or condition to occur which has resulted, or which will result, in any Material Indebtedness becoming due prior to its scheduled maturity or that permits (with or without the giving of notice, the lapse of time, or both) the holder or holders of any Material Indebtedness or any trustee or agent on its or their behalf to cause any Material Indebtedness to become due, or to require the prepayment, repurchase, redemption or defeasance thereof, prior to its scheduled maturity, or which will result in the creation of any Liens under any Indebtedness.

(p) Blocked Account/Cash Management Systems. The Lender shall have received evidence satisfactory to the Lender that, as of the Effective Date but subject to Section 5.15, blocked account and cash management systems complying with Section 2.17 have been established and are currently being maintained in the manner set forth in such Section 2.17, and the Lender shall have received copies of duly executed tri-party Blocked Account Agreements and other control agreements satisfactory to the Lender, acting reasonably, with the banks and other Persons as required by Section 2.17.

(q) Material Contracts. The Lender shall be satisfied with the terms and conditions of each of the Material Contracts.

(r) Cancellation of Existing Credit Lines. The Lender shall have received one or more pay off letters, in form and substance satisfactory to the Lender, confirming that the Borrowers shall have repaid all amounts outstanding under its existing credit lines, and that all such existing credit lines shall have been cancelled permanently.

(s) Capitalization Arrangement. The Lender shall be satisfied with the ownership, corporate and capital structure of the Borrowers, that each Borrower is solvent, and that the Borrowers have sufficient working capital to pay their debts as they become due.

(t) Background Checks. The Lender shall have received and be satisfied with the results of the background checks conducted on the key senior management and principals of the Credit Parties.

(u) Judgments/Litigation. The Lender shall be satisfied that there are no judgments outstanding, and no legal or administrative proceedings (including in any court arbitrator or any Governmental Authority) pending or threatened except as expressly permitted hereunder which could reasonably be expected to give rise to a Material Adverse Effect.

(v) "Know Your Customer" Information. The Lender shall have received all documentation and other information required by bank regulatory authorities under applicable "know your customer" and anti-money laundering rules and regulations, including the *Proceeds of Crime (Money Laundering) and Terrorist Financing Act (Canada)*, the *United States Executive Order No. 13224 on Terrorist Financing* and the *USA Patriot Act*.

(w) Business Due Diligence. The Lender shall have completed, to their satisfaction, and with satisfactory results, all business due diligence in respect of each of the Borrowers including, but

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not limited to, supplier due diligence (a review of supplier agreements and contracts, purchasing practices and length of relationships), customer due diligence (a review of sales cycles, pricing practices, discounts and rebates), and currency hedging practices.

(x) Other Documentation; Credit Approvals. The Lender shall have received (i) the Information Certificate executed by each Credit Party in favour of the Lender and dated as of the Effective Date, (ii) such other documents and instruments as are customary for transactions of this type or as they may reasonably request, and (iii) its final credit approval.

The conditions set forth in Section 4.1 are for the exclusive benefit of the Lender, and may be waived by the Lender in accordance with Section 9.2 at any time and from time to time, with or without further conditions.

4.2 Each Credit Event.

The obligations of the Lender to make any Loan or to permit the issuance of any Letter of Credit or to permit the Borrowers to obtain any F/X Contract (including the initial Borrowing hereunder) shall be conditional upon each of the following conditions being satisfied (or waived in accordance with Section 9.2):

(a) the representations and warranties of the Borrowers set forth in this Agreement shall be true and correct on and as of the date of each such Borrowing (including the date of issuance, amendment, renewal or extension of such Letter of Credit, as applicable) as if made on such date (except where such representation or warranty refers to a different date);

(b) at the time of and immediately after giving effect to such Borrowing (including the issuance, amendment, renewal or extension of such Letter of Credit, as applicable), no Default shall have occurred and be continuing; and

(c) the Lender shall have received a Borrowing Request in the manner and within the time period required by Section 2.3; and

(d) except as may be otherwise agreed to from time to time by the Lender and the Borrowers in writing, after giving effect to the extension of credit requested to be made by the Borrowers on such date, the aggregate Exposure will not exceed the lesser of (i) the Commitment, or (ii) an amount equal to the Borrowing Base.

Each Borrowing, including each issuance, amendment, renewal or extension of a Letter of Credit, shall be deemed to constitute a representation and warranty by the Borrowers on the date thereof as to the accuracy of the matters specified in paragraphs (a) and (b) above. This requirement does not apply on the conversion or rollover of an existing Borrowing provided that the aggregate outstanding Borrowings will not be increased as a consequence thereof.

ARTICLE 5 AFFIRMATIVE COVENANTS

From (and including) the Effective Date until the Commitment have expired or been terminated and the principal of and interest on each Loan and all fees payable hereunder shall have been paid in full and all Letters of Credit and F/X Contracts shall have expired and been terminated and all Reimbursement Obligations have been satisfied by the Borrowers, and the Borrowers and each other Credit Party covenants and agrees with the Lender that:

5.1 Financial Statements and Other Information.

The Borrowers will furnish to the Lender:

(a) as soon as available and in any event within 120 days after the end of each Fiscal Year of the Borrowers, the Borrowers' and their respective Subsidiaries' audited consolidated balance sheets and related statements of income, retained earnings and changes in financial position as of the end of and for such Fiscal Year, setting forth in each case in comparative form the figures for the previous Fiscal Year, all reported on by Kingston Ross Pasnak LLP or other independent auditors of recognized national standing (without a "going concern" or like qualification or exception and without any qualification or exception as to the scope of such audit) to the effect that such consolidated financial statements present fairly in all material respects the financial condition and results of operations of the Borrowers and their respective Subsidiaries on a consolidated basis in accordance with GAAP consistently applied;

(b) as soon as available and in any event within 30 days after the end of each calendar month, the Borrowers' and their respective Subsidiaries' unaudited consolidated balance sheet and related statements of income, retained earnings and changes in financial position as of the end of such month and the then elapsed portion of the Fiscal Year which includes such calendar month, setting forth in each case in comparative form the figures for the corresponding period or periods of (or, in the case of the balance sheet, as of the end of) the previous Fiscal Year, all certified by a Responsible Officer as presenting fairly in all material respects the financial condition and results of operations of the Borrowers and their Subsidiaries on a consolidated basis in accordance with GAAP consistently applied, subject to normal year-end audit adjustments;

(c) concurrently with the financial statements required pursuant to Sections 5.1(a) and (b) above, a certificate of the Borrowers, signed by a Responsible Officer in the form of Exhibit F;

(d) copies of each management letter issued to any Borrower by its auditors promptly following consideration or review thereof by the Board of Directors of such Borrower, or any committee thereof (together with any response thereto prepared by the Borrowers);

(e) [Intentionally Deleted];

(f) promptly upon the request of the Lender, and in any event no less frequently than the tenth Business Day of each calendar month, (together with a copy of all or any part of the following reports requested by the Lender in writing after the Effective Date), a Borrowing Base Report, as of the last day of the immediately preceding calendar month that reflects the Accounts as at the last business day of such month, together with a report of Priority Payables as at such date, accompanied by such supporting detail and documentation as shall be requested by the Lender in its reasonable discretion including:

- (i) an accounts receivable aging (including both summary and detail format) showing Accounts outstanding, aged from invoice date as follows: 1 to 30 days past due, 31 to 60 days past due, 61 to 90 days past due, and 91 days or more past due, accompanied by such supporting detail and documentation as shall be requested by the Lender in its reasonable discretion, including the ledger for disputed/legal accounts;
- (ii) a calculation of the Accounts which would not meet the criteria of an Eligible Account;

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- (iii) a reconciliation of the Accounts receipt batch totals for the month against the deposits to the blocked depository accounts for the Credit Parties for such month;
- (iv) an aged listing of the ten largest customer accounts for the month;
- (v) a detailed, monthly, Inventory listing of the Borrowers and each Credit Party by location, type and product group with a supporting perpetual Inventory report, in each case, accompanied by such supporting detail and documentation as shall be requested by the Lender in its sole discretion; such summaries and reports shall include the dollar value thereof both at cost, determined on a first-in, first out basis, and at fair market value;
- (vi) a calculation and report as to the Inventory which does not meet the definition of Eligible Inventory;
- (vii) details of any changes to any inventory costing methods;
- (viii) detailed monthly accounts payable aging;
- (ix) an aged listing of the ten largest accounts payable for the month; and
- (x) written confirmation that all rent payments under each lease of real property (under which a Credit Party is a tenant) has been paid.

(g) at all times when (i) the Term Loan balance is equal to or greater than \$2,000,000 and (ii) a Weekly Reporting Trigger Period has not occurred, every second week, on the third Business Day of such week for the prior two weeks, a Borrowing Base Report that reflects the Accounts as at the last business day of the previous two weeks together with a report of Priority Payables as at such date;

(h) at all times during a Weekly Reporting Trigger Period, weekly, on the third Business Day of each week for the prior week:

- (i) a weekly Borrowing Base Report that reflects the Accounts as at the last business day of the previous week together with a report of Priority Payables as at such date;
- (ii) a calculation of the Accounts which would not meet the criteria of an Eligible Account;
- (iii) an accounts receivable aging (including both summary and detail format) showing Accounts outstanding, aged from invoice date as follows: 1 to 30 days past due, 31 to 60 days past due, 61 to 90 days past due, and 91 days or more past due, accompanied by such supporting detail and documentation as shall be requested by the Lender in its reasonable discretion, including the ledger for disputed/legal accounts;
- (iv) a detailed, weekly, Inventory listing of each Credit Party by location, type and product group with a supporting perpetual Inventory report, in each case, accompanied by such supporting detail and documentation as shall be requested by the Lender in its sole discretion; such summaries and reports

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shall include the dollar value thereof both at cost, determined on a first-in, first out basis, and at fair market value;

- (v) a calculation and report as to the Inventory which does not meet the definition of Eligible Inventory; and
 - (vi) a reconciliation of the Accounts receipt batch totals for the week against the deposits to the blocked depository accounts for the Credit Parties for such week.
- (i) monthly within 30 days of the last day of each calendar month:
- (i) a copy of the internally generated general ledger report as at the month end;
 - (ii) a reconciliation of Accounts aging to the general ledger and to the financial statement as at the month end;
 - (iii) a reconciliation of the monthly inventory perpetual listing to the general ledger and to the financial statement as at the month end; and
 - (iv) promptly upon receipt thereof, copies of all material correspondence, actuarial valuation reports and other filings with any pension regulators or the applicable Governmental Entity to which such correspondence, reports and filings must be sent (including any filings furnished to the trustee under any Pension Plan and any valuation reports prepared by the Borrowers' actuary and confirming that all contributions to be made in respect of the Pension Plans have been made when due).
- (j) such other reports designating, identifying and describing the Accounts and Inventory as required by the Lender and on a more frequent basis as the Lender may reasonably request in its reasonable credit discretion;
- (k) the results of each physical verification, if any, that the Borrowers may have made, or caused any other Person to have made on its behalf, of all or any portion of its Inventory, within 10 Business Days of completion of any such physical verification (and, if a Default or an Event of Default has occurred and be continuing, the Borrowers shall, upon the request of the Lender, conduct, and deliver the results of, such physical verifications as the Lender may require);
- (l) such appraisals of the inventory of the Borrowers and the Credit Parties as the Lender may request at any time, such appraisals to be conducted at the expense of the Borrowers by an appraiser that is acceptable to the Lender, and shall be in scope, form and substance acceptable to the Lender; provided that until the Term Loan balance is less than \$2,000,000, the Borrowers will be liable for the expense of two (2) appraisals per Fiscal Year, and once the Term Loan balance is less than \$2,000,000 and no Excess Availability Trigger has occurred, then the Borrowers will only be liable for the expense of one (1) appraisal per Fiscal Year; however (A) if an Excess Availability Trigger has occurred at any time, then the Borrowers will be liable for the expense of up to two (2) appraisals per Fiscal Year, and (B) if an Event of Default has occurred and is continuing at any time, then the Borrowers will be liable for the expenses of all further appraisals required by the Lender in its sole discretion;
- (m) at the cost of the Borrowers, a report or reports of an independent collateral field examiner (which collateral field examiner may be the Lender or an Affiliate thereof) approved (i) by the Borrowers, whose approval shall not be unreasonably withheld, and (ii) by the Lender with

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respect to the Eligible Accounts and Eligible Inventory components included in the Borrowing Base. The Lender may request such reports or additional reports as it shall reasonably deem necessary. Until the Term Loan balance is less than \$2,000,000, the Borrowers will be liable for the expense of two (2) field examinations per Fiscal Year, and once the Term Loan balance is less than \$2,000,000 and no Excess Availability Trigger has occurred, then the Borrowers will only be liable for the expense of one (1) field examination per Fiscal Year; however (A) if an Excess Availability Trigger has occurred at any time, then the Borrowers will be liable for the expense of up to two (2) field examinations per Fiscal Year, and (B) if an Event of Default has occurred and is continuing at any time, then the Borrowers will be liable for the expenses of all further field examinations required by the Lender in its sole discretion.

(n) promptly after a Borrower learns of the receipt or occurrence of any of the following, a certificate of such Borrower, signed by a Responsible Officer, specifying (i) any official notice of any violation, possible violation, non-compliance or possible non-compliance, or claim made by any Governmental Authority pertaining to all or any part of the properties of the Borrowers or any other Credit Party which could reasonably be expected to have a Material Adverse Effect, (ii) any event which constitutes a Default or Event of Default, together with a detailed statement specifying the nature thereof and the steps being taken to cure such Default or Event of Default, (iii) the receipt of any notice from, or the taking of any other action by, the holder of any promissory note, debenture or other evidence of Indebtedness of the Borrowers or any other Credit Party in an amount in excess of \$250,000 with respect to an actual or alleged default, together with a detailed statement specifying the notice given or other action taken by such holder and the nature of the claimed default and what action the Borrowers or the relevant Subsidiary is taking or proposes to take with respect thereto, (iv) any default or non-compliance of any party to any of the Loan Documents with any of the terms and conditions thereof or any notice of termination or other proceedings or actions which could reasonably be expected to adversely affect any of the Loan Documents, (v) the creation, dissolution, amalgamation, merger, consolidation or acquisition of any Subsidiary of the Borrowers, (vi) any event or condition not previously disclosed to the Lender, which violates any Environmental Law and which could potentially, in the Borrowers' reasonable judgment, have a Material Adverse Effect, (vii) any material amendment to, termination of, or material default under a Material Contract or any execution of, or material amendment to, termination of, or material default under, any material collective bargaining agreement, (viii) any circumstance which could reasonably be expected to result in a claim by the issuer of any performance bond, surety bond, appeal bond, completion guarantee or like instrument arising as a result of any failure of performance by a Credit Party, and (ix) any other event, development or condition which may reasonably be expected to have a Material Adverse Effect;

(o) promptly after the occurrence thereof, notice of the institution of or any material adverse development in any action, suit or proceeding or any governmental investigation or any arbitration before any court or arbitrator or any Governmental Authority or official against a Borrower or any other Credit Party or any of its or their Subsidiaries or any material property of any thereof which could reasonably be expected to have a Material Adverse Effect;

(p) promptly after the filing thereof with any Governmental Authority (if requested by the Lender), copies of each annual and other report (including applicable schedules and actuarial reports) with respect to each Pension Plan of a Borrower or any other Credit Party or any trust created thereunder;

(q) upon request by the Lender, a summary of the insurance coverages of the Borrowers and any other Credit Party, in form and substance reasonably satisfactory to the Lender, and upon renewal of any insurance policy, a copy of an insurance certificate summarizing the terms of such policy, and upon request by the Lender, copies of the applicable policies;



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(r) on or before the earlier of the 10th day after approval by the Board of Directors of the respective Borrowers and the 30th day after each Fiscal Year end, an annual budget of the Borrowers and the other Credit Parties on a consolidated and consolidating basis, approved by the Board of Directors of each Borrower, setting forth in reasonable detail and on a monthly basis the projected revenues and expenses (including capital expenditures) of the Borrowers for the following Fiscal Year, it being recognized by the Lender that projections as to future results are not to be viewed as fact and that the actual results for the period or periods covered by such projections may differ from the projected results; and

(s) concurrently with any delivery of financial statements under Section 5.1 (a) or (b) above, a certificate of a Responsible Officer of Nilex Inc. (i) stating whether any change in GAAP or in the application thereof has occurred since the date of the audited financial statements referred to in Section 5.1(a) and, if any such change has occurred, specifying the effect of such change on the financial statements accompanying such certificate, (ii) identifying all its Subsidiaries existing on the date of such certificate and indicating, for each such Subsidiary, and whether such Subsidiary is a Guarantor and whether such Subsidiary was formed or acquired since the end of the previous calendar month, and (iii) identifying any parcels of real property or improvements thereto that have been acquired by any Credit Party since the end of the previous calendar month.

5.2 Existence; Conduct of Business.

Each Credit Party will do or cause to be done all things necessary to preserve, renew and keep in full force and effect its legal existence (subject only to Section 6.3), and obtain, preserve, renew and keep in full force and effect any and all rights, licenses, permits, privileges and franchises material to the conduct of its business.

5.3 Payment of Obligations.

Each Credit Party will pay its obligations, including Tax liabilities, that, if not paid, could result in a Material Adverse Effect before the same shall become delinquent or in default, except where (a) the validity or amount thereof is being contested in good faith by appropriate proceedings, (b) such Borrower or such other Credit Party has set aside on its books adequate reserves with respect thereto in accordance with GAAP, and (c) the failure to make payment pending such contest could not reasonably be expected to result in a Material Adverse Effect.

5.4 Maintenance of Properties.

Each Credit Party will keep and maintain all property material to the conduct of its business in good working order and condition, ordinary wear and tear excepted.

5.5 Books and Records; Inspection Rights.

Each Credit Party will keep proper books of record and account in which full, true and correct entries are made of all dealings and transactions in relation to its business and activities. Each Credit Party will permit any representatives designated by the Lender, upon reasonable prior notice, to visit and inspect its properties, to examine and make extracts from its books and records, and to discuss its affairs, finances and condition with its officers and independent accountants, all at such reasonable times and as often as reasonably requested.

5.6 Compliance with Applicable Laws and Material Contracts.

Each Credit Party will comply with all Applicable Laws and orders of any Governmental Authority applicable to it or its property and with all of its Material Contracts, except where the failure

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to do so, individually or in the aggregate, could not reasonably be expected to result in a Material Adverse Effect. No Credit Party shall modify, amend or alter its certificate or articles of incorporation.

5.7 Use of Proceeds and Letters of Credit.

The proceeds of the Revolving Loans will be used to refinance the Borrowers' existing senior credit facility, for working capital and other general corporate purposes of the Borrowers. Letters of Credit will be issued only to support any activity of the Borrowers or any other Credit Party that is reasonably acceptable to the Lender.

5.8 Further Assurances.

Each Credit Party will cure promptly any defects in the execution and delivery of the Loan Documents, including this Agreement. Upon request, each Credit Party will, at its expense, as promptly as practical, execute and deliver to the Lender, all such other and further documents, agreements and instruments in compliance with or performance of the covenants and agreements of the Borrowers or any other Credit Party in any of the Loan Documents, including this Agreement, or to further evidence and more fully describe the Collateral, or to correct any omissions in any of the Loan Documents, or more fully to state the security obligations set out herein or in any of the Loan Documents, or to perfect, protect or preserve any Liens created pursuant to any of the Loan Documents, or to make any recordings, to file any notices, or obtain any consents, all as may be necessary or appropriate in connection therewith, in the judgment of the Lender, acting reasonably.

5.9 Insurance.

Each Credit Party shall maintain insurance on its property and assets under such policies of insurance, with such insurance companies, in such reasonable amounts and covering such insurable risks as are at all times reasonably satisfactory to the Lender. All such policies are subject to the rights of any holders of Permitted Liens holding claims senior to the Lender, to be made payable to the Lender, to the extent required herein, in case of loss, under a standard non contributory "mortgagee", "lender" or "secured party" clause and are to contain such other provisions as the Lender may require to fully protect the Lender's interest in the property and assets subject to the Liens in favour of the Lender and to any payments to be made under such policies. All original policies (or true copies thereof) which relate to Collateral are to be delivered to the Lender, with the loss payable endorsement in the Lender's favour, and shall provide for not less than thirty (30) days prior written notice to the Lender of the exercise of any right of cancellation. Upon the occurrence and continuance of an Event of Default which is not waived in writing by the Lender, the Lender shall, subject to the rights of any holders of Permitted Liens holding claims senior to the Lender, have the sole right, in the name of the Lender, the Borrowers or any other applicable Credit Party, to file claims under any insurance policies, to receive, receipt and give acquittances for any payments that may be payable thereunder, and to execute any and all endorsements, receipts, releases, assignments, reassignments or other documents that may be necessary to effect the collection, compromise or settlement of any claims under any such insurance policies. If any part of the Collateral is lost or damaged by fire or other casualty and the insurance proceeds for such loss or damage is less than or equal to \$100,000, such insurance proceeds shall be paid to the Borrowers. Notwithstanding the foregoing, to the extent such insurance proceeds are received by the Lender, the Lender shall promptly, and in any event within one (1) Business Day of receipt, remit such insurance proceeds to the applicable Credit Party. If any part of the Collateral is lost or damaged by fire or other casualty and the insurance proceeds for such loss or damage is greater than \$100,000, such insurance proceeds shall be paid to the Borrowers, and provided that the applicable Credit Party has sufficient business interruption insurance to replace the lost profits of any of its facilities, the Borrowers may irrevocably elect (by delivering written notice to the Lender) to replace, repair or

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restore such Collateral to substantially the equivalent condition prior to such fire or other casualty as set forth herein. If such election is not made by the Borrowers, insurance proceeds shall be used by the Borrowers to repay outstanding Revolving Loans. Notwithstanding the foregoing, to the extent that such insurance proceeds are received by the Lender, the Lender shall promptly, and in any event within one (1) Business Day of receipt, remit such insurance proceeds to the Borrowers to be applied in accordance with this Section 5.9. If the Borrowers does not, or cannot, elect to use the insurance proceeds as set forth above, or if the Lender in its Permitted Discretion believes that the applicable Credit Party will not be able to timely replace, repair or restore such Collateral to substantially the equivalent condition prior to such fire or other casualty, the Lender may, subject to the rights of any holders of Permitted Liens holding claims senior to the Lender in respect of such insurance proceeds, (i) if no Event of Default has occurred and is continuing, apply the insurance proceeds to the payment of any Revolving Loans until paid in full and (b) if an Event of Default has occurred and is continuing, apply the insurance proceeds to the Obligations in such manner and in such order as the Lender may reasonably elect. Upon the occurrence and during the continuance of an Event of Default, all insurance proceeds in respect of any Collateral shall be paid to the Lender. The Lender may apply such insurance proceeds to the Obligations in such manner as it may deem advisable in its sole discretion. In the event the Borrowers fail to provide the Lender with timely evidence, acceptable to the Lender, of the maintenance of insurance coverage required pursuant to this Section 5.9, or in the event that any Credit Party fails to maintain such insurance, the Lender may purchase or otherwise arrange for such insurance, but at the Borrowers' expense and without any responsibility on the Lender's part for: (i) obtaining the insurance; (ii) the solvency of the insurance companies; (iii) the adequacy of the coverage; or (iv) the collection of claims. The insurance acquired by the Lender may, but need not, protect the Borrowers' or any other Credit Party's interest in the Collateral, and therefore such insurance may not pay claims which the Borrowers may have with respect to the Collateral or pay any claim which may be made against the Borrowers in connection with the Collateral. In the event the Lender purchases, obtains or acquires insurance covering all or any portion of the Collateral, the Borrowers shall be responsible for all of the applicable costs of such insurance, including premiums, interest (at the applicable interest rate for Revolving Loans set forth in Section 2.5), fees and any other charges with respect thereto, until the effective date of the cancellation or the expiration of such insurance. The Lender may charge all of such premiums, fees, costs, interest and other charges to the Borrowers' loan account. The Borrowers hereby acknowledge that the costs of the premiums of any insurance acquired by the Lender may exceed the costs of insurance which the Borrowers may be able to purchase on its own. In the event that the Lender purchases such insurance, the Lender will promptly, and in any event within fifteen (15) days, notify the Borrowers of said purchase.

5.10 Operation and Maintenance of Property.

Each Credit Party will, manage and operate its business or cause its business to be managed and operated (i) in accordance with prudent industry practice in all material respects and in compliance in all material respects with the terms and provisions of all applicable licenses, leases, contracts and agreements, and (ii) in compliance with all Applicable Laws of the jurisdiction in which such businesses are carried on, and all Applicable Laws of every other Governmental Authority from time to time constituted to regulate the ownership, management and operation of such businesses, except where a failure to so manage and operate would not have a Material Adverse Effect.

5.11 Additional Subsidiaries; Additional Liens.

If, at any time on or after the Effective Date, a Borrower or any other Credit Party creates or acquires an additional Subsidiary or in some other fashion becomes the holder of any Equity Securities of a new Subsidiary, then to the extent permitted by Applicable Law, the Borrowers and the other Credit Parties will cause such new Subsidiary to within 10 Business Days execute and deliver to the Lender a guarantee, and security agreements, hypothecs and other security-related



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documents covering such new Subsidiary's Inventory, Accounts and other Collateral, all in form and substance satisfactory to the Lender, acting reasonably. In addition, if at any time on or after the Effective Date, the Borrowers or any other Credit Party has Inventory, Accounts or other Collateral located in any jurisdiction in which the Lender does not hold duly perfected security in respect of the Inventory, Accounts or other Collateral of such Credit Party in such jurisdiction, the applicable Credit Party shall give notice to the Lender of those facts. If the Lender, acting reasonably, determines that it is practical to perfect security in such jurisdiction, the applicable Credit Party shall promptly execute all such security agreements, hypothecs and other security-related documents covering such Credit Party's Inventory, Accounts or other Collateral in such jurisdiction, all in form and substance satisfactory to the Lender, acting reasonably, and shall take all such action as may reasonably be required to ensure that the Liens in favour of the Lender in respect of the Inventory, Accounts or other Collateral of such Credit Party located in such jurisdiction are duly perfected. In connection with the execution and delivery of any guarantee, security agreement, intellectual property security agreements, hypothecs or related document pursuant to this Section, the Borrowers and each other Credit Party will cause to be delivered to the Lender such corporate resolutions, certificates, legal opinions and such other related documents and registrations as shall be reasonably requested by the Lender and consistent with the relevant forms and types thereof delivered on the Effective Date or as shall be otherwise reasonably acceptable to the Lender. Each guarantee, security agreement, intellectual property security agreements, hypothecs and other documents delivered pursuant to this Section shall be deemed to be a Security Document from and after the date of execution thereof. For greater certainty, the Credit Parties acknowledge that, to the extent that Collateral is located in a jurisdiction in which the Lender does not hold duly perfected security in such Collateral in such jurisdiction, such Collateral is not eligible for inclusion in the Borrowing Base.

5.12 Fixed Charge Coverage Ratio.

The Borrowers will, (i) at all times prior to the repayment in full of the Term Loan, and (ii) at all times during the continuance of an Excess Availability Trigger in any month, maintain a Fixed Charge Coverage Ratio of not less than 1.00:1.00.

5.13 [Intentionally Deleted].

5.14 Most Favoured Nations.

The Borrowers and the other Credit Parties will ensure that, if the Borrowers provide to any lender as at the Effective Date, or provides to any other lender in the future, a financial ratio or other form of financial measurement covenant which is not specifically included in this Agreement, then this Agreement shall be deemed to have been amended automatically to have the benefit of such other present or future financial ratio or other form of financial measurement covenant; provided that if any such present or future financial ratio or other form of financial measurement covenant provided by the Borrowers to another lender and not specifically included in this Agreement is changed or eliminated, the same change or elimination will automatically apply to this Agreement. For greater certainty, but without limitation, a covenant to maintain any particular type or class of assets or any particular type or class of liabilities (as the terms "asset" and "liability" are used under GAAP) at a specified maximum or minimum dollar amount (for example, a covenant that indebtedness will not exceed a fixed dollar amount) shall not constitute a "financial ratio or other financial measurement covenant"; however, a covenant such as a net worth covenant, which is not limited to any particular type or class of assets or any particular type or class of liabilities, shall constitute a "financial ratio or other financial measurement covenant".

5.15 Post-Closing Undertakings.

The Borrowers will ensure that all post-closing undertakings as set forth in Schedule 5.15 (collectively, the "**Post-Closing Undertakings**") have been satisfied within the time periods set forth therein and any failure to satisfy any of the Post-Closing Undertakings within the applicable time periods shall constitute an Event of Default.

5.16 Environmental Laws.

Each of the Borrowers and the other Credit Parties will conduct its business in compliance in all material respects with all Environmental Laws applicable to it or them, including those relating to the Credit Parties' generation, handling, use, storage and disposal of Hazardous Materials. Each of the Borrowers and the other Credit Parties will take prompt and appropriate action to respond to any non-compliance or alleged non-compliance with Environmental Laws, and the Borrowers shall regularly report to the Lender on such response. Without limiting the generality of the foregoing, whenever any Credit Party gives notice to the Lender pursuant to Section 5.1(l)(vi) and the Lender so requests, the Credit Parties shall, at the applicable Credit Party's expense:

(a) cause an independent environmental engineer acceptable to the Lender in its reasonable discretion to conduct such tests of the site where the non-compliance or alleged non-compliance with Environmental Laws has occurred, and prepare and deliver to the Lender a report setting forth the results of such tests, a proposed plan for responding to any environmental problems described therein, and an estimate of the costs thereof;

(b) provide to the Lender a supplemental report of such engineer whenever the scope of the environmental problem, or the Credit Party's, and any other Person's response thereto or the estimated costs thereof, shall change. Such reports shall also be addressed to the Lender and shall, as requested by the Lender, set out the results of such engineers' review of, among other things:

- (i) the internal policies and procedures of the Credit Parties relating to environmental regulatory compliance to ensure that all appropriate steps are being taken by or on behalf of the Credit Parties to comply in all material respects with all applicable requirements of Environmental Laws;
- (ii) the progress of compliance satisfaction, capital expenditures required to effect remedial steps and compliance deficiencies;
- (iii) all other environmental audit reports which the Credit Parties or any predecessor has commissioned in the normal conduct of its business which relate to the subject matter of such notice; and
- (iv) all environmental reports which have been commissioned by or made available to a Credit Party in connection with new acquisitions, and the engineers' report and recommendations on results of tests performed or samples taken by it during the course of its review, irregularities or steps which may be taken to ensure continued compliance, as well as such other matters as the Lender may reasonably request from time to time.

5.17 Landlords' Agreement, Mortgagee Agreements, Bailee Letters and Real Estate Purchases.

Each Credit Party shall use commercially reasonable efforts to obtain an Acceptable Landlord Waiver or Acceptable Bailee Letter, as applicable, from the lessor of each leased property,

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or bailee with respect to any warehouse, processor or converter facility or other location where Collateral is stored or located to the extent such Collateral shall be included in the Borrowing Base. With respect to such locations or warehouse space leased or owned as of the Effective Date and thereafter, if the Lender has not received an Acceptable Landlord Waiver or Acceptable Bailee Letter, as applicable, the Lender may establish such Rent Reserves with respect to leased premises and other Availability Reserves with respect to any other such location as may be established by the Lender in its Permitted Discretion. At any time following the Effective Date, no Inventory which is to be included in the Borrowing Base shall be located on real property that is leased or shall be shipped to a processor or converter under arrangements established after the Effective Date unless and until the Lender has established such Rent Reserves with respect to leased premises and other Availability Reserves with respect to any other such location as may be established by the Lender in its Permitted Discretion) or, unless and until an Acceptable Landlord Waiver or Acceptable Bailee Letter, as applicable, shall first have been obtained with respect to such location. Each Credit Party shall timely and fully pay and perform its obligations under all leases and other agreements with respect to each leased location or public warehouse where any Collateral is or may be located.

5.18 Pension Plans.

Each Credit Party will administer its Pension Plans in accordance with the requirements of the applicable pension plan texts, funding agreements, any other documents governing the Pension Plans, the ITA, ERISA, the Code and applicable federal or provincial pension benefits legislation except for any non-compliance which would not reasonably be expected to have a Material Adverse Effect. Each Credit Party shall, and shall cause its Subsidiaries to, promptly provide the Lender with any documentation relating to any of the Pension Plans as the Lender may request. Each Credit Party shall, and shall cause its Subsidiaries to, notify the Lender within thirty (30) days of: (i) a material increase in the obligations, liabilities and indebtedness of any of the Pension Plans; and (ii) commencing payment of contributions to a Pension Plan to which a Credit Party had not previously been contributing.

5.19 Collateral Monitoring and Review.

Upon the request of the Lender, after reasonable notice and during normal business hours, the Borrowers permit the Lender or professionals (including, consultants, accountants, and/or appraisers) retained by the Lender to conduct appraisals, commercial finance examinations and other evaluations, including, of (i) the Credit Parties' practices in the computation of the Borrowing Base, and (ii) the assets included in the Borrowing Base and financial information such as, but not limited to, sales, gross margins, payables, accruals and reserves, related to the calculation of the Borrowing Base. In connection with any Inventory appraisal and commercial finance examination relating to the computation of the Borrowing Base, the Borrowers shall make such adjustments to the calculation of the Borrowing Base as the Lender shall reasonably require based upon the terms of this Agreement and the results of such Inventory appraisal and commercial finance examination.

5.20 Physical Inventories.

The Borrowers will cause physical inventories and periodic cycle counts to be undertaken, at the expense of the Credit Parties, in each case consistent with past practices (but in no event less frequently than one (1) physical inventory per Fiscal Year), conducted by such inventory takers and following such methodology as is consistent with the immediately preceding inventory or as otherwise may be satisfactory to the Lender. The Lender, at the expense of the Credit Parties, may participate in and/or observe each scheduled physical count of Inventory which is undertaking on behalf of any Credit Party. The Credit Parties, within five (5) days following the completion of any such inventory, shall provide the Lender with a reconciliation of the results of such inventory (as well

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as of any other physical inventory or cycle counts undertaken by a Credit Party) and shall post such results to the Credit Parties' stock ledgers and general ledgers, as applicable.

5.21 Application under the CCAA.

Each Borrower acknowledges that its business and financial relationships with the Lender are unique from its relationship with any other of its creditors. Each Borrower agrees that it shall not file any plan of arrangement under the *Companies' Creditors Arrangement Act* (the "CCAA Plan") which provides for, or would permit, directly or indirectly, the Lender to be classified in the same class with any other creditor of the Credit Parties for purposes of such CCAA Plan.

5.22 Special Provisions Regarding Accounts, Inventory and Other Collateral.

(a) Each Credit Party hereby represents and warrants, with respect to its Accounts, that: (i) each existing Account represents or results from, and each future Account will represent or result from, a bona fide sale or lease and delivery of goods by such Credit Party, or rendition of services by such Credit Party, in the ordinary course of such Credit Party's business; (ii) each existing Account is, and each future Account will be, for a liquidated amount payable by the Account debtor thereon on the terms set forth in the invoice (or other document or record setting forth same) therefor or in the schedule thereof delivered to the Lender, without any material offset, deduction, defence or counterclaim except those known to such Credit Party and disclosed to the Lender; (iii) no payment will be received with respect to any Account of a Credit Party, and no credit, discount or extension or agreement therefor will be granted on any Account of a Credit Party, except as reported in Borrowing Base Reports delivered hereunder or otherwise reported by the Borrowers to the Lender pursuant to the terms hereof; (iv) each copy of an invoice or other documents delivered to the Lender by the Borrowers will be a genuine copy of the original invoice or document sent to the Account debtor named therein; and (v) all goods described in any invoice representing a sale of goods will have been delivered to the Account debtor and all services of a Credit Party described in each invoice will have been performed.

(b) The Credit Parties shall not extend or modify any Account (other than extensions and modifications made in the ordinary course of business). If, at any time, a Credit Party becomes aware of any matter adversely affecting the collectability in any material respect of any of its Accounts or the Account debtor therefor involving an amount greater than \$250,000, including a dispute or claim, or information regarding the Account debtor's creditworthiness, the Borrowers will promptly advise the Lender of the same.

(c) The Credit Parties shall not accept any note or other instrument (except a cheque or other instrument for the immediate payment of money) with respect to any of its Eligible Accounts, without the Lender's prior written consent. If the Lender consents to the acceptance of any such instrument, it shall be considered as evidence of the applicable Account and not payment thereof and such Credit Party will promptly deliver such instrument to the Lender, endorsed by such Credit Party to the Lender in a manner reasonably satisfactory in form and substance to the Lender.

(d) No discount, credit or allowance shall be granted to any Account debtor without the Lender's prior written consent, except for discounts, credits and allowances made or given in the ordinary course of a Credit Party's business when no Event of Default exists. The Borrowers shall send the Lender a copy of each credit when issued, and the Borrowers shall promptly report such credit on Borrowing Base Reports submitted by it.

(e) Each Credit Party represents and warrants to the Lender and agrees with the Lender that all of the Inventory owned by the Credit Parties is and will be held for sale or lease, or to be furnished in connection with the rendition of services, in the ordinary course of the Credit Parties'

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business, and is and will be fit for such purposes. Each Credit Party will keep its Inventory in good and marketable condition, except for damaged or defective goods arising in the ordinary course of such Credit Party's business. The Credit Parties will not, without the prior written consent of the Lender, acquire or accept any Inventory on consignment or approval other than in the ordinary course of business in a manner consistent with past practices and, upon the reasonable request of the Lender, the Borrowers will provide the Lender with the details of any such arrangements. Each Credit Party will maintain a perpetual inventory reporting system at all times. The Credit Parties will not, without the Lender's written consent, sell any of their Inventory on a sale on approval, consignment or other repurchase or return basis other than in the ordinary course of business in a manner consistent with past practices and, upon the reasonable request of the Lender, the Borrowers will provide the Lender with the details of any such arrangements.

(f) In connection with all Inventory of a Credit Party financed by Letters of Credit, the Borrowers will, at the Lender's request made after the occurrence and during the continuance of an Event of Default, instruct all suppliers, carriers, forwarders, customs brokers, warehouses or others receiving or holding cash, cheques, Inventory, documents or instruments of such Credit Party on which the Lender holds a Lien to deliver them to the Lender and/or subject to the Lender's order, and if they shall come into such Credit Party's possession, to deliver them, upon request, to the Lender in their original form. Each Credit Party shall also, at the Lender's request made after the occurrence and during the continuance of an Event of Default, designate the Lender as the consignee on all bills of lading and other negotiable and non-negotiable documents of such Credit Party.

(g) The Lender may, in its sole discretion, pay any amount or do any act required of any Credit Party hereunder or under any other Loan Document or requested by the Lender to preserve, protect, maintain or, upon the occurrence of an Event of Default which is continuing and exercise by the Lender of its rights under Section 7.2 hereof, enforce the Obligations, the Collateral or the Lender's Liens, and which the Credit Party fails to pay or do, including, without limitation, payment of any judgment against the Credit Party any insurance premium, any warehouse charge, any finishing or processing charge, any landlord's or processor's claim, and any other Lien upon or with respect to the Collateral. All payments that the Lender makes under this Section and all reasonable Out-of-Pocket-Expenses that the Lender pays or incurs in connection with any action taken hereunder shall be charged to the Borrower's loan account as a Revolving Loan. Any payment made or other action taken by the Lender under this Section shall be without prejudice to any right to assert an Event of Default hereunder and to proceed thereafter as herein provided.

(h) Each Credit Party hereby constitutes the Lender, or any person, agent or mandatary the Lender may designate, as its attorney-in-fact, at the Borrower's cost and expense to, upon the occurrence of an Event of Default which is continuing, exercise all of the following powers, which being coupled with an interest, shall be irrevocable until all Obligations to the Lender have been indefeasibly paid in full:

(1) receive, take, endorse, sign, assign and deliver, all in the name of the Lender or any Credit Party, as the case may be, any and all cheques, notes, drafts, and other documents or instruments relating to the Collateral, provided, however, that the Lender shall have the powers set out in this Subsection (h) at all times with or without the occurrence or continuance of an Event of Default;

(2) notwithstanding the foregoing, at all times (including prior to an Event of Default) at the Lender's discretion, request from customers indebted on Accounts at any time, in the name of any Credit Party, in the name of the chartered accountants designated by the Lender or in the name of the Lender's designee, information concerning the amounts owing on the Accounts;

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(3) transmit to customers indebted on Accounts notice of the Lender's interest therein and to notify customers indebted on Accounts to make payment directly to the Lender for the requisite Credit Party's account;

(4) take or bring, in the name of the Lender or any Credit Party, as the case may be, all steps, actions, suits or proceedings deemed by the Lender necessary or desirable to enforce or effect collection of the Accounts; and

(5) receive, open and dispose of all mail addressed to a Credit Party and to notify the postal authority of any change of address for delivery thereof to such address as the Lender may designate.

(i) Such Credit Party assumes all responsibility and liability arising from or relating to the use, sale or other disposition of the Collateral. The Obligations shall not be affected by any failure of the Lender to take any steps to perfect the Lender's Liens or to collect or realize upon the Collateral, nor shall loss of or damage to the Collateral release any Credit Party from any of the Obligations. Following the occurrence and continuation of an Event of Default, the Lender may (but shall not be required to), without notice to or consent from any Credit Party, sue upon or otherwise collect, extend the time for payment of, modify or amend the terms of, compromise or settle for cash, credit, or otherwise upon any terms, grant other indulgences, extensions, renewals, compositions, or releases, and take or omit to take any other action with respect to the Collateral, any security therefor, any agreement relating thereto, any insurance applicable thereto, or any Person liable directly or indirectly in connection with any of the foregoing, without discharging or otherwise affecting the liability of any Credit Party for the Obligations or under this Agreement or any other agreement now or hereafter existing between the Lender and any Credit Party.

(j) Such Credit Party represents and warrants to the Lender and agrees with the Lender that all of the Equipment is and will be used or held for use in any Credit Party's business, and is and will be fit for such purposes. Each Credit Party shall keep and maintain the Equipment in good operating condition and repair (ordinary wear and tear excepted) and shall make all necessary replacements thereof.

5.23 USA Patriot Act, Bank Secrecy Act and Office of Foreign Asset Control.

Each Borrower shall ensure, and cause each other Credit Party to ensure, that no Person who owns a controlling interest in or otherwise controls a Credit Party is or shall be (i) listed on the Specially Designated Nationals and Blocked Person List maintained by OFAC, Department of the Treasury, and/or any other similar lists maintained by OFAC pursuant to any authorizing statute, Executive Order or regulation or (ii) a Person designated under Section 1(b), (c) or (d) of Executive Order No. 13224 (September 23, 2001), any related enabling legislation or any other similar Executive Orders, and (b) comply, and cause each other Credit Party to comply, with all applicable *Bank Secrecy Act* and anti-money laundering laws and regulations.

ARTICLE 6 NEGATIVE COVENANTS

From (and including) the Effective Date until the Commitment have expired or been terminated and the principal of and interest on each Loan and all fees payable hereunder shall have been paid in full and all Letters of Credit and F/X Contracts shall have expired and been terminated and all Reimbursement Obligations have been satisfied by the Borrowers and the other Credit Parties, each Borrower and each other Credit Party covenants and agrees with the Lender that:

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6.1 Indebtedness.

No Credit Party will create, incur, assume or permit to exist any Indebtedness, except:

- (a) any Indebtedness created hereunder;
- (b) any Indebtedness existing on the date hereof and set forth in Schedule 6.1 (including, any extensions or renewals of any such Indebtedness but excluding any replacements of any such Indebtedness);
- (c) any (i) Shareholder Subordinated Debt, and (ii) Indebtedness of one Credit Party to another Credit Party;
- (d) any Guarantee by a Credit Party of Indebtedness of any other Credit Party which is permitted hereunder;
- (e) any Indebtedness of the Credit Parties incurred under Purchase Money Liens or Capital Lease Obligations in an aggregate amount not exceeding \$3,000,000 for all Credit Parties;
- (f) any Indebtedness of any Person that becomes a Credit Party after the date hereof, provided that (i) such Indebtedness exists at the time such Person becomes a Credit Party and is not created in contemplation of or in connection with such Person becoming a Credit Party, and (ii) the aggregate principal amount of Indebtedness permitted by this clause (f) shall not exceed \$1,000,000 at any time outstanding;
- (g) any Indebtedness in respect of trade letters of credit or Letters of Credit;
- (h) any Indebtedness in respect of Swap Transactions entered into in compliance with Section 6.5; and
- (i) Indebtedness in respect of the U.S. Bank Commercial Card Program.

6.2 Liens.

No Credit Party will, and no Credit Party will permit any Credit Party to, create, incur, assume or permit to exist any Lien on any property or asset now owned or hereafter acquired by any Credit Party or assign or sell any income or revenues (including Accounts of the Credit Parties) or rights in respect of any thereof, except Permitted Liens.

6.3 Fundamental Changes; Asset Sales.

- (a) No Credit Party will merge into or amalgamate or consolidate with any other Person, or permit any other Person to merge into or amalgamate or consolidate with it, or sell, transfer, lease or otherwise dispose of (in one transaction or in a series of transactions) all or substantially all of its assets, or all or any of the Equity Securities of any of its Subsidiaries (in each case, whether now owned or hereafter acquired), or liquidate or dissolve without the prior written consent of the Lender.
- (b) No Credit Party will engage to any material extent in any material business other than businesses of the type conducted by the Credit Party on the date of execution of this Agreement and businesses reasonably related thereto.
- (c) No Credit Party will make any sale, lease, license, transfer, assignment or other disposition of all or any portion of its business, assets, rights, revenues or property, real, personal or

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mixed, tangible or intangible, whether in one transaction or a series of transactions, other than (a) inventory sold in the ordinary course of business upon customary credit terms, (b) sales or dispositions of scrap or obsolete material or equipment which are not material in the aggregate, (c) leases of real property or personal property (under which such Person is lessor) which have a fair market value less than \$250,000 for any transaction and less than \$1,000,000 for all such transactions and which are no longer used or useful in the business, (d) sales or other dispositions of other assets not exceeding \$250,000 in any Fiscal Year.

6.4 Investments, Loans, Advances, Guarantees and Acquisitions.

Each Credit Party will not purchase, hold or acquire (including pursuant to any amalgamation, merger or consolidation with any Person that was not a Credit Party prior to such amalgamation, merger or consolidation) any Equity Securities, evidences of indebtedness or other securities (including any option, warrant or other right to acquire any of the foregoing) of, make or permit to exist any loans or advances to, Guarantee any obligations of, or make or permit to exist any Investment or any other interest in, any other Person, or purchase or otherwise acquire (in one transaction or a series of transactions) any assets of any other Person or otherwise make an Acquisition, except:

- (a) Investments by a Credit Party in the Equity Securities of any other Credit Party;
- (b) loans or advances made by one Credit Party to any other Credit Party;
- (c) Guarantees constituting Indebtedness permitted by Section 6.1; and
- (d) Permitted Investments.

6.5 Swap Transactions.

No Credit Party will enter into any Swap Transaction or engage in any transactions in respect thereof, except (i) Swap Transactions entered into by a Borrower to hedge or mitigate risks to which the Borrowers or any other Credit Party has actual exposure (other than those in respect of Equity Securities), (ii) Swap Transactions entered into in order to effectively cap, collar or exchange interest rates (from fixed to floating rates, from one floating rate to another floating rate or otherwise) with respect to any interest-bearing liability or investment of a Borrower or any other Credit Party, and (iii) F/X Contracts entered into pursuant to Section 2.19.

6.6 Restricted Payments.

No Credit Party will declare, pay or make, or agree to pay or make, directly or indirectly, any Restricted Payment, except (a) a Borrower may declare and pay dividends with respect to its Equity Securities payable solely in additional Equity Securities, (b) any Credit Party may declare and pay dividends to a Borrower or any other Credit Party and any Credit Party may redeem or repurchase its own Equity Securities, and (c) Nilex Inc. may otherwise make Restricted Payments provided that the Payment Conditions are satisfied.

6.7 Transactions with Affiliates.

No Credit Party will sell, lease or otherwise transfer any property or assets to, or purchase, lease or otherwise acquire any property or assets from, or otherwise engage in any other transactions with, any of its Affiliates, except (a) in the ordinary course of business at prices and on terms and conditions not less favourable to the Credit Party than could be obtained on an arm's-length basis from unrelated third parties, (b) transactions between or among the Credit Parties not

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involving any other Affiliate, and (c) any Restricted Payment permitted by Section 6.6. The foregoing restrictions shall not apply to: (i) the payment of reasonable and customary fees to directors of the Credit Party, (ii) any other transaction with any employee, officer or director of a Credit Party pursuant to employee profit sharing and/or benefit plans and compensation and non-competition arrangements in amounts customary for corporations similarly situated to the Credit Party and entered into in the ordinary course of business and approved by the board of directors of the Credit Party, or (iii) any reimbursement of reasonable out-of-pocket costs incurred by an Affiliate of the Credit Party on behalf of or for the account of the Credit Party.

6.8 Repayment of Debt.

No Credit Party will repay, prepay, redeem, repurchase, defease or otherwise make any payment on account of any Indebtedness for borrowed money except for (a) payment on account of Indebtedness owing to the Lender under this Agreement, (b) any payment consented to in writing by the Lender, and (c) payment on account of Indebtedness permitted by Section 6.1, the repayment of which is not restricted by Section 6.6.

6.9 Restrictive Agreements.

No Credit Party will directly or indirectly, enter into, incur or permit to exist any agreement or other arrangement that prohibits, restricts or imposes any condition upon (a) the ability of a Borrower or any Subsidiary to create, incur or permit to exist any Lien upon any of its property or assets, (b) the ability of a Credit Party to pay dividends or other distributions with respect to any Equity Securities or with respect to, or measured by, its profits or to make or repay loans or advances to a Borrower or any other Credit Party or to provide a Guarantee of any Indebtedness of a Borrower or any other Credit Party, (c) the ability of a Borrower or any other Credit Party to make any loan or advance to a Borrower or any of the other Credit Parties, or (d) the ability of a Borrower or any other Credit Party to sell, lease or transfer any of its property to a Borrower or any other Credit Party; provided that (i) the foregoing shall not apply to restrictions and conditions imposed by Applicable Law or by this Agreement, (ii) the foregoing shall not apply to restrictions and condition existing on the date hereof identified on Schedule 6.9 (but shall apply to any extension or renewal of, or any amendment or modification expanding the scope of, any such restriction or condition), (iii) the foregoing shall not apply to customary restrictions and conditions contained in agreements relating to the sale of a Subsidiary of a Borrower pending such sale, provided such restrictions and conditions apply only to the Subsidiary of a Borrower that is to be sold and such sale is permitted hereunder, (iv) clause (a) of the foregoing shall not apply to restrictions or conditions imposed by any agreement relating to secured Indebtedness permitted by this Agreement if such restrictions or conditions apply only to the property or assets securing such Indebtedness, and (v) clause (a) of the foregoing shall not apply to customary provisions in leases and other ordinary course contracts restricting the assignment thereof.

6.10 [Intentionally Deleted].

6.11 Sales and Leasebacks.

No Credit Party will enter into any arrangement, directly or indirectly, with any Person whereby the Credit Party shall sell or transfer any property, whether now owned or hereafter acquired, and whereby the Credit Party shall then or thereafter rent or lease as lessee such property or any part thereof or other property which the Credit Party intends to use for substantially the same purpose or purposes as the property sold or transferred.

6.12 Pension Plan Compliance.

No Credit Party will (a) terminate any Pension Plan in a manner, or take any other action with respect to any Pension Plan, which could reasonably be expected to result in any material liability of any Credit Party, (b) fail to make full payment when due of all amounts which, under the provisions of any Pension Plan, agreement relating thereto or Applicable Law, the Credit Party is required to pay as contributions thereto, except where the failure to make such payments could not reasonably be expected to have a Material Adverse Effect, or give rise to any Lien under ERISA or the Code, (c) permit to exist any material accumulated funding deficiency, whether or not waived, with respect to any Pension Plan, (d) contribute to or assume an obligation to contribute to or become liable under any "multi-employer pension plan" as such term is defined in the *Pension Benefits Act (Ontario)* or other Applicable Law, or any Pension Plan with a "defined benefit provision" as such term is defined in section 147.1(1) of the ITA not disclosed to the Lender, (e) acquire an interest in any Person if such Person sponsors, maintains or contributes to, or at any time in the six-year period preceding such acquisition has sponsored, maintained, or contributed to any Pension Plan with a "defined benefit provision" as such term is defined in section 147.1(1) of the ITA.

6.13 Sale or Discount of Receivables.

No Credit Party will discount or sell (with or without recourse) any of its Accounts.

6.14 Unconditional Purchase Obligations.

No Credit Party will enter into or be a party to, any Material Contract for the purchase of materials, supplies or other property or services, if such contract requires that payment be made by it regardless of whether or not delivery of such materials, supplies or other property or services is ever made, provided that this Section 6.14 shall not restrict the ability of any Credit Party to enter into any such contract in the ordinary course of its business to the extent that the materials, supplies or other property or services which are the subject matter of such contract are reasonably expected to be used by the applicable Credit Party in the ordinary course of its business.

6.15 Capital Expenditures.

No Credit Party will make Capital Expenditures in any period for the Credit Parties on a consolidated basis in excess of 150% of the budgeted Capital Expenditures for such period, as set forth in the most recent capital expenditure budget delivered to and approved by the Lender.

6.16 No Amendments to Material Contracts.

No Credit Party will amend, modify or terminate (or waive any provision of or provide any consent under), any Material Contract in a manner which may reasonably be expected to have a Material Adverse Effect.

6.17 Changes Relating to Subordinated Debt.

(a) No Credit Party shall change or amend the terms of any Subordinated Debt (or any indenture or agreement in connection therewith) if the effect of such amendment is to: (a) increase the interest rate on such Subordinated Debt; (b) change the dates upon which payments of principal or interest are due on such Subordinated Debt other than to extend such dates; (c) change any default or event of default other than to delete or make less restrictive any default provision therein, or add any covenant with respect to such Subordinated Debt; (d) change the redemption or prepayment provisions of such Subordinated Debt other than to extend the dates therefor or to reduce the premiums payable in connection therewith; (e) grant any further or additional security or

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collateral to secure payment of such Subordinated Debt; or (f) change or amend any other term if such change or amendment would materially increase the obligations of the Credit Party thereunder or confer additional material rights on the holder of such Subordinated Debt in a manner adverse to any Credit Party or the Lender.

ARTICLE 7 EVENTS OF DEFAULT

7.1 Events of Default.

It shall constitute an event of default ("Event of Default") if any one or more of the following shall occur:

(a) the Borrowers shall fail to pay any principal of any Loan or any Reimbursement Obligation in respect of any Letter of Credit when and as the same shall become due and payable, whether at the due date thereof or at a date fixed for prepayment thereof or otherwise;

(b) the Borrowers shall fail to pay any interest on any Loan or any fee or any other amount (other than an amount referred to in clause (a) above) payable under this Agreement, when and as the same shall become due and payable;

(c) any representation or warranty made or deemed made by or on behalf of any Credit Party in or in connection with any Loan Document or any amendment or modification thereof or waiver thereunder, or in any report, certificate, financial statement or other document furnished pursuant to or in connection with any Loan Document or any amendment or modification thereof or waiver thereunder, shall prove to have been incorrect when made or deemed to be made;

(d) any Credit Party shall fail to observe or perform any covenant, condition or agreement contained in Section 5.1(n)(ii) (notices of Defaults or Events of Default), 5.2 (with respect to the Credit Party's existence), 5.7 and 5.12 or in Article 6 (or in any comparable provision of any other Loan Document);

(e) any Credit Party shall fail to observe or perform any covenant, condition or agreement contained in this Agreement (other than those specified in clauses (a), (b) or (d) above) or any other Loan Document, and such failure shall continue unremedied for a period of 30 days after notice thereof from the Lender to the Borrowers (which notice will be given at the request of the Lender);

(f) any Credit Party shall fail to make any payment whether of principal or interest, and regardless of amount, in respect of any Material Indebtedness, when and as the same shall become due and payable;

(g) any event or condition occurs that results in any Material Indebtedness becoming due prior to its scheduled maturity or that enables or permits (with or without the giving of notice, the lapse of time or both) the holder or holders of any Material Indebtedness or any trustee or agent on its or their behalf to cause any Material Indebtedness to become due, or to require the prepayment, repurchase, redemption or defeasance thereof, prior to its scheduled maturity; provided that this Section 7.1(g) shall not apply to secured Indebtedness that becomes due as a result of the voluntary sale or transfer of the property or assets securing such Indebtedness so long as the proceeds of such sale or transfer are sufficient to, and are applied to, reduce such secured Indebtedness to nil;

(h) any Credit Party:

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- (i) becomes insolvent, or generally does not or becomes unable to pay its debts or meet its liabilities as the same become due, or admits in writing its inability to pay its debts generally, or declares any general moratorium on its indebtedness, or proposes a compromise or arrangement between it and any class of its creditors;
 - (ii) commits an act of bankruptcy under the BIA, or makes an assignment of its property for the general benefit of its creditors under the BIA, or makes a proposal (or files a notice of its intention to do so) under the BIA;
 - (iii) institutes any proceeding seeking to adjudicate it an insolvent, or seeking liquidation, dissolution, winding-up, reorganization, compromise, arrangement, adjustment, protection, moratorium, relief, stay of proceedings of creditors generally (or any class of creditors), or composition of it or its debts or any other relief, under any federal, provincial or foreign Applicable Law now or hereafter in effect relating to bankruptcy, winding-up, insolvency, reorganization, receivership, plans of arrangement or relief or protection of debtors (including the BIA, the *Companies' Creditors Arrangement Act* (Canada), the *United States Bankruptcy Code* and any applicable corporations legislation) or at common law or in equity, or files an answer admitting the material allegations of a petition filed against it in any such proceeding;
 - (iv) applies for the appointment of, or the taking of possession by, a receiver, interim receiver, receiver/manager, sequestrator, conservator, custodian, administrator, trustee, liquidator or other similar official for it or any substantial part of its property; or
 - (v) threatens to do any of the foregoing, or takes any action, corporate or otherwise, to approve, effect, consent to or authorize any of the actions described in this Section 7.1(h) or in Section 7.1(i), or otherwise acts in furtherance thereof or fails to act in a timely and appropriate manner in defense thereof,
- (i) any petition is filed, application made or other proceeding instituted against or in respect of any Credit Party:
- (i) seeking to adjudicate it an insolvent;
 - (ii) seeking a receiving order against it under the BIA or other Applicable Law;
 - (iii) seeking liquidation, dissolution, winding-up, reorganization, compromise, arrangement, adjustment, protection, moratorium, relief, stay of proceedings of creditors generally (or any class of creditors), or composition of it or its debts or any other relief under any federal, provincial or foreign Applicable Law now or hereafter in effect relating to bankruptcy, winding-up, insolvency, reorganization, receivership, plans of arrangement or relief or protection of debtors (including the BIA, the *Companies' Creditors Arrangement Act* (Canada) or the *United States Bankruptcy Code* and any applicable corporations legislation) or at common law or in equity; or
 - (iv) seeking the entry of an order for relief or the appointment of, or the taking of possession by, a receiver, interim receiver, receiver/manager, sequestrator,

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conservator, custodian, administrator, trustee, liquidator or other similar official for it or any substantial part of its property;

and such petition, application or proceeding continues undismissed, or unstayed and in effect, for a period of 30 days after the institution thereof, provided that if an order, decree or judgment is granted or entered (whether or not entered or subject to appeal) against the Credit Party thereunder in the interim, such grace period will cease to apply, and provided further that if the Credit Party files an answer admitting the material allegations of a petition filed against it in any such proceeding, such grace period will cease to apply;

(j) any other event occurs which, under the Applicable Laws of any applicable jurisdiction, has an effect which is comparable to any of the events referred to in either of Sections 7.1(h) or (i);

(k) one or more judgments for the payment of money in a cumulative amount in excess of \$500,000 (or its then equivalent in any other currency) in the aggregate is rendered against a Borrower, any other Credit Party or any combination thereof and the applicable Borrower or the other Credit Party has not (i) provided for its discharge in accordance with its terms within 30 days from the date of entry thereof, or (ii) procured a stay of execution thereof within 30 days from the date of entry thereof and within such period, or such longer period during which execution of such judgment has not been stayed, appealed such judgment and caused the execution thereof to be stayed during such appeal, provided that if enforcement and/or realization proceedings are lawfully commenced in respect thereof in the interim, such grace period will cease to apply;

(l) any property of any Credit Party having a fair market value in excess of \$500,000 (or its then equivalent in any other currency) in the aggregate is seized (including by way of execution, attachment, garnishment, levy or distraint), or any Lien thereon securing Indebtedness in excess of \$500,000 (or its then equivalent in any other currency) is enforced, or such property has become subject to any charging order or equitable execution of a Governmental Authority, or any writ of execution or distress warrant exists in respect of any Borrower, any other Credit Party or the property of any of them, or any sheriff or other Person becomes lawfully entitled by operation of law or otherwise to seize or distrain upon such property and in any case such seizure, enforcement, execution, attachment, garnishment, distraint, charging order or equitable execution, or other seizure or right, continues in effect and is not released or discharged for more than 45 days or such longer period during which entitlement to the use of such property continues with the Credit Party (as the case may be), and the Credit Party (as the case may be) is contesting the same in good faith and by appropriate proceedings, provided that if the property is removed from the use of the Credit Party (as the case may be), or is sold, in the interim, such grace period will cease to apply;

(m) one or more final judgments, not involving the payment of money and not otherwise specified in this Section 7.1(m), has been rendered against any Credit Party, the result of which could reasonably be expected to result in a Material Adverse Effect, so long as the Credit Party (as the case may be) has not (i) provided for its discharge in accordance with its terms within 30 days from the date of entry thereof, or (ii) procured a stay of execution thereof within 30 days from the date of entry thereof and within such period, or such longer period during which execution of such judgment has been stayed, appealed such judgment and caused the execution thereof to be stayed during such appeal, provided that if enforcement and/or realization proceedings are lawfully commenced in respect thereof in the interim, such grace period will cease to apply;

(n) this Agreement, any other Loan Document or any material obligation or other provision hereof or thereof at any time for any reason terminates or ceases to be in full force and effect and a legally valid, binding and enforceable obligation of any Credit Party, is declared to be void or voidable or is repudiated, or the validity, binding effect, legality or enforceability hereof or

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thereof is at any time contested by any Credit Party, or any Credit Party denies that it has any or any further liability or obligation hereunder or thereunder or any action or proceeding is commenced to enjoin or restrain the performance or observance by any Credit Party of any material terms hereof or thereof or to question the validity or enforceability hereof or thereof, or at any time it is unlawful or impossible for any Credit Party to perform any of its material obligations hereunder or thereunder;

(o) any Lien purported to be created by any Security Document shall cease to be, or shall be asserted by any Credit Party not to be, a valid, perfected, first priority (except as otherwise expressly provided in this Agreement or such Security Document) Lien in Collateral with a fair market value or book value (whichever is greater) in excess, individually or in the aggregate, of Cdn.\$500,000 (or the equivalent in any other currency);

(p) a Material Adverse Change shall occur;

(q) a Change in Control shall occur;

(r) if any Credit Party or any of its Subsidiaries violates any Environmental Law which results in an Action Request, Violation Notice or other notice or control order or cancellation of any license or certificate or approval, that results in any disruption of any Credit Party's business or that could reasonably be expected to have a Material Adverse Effect;

(s) any event or condition shall occur or exist with respect to a Pension Plan, Multiemployer Plan or Employee Benefit Plan that could, in the Lender's good faith judgment, subject any Credit Party to any tax, penalty or other liabilities under Applicable Laws which could reasonably be expected to give rise to a Material Adverse Effect, or if any ERISA Event occurs, or if or if any Lien arises (save for contribution amounts not yet due) in connection with any Pension Plan and in any such case, any Credit Party shall have a payment liability in excess of Cdn \$500,000;

then, and in every such event, and at any time thereafter during the continuance of such event or any other such event, the Lender may, by notice to the Borrowers, take any or all of the following actions, at the same or different times: (i) terminate the Commitment, and thereupon the Commitment shall terminate immediately, (ii) declare the Loans then outstanding to be due and payable in whole (or in part, in which case any principal not so declared to be due and payable may thereafter be declared to be due and payable), and thereupon the principal of the Loans so declared to be due and payable, together with accrued interest thereon and all fees and other obligations of the Borrowers accrued hereunder, shall become due and payable immediately, without presentment, demand, protest or other notice of any kind except as set forth earlier in this paragraph, all of which are hereby waived by the Borrowers, (iii) apply any amounts outstanding to the credit of the Borrowers to repayment of all amounts outstanding under this Agreement, and (iv) declare any or all of the Security Documents to be immediately enforceable.

7.2 Remedies.

(a) If an Event of Default described in Section 7.1(h) or 7.1(i) occurs with respect to any Credit Party, then to the extent permitted by Applicable Law, all Obligations shall become automatically due and payable and the Commitment shall terminate, without any action by the Lender or notice of any kind. In addition, or if any other Event of Default has occurred and is continuing, the Lender may, in its discretion, do one or more of the following at any time or times and in any order, without notice to or demand on the Borrower: (i) reduce the Commitment, or the advance rates against Eligible Accounts and/or Eligible Inventory used in computing the Borrowing Base, or reduce one or more of the other elements used in computing the Borrowing Base; (ii) restrict the amount of or refuse to make Revolving Loans; (iii) restrict or refuse to provide Letters of Credit and F/X Contracts; (iv) terminate the Commitment; (v) declare any or all Obligations to be

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immediately due and payable; and (vi) pursue its other rights and remedies under the Loan Documents and applicable law and equity.

(b) If an Event of Default has occurred and is continuing and without limiting any rights or remedies arising under the Security Documents, (i) the Lender shall have, in addition to all other rights of the Lender, the rights and remedies of a secured party under Applicable Law (including, as applicable, the PPSA, the *Civil Code of Quebec* and the UCC) in the jurisdiction where the Collateral is located and all rights and remedies provided for in the Loan Documents; (ii) the Lender may, at any time, take possession of the Collateral and keep it on any Borrower's or any Guarantor's Premises, at no cost to the Lender, or remove any part of it to such other place or places as the Lender may desire, or the Borrowers or any Guarantor shall, upon the Lender's demand, at the Borrowers' cost, assemble the Collateral and make it available to the Lender at a place convenient to the Lender; and (iii) the Lender may sell and deliver any Collateral at public or private sales, for cash, upon credit or otherwise, at such prices and upon such terms as the Lender deems advisable, in its sole discretion, and may postpone or adjourn any sale of the Collateral by an announcement at the time and place of sale or of such postponed or adjourned sale without giving a new notice of sale. Without in any way requiring notice to be given in the following manner, the Borrowers and each of the Guarantors agree that any notice by the Lender of sale, disposition or other intended action hereunder or in connection herewith, whether required by the PPSA, Civil Code of Quebec and the UCC or otherwise, shall constitute reasonable notice to the Borrowers and Guarantors if such notice is mailed by registered or certified mail, return receipt requested, postage prepaid, or is delivered personally against receipt, at least fifteen (15) days prior to such action to the Borrowers' address specified in or pursuant to Section 9.1. If any Collateral is sold on terms other than payment in full at the time of sale, no credit shall be given against the Obligations until the Lender receive payment, and if the buyer defaults in payment, the Lender may resell the Collateral without further notice to the Borrowers or any Guarantor. If the Lender seeks to take possession of all or any portion of the Collateral by judicial process, the Borrowers and each of the Guarantors irrevocably waives: (A) the posting of any bond, surety or security with respect thereto which might otherwise be required; (B) any demand for possession prior to the commencement of any suit or action to recover the Collateral; and (C) any requirement that the Lender retain possession and not dispose of any Collateral until after trial or final judgment. Each Borrower and each of the Guarantors agree that the Lender has no obligation to preserve rights to the Collateral or marshal any Collateral for the benefit of any Person. The Lender is hereby granted a license or other right to use, without charge, all of the Borrowers' and each Guarantor's Property, whether or not constituting Collateral, including its real estate, Equipment and Intellectual Property Rights (including labels, patents, copyrights, name, trade secrets, trade names, trademarks, and advertising matter, or any similar property), in completing production of, advertising or selling any Collateral, and the Borrowers' and Guarantors' rights under all licenses and all franchise agreements shall inure to the Lender's benefit for such purpose. The proceeds of sale shall be applied first to all expenses of sale, including legal fees, and then to the Obligations. The Lender will return any excess to the Borrowers and Guarantors and the Borrowers shall remain liable for any deficiency.

(c) If an Event of Default has occurred and is continuing, to the maximum extent permitted by law, each Borrower and each of the Guarantors hereby waive all rights to notice and hearing prior to the exercise by the Lender of the Lender's rights to repossess the Collateral without judicial process or to reply, attach or levy upon the Collateral without notice or hearing.

(d) During the continuance of an Event of Default, the Lender may apply any and all payments received by the Lender in respect of any Obligation as set forth below. Notwithstanding any provision herein to the contrary, all payments made by or for the account of the Credit Parties to the Lender after any or all of the Obligations have been accelerated (so long as such acceleration has not been rescinded), including proceeds of Collateral, shall be applied as follows:

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first, to payment of costs and expenses, including legal costs, of the Lender payable or reimbursable by the Credit Parties under the Loan Documents;

second, to payment of legal costs of Lender payable or reimbursable by the Borrowers under this Agreement;

third, to payment of all accrued unpaid interest on the Obligations and fees owed to Lender and the Issuing Bank;

fourth, to payment of all Loans, reimbursement obligations in respect of Letters of Credit, F/X Exposure, Cover, and Cash Management Obligations (but excluding Cash Management Obligations which are not subject to Availability Reserves, and excluding all Excluded Swap Obligations);

fifth, Cash Management Obligations which are not subject to Availability Reserves;

sixth, to payment of any other amounts owing which constitute Obligations; and

seventh, any remainder shall be for the account of and paid to whoever may be lawfully entitled thereto.

In carrying out the foregoing, (i) amounts received shall be applied in the numerical order provided until exhausted prior to the application to the next succeeding category, and (ii) the Lender or other Persons entitled to payment shall receive an amount equal to its pro rata share of amounts available to be applied pursuant to each applicable category.

(e) If the Lender receives any payment from or for the account of a Credit Party in any currency other than the currency in which the Obligation is denominated, the Lender may convert the payment (including the proceeds of realization upon any Collateral) in accordance with its normal practice into the currency in which such Obligation is denominated.

**ARTICLE 8
[INTENTIONALLY DELETED]**

**ARTICLE 9
MISCELLANEOUS**

9.1 Notices.

(a) Except in the case of notices and other communications expressly permitted to be given by telephone (and subject to paragraph (b) below), all notices and other communications provided for herein shall be in writing and shall be delivered by hand or overnight courier service, mailed by certified or registered mail or sent by facsimile in each case to the addressee, as follows:

(i) if to a Borrower or any other Credit Party:

c/o NILEX INC.
6810 8th Street
Edmonton, AB, T6P 0C5
Attention: Director, Finance
Facsimile: (780) 463-1773

with a copy to:

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BLAKE, CASSELS & GRAYDON LLP
 595 Burrard Street
 P.O. Box 49314
 Suite 2600, Three Bentall Centre
 Vancouver, BC, V7X 1L3

Attention: Michael Birch
 Facsimile: (604) 631-3309

(ii) if to the Lender:

CANADIAN IMPERIAL BANK OF COMMERCE.
 199 Bay Street, 4th Floor
 Toronto, ON M5L 1A2
 Attention: Senior Director, Portfolio Management
 Facsimile: (416) 861-9422

with a copy to:

CANADIAN IMPERIAL BANK OF COMMERCE
 199 Bay Street, 11th Floor
 Toronto, ON M5L 1A9
 Attention: Tim Meadowcroft, Vice President and Assistant General Counsel
 Facsimile: 416.304.4573
 Email: tim.meadowcroft@cibc.com

and

NORTON ROSE FULBRIGHT CANADA LLP
 Royal Bank Plaza, South Tower, Suite 3800
 Toronto, ON M5J 2Z4
 Attention: David M.A. Amato
 Facsimile: (416) 216-1861
 Email: david.amato@nortonrosefulbright.com

(iii) if to the Lender or any Issuing Bank, to it at its address (or facsimile number) set forth opposite its name in the execution page(s) of this Agreement or the applicable Assignment and Assumption Agreement, as the case may be.

(b) Any notice received by any Borrower from the Lender shall be deemed also to have been received by each other Credit Party. Notices and other communications to the Lender hereunder may be delivered or furnished by electronic communications pursuant to procedures approved by the Lender. The Lender or the Borrowers may, in its discretion, agree to accept notices and other communication to it hereunder by electronic communications pursuant to procedures approved by it; provided that approval of such procedures may be limited to particular notices or communications.

(c) Any party hereto may change its address or facsimile number for notices and other communications hereunder by notice to the other parties hereto. All notices and other communications given to any party hereto in accordance with the provisions of this Agreement shall be deemed to have been given on the date of receipt.

9.2 Waivers; Amendments.

(a) No failure or delay by the Lender in exercising any right or power hereunder shall operate as a waiver thereof, nor shall any single or partial exercise of any such right or power, or any abandonment or discontinuance of steps to enforce such a right or power, preclude any other or further exercise thereof or the exercise of any other right or power. The rights and remedies of the Lender hereunder are cumulative and are not exclusive of any rights or remedies that they would otherwise have. No waiver of any provision of this Agreement or consent to any departure by the Borrowers therefrom shall in any event be effective unless the same shall be permitted by Section 9.2(b), and then such waiver or consent shall be effective only in the specific instance and for the purpose for which given. Without limiting the generality of the foregoing, the making of a Loan or issuance of a Letter of Credit shall not be construed as a waiver of any Default, regardless of whether the Lender may have had notice or knowledge of such Default at the time.

(b) Neither this Agreement nor any other Loan Document (or any provision hereof or thereof) may be waived, amended or modified except pursuant to an agreement or agreements in writing entered into by the Borrowers and Lender (and for greater certainty, any such waiver, amendment or modification shall not require any consent or other agreement of any Credit Party other than the Borrowers, notwithstanding that any such Credit Party may be a party to this Agreement or any other Loan Document). For greater certainty, the Lender may release and discharge the Liens constituted by the Security Documents to the extent necessary to enable the Borrowers to complete any asset sale which is not prohibited by this Agreement or the other Loan Documents.

9.3 Expenses; Indemnity; Damage Waiver.

(a) The Borrowers shall pay (i) all reasonable Out-of-Pocket Expenses incurred by the Lender and its Affiliates, including the reasonable fees, charges and disbursements of counsel for the Lender and all applicable Taxes, and the preparation and administration of this Agreement and the other Loan Documents, (ii) all reasonable Out-of-Pocket Expenses incurred by the Lender and its Affiliates, including the reasonable fees, charges and disbursements of counsel for the Lender and applicable Taxes, in connection with any amendments, modifications or waivers of the provisions hereof or of any of the other Loan Documents, (whether or not the transactions contemplated hereby or thereby shall be consummated and, including, without limitation, as a result of an assignment by a Lender of all or a portion of its Commitments and Loans pursuant to Section 9.4), and (iii) all Out-of-Pocket Expenses incurred by the Lender, including the fees, charges and disbursements of any counsel for the Lender and all applicable Taxes, in connection with the enforcement or protection of their rights in connection with this Agreement, including its rights under this Section, or in connection with the Loans made hereunder, including all such Out-of-Pocket Expenses incurred during any workout, restructuring or negotiations in respect of such Loans.

(b) Each Credit Party shall indemnify the Lender, as well as each Related Party and each assignee of any of the foregoing Persons (each such Person and each such assignee being called an "Indemnitee") against, and hold each Indemnitee harmless from, any and all losses, claims, cost recovery actions, damages, expenses and liabilities of whatsoever nature or kind and all Out-of-Pocket Expenses and all applicable Taxes to which any Indemnitee may become subject arising out of or in connection with (i) the execution or delivery of the Loan Documents or any agreement or instrument contemplated thereby, the performance by the parties thereto of their respective obligations thereunder, and the consummation of the Transactions or any other transactions thereunder, (ii) any Loan, Letter of Credit or F/X Contract or any actual or proposed use of the proceeds therefrom, including any refusal by the Issuing Bank to honour a demand for payment under a Letter of Credit if the documents presented in connection with such demand do not strictly comply with the terms of such Letter of Credit, (iii) any actual or alleged presence or release

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of Hazardous Materials on or from any property owned or operated by a Borrower or any other Credit Party, or any Environmental Liability related in any way to a Borrower or any other Credit Party, (iv) any actual or prospective claim, litigation, investigation or proceeding relating to any of the foregoing (including, without limitation, any claim arising out of the Lender's collection and use of personal information of any Credit Party's principals and/or senior management), whether based on contract, tort or any other theory and regardless of whether any Indemnitee is a party thereto, (v) any other aspect of this Agreement and the other Loan Documents, or (vi) the enforcement of any Indemnitee's rights hereunder and any related investigation, defence, preparation of defence, litigation and enquiries; provided that such indemnity shall not, as to any Indemnitee, be available to the extent that such losses, claims, damages, liabilities or related expenses are determined by a court of competent jurisdiction by final and nonappealable judgment to have resulted from the gross negligence (it being acknowledged that ordinary negligence does not necessarily constitute gross negligence) or willful misconduct of such Indemnitee.

(c) The Credit Parties shall not assert, and hereby waive (to the fullest extent permitted by Applicable Law), any claim against any Indemnitee, on any theory of liability, for special, indirect, consequential or punitive damages (as opposed to direct or actual damages) arising out of, in connection with, or as a result of, any Loan Document, or any agreement or instrument contemplated thereby, the Transactions, any Loan or Letter of Credit or the use of the proceeds thereof.

(d) Any inspection of any property of a Borrower or any other Credit Party made by or through the Lender is for purposes of administration of the Credits only, and neither the Borrowers nor any other Credit Party is entitled to rely upon the same (whether or not such inspections are at the expense of the Borrowers).

(e) By accepting or approving anything required to be observed, performed, fulfilled or given to the Lender pursuant to the Loan Documents, the Lender shall not be deemed to have warranted or represented the sufficiency, legality, effectiveness or legal effect of the same, or of any term, provision or condition thereof, and such acceptance or approval thereof shall not constitute a warranty or representation to anyone with respect thereto by the Lender.

(f) The relationship between the Borrowers and the Lender is, and shall at all times remain, solely that of borrowers and lender. The Lender shall not under any circumstance be construed to be partners or joint venturers of the Borrowers or their Affiliates. The Lender shall not under any circumstance be deemed to be in a relationship of confidence or trust or a fiduciary relationship with the Borrowers or their Affiliates, or to owe any fiduciary duty to the Borrowers or their Affiliates. The Lenders does not undertake or assume any responsibility or duty to the Borrowers or their Affiliates to select, review, inspect, supervise, pass judgment upon or inform the Borrowers or their Affiliates of any matter in connection with their property or the operations of the Borrowers or their Affiliates. The Borrowers or their Affiliates and all Shareholders and all direct and indirect shareholders of the Credit Parties shall rely entirely upon their own judgment with respect to such matters, and any review, inspection, supervision, exercise of judgment or supply of information undertaken or assumed by the Lender in connection with such matters is solely for the protection of the Lender, and neither the Borrowers nor any other Person is entitled to rely thereon.

(g) The Lender shall not be responsible or liable to any Person for any loss, damage, liability or claim of any kind relating to injury or death to Persons or damage to Property caused by the actions, inaction or negligence of the Borrowers or any other Credit Party and/or their Affiliates and/or any Shareholder and/or any direct or indirect shareholder of any Credit Party; each Credit Party hereby indemnifies and holds the Lender harmless from any such loss, damage, liability or claim.

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(h) This Agreement is made for the purpose of defining and setting forth certain obligations, rights and duties of the Borrowers, the Lender in connection with the Loans, and is made for the sole benefit of the Borrowers, each other Credit Party, the Lender, and the Lender's and the Lender's successors and assigns. Except as provided in Sections 9.3(b) and 9.4, no other Person shall have any rights of any nature hereunder or by reason hereof.

(i) All amounts due under this Section 9.3 shall be payable not later than three Business Days after written demand therefor.

9.4 Successors and Assigns.

(a) The provisions of this Agreement shall be binding upon and inure to the benefit of the parties hereto and their respective successors and assigns permitted hereby, except that (i) a Borrower may not assign or otherwise transfer any of its rights or obligations hereunder without the prior written consent of the Lender (and any attempted assignment or transfer by a Borrower without such consent shall be null and void), and (ii) no Lender may assign or otherwise transfer its rights or obligations hereunder except in accordance with this Section. Nothing in this Agreement, expressed or implied, shall be construed to confer upon any Person (other than the parties hereto, their respective successors and assigns permitted hereby and, to the extent expressly contemplated hereby, the Related Parties of the Lender) any legal or equitable right, remedy or claim under or by reason of this Agreement.

(b) The Lender may assign to one or more Persons all or a portion of its rights and obligations under this Agreement and the other Loan Documents (including all or a portion of its Commitment and the Loans at the time owing to it); provided that (i) the Lender and the Borrowers must give their prior written consent to such assignment (which consent shall not be unreasonably withheld or delayed); and provided further that (ii) notwithstanding clause (i) immediately above, the Borrowers' consent shall not be required with respect to any assignment made at any time after the occurrence and during the continuance of an Event of Default, or in connection with any assignment by the Lender to an Affiliate of the Lender. Notwithstanding the foregoing, no assignment by the Lender or a Borrower shall be made to the Credit Parties, the Permitted Holders or any Affiliate thereof. Any such assignment shall, if required by the Lender, be subject to an amended and restated version of this Agreement and the granting by the Credit Parties of new Guarantees and Liens as security for the Obligations on terms and conditions to be agreed upon by the parties (but substantially in accordance with the Guarantee and Security Documents executed and delivered on the Effective Date) and such other documents and instruments (including legal opinions of the Credit Parties' counsel) as the Lender may reasonably require. Nillex USA Inc. shall act as an agent for all the Borrowers to maintain a register as to the principal and stated interest of each Loan owing to the Lender, along with a copy of all transfer documents and the name and address of the Lender and assignee. No assignment of an interest in a Loan shall be effective unless recorded in such register, absent manifest error. It is intended that such register be maintained such that the Loans are in "registered form" for the purposes of the Code.

(c) The Lender may at any time pledge or assign a security interest in all or any portion of its rights under this Agreement to secure obligations of the Lender, including any pledge or assignment to secure obligations to a Federal Reserve Bank, and Section 9.4 shall not apply to any such pledge or assignment of a security interest; provided that no such pledge or assignment of a security interest shall release the Lender from any of its obligations hereunder or substitute any such pledgee or assignee for the Lender as a party hereto.

9.5 Survival.

All covenants, agreements, representations and warranties made by the Borrowers herein and in the certificates or other instruments delivered in connection with or pursuant to this Agreement shall be considered to have been relied upon by the other parties hereto and shall survive the execution and delivery of this Agreement and the making of any Loans and issuance of any Letters of Credit, regardless of any investigation made by any such other party or on its behalf and notwithstanding that the Lender may have had notice or knowledge of any Default or incorrect representation or warranty at the time any credit is extended hereunder, and shall continue in full force and effect as long as the principal of or any accrued interest on any Loan or any fee or any other amount payable under this Agreement is outstanding and unpaid or any Letter of Credit is outstanding and so long as the Commitment has not expired or terminated. Sections 2.12, 2.13, 2.14 and 9.3 shall survive and remain in full force and effect, regardless of the consummation of the Transactions, the repayment of the Loans, the expiration or termination of the Letters of Credit and the Commitment or the termination of this Agreement or any provision hereof.

9.6 Counterparts; Integration; Effectiveness.

This Agreement may be executed in counterparts (and by different parties hereto on different counterparts), each of which shall constitute an original, but all of which when taken together shall constitute a single contract. This Agreement, the other Loan Documents and any separate letter agreements with respect to fees payable to the Lender, constitute the entire contract among the parties relating to the subject matter hereof and supersede any and all previous agreements and understandings, oral or written, relating to the subject matter hereof. Except as provided in Section 4.1, this Agreement shall become effective when it shall have been executed by the Lender and when the Lender shall have received counterparts hereof which, when taken together, bear the signatures of each of the other parties hereto, and thereafter shall be binding upon and inure to the benefit of the parties hereto and their respective successors and assigns. Delivery of an executed original counterpart of a signature page of this Agreement by facsimile or other electronically scanned method of delivery shall be as effective as delivery of a manually executed original counterpart of this Agreement.

9.7 Severability.

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

9.8 Right of Set-Off.

The Lender and each of its Affiliates is hereby authorized at any time and from time to time, to the fullest extent permitted by Applicable Law, to set off and apply any and all deposits (general or special, time or demand, provisional or final) at any time held and other obligations at any time owing by the Lender or Affiliate to or for the credit or the account of any Credit Party against any of and all of the obligations of the Borrowers now or hereafter existing under this Agreement held by the Lender, irrespective of whether or not the Lender shall have made any demand under this Agreement and although such obligations may be unmatured and regardless of the currency of the deposit. The rights of the Lender under this Section are in addition to other rights and remedies (including other rights of set off) which the Lender may have.



9.9 Governing Law; Jurisdiction; Consent to Service of Process.

(a) This Agreement shall be construed in accordance with and governed by the Laws of the Province of Alberta.

(b) Each of the Credit Parties hereto hereby irrevocably and unconditionally submits, for itself and its property, to the non-exclusive jurisdiction of the Courts of the Province of Alberta, and any appellate court thereof, in any action or proceeding arising out of or relating to this Agreement, or any other Loan Document or for recognition or enforcement of any judgment, and each of the parties hereto hereby irrevocably and unconditionally agrees that all claims in respect of any such action or proceeding may be heard and determined in Alberta. Each of the parties hereto agrees that a final judgment in any such action or proceeding shall be conclusive and may be enforced in other jurisdictions by suit on the judgment or in any other manner provided by Applicable Law. Nothing in this Agreement shall affect any right that the Lender may otherwise have to bring any action or proceeding relating to this Agreement or any other Loan Document against the Borrowers or their properties in the courts of any other jurisdiction.

(c) Each of the Credit Parties hereto hereby irrevocably and unconditionally waives, to the fullest extent it may legally and effectively do so, any objection which it may now or hereafter have to the laying of venue of any suit, action or proceeding arising out of or relating to this Agreement in any court referred to in this Section 9.9. Each of the parties hereto hereby irrevocably waives, to the fullest extent permitted by Applicable Law, any *forum non conveniens* defence to the maintenance of such action or proceeding in any such court.

(d) Each party to this Agreement irrevocably consents to service of process in the manner provided for notices in Section 9.1. Nothing in this Agreement will affect the right of any party to this Agreement to serve process in any other manner permitted by Applicable Law.

9.10 WAIVER OF JURY TRIAL.

EACH PARTY HERETO HEREBY WAIVES, TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, ANY RIGHT IT MAY HAVE TO A TRIAL BY JURY IN ANY LEGAL PROCEEDING DIRECTLY OR INDIRECTLY ARISING OUT OF OR RELATING TO THIS AGREEMENT, ANY OTHER LOAN DOCUMENT, OR THE TRANSACTIONS CONTEMPLATED HEREBY OR THEREBY (WHETHER BASED ON CONTRACT, TORT OR ANY OTHER THEORY). EACH PARTY HERETO (A) CERTIFIES THAT NO REPRESENTATIVE, AGENT OR ATTORNEY OF ANY OTHER PARTY HAS REPRESENTED, EXPRESSLY OR OTHERWISE, THAT SUCH OTHER PARTY WOULD NOT, IN THE EVENT OF LITIGATION, SEEK TO ENFORCE THE FOREGOING WAIVER AND (B) ACKNOWLEDGES THAT IT AND THE OTHER PARTIES HERETO HAVE BEEN INDUCED TO ENTER INTO THIS AGREEMENT BY, AMONG OTHER THINGS, THE MUTUAL WAIVERS AND CERTIFICATIONS IN THIS SECTION.

9.11 Headings.

Article and Section headings and the Table of Contents used herein are for convenience of reference only, are not part of this Agreement and shall not affect the construction of, or be taken into consideration in interpreting, this Agreement.

9.12 Confidentiality.

The Lender agrees to maintain the confidentiality of the Information (as defined below), except that Information may be disclosed (a) to each of their, and each of their Affiliates', directors, officers, employees, agents and advisors, including accountants, legal counsel and other advisors (it

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being understood that the Persons to whom such disclosure is made will be informed of the confidential nature of such Information and instructed to keep such Information confidential), (b) to the extent requested by any rating agency, regulatory authority or other Governmental Authority, or their legal counsel, (c) to the extent required by applicable laws or regulations or by any subpoena or similar legal process, (d) to any other party to this Agreement, (e) in connection with the exercise of any remedies under any Loan Document or any suit, action or proceeding relating to any Loan Document or the enforcement of rights thereunder, (f) subject to an agreement containing provisions substantially the same as those of this Section, to (i) any actual or prospective assignee (or such assignee's advisors) in any of its rights or obligations under this Agreement, or (ii) any actual or prospective counterparty (or its advisors) to any swap or derivative transaction relating to the Borrowers and their obligations, (g) to their auditors in connection with any audit, (h) to any financial institution (other than as otherwise identified in this Section 9.12), credit reporting agency or credit bureau, (i) to any Person with whom a Borrower or any other Credit Party may have or proposes to have financial dealings, or (j) with the consent of the Borrowers. For greater certainty, each Borrower and each of the Credit Parties acknowledges that from time to time, the Borrowers or any other Credit Party may request the Lender to facilitate the provision of certain financial services offered by CIBC (the "**CIBC Services**"). In such circumstances, CIBC policies and procedures ("**CIBC's Policies**") will apply in respect of all transactions undertaken by CIBC in connection with the provision of the CIBC Services, including any required due diligence investigation and related business approval processes conducted in respect of the Borrowers and the other Credit Parties. Each Borrower and each of the Credit Parties consents to the use of Information by CIBC for the purpose of facilitating compliance with CIBC's Policies. For the purposes of this Section, "Information" means all information received from the Borrowers or any Credit Party relating to the Borrowers, any of the Credit Parties, or their respective businesses, other than Information that is (i) is or becomes publicly available other than as a result of a breach of this Section, (ii) any such information that is or becomes available to the Lender on a non-confidential basis prior to disclosure by the Borrowers, or (iii) was already in the possession of the Lender prior to its disclosure by the Borrowers or any other Credit Party; or (iv) marked "non-confidential" (or such other words or expression having the same or similar meaning by the Borrowers or any other Credit Party. Any Person required to maintain the confidentiality of Information as provided in this Section shall be considered to have complied with its obligation to do so if such Person has exercised the same degree of care to maintain the confidentiality of such Information as such Person would accord to its own confidential information, acting prudently.

9.13 Press Releases and Related Materials.

Each Credit Party agrees that neither it nor its Affiliates will in the future issue any press releases or other public disclosure using the name of the Lender or referring to this Agreement, or the other Loan Documents without at least two (2) Business Days' prior notice to the Lender unless (and only to the extent that) such Credit Party or Affiliate is required to do so under law and then, in any event, such Credit Party or Affiliate will consult with the Lender before issuing such press release or other public disclosure. Each Credit Party consents to the publication by the Lender of advertising material relating to the financing transactions contemplated by this Agreement using its name, product photographs, logo or trademark. The Lender reserves the right to provide to industry trade organizations information necessary and customary for inclusion in league table measurements.

9.14 Anti-Money Laundering Legislation.

(a) Each Credit Party acknowledges that, pursuant to the *Proceeds of Crime (Money Laundering) and Terrorist Financing Act* (Canada) and other applicable anti-money laundering, anti-terrorist financing, government sanction and "know your client" Laws (collectively, including any guidelines or orders thereunder, "**AML Legislation**"), the Lender may be required to obtain, verify

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and record information regarding the Credit Parties, their directors, authorized signing officers, direct or indirect shareholders or other Persons in control of the Credit Parties, and the transactions contemplated hereby. The Credit Parties shall promptly provide all such information, including supporting documentation and other evidence, as may be reasonably requested by the Lender, or any prospective assignee or participant of the Lender, in order to comply with any applicable AML Legislation, whether now or hereafter in existence.

9.15 Keepwell.

Each Qualified ECP Guarantor hereby jointly and severally absolutely, unconditionally and irrevocably undertakes to provide such funds or other support as may be needed from time to time by each other Credit Party to honour all of its obligations under this Credit Agreement and each other Loan Document to which it is a party in respect of Swap Obligations (provided, however, that each Qualified ECP Guarantor shall only be liable under this Section 9.16 for the maximum amount of such liability that can be hereby incurred without rendering its obligations under this Section 9.16, or otherwise under this Credit Agreement or any other Loan Document, voidable under Applicable Law relating to fraudulent conveyance or fraudulent transfer, and not for any greater amount). The obligations of each Qualified ECP Guarantor under this Section shall remain in full force and effect until the payout of such Qualified ECP Guarantor's Obligations. Each Qualified ECP Guarantor intends that this Section 9.16 constitute, and this Section 9.16 shall be deemed to constitute, a "keepwell, support, or other agreement" for the benefit of each other Credit Party for all purposes of Section 1a(18)(A)(v)(II) of the *Commodity Exchange Act*.

9.16 No Strict Construction.

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

9.17 Paramountcy.

In the event of any inconsistency between the provisions of this Agreement and the provisions of any other Loan Document, the provisions of this Agreement shall prevail.

9.18 LIMITATION OF LIABILITY.

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

9.19 Language.

The parties herein have expressly requested that this Agreement and all related documents be drawn up in the English language. *À la demande expresse des parties aux présentes, cette convention et tout document y afférent ont été rédigés en langue anglaise.*

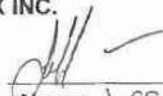
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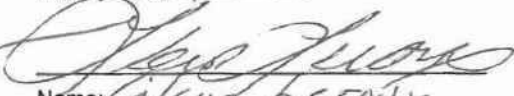
[Balance of page left blank; signature pages follow]

A handwritten signature consisting of the letters 'L' and 'B' in a cursive, stylized font.

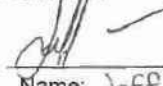
IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be duly executed by their respective authorized officers as of the day and year first above written.


NILEX INC.

Per: 
Name: Jeff Allen
Title: Director, Finance

Per: 
Name: Eileen Heroux
Title: President & CEO

NILEX USA, INC.


Per: 
Name: Jeff Allen
Title: Director, Finance


Per: 
Name: Eileen Heroux
Title: President & CEO



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CANADIAN IMPERIAL BANK OF COMMERCE,
as Lender

By: 
Name: **Geoff Golding**
Title: **Authorized Signatory**

By: 
Name: **Anthony Tsuen**
Title: **Authorized Signatory**



SCHEDULE A**COMMITMENTS**

<u>Lender</u>	<u>Commitment</u>
Canadian Imperial Bank of Commerce	Revolving Loans: \$20,000,000 Term Loan: \$4,000,000

SCHEDULE 3.3

APPROVALS

None.

Handwritten signature or initials in the bottom right corner of the page.

SCHEDULE 3.5

LITIGATION

None.

LB

SCHEDULE 3.7

OWNERSHIP

<u>Credit Party</u>	<u>Registered/Beneficial Holders of Equity Securities</u>
Nilex Inc.	a) PEF 2010 Nilex Investment Limited Partnership b) Gurchate Sekhon c) Hugh D. Watt d) Ian Wilson e) David LeMay
Nilex USA Inc.	Nilex Inc.

SCHEDULE 3.9
LIENS ON REAL PROPERTY

None.

AB

SCHEDULE 3.10

LIENS ON PERSONAL PROPERTY

<u>Credit Party</u>	<u>Jurisdiction</u>	<u>Secured Creditor</u>	<u>Registration Number(s) Perfecting the Lien (each as amended, as applicable)</u>
Nilex Inc.	Alberta	Element Fleet Management Inc.	10010720861
Nilex Inc.	Alberta	PEF 2010 Nilex Investment Limited Partnership; FCPI Nilex GP Inc.	13042623420; 13042623460
Nilex Inc.	Alberta	Foss National Leasing Ltd.	16032435197; 16112207721; 16121603816; 18041624228; 18041624236; 18041624253; 18041624384; 18041624393
Nilex Inc.	British Columbia	PEF 2010 Nilex Investment Limited Partnership; FCPI Nilex GP Inc.	314726H
Nilex Inc.	British Columbia	Foss National Leasing Ltd.	593249J; 912124J; 693514K
Nilex Inc.	Saskatchewan	Element Fleet Management Inc.	301163190
Nilex Inc.	Saskatchewan	PEF 2010 Nilex Investment Limited Partnership; FCPI Nilex GP Inc.	301015975
Nilex Inc.	Saskatchewan	Foss National Leasing Ltd.	301461191
Nilex Inc.	Ontario	PEF 2010 Nilex Investment Limited Partnership; FCPI Nilex GP Inc.	File: 686418885 Reg: 20130426 1704 1462 6168
Nilex Inc.	Ontario	Foss National Leasing Ltd.	File: 716811939 Reg: 20160519 1036 2677

LB

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			8638 File: 721762857 Reg: 20161021 1124 2677 9350 File: 738649629 Reg: 20180426 1034 2677 1851 File: 739104165 Reg: 20180508 1011 2677 1897
Nilex USA Inc.	Colorado	Element Financial Corp. PNC Equipment Finance, LLC	20142092764

AB

SCHEDULE 3.11
PENSION PLANS

None.

A handwritten signature consisting of the letters 'L' and 'B' in a cursive style.

SCHEDULE 3.13

DEFAULTS

None.

LB

SCHEDULE 3.15**SUBSIDIARIES****Nilex Inc.:**

- (i) Name: Nilex Inc.
- (ii) Form: Corporation
- (iii) Equity Securities issued and outstanding:
 - (A) 1,193,850 Class A Common Shares to PEF 2010 Nilex Investment Limited Partnership;
 - (B) 75,352 Class B Common Shares and 1,431,686 Class C Preferred Shares to Gurchate Sekhon;
 - (C) 63,467 Class B Common Shares and 1,205,867 Class B Preferred Shares to Hugh D. Watt;
 - (D) 173,918 Class B Common Shares and 3,304,447 Class A Preferred Shares to Ian Wilson; and
 - (E) 7,941 Class B Common Shares and 150,886 Class B Preferred Shares to David LeMay.
- (iv) Jurisdiction of formation: Alberta



- 2 -

Nilex USA Inc.:

- (i) Name: Nilex USA Inc.
- (ii) Form: Corporation
- (iii) Equity Securities issued and outstanding:
 - (A) 100 Common Shares to Nilex Inc.
- (iv) Jurisdiction of formation: Colorado



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SCHEDULE 3.18
MATERIAL CONTRACTS

None.

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SCHEDULE 3.19
ENVIRONMENTAL MATTERS

None.

LB

SCHEDULE 3.20
EMPLOYEE MATTERS

(See attached.)

AB

Schedule 3.20 - Employee Matters

**Pension Plan for the employees of
Nilex Inc. and Participating Employers**

Amended effective January 1, 2016

Registration Number 1074939

LB

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1. Interpretation

In this Plan,

"Act" means the *Alberta Employment Pension Plans Act*, and regulations as amended and any similar legislation of another jurisdiction governing the rights of a Member of the Plan.

"Administrator" means the Employer.

"Applicable Legislation" means the Act, the Income Tax Act and any other legislation governing the administration of the Plan.

"Continuous" in reference to employment with the Employer or membership in the Plan, includes any period of temporary suspension of employment or membership and periods of layoff from employment, or any other period required to be included under the Applicable Legislation.

"Earnings" means, in reference to employment within Canada, the Member's basic salary including overtime and bonuses and excluding profit sharing. If contributions are made to the Plan as permitted under Section 11, the Member's Earnings will include a prescribed amount of compensation in accordance with the Income Tax Act.

"Employee" means a person who is employed by the Employer.

"Employer" means Nilex Inc. and includes other employers who have entered into a Participation Agreement with the Administrator of the Plan as indicated below:

Nilex Construction Inc.

"Forfeited Amount" means the portion, if any, of a Member's account which arose from the Employer's contributions that the Member would not be entitled to receive upon termination of employment, retirement or death.

"Funding Agreement" means the agreement between the Administrator and a financial institution or other entity authorized to act as a funding agent for registered pension plans and under which contributions to the Plan are received and invested.

"Income Tax Act" means the *Income Tax Act* (Canada) and regulations as amended.

"Investment Income" means the rate of return of an investment option, including interest, gains and losses less the rate attributable to any investment expenses, administration expenses and other reasonable expenses related to the Plan and pension fund that are not paid separately by the Employer. Investment Income can be a positive or negative amount.

“Life Income Type Benefits Account” means an account, if any, created under defined contribution provisions of a pension plan that provides for benefits similar to those provided under a life income fund and complies with the requirements of the Applicable Legislation.

“Locked-in” means the benefit cannot be taken as a cash refund under the Applicable Legislation and/or as provided in the Plan.

“Locked-in Retirement Account” means a retirement savings plan that meets the requirements of the Applicable Legislation;

“Member” means an Employee or former Employee of the Employer for whom benefits are to be provided under the Plan.

“Participation Agreement” means the agreement between an Employer and the Administrator which sets forth the rules for employers who participate in the Plan, including, among other things, the obligation of the Employer to make and remit contributions to the Plan.

“Part-time”, in reference to an Employee, refers to permanent or temporary Employees of the Employer who are not employed on a full-time basis.

“Pension Partner” means, in relation to another person

- a person who, at the relevant time, was married to that other person and had not been living separate and apart from that other person for a continuous period of longer than three years, or;
- if there is no person as described above, a person who, immediately preceding the relevant time, had lived with that other person in a marriage-like relationship
 - for a continuous period of at least three years, or
 - of some permanence, if there is a child of the relationship by birth or adoption.

“Plan” means Pension Plan for the employees of Nilex Inc. and Participating Employers as amended from time to time.

“Plan Beneficiary” means the Pension Partner of a Member or, if the Member has no Pension Partner or the Pension Partner has waived entitlement to the death benefit, the Member’s designated beneficiary or the Member’s estate.

“Plan Documents” means the provisions, forms and information relating to the Plan which the Administrator is required under the Act to make available for inspection.

“Plan Year” means January 1 to December 31.

“Prescribed Retirement Income Arrangement” means

- a life income fund that meets the requirements of the Act and is registered under the **Income Tax Act**; or
- any other fund, account or other arrangement that is prescribed by the Act and registered under the **Income Tax Act** to be a retirement income arrangement.

“Year’s Maximum Pensionable Earnings” has the same meaning assigned by the *Canada Pension Plan* or other Applicable Legislation.

2. Introduction

This document sets out the terms and conditions of the Plan.

The effective date of the Plan is August 1, 2001.

Nilex Inc. has established this pension plan as a continuing part of its benefit program; however, Nilex Inc. reserves the right to amend or terminate the Plan. The Plan is designed to qualify for registration as a non-collectively bargained multi-employer defined contribution pension plan in accordance with the Applicable Legislation. Employers who wish to participate in the Plan must enter into a Participation Agreement with the Administrator and provide the Administrator with the information it reasonably requires to administer the Plan.

The Administrator of the Plan is responsible for the operation and administration of the Plan. The Administrator has the authority, in accordance with the Applicable Legislation, to determine all matters concerning the operation, administration and interpretation of the Plan. The Administrator may retain professionals to perform certain administrative functions. Administration expenses, investment expenses and other reasonable expenses related to the Plan and pension fund will be paid by Members from the assets of the pension fund, unless Nilex Inc. pays for all or part of those expenses separately.

On written request, a Member, the Member's Pension Partner, a person entitled to a benefit, or an authorized agent of any of them, may review the Plan Documents once a year as permitted under the Act. The Administrator will provide a copy of the Plan Documents on request for a reasonable fee. The Administrator will give each Member a written summary of any amendment to the Plan that affects the Member's benefits.

The Administrator will establish a pension plan fund for the accumulation and investment of contributions to the Plan. The assets of the pension plan fund will be invested as permitted by the Applicable Legislation. The fund will be maintained by a funding agent in accordance with the terms of the Funding Agreement. From time to time, the Administrator may appoint successor funding agents as considered necessary or desirable for purposes of the Plan.

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3. Membership

(a) Eligibility

All Employees, Directors and Executives are eligible for membership in the Plan.

Eligible full-time Employees may join the Plan on the first day of any month on or after the completion of one year of Continuous employment with an employer participating in the Plan.

Eligible Part-time Employees may join the Plan on the first day of any month on or after the completion of two years of Continuous employment with an employer participating in the Plan, provided the Employee has earned 35 per cent of the Year's Maximum Pensionable Earnings in each of the two consecutive calendar years immediately before joining the Plan.

Part-time Employees who join the Plan do not cease to be Members of the Plan if their Earnings drop below 35 per cent of the Year's Maximum Pensionable Earnings after they become Members.

The Administrator may elect to waive or vary the eligibility requirements for an Employee as permitted by the Applicable Legislation.

To enrol in the Plan, an application for membership must be completed.

The Administrator will give each eligible Employee a written summary of the Plan and of the rights and duties as a Member.

If a Member terminates employment and is subsequently re-hired by the Employer, the Employee will be treated as a new Employee for purposes of eligibility for membership and benefits under the Plan.

4. Contributions

(a) Member's required contributions

All Employees

Each Member is required to contribute to the Plan by payroll deduction an amount equal to two per cent of the Member's Earnings during each full or partial year of membership in the Plan.

Directors and Executives

Each Member is required to contribute to the Plan by payroll deduction an amount equal to four per cent of the Member's Earnings during each full or partial year of membership in the Plan.

(b) Member's voluntary contributions

Subject to the maximum contributions provision below, a Member may make voluntary contributions to the Plan and withdraw those contributions at any time.

(c) Member's transferred contributions

A Member may transfer amounts from another registered pension plan, a retirement savings plan or a deferred profit sharing plan into the Plan as permitted under the Income Tax Act.

If these funds are Locked-in, they will continue to be Locked-in and will be administered according to the Applicable Legislation.

(d) Employer's contributions

Each Employer is required to contribute to the Plan an amount equal to the Member's required contributions for each Member for each full or partial year of membership in the Plan.

(e) Payment of contributions

The Employer is required to remit contributions to the Plan within 30 days after the end of the month for which contributions are payable. The contributions will be remitted to the funding agent by the Administrator.

(f) Maximum contributions

The aggregate of the Member's contributions, the Employer's contributions made on behalf of a Member, and any Forfeited Amounts allocated to the Member in any calendar year may not exceed the lesser of 18 per cent of the Member's compensation and the money purchase limit for the calendar year, both as defined in the Income Tax Act, or such other maximum as required under the Applicable Legislation.

(g) Return of contributions

Subject to any consent required under the Applicable Legislation, all or a portion of the contributions made by the Member or the Employer on behalf of the Member will be returned to the Member or Employer respectively where such action is required to avoid revocation of the registration of the Plan.

(h) Suspension of contributions

A Member may elect to discontinue making required contributions. If the Member does so, the Employer's contributions on the Member's behalf will cease as well. These contributions may resume at any time. No benefits will be payable until the Member terminates employment, retires, dies or the Plan terminates. If all Members cease to contribute to the Plan, the Plan must be terminated.

(i) Investment options

Contributions will be invested in one or more of the investment options available under the Funding Agreement as directed by the Member.

The Administrator will provide the Member with information regarding the investment options currently available. Those options will be diversified and involve varying degrees of risk and expected rate of return to permit the Member to make a prudent investment choice. The Member may select one or a combination of the investment options at the time of joining the Plan, subject to any legislative restrictions. If the Member wishes to change the investment election at a later date, the Member may do so for any new contributions as well as existing investments, subject to the provisions of the Funding Agreement. If no election has been made by the Member, new contributions will be invested in the default investment option(s) selected by the Administrator. Members are solely responsible for their investment decisions (or decisions made on their behalf when the Member fails to make an election) regardless of any advice or recommendations that may be given by the Employer, Administrator or any agent of the Employer or Administrator.

The rate of return on investments may vary depending on the investment option selected. If an investment option is selected that does not guarantee a rate of return, the value of the investment, including the principal amount invested, will fluctuate based on the investment performance of the funds. Neither the Employer, Administrator nor any of the Administrator's agents will be responsible for the performance of the investment beyond the obligations required by the Applicable Legislation.

5. Member's Account

An account will be maintained for each Member. Each Member's account consists of contributions made by the Member, contributions made by the Employer on the Member's behalf and any Forfeited Amounts that have been applied to the Member's account, together with Investment Income.

Investment Income will be applied to the Member's account at least annually and will be calculated in accordance with the terms of the Funding Agreement and the Applicable Legislation.

A Member's account will be used to provide benefits in accordance with the terms of the Plan.

Where a benefit becomes payable under the Plan, the value of the Member's account will be equal to:

- the total contributions and any Forfeited Amounts that have been applied to the Member's account;
- plus Investment Income on those contributions and the Forfeited Amounts;
- less any voluntary contributions;

calculated in accordance with the terms of the Funding Agreement and the Applicable Legislation.

The Administrator will give the Member a statement indicating the value of the Member's account at least annually.

6. Retirement

A Member may elect to retire on the Member's normal retirement date or at an earlier or postponed retirement date.

(a) Normal retirement date

The normal retirement date is the first day of the month on or after the Member's 65th birthday. The value of the Member's account will be used to provide a retirement benefit.

(b) Early retirement date

A Member may elect an early retirement date up to 10 years before the normal retirement date. If the Member elects an early retirement date, the value of the Member's account will be used to provide a retirement benefit.

(c) Postponed retirement date

If a Member remains in the employment of the Employer after the normal retirement date, the Member must elect to receive a retirement benefit or to postpone the retirement date. If a Member elects to postpone the retirement date, or the Member does not make an election under this subsection, contributions to the Plan will continue on the same basis as before the normal retirement date. The value of the Member's account will be used to provide a retirement benefit which must begin no later than December 31 of the calendar year of the Member's 71st birthday, or at such other time or date as required under the Income Tax Act.

The Member retains the right to receive the value of any voluntary contributions as a cash refund or to transfer the value of those contributions to a registered retirement savings plan or such other vehicle as permitted under the Applicable Legislation.

7. Retirement Benefits

On retirement, a Member may elect to receive a retirement annuity or transfer the Member's benefit, subject to the requirements of the Applicable Legislation.

(a) Normal form of retirement annuity

If a Member elects a retirement annuity as the Member's retirement benefit and has a Pension Partner when the retirement annuity begins, the normal form of retirement annuity is a joint and survivor annuity. This annuity provides equal monthly payments to the Member for as long as the Member is alive. Following the Member's death, the retirement annuity payments will be reduced by 40 per cent and will be paid to the Member's Pension Partner for as long as the Pension Partner is alive. The Member's Pension Partner may waive this form of retirement annuity by completing the form required by the Applicable Legislation. The form must be signed in the manner required under the Applicable Legislation, not more than 90 days before the Member's actual retirement date and received by the Employer before the Member's actual retirement date.

If a Member elects a retirement annuity as the Member's retirement benefit and does not have a Pension Partner when the retirement annuity begins, the normal form of retirement annuity is a single life annuity. This annuity provides equal monthly payments for the Member's lifetime with payments guaranteed for 120 months.

If a Member elects a retirement annuity, the Member will receive the normal form of retirement annuity unless an optional form of retirement annuity is chosen.

(b) Optional forms of retirement annuity

Subject to the rights of the Member's Pension Partner under the Act and the limitations imposed by the Income Tax Act, a Member may elect, before the Member's actual retirement date, to receive any one of the following optional forms of retirement annuity:

- **Single life annuity**

A life annuity payable for life with payments guaranteed for a specified period, not to exceed 15 years.

- **Joint and survivor life annuity**

A life annuity payable for life and, upon the death of the Member, for the lifetime of the Member's Pension Partner. Either all or a percentage of the original annuity amount may continue to the Member's Pension Partner. Payments may be guaranteed for a specified period, not to exceed 15 years and as permitted under the Income Tax Act.

- **Government integrated annuity**
An increased retirement annuity payable until age 65, at which time the annuity payments will be reduced to provide an approximately level income from the Plan and government sources.
- **Indexed life annuity**
A retirement annuity increased each year by a specified per cent of the increase in the Consumer Price Index, subject to the maximum permitted under the Income Tax Act.
- Any other form of retirement annuity permitted under the Income Tax Act.

(c) Transfer at retirement

Instead of receiving a retirement annuity, a Member may transfer the benefit to another registered pension plan, a Locked-in Retirement Account or a Prescribed Retirement Income Arrangement subject to any rights of the Member's Pension Partner as provided in the Act and as permitted under the Applicable Legislation.

Within 60 days of receiving notification of a Member's retirement, the Administrator will give the Member a statement of options, indicating the options available to the Member as required by the Act. A Member's retirement benefit will be processed within 30 days after receipt of the Member's election and any other information that is required to process the election. If the Member does not make an election within 90 days after receipt of the statement of options, the Administrator may proceed with the purchase of a retirement annuity on behalf of the Member or any other option permitted under the Applicable Legislation and as communicated to the Member.

8. Death Benefit

(a) Death benefit before retirement

If a Member dies before retirement, the value of the Member's account will be paid to the Plan Beneficiary as a cash refund.

The Member's Pension Partner may waive the right to the above death benefit in the form and manner required under the Applicable Legislation. Subsequently, the Member's Pension Partner may revoke the waiver at any time before the Member's death.

Notwithstanding the above, if the Plan Beneficiary is the Member's Pension Partner the amount of the cash refund, except the value of any Member's voluntary contributions, must be:

- transferred to an approved Locked-in Retirement Account;
- transferred to a Prescribed Retirement Income Arrangement, provided the Member's Pension Partner is at least age 50;
- used to purchase an immediate or deferred life annuity which must commence no later than December 31 of the calendar year the Pension Partner attains age 71, or at such other time or date as required under the Income Tax Act. If the age of the Member's Pension Partner is greater than this maximum, payments must begin within one year after the Member's death; or
- transferred to another registered pension plan as permitted by the Applicable Legislation.

When an amount becomes payable to a Plan Beneficiary who qualifies as a spouse or common-law partner under the Income Tax Act but does not qualify as a Pension Partner under the Plan, the amount of the cash refund may be:

- transferred to a registered retirement savings plan;
- transferred to a registered retirement income fund;
- used to purchase an immediate or deferred life annuity which must commence no later than December 31 of the calendar year the Pension Partner attains age 71 or at such other time or date as required under the Income Tax Act. If the age of the Member's Pension Partner is greater than this maximum, payments must begin within one year after the Member's death; or
- transferred to another registered pension plan as permitted by the Applicable Legislation.

If the Pension Partner dies after the Member and before receiving the amount payable, the estate of the Pension Partner will receive the amount payable as a cash refund.

Within 60 days following receipt of notice of a Member's death, the Administrator will give the Plan Beneficiary a statement of options available as required by the Act. The option the Plan Beneficiary elects will be processed within 60 days after receipt of the election and any other information that is required to process the election. If the Plan Beneficiary does not make an election within 90 days after the date the statement of options is received, the Administrator may, to the extent an option is permitted under the Applicable Legislation, proceed with the purchase of a retirement annuity or any other option that is permitted and as communicated to the Plan Beneficiary.

(b) Death benefit after retirement

If a Member dies after retirement annuity payments commence, the death benefit, if any, will depend on the form of retirement benefit selected by the Member.

9. Termination of Membership

If a Member ceases employment with a participating employer, membership in the Plan does not automatically terminate if the Member returns to employment with another employer participating in the Plan within a period not exceeding one year. However, at the option of the Member, the Member may elect to terminate membership in the Plan when employment ceases with a participating employer.

For greater clarity and for the purpose of determining entitlement to a deferred retirement annuity, a Member who terminates employment will be deemed not to have terminated membership in the Plan if, before the end of the one-year period, the Member becomes employment by another employer participating in the Plan and contributions are required to be made on behalf of the Member unless the Member elects to terminate membership in the Plan.

If a Member terminates employment, the Member will be entitled to receive a deferred retirement annuity with payments commencing on the Member's normal retirement date provided by the value of the Member's account.

Instead of receiving a deferred retirement annuity, the Member may elect to transfer the benefit to one of the following, as permitted by the Applicable Legislation:

- an approved Locked-in Retirement Account;
- a Prescribed Retirement Income Arrangement; provided the Member is at least age 50,
- another registered pension plan;
- an insurer to purchase an immediate or deferred life annuity.

Any deferred retirement annuity transferred under this section remains subject to the rights of the Member's Pension Partner.

The Member retains the right to elect an early or postponed retirement date and an optional form of retirement annuity as provided in the Plan.

The Member retains the right to receive the value of any voluntary contributions as a cash refund or to transfer the value of those contributions to a registered retirement savings plan or such other vehicle as permitted under the Applicable Legislation.

Within 30 days after receipt of notice of termination of membership, the Administrator will give the Member a statement of the options available as required by the Act. The option the Member elects will be processed within 30 days after receipt of the election and any other information that is required to process the election. If the Member does not advise the Administrator of the election chosen within 90 days after receipt of the statement of options, the Administrator may, to the extent permitted under the Applicable Legislation, elect to purchase a deferred retirement annuity on behalf of the Member, transfer the Member's benefit to a Locked-in Retirement Account in the Member's name or may proceed with any other permissible option as communicated to the Member.

10. Termination of the Plan

If the Plan is terminated, the Employer must pay all contributions due under the Plan to the date of the termination. Any outstanding costs of administering the Plan, including the costs of termination and windup, will be paid by Members from the assets of the pension fund, unless paid by Nilex Inc. No funds may be released from the Plan until permitted by the Applicable Legislation.

On termination of the Plan, the Member is entitled to receive the value of the Member's account as permitted under the Applicable Legislation. The Member will be deemed to have elected to terminate membership on the date the Plan terminated. If any assets remain in the Plan after payment of all liabilities under the Plan, such assets will be refunded to each employer participating in the Plan as permitted by the Applicable Legislation and subject to the consent of the Superintendent of Pensions. At the discretion of each employer participating in the Plan, all or a portion of such assets may be allocated to active Members on an equitable basis.

If a participating employer withdraws from the Plan, the Plan will be considered to have terminated but only with respect to the Members affected by the termination (unless the affected members enroll in another pension plan as a result of the withdrawal).

After termination of the Plan each affected Member will be given a statement of the options available as required by the Act. The payment of benefits will be completed in accordance with the Act. If the Member does not advise the Administrator of an election within 90 days after receipt of the statement of options, the Administrator may, to the extent permitted under the Applicable Legislation, elect to purchase a deferred retirement annuity on behalf of the Member, transfer the Member's benefit to a Locked-in Retirement Account in the Member's name or proceed with any other permissible option as communicated to the Member. No funds may be released from the Plan until permitted by the Applicable Legislation.

11. Temporary Absence from Employment

Subject to the following paragraphs, if a Member is unable to work because of disability, leave of absence or temporary layoff, all contributions will cease during such periods. No benefits are payable until the Member terminates membership, retires, dies or until the Plan terminates.

If a Member becomes totally disabled as certified by a medical doctor licensed to practice in a province or the place where the Member resides and the disability qualifies as a period of disability under the Income Tax Act, the Member may continue to make voluntary contributions to the Plan.

If contributions are made to the Plan as described above, such contributions will respect the conditions applicable to a prescribed amount of compensation under the Income Tax Act.

12. General Provisions

(a) Proof of age and survival

Before any retirement annuity payments begin, the Member must provide satisfactory proof of age and the age of any other person on whose life the annuity depends. If an age has been misstated, the retirement annuity payments will be adjusted accordingly.

After retirement annuity payments begin, the Member may be required to provide satisfactory proof of survival and the survival of any other person on whose life the annuity depends. If such proof is not provided, the person will be considered to have died.

(b) Purchase of retirement annuity

If a retirement annuity is purchased by or on behalf of a Member, the sex of the Member, former Member or Plan Beneficiary will not be considered in determining the amount of the retirement annuity. The annuity must be purchased from a person who is licensed or authorized to conduct annuity business in Canada and must conform with the requirements of the Applicable Legislation. The annuity will commence no later than the date required under the Income Tax Act.

(c) Unlocking of small benefits

On termination of membership, retirement, death or termination of the Plan, a Locked-in benefit may be received as a cash refund if the benefit is less than the amount prescribed by the Act. Instead of receiving a cash refund, the benefit may be transferred to a registered retirement savings plan.

If the Member or Pension Partner does not make an election in respect of a small benefit amount within 90 days of receiving the statement of options on termination of membership, retirement, death or termination of the Plan, the Administrator may proceed with payment in the form of a cash refund in accordance with the statement of options and as permitted under the Applicable Legislation.

If a deferred Member or deferred Pension Partner requests that a Locked-in benefit be subsequently recalculated and the value of the benefit is less than the amount prescribed by the Act at the time of recalculation, the benefit may, at the option of the deferred Member or deferred Pension Partner, be paid as a cash refund or be transferred to a registered retirement savings plan.

- (d) **Unlocking for non-residents**
 Subject to the rights of the Member's Pension Partner, if a Member's membership in the Plan is terminated and the Member has been declared a non-resident of Canada for purposes of the Income Tax Act, a Locked-in benefit may be paid in the form of a cash refund as permitted under the Applicable Legislation. Similarly, on the death of the Member, a Locked-in benefit payable to the Member's Pension Partner may be paid in the form of a cash refund if the Pension Partner has been declared a non-resident.
- (e) **Unlocking of up to 50 per cent of a locked-in benefit**
 A person who is at least age 50, is withdrawing a Locked-in benefit from the Plan as a result of termination of membership, retirement, death, marriage breakdown or termination of the Plan and is transferring the benefit to a Prescribed Retirement Income Arrangement or a Life Income Type Benefits Account of another pension plan may elect to receive a cash refund of an amount up to 50 per cent of the Locked-in benefit, subject to the rights of the Member's Pension Partner. Instead of receiving a cash refund, the benefit may be transferred to a registered retirement savings plan or registered retirement income fund.
- (f) **Forfeited amounts**
 Any Forfeited Amount will be credited to the Employer to pay future Employer's contributions. Alternatively, the Employer may direct that such Forfeited Amounts be allocated to Members on an equitable basis or be used to pay administrative costs due under the Plan. Such amounts must be utilized no later than December 31 following the year in which the Forfeited Amount arose. Any amounts remaining will be returned to the Employer, subject to the requirements of the Applicable Legislation.
- (g) **Benefits not assignable**
 Rights and benefits under the Plan are not capable of being assigned, charged, anticipated, given as security or surrendered.
- However, upon marriage breakdown, benefits payable under the Plan may be divided in accordance with the provisions of a court order or agreement made under the Matrimonial Property Act (Alberta) or a similar order enforceable in Alberta or another jurisdiction and in accordance with the Applicable Legislation. The order or agreement is not effective to the extent it purports to entitle the Pension Partner to a share that exceeds the maximum permitted under the Act.
- (h) **Reduced life expectancy**
 If a medical doctor licensed to practice in a province or the place where the Member resides certifies that a Member's life expectancy is likely to be shortened considerably due to disability or otherwise as provided under the Act, the Member may be eligible to withdraw the value of the Member's account, subject to any rights of the Member's Pension Partner as provided under the Act.

- (i) **Payment of benefits**
Any payment under the Plan will, to the extent of the payment, constitute a full and final settlement of the rights of the Member, the Member's Pension Partner, former Pension Partner, or Plan Beneficiary, as applicable, against the Plan, the Administrator, the Employer, any agents of the Administrator and Employer, and the financial institution or other entity acting as a funding agent for the Plan.
- (j) **Applicable legislation**
This Plan is subject to all Applicable Legislation, which will prevail over any inconsistent or conflicting provisions contained in this Plan.

Appendix - British Columbia Employees

Notwithstanding the provisions in Sections 1 to 12 of the Plan, Members who are employed in British Columbia are subject to the provisions of the British Columbia *Pension Benefits Standards Act* and regulations (the Act), as amended, and the provisions of this appendix. This appendix highlights the major revisions to the Plan for Members employed in British Columbia.

The following provisions are applicable to Members employed in British Columbia and override the equivalent Plan provisions.

1. Interpretation

The following definitions apply to Members employed in British Columbia:

“Connected Person” means an individual who:

- owns – directly or indirectly – 10 per cent or more of any class of capital stock issued by the Employer or any other corporation related to the Employer;
- does not deal at arm’s length, as defined in the Income Tax Act, with the Employer; or
- is a specified shareholder of the Employer according to the Income Tax Act.

“Locked-in Retirement Account” means a registered retirement savings plan that meets the requirements of the Applicable Legislation.

“Plan Beneficiary” means the Spouse of a Member or, if the Member has no Spouse or the Spouse has waived the right to the death benefit, the Member’s designated beneficiary or the Member’s estate.

“Prescribed Retirement Income Arrangement” means

- a life income fund that meets the requirements of the Act and is registered under the Income Tax Act; or
- any other retirement income fund or arrangement that is prescribed by the Act to be a retirement income arrangement and registered under the Income Tax Act.

“Spouse” means, in relation to another person, a person who at the relevant time

- was married to that other person, and has not been living separate and apart from that person for a continuous period longer than two years immediately preceding the relevant time; or
- has been living with each other in a marriage-like relationship for a period of at least two years immediately preceding the relevant time.

3. Membership

The following provisions apply to Members employed in British Columbia:

The waiting period for eligible Part-time Employees to join the Plan is replaced with the following:

After the completion of two years of Continuous employment with an employer participating in the Plan, provided the Employee has earned 35 per cent of the Year's Maximum Pensionable Earnings in each of two consecutive calendar years.

6. Retirement

Section 6 is replaced with the following:

A Member may elect to retire on the Member's Normal Retirement Date or at an earlier or postponed retirement date.

(d) Normal Retirement Date

The Normal Retirement Date is the first day of the month on or after the Member's 65th birthday. The value of the Member's account will be used to provide a retirement benefit.

(e) Early retirement date

A Member may elect an early retirement date up to 10 years before the Normal Retirement Date. If the Member elects an early retirement date, the value of the Member's account will be used to provide a retirement benefit.

(f) Postponed retirement date

If a Member remains in the employment of the Employer after the Normal Retirement Date, the Member must elect to receive a retirement benefit or to postpone the retirement date. If a Member elects to postpone the retirement date, or the Member does not make an election under this subsection, contributions to the Plan will continue on the same basis as before the Normal Retirement Date. The value of the Member's account will be used to provide a retirement benefit which must begin no later than December 31 of the calendar year of the Member's 71st birthday, or at such other time or date as required under the Income Tax Act.

The Member retains the right to receive the value of any voluntary contributions as a cash refund or to transfer the value of those contributions to a registered retirement savings plan or such other vehicle as permitted under the Applicable Legislation.

7. Retirement Benefits

Section 7 is replaced with the following:

(a) Normal form of retirement annuity

If a Member elects a retirement annuity as the Member's retirement benefit and has a Spouse when the retirement annuity begins, the normal form of retirement annuity is a joint and survivor annuity. This annuity provides equal monthly payments to the Member for as long as the Member is alive. Following the Member's death, the retirement annuity payments will be reduced by 40 per cent and will be paid to the Member's Spouse for as long as the Spouse is alive. The Member's Spouse may waive this form of retirement annuity by completing the form required by the Applicable Legislation. The form must be signed in the manner required under the Applicable Legislation not more than 90 days before the Member's actual retirement date and received by the Administrator before the Member's actual retirement date.

If a Member elects a retirement annuity as the Member's retirement benefit and does not have a Spouse when the retirement annuity begins, the normal form of retirement annuity is a single life annuity. This annuity provides equal monthly payments for the Member's lifetime with payments guaranteed for 120 months.

If a Member elects a retirement annuity, the Member will receive the normal form of retirement annuity unless an optional form of retirement annuity is chosen.

(b) Optional forms of retirement annuity

Subject to the rights of the Member's Spouse under the Act and the limitations imposed by the Income Tax Act, a Member may elect, before the Member's actual retirement date, to receive any one of the following optional forms of retirement annuity:

- **Single life annuity**

A life annuity payable for life with payments guaranteed for a specified period, not to exceed 15 years.

- **Joint and survivor life annuity**

A life annuity payable for life and, upon the death of the Member, for the lifetime of the Member's Spouse. Either all or a percentage of the original annuity amount may continue to the Member's Spouse. Payments may be guaranteed for a specified period, not to exceed 15 years and as permitted under the Income Tax Act.

- **Government integrated annuity**
An increased retirement annuity payable until age 65, at which time the annuity payments will be reduced to provide an approximately level income from the Plan and government sources.
- **Indexed life annuity**
A retirement annuity increased each year by a specified per cent of the increase in the Consumer Price Index, subject to the maximum permitted under the Income Tax Act.
- Any other form of retirement annuity permitted under the Income Tax Act.

(c) Transfer at retirement

Instead of receiving a retirement annuity, a Member may transfer the benefit to another registered pension plan, a Locked-in Retirement Account or, provided the Member is at least age 50, to a Prescribed Retirement Income Arrangement subject to any rights of the Member's Spouse as provided in the Act.

Within 60 days of receiving notification of a Member's retirement, the Administrator will give the Member a statement of options, indicating the options available to the Member as required by the Act. A Member's retirement benefit will be processed within 30 days after receipt of the Member's election and any other information that is required to process the election. If the Member does not make an election within 90 days after receipt of the statement of options, the Administrator may proceed with the purchase of a retirement annuity on behalf of the Member or any other option permitted under the Applicable Legislation and as communicated to the Member.

8. Death Benefit

Section 8 is replaced with the following:

(a) Death benefit before retirement

If a Member dies before retirement, the value of the Member's account will be paid to the Plan Beneficiary as a cash refund.

The Member's Spouse may waive the right to the above death benefit in the form and manner required under the Applicable Legislation. Subsequently, the Member's Spouse may revoke the waiver at any time before the Member's death.

As permitted by the Applicable Legislation, when an amount becomes payable to the Member's Spouse, the amount of the cash refund may be:

- transferred to a registered retirement savings plan;
- transferred to a registered retirement income fund;
- used to purchase an immediate or deferred life annuity that must commence no later than December 31 of the calendar year the Spouse attains age 71 or at such other time or date as required under the Income Tax Act. If the age of the Member's Spouse is greater than this maximum, payments must begin within one year after the Member's death; or
- transferred to another registered pension plan.

When an amount becomes payable to a Plan Beneficiary who qualifies as a spouse or common-law partner under the Income Tax Act but does not qualify as a Spouse under the Plan, the above options are available to the Plan Beneficiary, as permitted by the Applicable Legislation.

Notwithstanding the above, if the Plan Beneficiary is the Member's Spouse, the amount of the cash refund, except the value of any Member's voluntary contributions, must be:

- transferred to a Locked-in Retirement Account;
- transferred to a Prescribed Retirement Income Arrangement provided the Member's Spouse is at least age 50;
- used to purchase an immediate or deferred life annuity that will not commence payments before the Spouse's age 50 and commence no later than December 31 of the calendar year the Spouse attains age 71 or at such other time or date as required under the Income Tax Act. If the age of the Member's Spouse is greater than this maximum, payments must begin within one year after the Member's death; or
- transferred to another registered pension plan as permitted by the Applicable Legislation.

If the Spouse dies after the Member and before receiving the amount payable, the estate of the Spouse will receive the amount payable as a cash refund.

Within 60 days following receipt of notice of a Member's death, the Administrator will give the Plan Beneficiary a statement of options available as required by the Act. The option the Plan Beneficiary elects will be processed within 60 days after receipt of the election and any other information that is required to process the election. If the Plan Beneficiary does not make an election within 90 days after the date the statement of options is received, the Administrator may, to the extent an option is permitted under the Applicable Legislation, proceed with the purchase of a retirement annuity or any other option that is permitted and as communicated to the Plan Beneficiary.

(b) Death benefit after retirement

If a Member dies after retirement annuity payments commence, the death benefit, if any, will depend on the form of retirement benefit selected by the Member.

9. Termination of Membership

Section 9 is replaced with the following:

If a Member ceases employment with a participating employer, membership in the Plan does not automatically terminate if the Member returns to employment with another employer participating in the Plan within a period not exceeding one year. However, at the option of the Member, the Member may elect to terminate membership in the Plan when employment ceases with a participating employer.

For greater clarity and for the purpose of determining entitlement to a deferred retirement annuity, a Member who terminates employment will be deemed not to have terminated membership in the Plan if, before the end of the one-year period, the Member becomes employment by another employer participating in the Plan and contributions are required to be made on behalf of the Member unless the Member elects to terminate membership in the Plan.

Instead of receiving a deferred retirement annuity, the Member may elect to transfer the benefit to one of the following, as permitted by the Applicable Legislation:

- an approved Locked-in Retirement Account;
- a Prescribed Retirement Income Arrangement; provided the Member is at least age 50,
- another registered pension plan;
- an insurer to purchase an immediate or deferred life annuity that will not commence payments before the Member's age 50.

Any deferred retirement annuity transferred under this section remains subject to the rights of the Member's Spouse.

The Member retains the right to elect an early or postponed retirement date and an optional form of retirement annuity as provided in the Plan.

Notwithstanding the above, the Member retains the right to receive the value of any voluntary contributions as a cash refund or to transfer the value of those contributions to a registered retirement savings plan or such other vehicle as permitted under the Applicable Legislation.

Within 60 days after receipt of notice of termination of membership, the Administrator will give the Member a statement of the options available as required by the Act. The option the Member elects will be processed within 30 days after receipt of the election and any other information that is required to process the election. If the Member does not advise the Administrator of the election chosen within 90 days after the termination of membership statement is received, the Administrator may, to the extent permitted under the Applicable Legislation, elect to purchase a deferred retirement annuity on behalf of the Member, transfer the Member's benefit to a Locked-in Retirement Account in the Member's name or may proceed with any other permissible option as communicated to the Member.

11. Temporary Absence from Employment

Section 11 is replaced with the following:

Subject to the following paragraphs, if a Member is unable to work because of disability, leave of absence or temporary layoff, all contributions will cease during such periods. No benefits are payable until the Member terminates membership, retires, dies or until the Plan terminates.

However, if a Member is on a maternity or parental leave of absence, and the Member elects to continue to make contributions required under the Plan, then the Employer's contributions made on the Member's behalf will continue for the period required by the Applicable Legislation. If a Member is not required to contribute to the Plan, the Employer's contributions on the Member's behalf will automatically continue for the period required by the Applicable Legislation. The Member may continue to make voluntary contributions to the Plan.

The above periods of maternity and/or parental leave of absence qualify as periods of parenting under the Income Tax Act.

In addition, there may be other circumstances required under the applicable employment legislation where contributions will continue to be made to the Plan. Such continuance of contributions will be subject to the terms and conditions of the Applicable Legislation.

If a Member becomes totally disabled as certified by a medical practitioner licensed to practice in a province or the place where the Member resides and the disability qualifies as a period of disability under the Income Tax Act, the Member may continue to make voluntary contributions to the Plan.

NOTE: If the Member is a Connected Person, contributions may not continue to be made to the Plan unless the absence qualifies as a period of disability under the Income Tax Act.

If any contributions are made to the Plan as described above, such contributions will respect the conditions applicable to a prescribed amount of compensation under the Income Tax Act.

12. General Provisions

(c) Unlocking of small benefits

This provision is replaced with the following:

On termination of membership, retirement, death or termination of the Plan, a Locked-in benefit may be received as a cash refund if the benefit is less than the amount prescribed by the Act. Instead of receiving a cash refund, the benefit may be transferred to a registered retirement savings plan.

If the Member or Spouse does not make an election in respect of a small benefit amount within 90 days of receiving the statement of options on termination of employment, retirement, death or termination of the Plan, the Administrator may proceed with payment in the form of a cash refund in accordance with the statement of options and as permitted under the Applicable Legislation.

If a deferred Member or deferred Spouse requests that a Locked-in benefit be subsequently recalculated and the value of the benefit is less than the amount prescribed by the Act at the time of recalculation, the benefit may, at the option of the deferred Member or deferred Spouse, be paid as a cash refund or be transferred to a registered retirement savings plan.

(d) Unlocking for non-residents

This provision is replaced with the following:

If a Member's membership in the Plan is terminated and the Member has been a non-resident of Canada for at least two years, a Locked-in benefit may be paid in the form of a cash refund as permitted under the Applicable Legislation.

(e) Unlocking of up to 50 per cent of a locked-in benefit

This provision does not apply to Members employed in British Columbia.

(g) Benefits not assignable

The second paragraph is replaced with the following:

However, upon the breakdown of the relationship between a Member and the Member's Spouse, benefits payable under the Plan may be assigned to the Member's Spouse pursuant to a court order or a written separation agreement as permitted under the Applicable Legislation.

(h) Reduced life expectancy

This provision is replaced with the following:

If a medical practitioner licensed to practice in a province or the place where the Member resides certifies that a Member has an illness or disability which is terminal or is likely to shorten the Member's life considerably or otherwise as provided under the Act, the Member may be eligible to withdraw all or a portion of the value of the Member's account, subject to any rights of the Member's Spouse as provided under the Act.

Appendix - Ontario Employees

Notwithstanding the provisions in Sections 1 to 12 of the Plan, Members who are employed in Ontario are subject to the provisions of the *Pension Benefits Act*, Revised Statutes of Ontario 1990, and regulations (the Act), as amended, and the provisions of this appendix. This appendix highlights the major revisions to the Plan for Members employed in Ontario.

The following provisions are applicable to Members employed in Ontario and override the equivalent Plan provisions.

1. Interpretation

The following definitions apply to Members employed in Ontario:

“Connected Person” means an individual who:

- owns – directly or indirectly – 10 per cent or more of any class of capital stock issued by the Employer or any other corporation related to the Employer;
- does not deal at arm’s length, as defined in the Income Tax Act, with the Employer; or
- is a specified shareholder of the Employer according to the Income Tax Act.

“Plan Beneficiary” means the Spouse of a Member or, if the Member has no Spouse or the Spouse has waived the right to the death benefit, the Member’s designated beneficiary or the Member’s estate.

“Prescribed Retirement Savings Arrangement” means

- a locked-in retirement account or a life income fund, that meets the requirements of the Act and is registered under the Income Tax Act; or
- any other retirement savings arrangement prescribed by the Act and registered under the Income Tax Act.

“Spouse” means the individual, who at the relevant time

- is married to the Member and is not living separate and apart from the Member; or
- if not married to the Member, has been living with the Member in a conjugal relationship:
 - continuously for a period of not less than three years; or
 - in a relationship of some permanence, if the individual and the Member are the natural or adoptive parents of a child, both defined in the *Family Law Act*, 1990 as amended.

3. Membership

The following provisions apply to Members employed in Ontario:

The waiting period for eligible Part-time Employees to join the Plan is replaced with the following:

After the completion of two years of Continuous employment with an employer participating in the Plan, provided the Employee has earned 35 per cent of the Year’s Maximum Pensionable Earnings or has worked 700 hours in each of the two consecutive calendar years immediately before joining the Plan.

7. Retirement Benefits

Section 7 is replaced with the following:

(a) Normal form of retirement annuity

If a Member has a Spouse when the retirement annuity begins, the normal form of retirement annuity is a joint and survivor annuity. This annuity provides equal monthly payments to the Member for as long as the Member is alive. Following the Member’s death, the retirement annuity payments will be reduced by 40 per cent and will be paid to the Member’s Spouse for as long as the Spouse is alive. The Member and the Member’s Spouse may waive this form of retirement annuity by completing the form required by the Applicable Legislation. The form must be received by the Administrator within the 12-month period preceding the Member’s actual retirement date. Subsequently, the Member and the Member’s Spouse may revoke the waiver at any time before the Member’s retirement annuity commences.

If a Member does not have a Spouse when the retirement annuity begins, the normal form of retirement annuity is a single life annuity. This annuity provides equal monthly payments for the Member’s lifetime with payments guaranteed for 120 months.

A Member will receive the normal form of retirement annuity unless an optional form of retirement annuity is chosen.

(b) Optional forms of retirement annuity

Subject to the rights of the Member's Spouse under the Act and the limitations imposed by the Income Tax Act, a Member may elect, before the Member's actual retirement date, to receive any one of the following optional forms of retirement annuity:

- **Single life annuity**
A life annuity payable for life with payments guaranteed for a specified period, not to exceed 15 years.
- **Joint and survivor life annuity**
A life annuity payable for life and, upon the death of the Member, for the lifetime of the Member's Spouse. Either all or a percentage of the original annuity amount may continue to the Member's Spouse. Payments may be guaranteed for a specified period, not to exceed 15 years and as permitted under the Income Tax Act.
- **Government integrated annuity**
An increased retirement annuity payable until age 65, at which time the annuity payments will be reduced to provide an approximately level income from the Plan and government sources.
- **Indexed life annuity**
A retirement annuity increased each year by a specified per cent of the increase in the Consumer Price Index, subject to the maximum permitted under the Income Tax Act.
- Any other form of retirement annuity permitted under the Income Tax Act.

(c) Transfer at retirement

Instead of receiving an immediate life annuity at retirement, a Member may transfer the benefit to a Prescribed Retirement Savings Arrangement subject to any rights of the Member's Spouse as provided in the Act.

A Member's retirement annuity payments will begin within 30 days after receipt of the Member's election and any other information that is required to process the election.

8. Death Benefit

Section 8 is replaced with the following:

(a) Death benefit before retirement

If a Member dies before any retirement annuity payments are made, the value of the Member's account will be paid to the Plan Beneficiary as a cash refund.

The Member's Spouse may waive the right to the above death benefit in the form and manner required under the Applicable Legislation. Subsequently, the Member's Spouse may revoke the waiver at any time before the Member's death.

As permitted by the Applicable Legislation, when an amount becomes payable to the Member's Spouse, or to the Member's former Spouse, the amount of the cash refund may be:

- transferred to a registered retirement savings plan;
- transferred to a registered retirement income fund;
- used to purchase an immediate or deferred life annuity which must commence no later than December 31 of the calendar year the Spouse or the former Spouse attains age 71 or at such other time or date as required under the Income Tax Act. If the age of the Member's Spouse, or the age of the former Spouse, is greater than this maximum, payments must begin within one year after the Member's death; or
- transferred to another registered pension plan.

When an amount becomes payable to a Plan Beneficiary who qualifies as a spouse or common-law partner under the Income Tax Act but does not qualify as a Spouse or former Spouse under the Plan, the above options are available to the Plan Beneficiary, as permitted by the Applicable Legislation.

If the Spouse dies after the Member and before receiving the amount payable, the estate of the Spouse will receive the amount payable as a cash refund.

Within 30 days following receipt of notice of a Member's death, the Administrator will give the Plan Beneficiary a statement of options available as required by the Act. The option the Plan Beneficiary elects will be processed within 60 days after receipt of the election and any other information that is required to process the election.

(b) Death benefit after retirement

If a Member dies after retirement annuity payments commence, the death benefit, if any, will depend on the form of retirement benefit selected by the Member.

9. Termination of Employment

Section 9 is replaced with the following:

If a Member ceases employment with a participating employer, membership in the Plan does not automatically terminate if the Member returns to employment with another employer participating in the Plan within a period not exceeding one year. However, at the option of the Member, the Member may elect to terminate membership in the Plan when employment ceases with a participating employer.

For greater clarity and for the purpose of determining entitlement to a deferred retirement annuity, a Member who terminates employment will be deemed not to have terminated membership in the Plan if, before the end of the one-year period, the Member becomes employment by another employer participating in the Plan and contributions are required to be made on behalf of the Member unless the Member elects to terminate membership in the Plan.

If a Member terminates membership, the Member will be entitled to receive a deferred retirement annuity with payments commencing on the Member's normal retirement date provided by the value of the Member's account.

Instead of receiving a deferred retirement annuity, the Member may elect to transfer that benefit to one of the following, as permitted by the Applicable Legislation:

- a Prescribed Retirement Savings Arrangement;
- another registered pension plan;
- an insurer to purchase an immediate or deferred life annuity.

Any deferred retirement annuity transferred under this section remains subject to the rights of the Member's Spouse.

The Member retains the right to receive the value of any voluntary contributions as a cash refund.

If a Member is entitled to receive a deferred retirement annuity, the Member retains the right to elect an early or postponed retirement date and an optional form of retirement annuity as provided in the Plan.

Within 30 days after receipt of notice of termination of membership, the Administrator will give the Member a statement of the options available as required by the Act. The option the Member elects will be processed within 30 days after receipt of the election and any other information that is required to process the election. If the Member does not advise the Administrator of the election chosen within 90 days after the date the termination of membership statement is received, the Administrator may elect to purchase a deferred retirement annuity on behalf of the Member.

11. Temporary Absence from Employment

Section 11 is replaced with the following:

Subject to the following paragraphs, if a Member is unable to work because of disability, leave of absence or temporary layoff, all contributions will cease during such periods. No benefits are payable until the Member terminates membership, retires, dies or until the Plan terminates.

However, if a Member is on a maternity or parental leave of absence or is absent from work as a result of work-related injury for which the Member receives worker's compensation benefits, and the Member elects to continue to make contributions required under the Plan, then the Employer's contributions made on the Member's behalf will continue for the period required by the Applicable Legislation. If a Member is not required to contribute to the Plan, the Employer's contributions on the Member's behalf will automatically continue for the period required by the Applicable Legislation. The Member may continue to make voluntary contributions to the Plan.

The above periods of maternity and/or parental leave of absence qualify as periods of parenting under the Income Tax Act.

In addition, there may be other circumstances required under the applicable employment legislation where contributions will continue to be made to the Plan. Such continuance of contributions will be subject to the terms and conditions of the Applicable Legislation.

If a Member becomes totally disabled as certified by a medical doctor licensed to practice in a province or the place where the Member resides and the disability qualifies as a period of disability under the Income Tax Act, the Member may continue to make voluntary contributions to the Plan.

NOTE: If the Member is a Connected Person, contributions may not continue to be made to the Plan unless the absence qualifies as a period of disability under the Income Tax Act.

If any contributions are made to the Plan as described above, such contributions will respect the conditions applicable to a prescribed amount of compensation under the Income Tax Act.

12. General Provisions

(c) Unlocking of small benefits

This provision is replaced with the following:

On termination of membership, retirement or termination of the Plan, a Locked-in benefit may be received as a cash refund if the benefit is less than the amount prescribed by the Act. Instead of receiving a cash refund, the benefit may be transferred to a registered retirement savings plan.

(d) Unlocking for non-residents

This provision does not apply to Members employed in Ontario.

(e) Unlocking of up to 50 per cent of a locked-in benefit

This provision does not apply to Members employed in Ontario.

(g) Benefits not assignable

The second paragraph is replaced with the following:

However, upon the breakdown of the relationship between a Member and the Member's Spouse, benefits payable under the Plan may be assigned to the Member's Spouse pursuant to a court order, family arbitration award or domestic contract as permitted under the Applicable Legislation.

(h) Reduced life expectancy

This provision is replaced with the following:

If a medical doctor licensed to practice in a province or the place where the Member resides certifies that a Member's life expectancy is likely to be shortened considerably due to disability as provided under the Act, the Member may be eligible to withdraw the value of the Member's account, subject to the rights of the Member's Spouse as provided under the Act.

Appendix - Saskatchewan Employees

Notwithstanding the provisions in Sections 1 to 12 of the Plan, Members who are employed in Saskatchewan are subject to the provisions of the Saskatchewan *Pension Benefits Act, 1992* and regulations (the Act), as amended, and the provisions of this appendix. This appendix highlights the major revisions to the Plan for Members employed in Saskatchewan.

The following provisions are applicable to Members employed in Saskatchewan and override the equivalent Plan provisions.

1. Interpretation

The following definitions apply to Members employed in Saskatchewan:

“Connected Person” means an individual who:

- owns – directly or indirectly – 10 per cent or more of any class of capital stock issued by the Employer or any other corporation related to the Employer;
- does not deal at arm's length, as defined in the Income Tax Act, with the Employer; or
- is a specified shareholder of the Employer according to the Income Tax Act.

“Locked-in Retirement Account” means a retirement savings plan that meets the requirements of the Applicable Legislation.

“Plan Beneficiary” means

- the Member's Spouse or, if the Member has no Spouse, the Member's designated beneficiary; or
- if the Member has not designated a beneficiary, the Member's estate.

“Prescribed Retirement Plan” means

- a registered retirement income fund (commonly referred to as a prescribed registered retirement income fund); or
- any other retirement plan registered under the Income Tax Act and prescribed by the Applicable Legislation for the purpose of accepting Locked-in pension funds.

“Spouse” means in relation to a Member

- the person who is married to the Member or former Member; or
- if the Member or former Member is not married, the person with whom the Member or former Member is cohabiting in a conjugal relationship at the relevant time and who has been cohabiting continuously with the Member or former Member for at least one year prior to the relevant time.

3. Membership

The following provisions apply to Members employed in Saskatchewan:

The waiting period for eligible Part-time Employees to join the Plan is replaced with the following:

After the completion of two years of Continuous employment with an employer participating in the Plan, provided the Employee has earned 35 per cent of the Year's Maximum Pensionable Earnings or has worked 700 hours in each of the two consecutive calendar years immediately before joining the Plan.

4. Contributions

The Suspension of contributions provision is replaced with the following:

Suspension of contributions

A Member may elect to discontinue making required contributions. If the Member does so, the Employer's contributions on the Member's behalf will cease as well. The Member may elect to resume making required contributions at any time. If the Member makes such an election, the Employer's contributions will resume as well. No benefits will be payable until the Member terminates membership, retires, dies or the Plan terminates. A Member who elects to suspend contributions will continue to be a Member for all purposes of the Plan. If all Members cease to contribute to the Plan, the Plan must be terminated.

7. Retirement Benefits

Section 7 is replaced with the following:

(a) Normal form of retirement annuity

If a Member has a Spouse when the retirement annuity begins, the normal form of retirement annuity is a joint and survivor annuity. This annuity provides equal monthly payments to the Member for as long as the Member is alive. Following the Member's death, the retirement annuity payments will be reduced by 40 per cent and will be paid to the Member's Spouse for as long as the Spouse is alive. The Member's Spouse may waive this form of retirement annuity by completing the form required by the Applicable Legislation. The form must be signed not more than 90 days preceding the Member's actual retirement date and received by the Administrator before the Member's actual retirement date.

If a Member does not have a Spouse when the retirement annuity begins, the normal form of retirement annuity is a single life annuity. This annuity provides equal monthly payments for the Member's lifetime with payments guaranteed for 120 months.

A Member will receive the normal form of retirement annuity unless an optional form of retirement annuity is chosen.

(b) Optional forms of retirement annuity

Subject to the rights of the Member's Spouse under the Act and the limitations imposed by the Income Tax Act, a Member may elect, before the Member's actual retirement date, to receive any one of the following optional forms of retirement annuity:

- **Single life annuity**

A life annuity payable for life with payments guaranteed for a specified period, not to exceed 15 years.

- **Joint and survivor life annuity**

A life annuity payable for life and, upon the death of the Member, for the lifetime of the Member's Spouse. Either all or a percentage of the original annuity amount may continue to the Member's Spouse. Payments may be guaranteed for a specified period, not to exceed 15 years and as permitted under the Income Tax Act.

- **Government integrated annuity**

An increased retirement annuity payable until age 65, at which time the annuity payments will be reduced to provide an approximately level income from the Plan and government sources.

- **Indexed life annuity**
A retirement annuity increased each year by a specified per cent of the increase in the Consumer Price Index, subject to the maximum permitted under the Income Tax Act.
- Any other form of retirement annuity permitted under the Income Tax Act.

(c) Transfer at retirement

Instead of receiving an immediate life annuity at retirement, a Member may transfer the benefit to a Locked-in Retirement Account, or a Prescribed Retirement Plan provided the Member has reached the early retirement date under the Plan, subject to any rights of the Member's Spouse as provided in the Act.

A Member's retirement annuity payments will begin within 30 days after receipt of the Member's election and any other information that is required to process the election as required by the Act.

8. Death Benefit

Section 8 is replaced with the following:

(a) Death benefit before retirement

If a Member dies before any retirement annuity payments are made, the value of the Member's account will be paid to the Plan Beneficiary as a cash refund.

The Member's Spouse may waive the right to the above death benefit in the form and manner required under the Applicable Legislation. Subsequently, the Member's Spouse may revoke the waiver at any time before the Member's death.

As permitted by the Applicable Legislation, any amount payable to the Member's Spouse, except the value of any Member's voluntary contributions, may be:

- transferred to a Locked-in Retirement Account;
- transferred to a Prescribed Retirement Plan;
- used to purchase an immediate or deferred life annuity which must commence no later than December 31 of the calendar year the Spouse attains age 71 or at such other time or date as required under the Income Tax Act. If the age of the Member's Spouse is greater than this maximum, payments must begin within one year after the Member's death; or
- transferred to another registered pension plan.

Alternatively, the amount payable to the Member's Spouse, including the value of any Member's voluntary contributions, may be:

- transferred to a registered retirement savings plan;
- transferred to a registered retirement income fund;
- used to purchase an immediate or deferred life annuity which must commence no later than December 31 of the calendar year the Spouse attains age 71 or at such other time or date as required under the Income Tax Act. If the age of the Member's Spouse is greater than this maximum, payments must begin within one year after the Member's death; or
- transferred to another registered pension plan.

If an amount becomes payable to a Plan Beneficiary who qualifies as a spouse or common-law partner under the Income Tax Act but does not qualify as a Spouse under the Plan, the above non-locked-in options are available to the Plan Beneficiary as permitted under the Applicable Legislation.

If the Spouse dies after the Member and before receiving the amount payable, the estate of the Spouse will receive the amount payable as a cash refund.

Within 30 days following receipt of notice of a Member's death, the Administrator will give the Plan Beneficiary a statement of options available as required by the Act. The option the Plan Beneficiary elects will be processed within 60 days after receipt of the election and any other information that is required to process the election.

(b) Death benefit after retirement

If a Member dies after retirement annuity payments commence, the death benefit, if any, will depend on the form of retirement benefit selected by the Member.

9. Termination of Employment

Section 9 is replaced with the following:

If a Member ceases employment with a participating employer, membership in the Plan does not automatically terminate if the Member returns to employment with another employer participating in the Plan within a period not exceeding one year. However, at the option of the Member, the Member may elect to terminate membership in the Plan when employment ceases with a participating employer.

For greater clarity and for the purpose of determining entitlement to a deferred retirement annuity, a Member who terminates employment will be deemed not to have terminated membership in the Plan if, before the end of the one-year period, the Member becomes employment by another employer participating in the Plan and contributions are required to be made on behalf of the Member unless the Member elects to terminate membership in the Plan.

- (a) **Before the completion of two years of continuous employment**
If a Member terminates membership before the completion of two years of Continuous employment, the Member will be entitled to receive a deferred retirement annuity with payments commencing on the Member's normal retirement date provided by the value of the Member's account.
- (b) **After the completion of two years of continuous employment**
If a Member terminates membership after the completion of two years of Continuous employment, the Member will be entitled to receive a deferred retirement annuity with payments commencing on the Member's normal retirement date provided by the value of the Member's account.
- (c) **Transfer rights**
If the Member is entitled to receive a cash refund upon termination of membership, the Member may elect to transfer that benefit to one of the following, as permitted by the Applicable Legislation:
- a registered retirement savings plan;
 - a registered retirement income fund;
 - another registered pension plan;
 - an insurer to purchase an immediate or deferred life annuity.

If the Member is entitled to receive a deferred retirement annuity upon termination of membership, the Member may elect to transfer that benefit to one of the following, as permitted by the Applicable Legislation:

- a Locked-in Retirement Account;
- a Prescribed Retirement Plan, provided the Member has reached the early retirement date under the Plan;
- another registered pension plan;
- an insurer to purchase an immediate or deferred life annuity.

Any deferred retirement annuity transferred under this section remains subject to the rights of the Member's Spouse.

The Member retains the right to receive the value of any voluntary contributions as a cash refund.

Notwithstanding the provisions above, the Employer may waive the vesting for a Member, in which case the Member will be entitled to the value of the Member's account on termination of membership. The benefit will be payable in the form(s) indicated under Section 9(a).

If a Member is entitled to receive a deferred retirement annuity, the Member retains the right to elect an early or postponed retirement date and an optional form of retirement annuity as provided in the Plan.

Within 30 days after receipt of notice of termination of membership, the Administrator will give the Member a statement of the options available as required by the Act. The option the Member elects will be processed within 30 days after receipt of the election and any other information that is required to process the election. If the Member does not advise the Administrator of the election chosen within 90 days after the date the termination of membership statement is received, the Administrator may elect to purchase a deferred retirement annuity on behalf of the Member.

11. Temporary Absence from Employment

Section 11 is replaced with the following:

Subject to the following paragraphs, if a Member is unable to work because of disability, leave of absence or temporary layoff, all contributions will cease during such periods. No benefits are payable until the Member terminates membership, retires, dies or until the Plan terminates.

However, if a Member is on a maternity or parental leave of absence, the Employer will give the Member the option of maintaining active participation in the Plan during the leave. If the Member so elects, contributions to the Plan will continue for the period required by the Applicable Legislation. The Member will be responsible to pay the Employer's contributions in addition to any Member's required contributions.

Similarly, there may be other circumstances required under the applicable employment legislation where the Member will be given the option of maintaining active participation in the Plan. If the Member so elects, the continuance of contributions will be subject to the terms and conditions of the Applicable Legislation.

The above periods of maternity and/or parental leave of absence qualify as periods of parenting under the Income Tax Act.

If a Member becomes totally disabled as certified by a medical doctor licensed to practice in a province or the place where the Member resides and the disability qualifies as a period of disability under the Income Tax Act, the Member may continue to make voluntary contributions to the Plan.

NOTE: If the Member is a Connected Person, contributions may not continue to be made to the Plan unless the absence qualifies as a period of disability under the Income Tax Act.

If any contributions are made to the Plan as described above, such contributions will respect the conditions applicable to a prescribed amount of compensation under the Income Tax Act.

12. General Provisions

(b) Purchase of retirement annuity

This provision is replaced with the following:

When a retirement annuity is purchased under the Plan, the sex of the Member, former Member or Plan Beneficiary will not be considered in determining the amount of the retirement annuity. The annuity must be purchased from a person who is licensed or authorized to conduct annuity business in Canada and must conform with the requirements of the Applicable Legislation. The annuity will commence no later than the date required under the Income Tax Act.

(c) Unlocking of small benefits

This provision is replaced with the following:

On termination of membership, retirement or termination of the Plan, a Locked-in benefit may be received as a cash refund if the benefit amount:

- is less than 20 per cent of the Year's Maximum Pensionable Earnings;
- purchases a retirement annuity in the normal form that is less than 1/12th of four per cent of the Year's Maximum Pensionable Earnings for Members who are eligible to retire; or
- is less than such other amount as prescribed by the Act.

Instead of receiving a cash refund, the benefit may be transferred to a registered retirement savings plan.

(d) Unlocking for non-residents

This provision is replaced with the following:

Subject to the requirements of the Applicable Legislation, if a person entitled to a benefit under the Plan has been a non-resident of Canada for at least two years, a Locked-in benefit may be paid in the form of a cash refund.

(e) Unlocking of up to 50 per cent of a locked-in benefit

This provision does not apply to Members employed in Saskatchewan.

(g) Benefits not assignable

This provision is replaced with the following:

Rights and benefits under the Plan are not capable of being assigned, charged, anticipated, given as security or surrendered.

However, upon the breakdown of the relationship between a Member and the Member's Spouse, benefits payable under the Plan may be assigned to the Member's Spouse pursuant to a court order or written agreement as permitted under the Applicable Legislation.

For the purpose of enforcement of a maintenance order, benefit entitlements of a former Member are subject to attachment or garnishment as provided under the Applicable Legislation.

(h) Reduced life expectancy

This provision is replaced with the following:

If a medical doctor licensed to practice in a province or the place where the Member resides certifies that a Member's life expectancy is likely to be shortened considerably due to disability or otherwise as provided under the Act, the Member may be eligible to withdraw the value of the Member's account, subject to the rights of the Member's Spouse as provided under the Act.

Nilex Variable Compensation Plan – 2018

The compensation structure provided to every Nilex employee is comprised of two elements; Salary or Hourly Wage and benefits. For most employees, there is a third element to their compensation structure and that is Variable Compensation.

The Nilex Variable Compensation Plan (VCP) has been created in such a way to achieve greater alignment with team members and the strategic direction of the Company. Our 2018 Incentive plan has a few very important characteristics that are quite different from previous Nilex Incentive plans;

- Independent of the employee's base salary or wage.
- Independent of the budget.
- Measured quarterly and paid quarterly, rather than measured monthly and paid quarterly.
- No cap on the earning potential.

Financial Measurement

A key financial objective of Nilex is the steady and dependable growth of our revenue base and more importantly, our profit. The Company measures its financial performance on a quarterly basis comparing the current quarter to the same quarter in the previous year. The Company also measures itself on how it is performing on a trailing year of financial performance. So, every quarter, management looks back four quarters and compares the performance to the same time span of the previous year. This measure is an accurate reflection of the progress the company is making as it accounts for the seasonality of our business. Its no different that comparing year on year at the end of a year, its just that the comparison is done at the end of each quarter.

Plan Mechanics

The Nilex Variable Compensation Plan (VCP) rewards participants for delivering growth in either Gross Margin or EBITDA. Both of these plans will be measured quarterly and paid quarterly. The performance measure is a trailing four quarter (T4Q) summation that creates a trailing year of results. If the T4Q summation of the plan year is greater than the T4Q summation of previous year, a portion of the difference goes into a pool to be paid out to participants. If the difference between current T4Q and prior year T4Q is negative, the pool receives no funds and no incentive is paid in that quarter. The pool is self-funding, the more the current year results beat the previous year T4Q results, the more money goes into the incentive pool. There is no cap on the size of the pool.

Pool Allocation

The percent of the Company's profits that are directed to the VCP pool for each business unit is determined by management as the plan is developed each year. That percentage will vary depending on the size of the business unit, the number of participants and the business unit's ability to exceed the previous year's performance.

Pool Assignment

There are two levels to the plan; Profit Measure and Business Unit. Participants are assigned to a Gross Margin or EBITDA plan based on their position's ability to affect either profit measure. Generally, sales and marketing staff and anyone in direct support of Sales and Marketing are on a Gross Margin plan and

management and support staff are on the EBITDA plan. Further, based on where participants exert the most influence, they are assigned to a business unit plan. For example, a Technical Sales Representative based in Surrey would be assigned to the Pacific Region's Gross Margin plan. A person working in the corporate finance department would be assigned to the Corporate EBITDA plan.

Point System

An individual's payout from their respective pool is determined by a point allocation system. Individuals are allotted a certain number of points reflective of their position and ability to influence results of their pool. An individual's points, relative to the number of overall points in their respective pool, determines their pro-rata share of the pool. For example, an employee is assigned 10 points for their position and the pool they participate in has a total of 100 points assigned, that employee is entitled to 10/100 or 10% of the pool each quarter.

Plan Administration

At the beginning of every Plan Year participating employees will receive a letter confirming their participation and the point level they have been assigned. Within the letter will be a table that details;

- The previous year's T4Q results for the business unit they are participating in.
- The T4Q values for the Plan year that management feels are achievable
- The total expected points for the business unit.
- The employee's point assignment.
- The potential payout if the business unit performs to management expectations.

As the year progresses actual values will be shared with the employees. As each quarter wraps up and the financials are deemed accurate by the executive team, employees will receive a personalized letter detailing how their business unit performed against the previous year and confirmation of their VCP pay out. VCP incentive earned will be paid by the end of the first month following the end of the quarter. (e.g. Q1 incentive will be paid before the end of April.)

Plan Rules

1. Must be in a position deemed eligible for participation in the Nilex Variable Compensation Plan (VCP).
2. Must have full time or permanent part time status.
3. Permanent part time employee participation will be pro-rated to their work schedule.
4. Participation for eligible employees begins after completion of their 3 month probationary period or upon exception granted by the CEO.
5. Employees who undergo a position change within the plan year will have their plan migrated to the new position plan commencing the day they begin their new position and the quarter incentive will be pro-rated to match the start date.
6. Each VCP eligible employee will receive a letter detailing the specifics of their plan participation before the start of the next plan year.
7. Employees must be employed by Nilex on the day of distribution to receive payment. Employees who are terminated without cause will collect a prorated VCP incentive estimate for the time they were employed.
8. The Company cannot claw back an incentive once it has been paid.

9. Point levels for positions are assigned by the CEO in consultation with the executive team and Human Resources Manager.
10. The percentage of Gross Margin or EBITDA performance achievement assigned to the incentive pool is determined by the CEO in consultation with the executive team. This assignment will be done during the budgeting process and will be in place for the start of the incentive plan year. The CEO reserves the right to alter the pool percentage should business conditions deem it appropriate.
11. Quarterly incentive plan payouts are subject to approval by the Nilex Board of Directors.
12. An employee will only participate in one incentive pool at any given time.

Definitions

Gross Margin – Selling price less the cost of the product sold or service provided.

Product Sold includes Nilex's cost to purchase the product along with shipping, customs, duties and import taxes (landed cost). Employees in a position of direct Customer contact can influence Gross Margin on a product sold by negotiating a high sales price, selling the value of the product over a competitor's product to support Nilex pricing, selling high volumes of a product so Nilex has negotiating power with its suppliers to lower the landed cost.

Service Provided includes all labor and consumables, vehicle costs, equipment maintenance costs, accommodation, meals and any other costs directly related to providing the service on a specific project. Employees can influence the Gross Margin on Services Provided by providing the service in a time efficient and operationally excellent manner such that the service delivered and the product installed is done in the more cost-effective way while still providing the customer with excellent service and no installation errors or warranty issues.

EBITDA – Earnings Before Interest, Taxes, Depreciation and Amortization.

It is a measure of profit that accounts for all direct costs of running a business separate from the more intangible elements that are manipulated to manage the debt the company has, the various tax laws and obligations and declining value of the Company's assets over time (depreciation and amortization) that proper accounting practice dictate a company must keep track of. EBITDA represents a clean vision of a Company's ability to generate free cash from its business. All employees can influence the Company's EBITDA performance. If Sales gets a higher price for the goods sold, that extra Gross Margin flows directly to offset other costs the Company deals with. Some however, have a more direct effect on managing the actual costs of running the Company. Negotiating our insurance and benefits costs, minimizing expensive safety incidents, managing the day to day costs of running regional operations, managing and executing the efficiency of our purchasing processes and managing the Company's personnel and overall efficiency of Nilex's operations.

Gross Margin Results

	2016				2017				2018	
	Q1	Q2	Q3	Q4	Q1	Q2	Q3	Q4	Q1	Q2
Region A	199,000	513,000	305,000	110,000	130,000	241,000	454,000	253,000	140,000	330,000
Region B	467,000	784,000	933,000	577,000	368,000	907,000	1,148,000	596,000	515,000	920,000
Region C	493,000	1,748,000	2,757,000	1,739,000	1,098,000	2,222,000	3,805,000	1,252,000	1,500,000	2,400,000
Trailing 4-Quarter Totals					2017				2018	
					Q1	Q2	Q3	Q4	Q1	Q2
Region A					1,058,000	786,000	935,000	1,078,000	1,088,000	1,177,000
Region B					2,662,000	2,785,000	3,000,000	3,019,000	3,166,000	3,179,000
Region C					7,342,000	7,816,000	8,864,000	8,377,000	8,779,000	8,957,000

In this example for Region A, a point per value is calculated starting with adding the trailing 4 quarters back from Q1-2017.

$$513,000 + 305,000 + 110,000 + 130,000 = 1,058,000.$$

That is then compared to how Region A did in the same four quarters back from Q1-2018.

$$241,000 + 454,000 + 253,000 + 140,000 = 1,088,000$$

The 2018 value less the 2017 value is the amount of improvement over the same year long time period

$$1,088,000 - 1,058,000 = 30,000$$

10% of the 30,000 (\$3,000) goes into Region A's incentive pool for Q1-2018.

All of the employees individual points who participate in Region A's pool add up to 60. So, \$3,000/60 points = \$60/point. An employee with a 5 point share of the pool would receive \$60*5 points or \$300. In Region C where a big improvement in Q1-2018, was delivered, the employee with 5 points would earn 5*\$287 = \$1,435.

Trailing 4-Quarter Comparison (2017 less 2016)

	2018	
	Q1	Q2
Region A	30,000	391,000
Region B	504,000	394,000
Region C	1,437,000	1,141,000
% of Gross Margin achievement to Pool		
Region A	10%	10%
Region B	5%	5%
Region C	5%	5%
Total Amount in Incentive Pool		
Region A	3,000	39,100
Region B	25,200	19,700
Region C	71,850	57,050
Total Points in Pool		
Region A	60	60
Region B	75	75
Region C	250	260
Value per Point		
Region A	\$ 50	\$ 652
Region B	\$ 336	\$ 263
Region C	\$ 287	\$ 219

SCHEDULE 3.22

INTELLECTUAL PROPERTY RIGHTS*Patents*

Owner	Registration Number	Description
Nilex Inc.	Patent # (Canada): 2310483 Patent Serial # (USA): 6,610,781	Reinforced networked polymer/clay alloy composite (geosynthetic composite liner)
Nilex Inc.	Patent # (Canada): 2588196	Degradable Erosion Control Barrier
Nilex Inc. and Innotech Alberta Inc.	Patent # (USA): 6737472	Reinforced Networked Polymer / Clay Alloy Composite
Nilex Inc.	Patent # (USA): 8596930	Degradable Erosion Control Barrier

Trademarks

Owner	Registration Number	Trademark
Nilex Inc.	TMA833996 (Canada)	Mulchmax
Nilex Inc.	TMA757659 (Canada)	Square with slanted triangle in the middle 
Nilex Inc.	TMA758094 (Canada)	Unearthing Better Results
Nilex Inc.	TMA513690 (Canada)	NRS
Nilex Inc.	TMA521575 (Canada)	NILEX
Nilex Inc.	3879659 (USA)	NILEX



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Owner	Registration Number	Trademark
Nilex Inc.	TMA508923 (Canada)	NILEX & DESIGN  NILEX
Nilex Inc.	TMA491878 (Canada)	GEO-RIDGE
Nilex Inc.	3877087 (USA)	3877087 (USA)
Nilex Inc.	GEORIDGE	GEORIDGE
Nilex Inc.	3899606 (USA)	3899606 (USA)
Nilex Inc.	UNEARTHING BETTER RESULTS	UNEARTHING BETTER RESULTS



SCHEDULE 3.28

REAL PROPERTY AND LEASES

Owned real property: none.

Leased real property:

Credit Party	Common Name and Address	Landlord/ Owner
Nilex Inc.	18877 96 Avenue, Surrey, BC, V4N 3P3	Kelfor Properties Inc.
Nilex Inc.	9222 40 ST SE, Calgary, AB, T2C 2P3	Adak Properties Canada Inc.
Nilex Inc	6810 8 ST NW AB	Adak Properties Canada ULC
Nilex Inc.	#4, 3003 Millar Ave, Saskatoon, SK, S7K 6G5	101003967 Saskatchewan Ltd.
Nilex Inc.	#2, 40 Audia Court, Vaughan, ON, L4K 3N4	Stellarbridge Management Inc.
Nilex USA Inc.	15253 East Fremont Drive, Centennial, CO, 80112	Adak Properties LLC
Nilex USA Inc.	425 N Neil Armstrong Road, Salt Lake City, UT, 84116	SATT Management LLC



SCHEDULE 5.15**Post-Closing Undertakings**

1. Within 90 days of the Effective Date or such longer period as the Lender may permit, the Credit Parties shall (a) open one or more Accounts with the Lender, (b) cause each Account maintained by them with HSBC Bank Canada on the Effective Date to be closed and migrated to the Accounts maintained with the Lender described in item 1(a), and (c) enter into Blocked Account Agreements in respect of the Accounts opened with the Lender described in item 1(a).
2. Within 30 days of the Effective Date or such longer period as the Lender may permit, the Credit Parties shall deliver to the Lender certificated Equity Securities representing 100% of the equity interests of Nilex USA Inc., together with stock transfer powers in respect of same executed in blank and in form and substance satisfactory to the Lender, acting reasonably.
3. Within 10 days of the Effective Date or such longer period as the Lender may permit, the Credit Parties shall use all commercially reasonable efforts to deliver to Lender (i) an issued endorsement to each liability insurance policy of such Credit Parties naming Lender as an additional insured thereunder, (ii) an issued endorsement to each property insurance policy of such Credit Parties naming Lender as the lenders' loss payee thereunder, and (iii) an issued endorsement to each insurance policy described in clause (i) and (ii) above (to the extent the foregoing is not already included in the applicable endorsement delivered pursuant to clause (i) or (ii) above that provides for at least thirty (30) days' prior written notice to Lender of any modification or cancellation of such policy (or ten (10) days' prior written notice in the case of the failure to pay any premiums thereunder), each in form and substance satisfactory to Lender in its sole discretion.



SCHEDULE 6.1**INDEBTEDNESS**

Indebtedness owed by the Credit Parties to PEF 2010 Nilex Investment Limited Partnership including, without limitation, under the promissory note dated April 30, 2013 for \$22,683,150 and the promissory note dated June 14, 2017 for \$2,000,000 (each as amended to the date hereof).



SCHEDULE 6.9**RESTRICTIVE AGREEMENTS**

Unanimous Shareholder Agreement dated April 30, 2013 among PEF 2010 Nilex Investment Limited Partnership, Gurchate Sekhon, Hugh Watt, Ian Wilson and Nilex Inc.

EXHIBIT A
FORM OF BORROWING BASE REPORT

CANADIAN IMPERIAL BANK OF COMMERCE
Borrowing Base Certificate

REPORT#: BBC-1
Date

The following is an accurate and complete calculation of the Borrowing Base in Canadian Dollars at the above date.

<u>ABC</u> Client # 11 _____	<u>ACCOUNTS RECEIVABLE</u> Date		<u>INVENTORY</u> Date	
1 TOTAL COLLATERAL (line B of previous report)		\$ -		\$ -
2 GROSS SALES (per attached report).....	(+)	\$ -		
3 CREDIT MEMOS (per attached report).....	(-)	\$ -		
4 INVENTORY CHANGE (per attached report).....	(+/-)			
5 (+/-) MISC. ADJUSTMENTS (back-up attached).....	(+/-)	\$ -		
6 NET COLLECTIONS (per attached report).....	(-)	\$ -		
7 DISCOUNTS ALLOWED (per attached report).....	(-)	\$ -		
8 A TOTAL COLLATERAL per this report.....		\$ -		\$ -
B US\$ Exchange Increase		\$ -		
C TOTAL ELIGIBLE COLLATERAL (CAD\$) per this report		\$ -		
9 A MONTHLY INELIGIBLES.....		\$ -		\$ -
B OTHERS.....				
C TOTAL INELIGIBLES.....	(-)	\$ -		\$ -
10 TOTAL ELIGIBLE COLLATERAL (line 8C minus 9C)		\$ -		\$ -
A Accounts Receivable at XX% of Line 10	XX%	\$ -		
B Inventory at lesser of XX% of the lower of cost or market or XX% of NOLV (XX%)	XX%			\$ -
11 TOTAL A/R AND INVENTORY COLLATERAL VALUE (line 10A + 10B)		\$ -		
12 A RESERVES (per attached report)		\$ -		
B OTHER		\$ -		
13 TOTAL BORROWING BASE (line 11 - 12A - 12B) (maximum \$XXMM CDN) (lesser of Borrowing Base formula and Max. Revolving Line of Credit)		\$ -		
		<u>CAD</u>		<u>USD</u>
14 LOAN BALANCE (Previous Report)....		\$ -		\$ -
15 ADVANCES	(+)	\$ -		\$ -
16 CHARGES (SEE BELOW)	(+/-)	\$ -		\$ -
17 NET COLLECTIONS.....	(-)	\$ -		\$ -
18 NON A/R COLLECTIONS.....	(-)	\$ -		\$ -
19 A REVOLVER LOAN BALANCE per this report		\$ -		\$ -
B LETTERS OF CREDIT		\$ -		\$ -
20 A TOTAL LOAN AND LC EXPOSURE (19A + 19B)		\$ -		\$ -
B USD EXPOSURE STATED IN CAD	1.XXXX	\$ -		
21 TOTAL REVOLVER LOAN BALANCE (20A + 20B)		\$ -		
22 Past Due Accounts Payable		\$ -		
23 EXCESS AVAILABILITY (line 13 minus 21 minus 22).....		\$ -		
24 SUPPRESSED AVAILABILITY		\$ -		

The person who executes this Borrowing Base Report on behalf of the Borrower hereby certifies that he/she is an officer of the Borrower and in such capacity is authorized to execute this Borrowing Base Report on behalf of the Borrower pursuant to a credit agreement dated as of _____, 20__ (as amended, supplemented, restated or otherwise modified prior to the date hereof, the "Credit Agreement") between _____ (the "Borrower") and Canadian Imperial Bank of Commerce, in its capacity as Agent for the Lenders (the "Agent"). All capitalized terms not defined herein shall have the meaning ascribed to them in the Credit Agreement. The undersigned certifies, represents and warrants the correctness of this Borrowing Base Report.

AUTHORIZED SIGNATURE: _____

DATE: _____

EXHIBIT B

FORM OF NOTICE OF BORROWING

(Letter to be typed on Borrower's Letterhead, scan signed letter and email to CIBCABLCollateralAnalysts@cibc.com)

[DATE]

CANADIAN IMPERIAL BANK OF COMMERCE
199 Bay Street, 4th Floor
Toronto, ON M5L 1A2

Attention: Collateral Analyst

BORROWING NOTICE

Gentlemen:

We refer to the credit agreement dated as of June 1, 2018 (as amended, restated, supplemented, replaced or otherwise modified from time to time the "**Credit Agreement**"; capitalized terms used herein but not otherwise defined shall have the meanings set forth in the Credit Agreement), between Nillex Inc. and Nillex USA Inc., as borrowers (the "**Borrowers**" and each, a "**Borrower**") and Canadian Imperial Bank of Commerce, as lender (the "**Lender**").

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

[Name of Borrower] hereby requests an advance (the "**Advance**") be made under the Revolving Credit Facility as follows:

A. the Borrowing Amount :

Canadian Prime Loan (Cdn\$): _____

BA Borrowing _____ Contract Period _____

Base Rate Loan (US\$) _____

LIBO Rate Loan (US\$) _____ Contract Period _____

Letter of Credit/Credit Support*: _____

Additional Information: As per the attached Letter of Credit application

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

B. the Drawdown Date: [DATE] _____

ZB

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Notice requirements as stated in the Credit Agreement are:

- 10:00 AM (Toronto time) on the requested Drawdown Date for Canadian Prime Loans or Base Rate Loans,
- 11:00 AM (Toronto time) 2 days in advance of the requested Drawdown Date for BA Loans
- 11:00 AM (Toronto time) 3 days in advance of the requested Drawdown Date for LIBO Rate Loans

Proceeds of the Advance are to be directed as follows:

Bank Name: _____

Account Name: _____

Branch #: _____

Account Number: CAD# _____

USD# _____

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

Each of the Borrowers hereby confirms as follows:

- (a) Each of the representations and warranties made by such Borrower in or pursuant to the Credit Agreement and the other Loan Documents are true and correct on and as of the date hereof as if made on and as of the date hereof, except where such representation and warranty refers to a different date.
- (b) No Default or Event of Default has occurred and is continuing on the date hereof or will occur after the making of the Advance(s) requested hereunder.
- (c) Except as may have been otherwise agreed to from time to time by the Lender and the Borrowers in writing, after making the Advance(s) requested to be made by the Borrowers hereunder, the aggregate Exposure will not exceed the lesser of (i) the Commitment, and (ii) an amount equal to the Borrowing Base.

DATED this day of _____, 20__

Yours truly,

[Borrowers]

EXHIBIT C

FORM OF LANDLORD WAIVER

The undersigned is the owner of the premises known as _____ (the "**Premises**"), which Premises are leased by the undersigned to **[NAME OF CREDIT PARTY]**, a **[JURISDICTION]** corporation, or one of its affiliates (collectively, the "**Obligors**") pursuant to a lease agreement dated as of _____ (as it may be amended, restated, supplemented, replaced or otherwise modified from time to time, the "**Lease**"). The undersigned understands that the Obligors will enter (or have entered) into a credit facility with Canadian Imperial Bank of Commerce (the "**Lender**") for certain lenders (the "**Lender**"), pursuant to which (a) the Lender may make loans to certain of the Obligors from time to time, and (b) the Obligors will grant (or have granted) to the Lender, a security interest on all of the Obligors' present and after-acquired accounts receivable, Inventory, general intangibles (including, without limitation, trademarks and intellectual property rights), capital assets, documents of title, collateral proceeds accounts and capital stock (collectively, the "**Collateral**").

1. The undersigned hereby waives and relinquishes in favour of the Lender any landlord's lien, all rights of levy or distraint, security interests, hypothecs, mortgages, charges, guarantees, assignments, encumbrances or other interest that the undersigned may now or hereafter have, whether by statute, contract (including the Lease) or by common law, in any of the Collateral (the "**Landlord's Liens**"), whether for rent or otherwise, and agrees that the Lender's security interests and liens in the Collateral, now existing or hereafter arising, shall have priority over and rank senior to any and all of the Landlord's Liens and hereby cedes priority and preference of rank of any hypothec, present or future, granted by the Obligors to the Landlord on the Collateral to the hypothec of Agent on the Collateral, present or future, granted by the Obligor. The undersigned disclaims any interest in the Collateral and agrees not to assert any claim to the Collateral while the Obligors are indebted to the Lender.

2. In order to exercise any rights as a secured party holding a security interest in the Collateral, the Lender is expressly authorized and privileged at any time to enter the Premises and inspect, remove or repossess the Collateral and may advertise and conduct a public auction or private sale of the Collateral; provided, however, that the Lender will repair, or pay the reasonable cost to repair, any damage to the Premises resulting from such inspection, removal, repossession, auction or sale.

3. If the Lease is terminated by the undersigned whether by reason of any default by the Obligors or otherwise, or if the Obligors default under any of their agreements with the Lender, and in any such case the Lender desires to exercise its rights as a secured party holding a security interest in any of the Collateral, then the Lender may thereafter at its option occupy the Premises for up to 90 days and may keep thereon such property as it determines appropriate, provided that the Lender shall pay rent for its period of occupancy (pro-rated on a daily basis and computed on the basis of a 30-day month) at the rate provided in the Lease based on the rate in effect just prior to such termination or default, without incurring any other obligations of the Obligors.

4. The undersigned hereby consents to the acquisition by the Lender, at the Lender's option, of the absolute ownership of the Obligors' interest in the Lease and agrees that if the Lender, at its option, takes possession of the Obligors' leasehold estate in the Premises, the Lender will thereupon, be recognized as the tenant under the Lease. If the Lender shall become the tenant under the Lease, it may, on behalf of the Lender, sublease or assign the Lease for any lawful

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purpose with the express written consent of the undersigned and the assignment of the Lease shall release and relieve the Lender of all obligations thereunder. The undersigned agrees to give notice within 5 days of any default by any Obligor of any of the provisions of the Lease, such notice to be provided to:

Canadian Imperial Bank of Commerce
 199 Bay Street, 4th Floor
 Toronto, ON M5L 1A2
 Attention: Senior Director, Portfolio Management, Asset Based Lending
 Group

5. All of the Lender's rights and privileges hereunder shall inure to the benefit of its successors and assigns and shall bind the undersigned's successors or assigns.

6. This Agreement shall be governed by and construed in accordance with the laws of the Province of Alberta and the federal laws of Canada applicable therein.

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

IN WITNESS WHEREOF, the undersigned has caused this instrument to be executed this _____ day of _____, 20__.

[NAME OF LANDLORD]

By: _____
 Name:
 Title:

EXHIBIT D

FORM OF BAILEE LETTER

_____, 20__

[NAME OF BAILEE]

[ADDRESS OF BAILEE]

Re: [NAME OF CREDIT PARTY] (the "Bailor")

Ladies and Gentlemen:

This letter (the "**Letter**") is to advise _____ (the "**Bailee**") that the Bailor executed and delivered to Canadian Imperial Bank of Commerce (the "**Lender**") a Credit Agreement (as may be modified, amended, renewed, extended, restated, or replaced from time to time, the "**Credit Agreement**"), pursuant to which the Bailor granted to the Lender a security interest in, and hypothec and lien upon, among other things, all inventory of the Bailor, some of which is in possession of the Bailee from time to time (the "**Controlled Inventory**"). By executing this Letter, the Bailee acknowledges that from time to time the Bailee is in possession of Controlled Inventory and that, because of the Lender's interest in the Controlled Inventory, the instructions contained in this Letter are irrevocable and cannot be altered or amended without the prior written consent of the Lender. The Bailor's execution of this Letter is conclusive evidence to the Bailee of its confirmation of and agreement to the foregoing and of its agreement to be bound by all terms of this Letter on which the Bailee is entitled to rely for all purposes until written notice of termination of this Letter is given to the Bailee by the Lender.

The Bailee recognizes the Lender's continuing security interest in the Controlled Inventory and in the proceeds thereof. The Bailee covenants and agrees that the Controlled Inventory is and shall remain owned by the Bailor, and that the Lender may at any time and from time to time inspect, remove and/or repossess the Controlled Inventory while in possession of the Bailee without accountability to the Bailee therefor and free of any lien, security interest, hypothec, mortgages, charge, guarantee, encumbrance or other interest right or claim which the Bailee may now or hereafter have, such right of the Lender being independent of any other right or remedy the Lender may have. The Bailee hereby authorizes and empowers the Lender to access the premises where the Controlled Inventory is located for the purposes of guarding and maintaining the Controlled Inventory, preparing and showing the same for sale and/or conducting a sale thereof. The Bailee hereby waives and releases, for the benefit of the Lender, its successors and assigns, any and all liens, security interests, hypothecs, mortgages, charges, guarantees, assignments, encumbrances or other interest, rights and claims of every kind, whether statutory, contractual or by law, which the Bailee may now or hereafter have with respect to the Controlled Inventory, including, without limitation, any rights to seize, hold, restrain, levy upon, take possession of, sell or otherwise transfer or dispose of the Controlled Inventory and hereby cedes priority and preference of rank of any hypothec, present or future, granted by the Bailor to the Bailee on the Controlled Inventory to the hypothecs of Agent on the Controlled Inventory, present or future, granted by the Bailor and the Bailee further acknowledges and agrees that no negotiable warehouse receipts or documents of title will be issued covering the Controlled Inventory.

So long as no Default Period (hereinafter defined) is continuing, the Bailor may control the Controlled Inventory. From the date on which the Lender notifies the Bailee that an "Event of

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Default" (as defined in the Credit Agreement) has occurred and thereafter until the Bailee receives notice from the Lender that such Event of Default is no longer continuing and that no other Event of Default is continuing (such period being referred to herein as a "Default Period"), the Bailee, the Bailor and the Lender agree that the Lender shall have the exclusive right to direct the Bailee as to control of the Controlled Inventory, which includes, without limitation, the right to dispose of, repossess or remove the Controlled Inventory, and the Bailee shall not comply in any respect with any request or direction by the Bailor in connection with the Controlled Inventory, unless consented to in writing by the Lender.

At any time when the Bailee has possession of the Controlled Inventory, the Bailee agrees to prevent the commingling of the Controlled Inventory in its possession with other Inventory, goods or items in the Bailee's possession by clearly separating, dividing or otherwise isolating the Controlled Inventory from all such other items in the Bailee's possession. The Bailee will also clearly identify the Controlled Inventory as belonging to the Bailor, through the use of labels, tags, or other similar coding methods.

The Bailee will from time to time deliver to the Lender, upon the written request of the Lender (which request may be by facsimile transmission) and at the Bailor's cost and expense, such information regarding the Controlled Inventory as may be reasonably requested by the Lender, and the Bailee will notify the Lender promptly if the Bailee acquires knowledge that the Controlled Inventory shall become subject to any injunction, writ or warrant of attachment or garnishment, judgment, levy and execution, or similar process. The Bailee confirms in favour of the Lender that it has not, prior to the date hereof, executed in favour of any third party any document, instrument or agreement pursuant to which (a) the Bailee has acknowledged a security interest in the Controlled Inventory in favour of such third party, or (b) the Bailee has agreed to follow the instructions of such third party in respect of the Controlled Inventory.

The Bailor agrees that the Bailee shall be fully protected in acting on any notice or direction by the Lender relating to the Controlled Inventory without making any inquiry whatsoever as to the Lender's right or authority to give such notice or direction. Further, the Bailee shall have no liabilities to the Bailor or the Lender other than those imposed upon it by law for its own lack of good faith, gross negligence or wilful misconduct. The Bailee shall not be liable for consequential, indirect or special damages, even if the Bailee has been advised of the possibility of such damages. The Bailee shall not be liable for any failure or delay in performing any service under this Letter in the event and to the extent that such failure arises out of causes beyond the Bailee's control, including but not limited to war, civil commotion, an Act of God, fire, flood, explosion, sabotage, failure or interruption of electrical or other power supplies or of transportation services, compliance with governmental laws, regulations or orders, and strikes and lockouts.

The Bailor agrees to pay the Bailee's costs and expenses, including reasonable legal fees, in connection with the execution, delivery and administration of this Letter.

The Bailor and the Lender, jointly and severally, hereby agree to indemnify and save the Bailee harmless from and against any and all losses, costs and expenses arising out of the compliance by the Bailee with the terms of the instructions contained herein.

If the Bailor is unable to fulfill its obligations to the Bailee in respect of warehouse fees and other expenses payable by the Bailor to the Bailee in connection with the storage, handling and delivery of the Controlled Inventory (collectively, the "Storage Fees"), the Lender agrees that, as a condition to the Lender's rights of access to the Controlled Inventory and the Lender's rights of inspection, removal and/or repossession of the Controlled Inventory provided for in this Letter, it will pay to the Bailee all Storage Fees which remain unpaid as at the commencement of any Default Period together with any Storage Fees incurred during the continuance of a Default Period.

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The Bailor acknowledges and agrees that (a) any amounts paid by the Lender to the Bailee hereunder shall constitute "Obligations" of the Bailor for purposes of the Credit Agreement, and (b) that this Letter is a "Loan Document" as such term is defined in the Credit Agreement dated _____ between the Lender and the Bailor, as borrower.

This Letter may only be terminated by the Lender upon written notice to the Bailee.

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

If the foregoing instructions, terms and agreements are acceptable to the Bailee, please indicate the Bailee's acceptance by signing this letter in the space provided below and returning it to the Bailor.

Sincerely,

[NAME OF CREDIT PARTY]

By: _____

Name: _____

Title: _____

AGREED AND ACCEPTED:

CANADIAN IMPERIAL BANK OF COMMERCE

Address for Notice:

By: _____
 Name: _____
 Title: _____
 Management,

199 Bay Street, 4th Floor
 Toronto, ON M5L 1A2
 Attention: Senior Director, Portfolio

Asset Based Lending Group

[BAILEE]

By: _____
 Name: _____
 Title: _____



EXHIBIT E

FORM OF REPAYMENT NOTICE

(Letter to be typed on Borrower's Letterhead, scan signed letter and email to CIBCABLCollateralAnalysts@cibc.com)

CANADIAN IMPERIAL BANK OF COMMERCE, _____, 20_
 199 Bay Street, 4th Floor
 Toronto, ON M5L 1A2

Attention: Collateral Analyst

REPAYMENT NOTICE

Ladies/Gentlemen:

We refer to the Credit agreement dated June 1, 2018 (the "Credit Agreement"; capitalized terms not otherwise defined herein shall have the meanings ascribed to them in the Credit Agreement), between [Borrower] (the "Company"), Canadian Imperial Bank of Commerce, (the "Lender"), and the Lender party thereto (as "Lender").

We hereby notify the Lender of our repayment of the [Revolving Loans/Term Loan] (as defined in the Credit Agreement), subject to and in accordance with the terms and provisions of the Credit Agreement in the amount of:

A. **The repayment amount:**
Canadian Prime Loan/Term Loan: CAD\$ _____
Base Rate Loan: US\$ _____
LIBO Rate Loan: US\$ _____
BA Borrowing: CAD\$ _____

B. **The date of repayment*:** _____

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

Proceeds of the repayment are to be deposited to the account of Canadian Imperial Bank of Commerce as follows:

Bank Name:	CIBC, Main Branch Commerce Court, Toronto, ON
Account Name:	CIBC Asset Based Lending suspense account
Transit #:	00002
Account Number:	CAD 09-68617
	USD 05-38507

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

Yours truly,

By: _____

By: _____

Name: _____

Name: _____

Title: _____

Title: _____

[NAME OF ASSIGNOR]

As Assignee

By: _____

Title: _____

By: _____

Title: _____

Consented to:¹

[BORROWER]

By: _____

Title: _____

¹ To be added only if the consent of the Borrower is required by the terms of the Credit Agreement.

EXHIBIT F

FORM OF RESPONSIBLE OFFICER'S CERTIFICATE

TO: Canadian Imperial Bank of Commerce

The undersigned, _____ [TITLE of AUTHORIZED SIGNING OFFICER], of Nilex Inc., pursuant to Section 5.1 of the credit agreement dated as of •, 20___, between, amongst others, Canadian Imperial Bank of Commerce, Nilex Inc. and Nilex USA Inc. (the "**Borrowers**" and each, a "**Borrower**") (as amended, restated, supplemented, replaced or otherwise modified from time to time the "**Credit Agreement**"), **DOES HEREBY CERTIFY** in [his/her] capacity as an authorized signing officer of the Borrowers and not in [his/her] personal capacity that:

1. The financial statements attached hereto fairly and accurately represent the Borrowers' financial condition at the end of the particular accounting period set out in such financial statements, as well as the Borrowers' and their Subsidiaries' operating results during such accounting period, subject to year-end audit adjustments;
2. A review of such financial statements and of the activities of the Borrowers and their Subsidiaries during the period covered by such financial statements has been made under my supervision has been made with a view to determining whether the Borrowers and the Subsidiaries have fulfilled all of their obligations;
3. During the accounting period set out in such financial statements:
 - (a) each of the Borrowers and the other Credit Parties have fulfilled each of its respective obligations under each of the Loan Documents to which it is a party;
 - (b) there has been no Default or Event of Default under the Credit Agreement,
 - (c) the Borrowers are not aware of any event or circumstance which could reasonably have or could reasonably have had a Material Adverse Effect;
 - (d) the representation and warranties contained in the Credit Agreement and the other Loan Documents are correct in all material respects on and as of the date hereof as though made on and as of such date, other than any such representation or warranty which relates to a specified prior date and except to the extent that the Lender has been notified in writing by a Borrower that any representation or warranty is not correct and the Lender has explicitly waived in writing compliance with such representation or warranty;
 - (e) the Borrowers have been in full compliance with all covenants set out in the Credit Agreement and, specifically, set out in Sections 5.12 and 6.15 of the Credit Agreement as evidenced by the statements and calculations attached hereto as Annex A.;
 - (f) Annex B hereto sets out all Subsidiaries and indicates, for each such Subsidiary, the date of the formation or acquisition of each Subsidiary;
 - (g) no change in GAAP or in the application thereof has occurred since the date of the most recent audited annual financial statements of the Borrowers delivered to the Lender [**Note to Draft: - If a change has occurred, specify the details of the change and its effect on the accompanying financial statements**]; and

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(h) the Borrowers and the other Credit Parties have been in compliance with Section 6.4 of the Credit Agreement and Annex C hereto sets out details of all transactions contemplated by Section 6.4 of the Credit Agreement and the details of such compliance.

[Note to Draft: if any of the foregoing is incorrect, revise wording accordingly to include particulars of any variation.]

4. Capitalized terms used herein and not otherwise defined shall have the meanings given to such terms in the Credit Agreement.

IN WITNESS WHEREOF, the undersigned has executed this Responsible Officer's certificate on behalf of Nilex Inc. as of the _____ day of _____, 20__.

By: _____
Name:
Title:



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This is Exhibit "E" referred to in the Affidavit of Jeff Allen sworn before me this 31st day of October, 2022.

A Commissioner for Oaths in and for Alberta

A handwritten signature in cursive script, appearing to be the initials 'LB', located in the bottom right corner of the page.

GENERAL SECURITY AGREEMENT

dated as of

June 1, 2018

among

NILEX INC. and NILEX USA INC.

as Debtors

and

CANADIAN IMPERIAL BANK OF COMMERCE

as Lender

A handwritten signature or set of initials, possibly 'AB', in black ink, located in the bottom right corner of the page.

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THIS GENERAL SECURITY AGREEMENT is dated June 1, 2018

GRANTED TO: **CANADIAN IMPERIAL BANK OF COMMERCE,**
as Lender under the Credit Agreement (as defined below)

(in such capacity and any successor thereto, the **Lender**)

GRANTED BY: **EACH OF THE UNDERSIGNED DEBTORS**

(including each of their successors and permitted assigns, collectively, the **Debtors** and each a **Debtor**)

SECTION 1 - GRANT OF SECURITY INTEREST

1.1 Security Interest

As a general and continuing security for the payment and performance of all Obligations of each Debtor, each such Debtor, **IN CONSIDERATION OF THE OBLIGATIONS** and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, hereby grants, assigns and transfers to the Lender as security, and grants to the Lender a continuing security interest in, all of such Debtor's present and after-acquired personal property, now owned or hereafter acquired by or on behalf of such Debtor, wherever located, including, without limitation, all of the following (collectively, the **Collateral**):

(a) **Accounts Receivable**

All debts, book debts, accounts, accounts receivable, claims, demands, moneys and choses in action whatsoever, including, without limitation, claims against the Crown and claims under insurance policies, which are now owned by or are due, owing or accruing due to such Debtor or which may hereafter be owned by or become due, owing or accruing due to such Debtor together with all contracts, securities, bills, notes, lien notes, judgments, chattel mortgages, mortgages and all other rights, benefits and documents now or hereafter taken, vested in or held by such Debtor in respect of or as security for the same and the full benefit and advantage thereof, and all rights of action or claims which such Debtor now has or may at any time hereafter have against any Person in respect thereof (all of the foregoing being herein collectively called the **Accounts Receivable**);

(b) **Inventory**

All inventory of whatever kind now or hereafter owned by such Debtor or in which such Debtor now or hereinafter has an interest or right of any kind, and all accessions thereto and products thereof, including, without limitation, all goods, merchandise, raw materials, goods in process, finished goods, packaging and packing material and other tangible personal property now or hereafter held for sale, lease, rental or resale or that are to be furnished or have been furnished under a contract of service or that are to be used or consumed in the business of such Debtor (all of the foregoing being herein collectively called the **Inventory**);

(c) **Equipment**

All goods now or hereafter owned by such Debtor which are not inventory or consumer goods (as defined in the *Personal Property Security Act* (Alberta) or, to the extent applicable, similar legislation of any other jurisdiction, as amended from time to time, collectively, the **PPSA**), including, without limitation, all fixtures, equipment, machinery, tools, furniture, vehicles and other tangible personal property (all of the foregoing being herein collectively called the **Equipment**);

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(d) **Deposit Accounts**

Any and all depository accounts maintained at any financial institution into which proceeds of the Collateral or proceeds of loans or other extensions of credit under the Credit Agreement may be deposited from time to time;

(e) **Chattel Paper, Instruments, etc.**

All chattel paper, instruments, warehouse receipts, bills of lading and other documents of title, whether negotiable or non-negotiable, shares, stock, warrants, bonds, debentures, debenture stock, securities and other financial assets, now or hereafter owned by such Debtor;

(f) **Securities and Securities Accounts**

All securities and securities accounts of such Debtor and all of the credit balances, security entitlements and other financial assets and items or property standing to the credit of such Debtor from time to time in any securities accounts;

(g) **Intangibles and Other Intellectual Property**

All intangibles now or hereafter owned by such Debtor, including, without limitation, all contractual rights, goodwill, patents, trademarks, trade names, copyrights, industrial designs and other industrial or intellectual property or rights therein, including, without limitation, the intellectual property rights described in Schedule 3.22 of the Credit Agreement from time to time;

(h) **Books and Accounts, etc.**

With respect to the personal property described in paragraphs (a) to (g) above, inclusive, all books, accounts, invoices, deeds, documents, writings, letters, papers, security certificates and other records in any form evidencing or relating thereto and all contracts, securities, instruments and other rights and benefits in respect thereof, including, without limitation, computer programs, disks, tapes and related electronic data processing media and the rights of such Debtor to receive the same from third persons, which now are or may hereafter become vested in such Debtor;

(i) **Other Property**

The uncalled capital, money, rights, bills of exchange, negotiable and non-negotiable instruments and securities not otherwise described in paragraphs (a) to (h) above, inclusive;

(j) **Replacements, etc.**

With respect to the personal property described in paragraphs (a) to (i) above, inclusive, all substitutions and replacements thereof, increases, additions and accessions thereto and any interest of such Debtor therein;

(k) **Proceeds**

With respect to the personal property described in paragraphs (a) to (j) above, inclusive, personal property in any form or fixtures or crops derived directly or indirectly from any dealing with such property or that indemnifies or compensates for such property destroyed or damaged and proceeds of proceeds whether of the same type, class or kind as the original proceeds, including without limitation, all indemnities and insurance proceeds, expropriation proceeds, rents, income, fruits, revenues, issues and profits arising from, or connection with, such property and the present and continuing right to claim for, collect and receive any one and all of the said indemnities and

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insurance proceeds, expropriation proceeds, rents, income, fruits, revenues, issues and profits; and

(l) **Taxes, Assessments etc.**

All reimbursements of taxes, rates, assessments, levies, surtaxes and any other impositions which may be assessed on or payable in respect of any of the property described in paragraphs (a) to (k) above, inclusive.

1.2 **Definitions and Interpretation**

In this General Security Agreement (the **Security Agreement**):

- (a) Capitalized terms used herein and not otherwise defined herein shall have the meanings ascribed thereto in the Credit Agreement;
- (b) Terms used herein and defined in the PPSA shall have the same meanings as in the PPSA unless the context otherwise requires;
- (c) **Credit Agreement** means that certain credit agreement dated as of the date hereof and entered into by and among Nilex Inc. and Nilex USA Inc., as borrowers, the guarantors from time to time parties thereto, as guarantors, and Canadian Imperial Bank of Commerce, as lender, as may be amended, supplemented, revised, restated, replaced or otherwise modified from time to time (the **Credit Agreement**);
- (d) **Guarantee** means that certain guarantee dated as of the date hereof entered into by the Debtors, as guarantors, and the Lender, as the same may be amended, supplemented, revised, restated, replaced or otherwise modified from time to time;
- (e) **PPSA** has the meaning set forth in Section 1.1(c);
- (f) **STA** means the *Securities Transfer Act* (Alberta) or, to the extent applicable, similar legislation of any other jurisdiction, as such legislation may be amended from time to time;
- (g) The grant of the security interest herein provided for shall include, without limitation, a fixed mortgage, hypothecation, pledge, charge and assignment of the Collateral in favour of the Lender;
- (h) Any reference to Collateral shall, unless the context otherwise requires, refer to the Collateral or any part thereof;
- (i) The term **security interest** shall include, without limitation, a fixed mortgage, hypothecation, pledge, charge and assignment; and
- (j) The term **encumbrance** shall include, without limitation, a security interest, lien, claim, charge, deemed trust or encumbrance of any kind whatsoever.

1.3 **Leases**

The last day of the term of any lease or sub-lease, oral or written, or any agreement therefor, now held or hereafter acquired by a Debtor, shall be excepted from the security interest hereby granted and shall not form part of the Collateral, but each Debtor shall stand possessed of such one day remaining upon trust to assign and dispose of the same as the Lender or any assignee of the Lender in respect of such lease, sub-lease or agreement shall direct. If any such lease, sub-lease or agreement therefor

contains a provision which provides in effect that such lease, sub-lease or agreement may not be assigned, sub-leased, charged or encumbered without the leave, license, consent or approval of the lessor, the application of the security interest created hereby to any such lease, sub-lease or agreement shall be conditional upon such leave, license, consent or approval having been obtained.

1.4 Debtors Remain Liable

Notwithstanding anything herein to the contrary:

- (a) each of the Debtors shall remain liable under the contracts and agreements included in the Collateral to the extent set forth therein to perform all its duties and obligations thereunder to the same extent as if this Security Agreement had not been executed;
- (b) the exercise by the Lender of any of the rights or remedies hereunder shall not release any Debtor from any of its duties or obligations under the contracts and agreements included in the Collateral; and
- (c) the Lender shall not have any obligation or liability under the contracts and agreements included in the Collateral by reason of this Security Agreement, nor shall the Lender be obligated to perform any of the obligations or duties of a Debtor thereunder or to take any action to collect or enforce any claim for payment assigned hereunder.

1.5 Scope of Security Interest

- (a) To the extent that the creation of the security interest created hereby would constitute a breach or permit the acceleration or termination of any agreement, right, licence or permit of a Debtor which constitutes Collateral (each, a **Restricted Asset**), the security interest created hereunder shall not attach to the Restricted Asset, but each Debtor shall, subject to paragraph **Error! Reference source not found.** below, hold its interest in the Restricted Asset in trust for the Lender, provided that, until the security interest created hereby has become enforceable, such Debtor shall be entitled to deal with, receive the benefits of and receive and retain all proceeds arising under or in connection with the Restricted Asset.
- (b) The security interest created hereby shall not extend to consumer goods.



1.6 Attachment, Perfection, Possession and Control

- (a) Each of the Debtors acknowledges that (i) value has been given, (ii) it has rights in the Collateral or the power to transfer rights in the Collateral to the Lender (other than after-acquired Collateral) and (iii) it has not agreed to postpone the time of attachment of the security interest hereby created.
- (b) No Person, has any option, warrant, call, commitment, conversion, right of exchange or other agreement or any right or privilege (whether by law, pre-emptive or contractual) capable of becoming an option, warrant, right, call, commitment, conversion right, right of exchange or other agreement to acquire any right or interest in the Collateral.
- (c) Upon request from the Lender, acting reasonably, each of the Debtors shall promptly execute and deliver, from time to time, at its own expense, amendments to this Security Agreement and its schedules or additional Security Agreements or schedules as may be required by the Lender in order to preserve, protect and perfect its security interest in the Collateral.
- (d) Subject to the provisions of the Credit Agreement, if a Debtor acquires Collateral consisting of chattel paper, instruments or negotiable documents of title (collectively, **Negotiable Collateral**), such Debtor shall, immediately upon receipt thereof, deliver to the Lender the Negotiable Collateral and shall, at the request of the Lender (i) endorse the same for transfer in blank or as the Lender may direct, (ii) cause any transfer to be registered wherever, in the opinion of the Lender, such registration may be required or advisable, and (iii) deliver to the Lender any and all consents or other documents which may be necessary or desirable to transfer the Negotiable Collateral.

SECTION 2 - REPRESENTATIONS AND WARRANTIES

Each of the Debtors represents and warrants to and in favour of the Lender that all of the representations and warranties given by it in the Credit Agreement are true and accurate.

SECTION 3 - COVENANTS OF DEBTORS

Each of the Debtors covenants and agrees with the Lender that it shall comply with all covenants given by it in the Credit Agreement.

SECTION 4 - COLLECTION OF PROCEEDS

4.1 Payments to the Lender

Each of the Debtors shall:

- (a) collect and enforce payment of all Accounts Receivable in the ordinary course of business (except as provided for in Section 4.2 below) and shall dispose of and receive payment for all Inventory which is ordinarily disposed of in such Debtor's business;
- (b) upon the occurrence and during the continuance of an Event of Default, receive and hold in trust for the Lender, all payments on or instruments received in respect of the Collateral, all rights by way of suretyship or guarantee which such Debtor now has or may hereafter acquire to enforce payment of the Collateral and all rights in the nature of a security interest whereby such Debtor may satisfy any Collateral out of property, and all non-cash proceeds of any such collection, disposition or realization of any of the Collateral shall be subject to the security interest hereby created;

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- (c) upon the occurrence and during the continuance of an Event of Default, endorse to the Lender and forthwith deliver to it all such payments and instruments in the form received by such Debtor; and
- (d) upon the occurrence and during the continuance of an Event of Default, forthwith deliver to the Lender all property in such Debtor's possession or hereafter coming into its possession through enforcement of any such rights.

4.2 Account Debtors

Upon the occurrence and during the continuance of an Event of Default, the Lender may notify an account debtor or obligors under any Account Receivable of the assignment of the Account Receivable to the Lender and require such person to make payment to the Lender in respect of any of the Accounts Receivable and the Lender may hold all amounts acquired or received from any such account debtors or obligors, together with income on such amounts, as part of the Collateral and as security for the Obligations.

SECTION 5 - DEFAULT

5.1 Defaults

The Obligations secured by this Security Agreement shall be immediately due and payable in full and the security hereby constituted shall become enforceable upon the occurrence and during the continuance of an Event of Default.

SECTION 6 - REMEDIES ON DEFAULT

If the security hereby constituted becomes enforceable in accordance with Section 5.1, the Lender shall have, in addition to any other rights, remedies and powers which it may have at law, in equity or under the PPSA, the following rights, remedies and powers:

6.1 Power of Entry

Each of the Debtors shall forthwith upon demand assemble and deliver to the Lender possession of all of the Collateral at such place or places as may be specified by the Lender. The Lender may take such steps as it considers necessary or desirable to obtain possession of all or any part of the Collateral and, to that end, each of the Debtors agrees that the Lender, its servants or agents or Receiver (as defined below) may enter upon lands and premises where the Collateral may be found for the purpose of taking possession of and/or removing the Collateral or any part thereof. In the event of the Lender taking possession of the Collateral, or any part thereof, the Lender shall have the right to maintain the same upon the premises on which the Collateral may then be situate. The Lender may, in a reasonable manner, take such action or do such things as to render any Equipment usable.

6.2 Power of Sale

The Lender may sell, lease or otherwise dispose of all or any part of the Collateral, as a whole or in separate parcels, by public auction, private tender or by private contract, with or without notice, except as otherwise required by Applicable Law, with or without advertising and without any other formality, all of which are hereby waived by the each of the Debtors. Such sale, lease or disposition shall be on such terms and conditions as to credit and otherwise and as to upset or reserve bid or price as to the Lender, acting reasonably, may seem advantageous. If such sale, transfer or disposition is made on credit or part cash and part credit, the Lender need only credit against the Obligations the actual cash received at the time of the disposition. Any payments made pursuant to any credit granted at the time of the disposition shall be credited against the Obligations as they are received. The Lender may buy in or rescind or vary any contract for sale of all or any of the Collateral and may resell without being answerable for any loss

occasioned thereby. Any such sale, lease or disposition may take place whether or not the Lender has taken possession of the Collateral. The Lender may, before any such sale, lease or disposition, perform any commercially reasonable repair, processing or preparation for disposition and the amount so paid or expended shall be deemed advanced to a Debtor by the Lender, shall become part of the Obligations, shall bear interest at the highest rate per annum charged by the Lender on the Obligations or any part thereof and shall be secured by this Security Agreement.

6.3 Validity of Sale

No person dealing with the Lender or its servants or agents shall be concerned to inquire whether the security hereby constituted has become enforceable, whether the powers which the Lender is purporting to exercise have become exercisable, whether any money remains due on the security of the Collateral, as to the necessity or expedience of the stipulations and conditions subject to which any sale, lease or disposition shall be made, otherwise as to the propriety or regularity of any sale or any other dealing by the Lender with the Collateral or to see to the application of any money paid to the Lender. In the absence of fraud on the part of such persons, such dealings shall be deemed, so far as regards the safety and protection of such persons, to be within the powers hereby conferred and to be valid and effective accordingly.

6.4 Receiver-Manager

The Lender may, in addition to any other rights it may have, appoint by instrument in writing a receiver, interim receiver, or receiver and manager (all of which are herein called a **Receiver**) of all or any part of the Collateral or may institute proceedings in any court of competent jurisdiction for the appointment of such a Receiver. Any such Receiver is hereby given and shall have the same powers and rights and exclusions and limitations of liability as the Lender has under this Security Agreement, at law or in equity. In exercising any such powers, any such Receiver shall, to the extent permitted by law, act as and for all purposes shall be deemed to be the agent of a Debtor and the Lender shall not be responsible for any act or default of any such Receiver. The Lender may appoint one or more Receivers hereunder and may remove any such Receiver or Receivers and appoint another or others in his or their stead from time to time. Any Receiver so appointed may be an officer or employee of the Lender. A court need not appoint, ratify the appointment by the Lender of or otherwise supervise in any manner the actions of any Receiver. Upon a Debtor receiving notice from the Lender of the taking of possession of the Collateral or the appointment of a Receiver, all powers, functions, rights and privileges of each of the directors and officers of such Debtor with respect to the Collateral shall cease, unless specifically continued by the written consent of the Lender.

6.5 Carrying on Business

The Lender may carry on, or concur in the carrying on of, all or any part of the business or undertaking of a Debtor and may, to the exclusion of all others, including each of the Debtors, enter upon, occupy and use all or any of the premises, buildings, plant and undertaking of or occupied or used by such Debtor and may use all or any of the tools, machinery, equipment and intangibles of any of such Debtor for such time as the Lender sees fit, free of charge, to carry on the business of such Debtor and, if applicable, to manufacture or complete the manufacture of any Inventory and to pack and ship the finished product.

6.6 Dealing with Collateral

The Lender may seize, collect, realize, dispose of, enforce, release to third parties or otherwise deal with the Collateral or any part thereof in such manner, upon such terms and conditions and at such time or times as may seem to it advisable, all of which without notice to a Debtor except as otherwise required by any Applicable Law. The Lender may demand, sue for and receive any Accounts Receivable with or without notice to a Debtor, give such receipts, discharges and extensions of time and make such compromises in respect of any Accounts Receivable which may, in the Lender's absolute discretion, seem bad or doubtful. The Lender may charge on its own behalf and pay to others, sums for legitimate,

reasonable costs and expenses incurred including, without limitation, reasonable legal fees and expenses on a solicitor and his own client scale and reasonable Receivers' and accounting fees, in or in connection with seizing, collecting, realizing, disposing, enforcing or otherwise dealing with the Collateral and in connection with the protection and enforcement of the rights of the Lender hereunder, including, without limitation, in connection with advice with respect to any of the foregoing. The amount of such sums shall be deemed advanced to a Debtor by the Lender, shall become part of the Obligations, shall bear interest at the highest rate per annum charged by the Lender on the Obligations or any part thereof and shall be secured by this Security Agreement.

6.7 Retention of Collateral

Upon notice to a Debtor and subject to any obligation to dispose of any of the Collateral, as provided in the PPSA, the Lender may elect to retain all or any part of the Collateral in satisfaction of the Obligations or any of them.

6.8 Pay Encumbrances

The Lender may pay any obligations secured by any encumbrance that may exist or be threatened against the Collateral. In addition, the Lender may borrow money required for the maintenance, preservation or protection of the Collateral or for the carrying on of the business or undertaking of a Debtor and may grant further security interests in the Collateral in priority to the security interest created hereby as security for the money so borrowed. In every such case, the amounts so paid or borrowed together with costs, charges and expenses incurred in connection therewith shall be deemed to have been advanced to a Debtor by the Lender, shall become part of the Obligations, shall bear interest at the highest rate per annum charged by the Lender on the Obligations or any part thereof and shall be secured by this Security Agreement.

6.9 Application of Payments Against Obligations

Any and all payments made in respect of the Obligations from time to time and moneys realized on the Collateral shall be applied in accordance with Section 7.2(d) of the Credit Agreement.

6.10 Set-Off

The Obligations will be paid by the Debtors without regard to any equities between the Debtors and the Lender or any right of set-off or cross-claim. Any indebtedness owing by the Lender to a Debtor may be set off and applied by the Lender against the Obligations at any time or from time to time either before or after maturity, without demand upon or notice to anyone.

6.11 Deficiency

If the proceeds of the realization of the Collateral are insufficient to repay the Lender all moneys due to it, the Debtors shall forthwith pay or cause to be paid to the Lender such deficiency.

6.12 Lender Not Liable

Except as otherwise provided in this Security Agreement, the Lender shall not be liable or accountable for any failure to seize, collect, realize, dispose of, enforce or otherwise deal with the Collateral, shall not be bound to institute proceedings for any such purposes or for the purpose of preserving any rights of the Lender, the Debtors or any other Person, firm or corporation in respect of the Collateral and shall not be liable or responsible for any loss, cost or damage whatsoever which may arise in respect of any such failure, other than as a result of the gross negligence or willful misconduct of the Lender or any of its officers, servants, agents, solicitors, attorneys or Receivers. Except as otherwise provided in this Security Agreement, neither the Lender nor its officers, servants, agents or Receivers shall be liable by reason of any entry into possession of the Collateral or any part thereof, to account as a

- 10 -

mortgagee in possession, for anything except actual receipts, for any loss on realization, for any act or omission for which a mortgagee in possession might be liable, for any negligence in the carrying on or occupation of the business or undertaking of a Debtor as provided in Section 6.5 above or for any loss, cost, damage or expense whatsoever which may arise in respect of any such actions, omissions or negligence, in each case, except as a result of the gross negligence or willful misconduct of any such person.

6.13 Extensions of Time

The Lender may grant renewals, extensions of time and other indulgences, take and give up securities, accept compositions, grant releases and discharges, perfect or fail to perfect any securities, release any part of the Collateral to third parties and otherwise deal or fail to deal with the Debtors, debtors of the Debtors, guarantors, sureties and others and with the Collateral and other securities as the Lender may see fit, all without prejudice to the liability of the Debtors to the Lender or the Lender's rights and powers under this Security Agreement.

6.14 Rights in Addition

The rights and powers conferred by this Section 6 are in supplement of and in addition to and not in substitution for any other rights or powers the Lender may have from time to time under this Security Agreement or under Applicable Law. The Lender may proceed by way of any action, suit, remedy or other proceeding at law or in equity and no such remedy for the enforcement of the rights of the Lender shall be exclusive of or dependent on any other such remedy. Any one or more of such remedies may from time to time be exercised separately or in combination.

SECTION 7 - DEALING WITH COLLATERAL BY THE DEBTORS

7.1 Sale of Inventory

So long as no Event of Default is continuing, each of the Debtors may, in the ordinary course of its business and on customary trade terms, lease or sell items of Inventory, so that the purchaser thereof takes title clear of the security interest hereby created. If such sale or lease results in an Account Receivable, such Account Receivable shall be subject to the security interest hereby created.

SECTION 8 - GENERAL

8.1 Security in Addition

The security hereby constituted is not in substitution for any other security for the Obligations or for any other agreement between the parties creating a security interest in all or part of the Collateral, whether heretofore or hereafter made, and such security and such agreements shall be deemed to be continued and not affected hereby unless expressly provided to the contrary in writing and signed by the Lender and the Debtors. The taking of any action or proceedings or refraining from so doing, or any other dealing, with any other security for the Obligations or any part thereof, shall not release or affect the security interest created by this Security Agreement and the taking of the security interest hereby created or any proceedings hereunder for the realization of the security interest hereby created shall not release or affect any other security held by the Lender for the repayment of or performance of the Obligations.

8.2 Waiver

Any waiver of a breach by a Debtor of any of the terms or provisions of this Security Agreement or of an Event of Default must be in writing to be effective against and bind the Lender. No such waiver by the Lender shall extend to or be taken in any manner to affect any subsequent breach or Event of Default or the rights of the Lender arising therefrom.

8.3 Further Assurances

Each of the Debtors shall at all times do, execute, acknowledge and deliver or cause to be done, executed, acknowledged or delivered all and every such further acts, deeds, conveyances, instruments, transfers, assignments, security agreements and assurances as the Lender may require, acting reasonably, in order to give effect to the provisions and purposes of this Security Agreement, including, without limitation, in respect of the Lender's enforcement of the security and its realization on the Collateral, and for the better granting, transferring, assigning, charging, setting over, assuring, confirming and/or perfecting the security interest of the Lender in the Collateral pursuant to this Security Agreement through registration, control or otherwise and for obtaining control of any Collateral that consists of securities, securities entitlements or future contracts in the manner provided under the PPSA or the STA, as applicable. Each of the Debtors hereby constitutes and appoints, effective upon the occurrence and during the continuance of an Event of Default, the manager or acting manager of the Lender at its above address, or any Receiver appointed by a court or the Lender as provided herein, the true and lawful attorney of such Debtor irrevocably with full power of substitution to do, make and execute all such assignments, documents, acts, matters or things which such Debtor has herein agreed to do, make or execute or which may be required by the Lender or a Receiver to give effect to this Security Agreement, with the right to use the name of such Debtor whenever and wherever it may be deemed necessary or expedient. Such power of attorney is coupled with an interest. Each of the Debtors hereby authorizes the Lender to file such proofs of claim and other documents as may be necessary or advisable in order to prove its claim in any bankruptcy, proposed winding-up or other proceeding relating to such Debtor.

8.4 No Merger

Neither the taking of any judgment nor the exercise of any power of seizure or sale shall operate to extinguish the liability of a Debtor to make payment of or satisfy the Obligations. The acceptance of any payment or alternate security shall not constitute or create any novation and the taking of a judgment or judgments under any of the covenants herein contained shall not operate as a merger of such covenants.

8.5 Continuing Security Interest and Discharge

This Security Agreement shall create a continuing security interest in the Collateral and shall remain in full force and effect until discharge of the security interest created hereby in accordance with Section 8.11 hereof, notwithstanding any dealing between the Lender and a Debtor or any Guarantor in respect of the Obligations or any release, exchange, non-perfection, amendment, waiver, consent or departure from or in respect of any or all of the terms or provisions of any security held for the Obligations.

8.6 Governing Law

This Security Agreement shall be governed by and construed in accordance with the laws of the Laws of the Province of Alberta and the federal laws of Canada applicable therein.

8.7 Security Interest Effective Immediately

Neither the execution nor registration of this Security Agreement nor any partial advances by the Lender shall bind the Lender to advance any other amounts to the Debtors. The parties intend the security interest created hereby to attach and take effect forthwith upon execution of this Security Agreement by the Debtors and each of the Debtors acknowledges that it has received a copy of this Security Agreement.

8.8 Invalidity

In the event that any term or provision of this Security Agreement shall, to any extent, be invalid or unenforceable, the remaining terms and provisions of this Security Agreement shall be unaffected thereby and shall be valid and enforceable to the fullest extent permitted by law.

8.9 Binding Effect

All rights of the Lender hereunder shall enure to the benefit of its successors and assigns and all obligations of a Debtor hereunder shall bind such Debtor and its successors and assigns.

8.10 Paramountcy

In the event that any provisions of this Security Agreement contradict, are inconsistent with or are otherwise incapable of being construed in harmony with the provisions (including any rights, remedies and covenants therein) of the Credit Agreement, the provisions of the Credit Agreement shall take precedence over those contained in this Security Agreement.

8.11 Discharge

The Security Interest will be discharged upon, but only upon, (a) full and indefeasible payment and performance of the Obligations, (b) the Lender having no obligations under the Credit Agreement and the other Loan Documents, and (c) at the request and expense of the Debtors. In that connection, the Lender will execute and deliver to each of the Debtors such releases and discharges as the Debtors may reasonably require.

8.12 Notices

Any notices, directions or other communications provided for in this Security Agreement shall be in writing and given in accordance with the provisions of the Credit Agreement.

8.13 Headings, etc.

The division of this Security Agreement into Sections and the insertion of headings are for convenient reference only and are not to affect its interpretation.

8.14 Counterparts

This Security Agreement may be executed electronically and in any number of counterparts, each of which when executed and delivered is an original but all of which taken together constitute one and the same instrument, any party may execute this Security Agreement by signing any counterpart of it and may communicate such signing by facsimile or otherwise.

8.15 Copies of Agreement and Financing Statements

Each of the Debtors acknowledges receipt of a copy of this Security Agreement and waives the right to receive a copy of all present and future financing statements and financing change statements filed in connection with the security interests created hereby and all related verification statements.

8.16 Language

The parties hereto acknowledge that they have requested and are satisfied that the foregoing, as well as all notices, actions and legal proceedings be drawn up in the English language. *Les parties à cette convention reconnaissent qu'elles ont exigé que ce qui précède ainsi que tous avis, actions et procédures légales soient rédigés et exécutés en anglais et s'en déclarent satisfaites.*


- 13 -

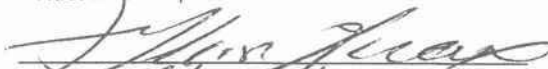
[Signature page follows]

A handwritten mark or signature in the bottom right corner, consisting of a stylized, cursive letter 'B'.


IN WITNESS WHEREOF the each of the Debtors has duly executed this Security Agreement as of the date first above-written.


NILEX INC.

Per: 
Name: Jeff Allen
Title: Director, Finance

Per: 
Name: Glenn Keroux
Title: President & CEO

NILEX USA INC.

Per: 
Name: Jeff Allen
Title: Director, Finance

Per: 
Name: Glenn Keroux
Title: President & CEO

CANADIAN IMPERIAL BANK OF COMMERCE, as Lender

Per: _____
Name:
Title:

Per: _____
Name:
Title:



IN WITNESS WHEREOF the each of the Debtors has duly executed this Security Agreement as of the date first above-written.

NILEX INC.

Per: _____

Name:

Title:

Per: _____

Name:

Title:

NILEX USA INC.

Per: _____

Name:

Title:

Per: _____

Name:

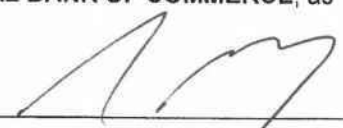
Title:

CANADIAN IMPERIAL BANK OF COMMERCE, as Lender

Per: _____

Name:

Title:

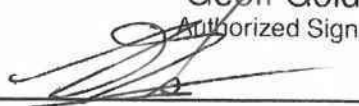


Geoff Golding
Authorized Signatory

Per: _____

Name:

Title:



Anthony Tsuen
Authorized Signatory



- 21 -

This is Exhibit "F" referred to in the Affidavit of Jeff Allen sworn before me this 31st day of October, 2022.

A Commissioner for Oaths in and for Alberta

LB

Search ID #: Z15447851

Transmitting Party

BLAKE CASSELS & GRAYDON LLP

3500 -855-2ND STREET S.W.
CALGARY, AB T2P4J8

Party Code: 50038397

Phone #: 403 663 2233

Reference #: 99580/8 JMRD

Search ID #: Z15447851

Date of Search: 2022-Sep-27

Time of Search: 12:51:15

Business Debtor Search For:

NILEX INC.

Exact Result(s) Only Found

NOTE:

A complete Search may result in a Report of Exact and Inexact Matches.
Be sure to read the reports carefully.

*AB*

Search ID #: Z15447851

Business Debtor Search For:

NILEX INC.

Search ID #: Z15447851

Date of Search: 2022-Sep-27

Time of Search: 12:51:15

Registration Number: 10010720861

Registration Date: 2010-Jan-07

Registration Type: SECURITY AGREEMENT

Registration Status: Current

Expiry Date: 2025-Jan-07 23:59:59

Exact Match on:

Debtor

No: 4

Amendments to Registration

11092822775	Amendment	2011-Sep-28
12031623745	Amendment	2012-Mar-16
12112105737	Amendment	2012-Nov-21
13042927211	Amendment	2013-Apr-29
13100916707	Amendment	2013-Oct-09
14011617040	Amendment	2014-Jan-16
14073032538	Amendment	2014-Jul-30
14111024332	Renewal	2014-Nov-10
15010613485	Amendment	2015-Jan-06
16090908186	Amendment	2016-Sep-09

Debtor(s)**Block**

1 NILEX INC.
9304 - 39 AVENUE
EDMONTON, AB T6E 6L8

Status

Deleted by
14073032538

Block

2 NILEX CONSTRUCTION
9304 - 39 AVENUE
EDMONTON, AB T6E 6L8

Status

Deleted by
11092822775

Search ID #: Z15447851

Block

3 NILEX CONSTRUCTION INC.
9304 - 39 AVENUE NW
EDMONTON, AB T6E 6L8

Status

Deleted by
14073032538

Block

4 NILEX INC.
6810 - 8 STREET NW
EDMONTON, AB T6P 0C5

Status

Current by
14073032538

Block

5 NILEX CONSTRUCTION INC.
6810 - 8 STREET NW
EDMONTON, AB T6P 0C5

Status

Current by
14073032538

Secured Party / Parties**Block**

1 TRANSPORTACTION LEASE SYSTEMS INC
51 CONSTELLATION COURT
TORONTO, ON M9W 1K4

Status

Deleted by
14011617040

Block

2 ELEMENT FLEET MANAGEMENT INC.
900 - 4 ROBERT SPECK PARKWAY
MISSISSAUGA, ON L4Z 1S1

Status

Current by
14011617040

Collateral: Serial Number Goods

Block	Serial Number	Year	Make and Model	Category	Status
1	1FTWW31R89EA61328	2009	Ford F350	MV - Motor Vehicle	Deleted By 16090908186
2	1FTWW31R79EA30393	2009	Ford F350	MV - Motor Vehicle	Deleted By 13100916707
3	1FTWW3BR9AEA48770	2010	Ford F350	MV - Motor Vehicle	Deleted By 16090908186
4	1FTFW1EV7AFA88689	2010	Ford F150	MV - Motor Vehicle	Deleted By 12112105737
5	1GC4KZBG8AF142086	2010	Chevrolet Silverado 3500	MV - Motor Vehicle	Deleted By 13042927211
6	1GC4KZBGXAF142378	2010	Chevrolet Silverado 3500	MV - Motor Vehicle	Deleted By 15010613485
7	1GC4KXBG7AF131651	2010	Chevrolet Silverado	MV - Motor Vehicle	Deleted By 16090908186

Search ID #: Z15447851

8	1GC4K0BG0AF154860	2010	Chevrolet Silverado 3500	MV - Motor Vehicle	Deleted By 12031623745
9	3TMMU4FN2BM026129	2011	Toyota Tacoma	MV - Motor Vehicle	Deleted By 16090908186

Collateral: General

<u>Block</u>	<u>Description</u>	<u>Status</u>
1	All present and future vehicles of whatever year, make or model,	Current
2	including but not limited to, passenger automobiles, equipment,	Current
3	trucks and all attached equipment, trailers, portable buildings	Current
4	and forklifts that may be provided by the secured party to the	Current
5	debtor pursuant to a motor vehicle lease agreement made between	Current
6	the parties, and any proceeds thereof.	Current



Search ID #: Z15447851

Business Debtor Search For:

NILEX INC.

Search ID #: Z15447851

Date of Search: 2022-Sep-27

Time of Search: 12:51:15

Registration Number: 13042623420

Registration Date: 2013-Apr-26

Registration Type: LAND CHARGE

Registration Status: Current

Registration Term: Infinity

Exact Match on:

Debtor

No: 1

Debtor(s)**Block**

1 NILEX INC.
9304 39 AVENUE
EDMONTON, AB T6E 6L8

Status
Current

Secured Party / Parties**Block**

1 PEF 2010 NILEX INVESTMENT LIMITED PARTNERSHIP
885 WEST GEORGIA STREET, SUITE 1020
VANCOUVER, BC V6C 3E8

Status
Current

Block

2 FCPI NILEX GP INC.
885 WEST GEORGIA STREET, SUITE 1020
VANCOUVER, BC V6C 3E8

Status
Current

Search ID #: Z15447851

Business Debtor Search For:

NILEX INC.

Search ID #: Z15447851

Date of Search: 2022-Sep-27

Time of Search: 12:51:15

Registration Number: 13042623460

Registration Date: 2013-Apr-26

Registration Type: SECURITY AGREEMENT

Registration Status: Current

Expiry Date: 2023-Apr-26 23:59:59

Exact Match on:

Debtor

No: 1

Amendments to Registration

17061620004

Renewal

2017-Jun-16

Debtor(s)**Block**

1 NILEX INC.
9304 39 AVENUE
EDMONTON, AB T6E 6L8

Status
Current

Secured Party / Parties**Block**

1 PEF 2010 NILEX INVESTMENT LIMITED PARTNERSHIP
885 WEST GEORGIA STREET, SUITE 1020
VANCOUVER, BC V6C 3E8

Status
Current

Block

2 FCPI NILEX GP INC.
885 WEST GEORGIA STREET, SUITE 1020
VANCOUVER, BC V6C 3E8

Status
Current

Collateral: General**Block**

1 All present and after-acquired personal property and proceeds.

Status
Current

Search ID #: Z15447851

Business Debtor Search For:

NILEX INC.

Search ID #: Z15447851

Date of Search: 2022-Sep-27

Time of Search: 12:51:15

Registration Number: 18041624228

Registration Date: 2018-Apr-16

Registration Type: SECURITY AGREEMENT

Registration Status: Current

Expiry Date: 2023-Apr-16 23:59:59

Exact Match on:

Debtor

No: 1

Debtor(s)**Block****Status**

1 NILEX INC.
6810 - 8TH STREET NW
EDMONTON, AB T6P0C5

Current

Secured Party / Parties**Block****Status**

1 FOSS NATIONAL LEASING LTD.
801-125 COMMERCE VALLEY DR. W.
MARKHAM, ON L3T7W4

Current

Collateral: Serial Number Goods

<u>Block</u>	<u>Serial Number</u>	<u>Year</u>	<u>Make and Model</u>	<u>Category</u>	<u>Status</u>
1	1C6RR7LG6JS257210	2018	DODGE 1500 SLT 4X4 CREW C	MV - Motor Vehicle	Current

Collateral: General

<u>Block</u>	<u>Description</u>	<u>Status</u>
1	AMOUNT SECURED \$40,176.00	Current

Search ID #: Z15447851

Business Debtor Search For:

NILEX INC.

Search ID #: Z15447851

Date of Search: 2022-Sep-27

Time of Search: 12:51:15

Registration Number: 18041624236

Registration Date: 2018-Apr-16

Registration Type: SECURITY AGREEMENT

Registration Status: Current

Expiry Date: 2023-Apr-16 23:59:59

Exact Match on:

Debtor

No: 1

Debtor(s)**Block****Status**

1 NILEX INC.
6810 - 8TH STREET NW
EDMONTON, AB T6P0C5

Current

Secured Party / Parties**Block****Status**

1 FOSS NATIONAL LEASING LTD.
801-125 COMMERCE VALLEY DR. W.
MARKHAM, ON L3T7W4

Current

Collateral: Serial Number Goods

<u>Block</u>	<u>Serial Number</u>	<u>Year</u>	<u>Make and Model</u>	<u>Category</u>	<u>Status</u>
1	1C6RR7LG8JS257211	2018	DODGE 1500 SLT 4X4 CREW C	MV - Motor Vehicle	Current

Collateral: General

<u>Block</u>	<u>Description</u>	<u>Status</u>
1	AMOUNT SECURED \$40,176.00	Current

Search ID #: Z15447851

Business Debtor Search For:

NILEX INC.

Search ID #: Z15447851

Date of Search: 2022-Sep-27

Time of Search: 12:51:15

Registration Number: 18041624253

Registration Date: 2018-Apr-16

Registration Type: SECURITY AGREEMENT

Registration Status: Current

Expiry Date: 2023-Apr-16 23:59:59

Exact Match on: Debtor No: 1

Debtor(s)**Block****Status**

1 NILEX INC.
6810 - 8TH STREET NW
EDMONTON, AB T6P0C5

Current

Secured Party / Parties**Block****Status**

1 FOSS NATIONAL LEASING LTD.
801-125 COMMERCE VALLEY DR. W.
MARKHAM, ON L3T7W4

Current

Collateral: Serial Number Goods

<u>Block</u>	<u>Serial Number</u>	<u>Year</u>	<u>Make and Model</u>	<u>Category</u>	<u>Status</u>
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Collateral: General

<u>Block</u>	<u>Description</u>	<u>Status</u>
1	AMOUNT SECURED \$40,176.00	Current

Search ID #: Z15447851

Business Debtor Search For:

NILEX INC.

Search ID #: Z15447851

Date of Search: 2022-Sep-27

Time of Search: 12:51:15

Registration Number: 18041624384

Registration Date: 2018-Apr-16

Registration Type: SECURITY AGREEMENT

Registration Status: Current

Expiry Date: 2023-Apr-16 23:59:59

Exact Match on: Debtor No: 1

Debtor(s)**Block****Status**
Current

1 NILEX INC.
6810 - 8TH STREET NW
EDMONTON, AB T6P0C5

Secured Party / Parties**Block****Status**
Current

1 FOSS NATIONAL LEASING LTD.
801-125 COMMERCE VALLEY DR. W.
MARKHAM, ON L3T7W4

Collateral: Serial Number Goods

<u>Block</u>	<u>Serial Number</u>	<u>Year</u>	<u>Make and Model</u>	<u>Category</u>	<u>Status</u>
1	1C6RR7LG8JS251120	2018	DODGE 1500 SLT 4X4 CREW C	MV - Motor Vehicle	Current

Collateral: General

<u>Block</u>	<u>Description</u>	<u>Status</u>
1	AMOUNT SECURED \$40,176.00	Current

Search ID #: Z15447851

Business Debtor Search For:

NILEX INC.

Search ID #: Z15447851

Date of Search: 2022-Sep-27

Time of Search: 12:51:15

Registration Number: 18041624393

Registration Date: 2018-Apr-16

Registration Type: SECURITY AGREEMENT

Registration Status: Current

Expiry Date: 2023-Apr-16 23:59:59

Exact Match on: Debtor No: 1

Debtor(s)**Block****Status**
Current

1 NILEX INC.
6810 - 8TH STREET NW
EDMONTON, AB T6P0C5

Secured Party / Parties**Block****Status**
Current

1 FOSS NATIONAL LEASING LTD.
801-125 COMMERCE VALLEY DR. W.
MARKHAM, ON L3T7W4

Collateral: Serial Number Goods

<u>Block</u>	<u>Serial Number</u>	<u>Year</u>	<u>Make and Model</u>	<u>Category</u>	<u>Status</u>
1	1C6RR7LGXJS257338	2018	DODGE 1500 SLT 4X4 CREW C	MV - Motor Vehicle	Current

Collateral: General

<u>Block</u>	<u>Description</u>	<u>Status</u>
1	AMOUNT SECURED \$39,448.00	Current



Search ID #: Z15447851

Business Debtor Search For:

NILEX INC.

Search ID #: Z15447851

Date of Search: 2022-Sep-27

Time of Search: 12:51:15

Registration Number: 18052825681

Registration Date: 2018-May-28

Registration Type: SECURITY AGREEMENT

Registration Status: Current

Expiry Date: 2025-May-28 23:59:59

Exact Match on:

Debtor

No: 1

Debtor(s)**Block**

1 NILEX INC.
6810 8TH STREET NW
EDMONTON, AB T6P 0C5

Status
Current

Block

2 NILEX USA INC.
6810 8TH STREET NW
EDMONTON, AB T6P 0C5

Status
Current

Secured Party / Parties**Block**

1 CANADIAN IMPERIAL BANK OF COMMERCE
199 BAY STREET, 4TH FLOOR
TORONTO, ON M5L 1A2

Status
Current

Collateral: General**Block**

1 All of the Debtors' present and after-acquired personal property.

Status
Current

Search ID #: Z15447851

Business Debtor Search For:

NILEX INC.

Search ID #: Z15447851

Date of Search: 2022-Sep-27

Time of Search: 12:51:15

Registration Number: 19012814797

Registration Date: 2019-Jan-28

Registration Type: SECURITY AGREEMENT

Registration Status: Current

Expiry Date: 2024-Jan-28 23:59:59

Exact Match on:

Debtor

No: 1

Debtor(s)**Block****Status**

1 NILEX INC.
6810 - 8TH STREET NW
EDMONTON, AB T6P0C5

Current

Secured Party / Parties**Block****Status**

1 FOSS NATIONAL LEASING LTD.
801-125 COMMERCE VALLEY DR. W.
MARKHAM, ON L3T7W4

Current

Collateral: Serial Number Goods

<u>Block</u>	<u>Serial Number</u>	<u>Year</u>	<u>Make and Model</u>	<u>Category</u>	<u>Status</u>
1	1C6RRFFG6KN739097	2019	RAM 1500 BIG HORN 4	MV - Motor Vehicle	Current

Search ID #: Z15447851

Business Debtor Search For:

NILEX INC.

Search ID #: Z15447851

Date of Search: 2022-Sep-27

Time of Search: 12:51:15

Registration Number: 19032103476

Registration Date: 2019-Mar-21

Registration Type: SECURITY AGREEMENT

Registration Status: Current

Expiry Date: 2024-Mar-21 23:59:59

Exact Match on:

Debtor

No: 1

Debtor(s)**Block****Status**

1 NILEX INC.
6810 - 8TH STREET NW
EDMONTON, AB T6P0C5

Current

Secured Party / Parties**Block****Status**

1 FOSS NATIONAL LEASING LTD.
801-125 COMMERCE VALLEY DR. W.
MARKHAM, ON L3T7W4

Current

Collateral: Serial Number Goods

<u>Block</u>	<u>Serial Number</u>	<u>Year</u>	<u>Make and Model</u>	<u>Category</u>	<u>Status</u>
1	1C6RRFFG5KN767473	2019	RAM 1500 BIG HORN 4	MV - Motor Vehicle	Current

Search ID #: Z15447851

Business Debtor Search For:

NILEX INC.

Search ID #: Z15447851

Date of Search: 2022-Sep-27

Time of Search: 12:51:15

Registration Number: 19070919294

Registration Date: 2019-Jul-09

Registration Type: SECURITY AGREEMENT

Registration Status: Current

Expiry Date: 2024-Jul-09 23:59:59

Exact Match on:

Debtor

No: 1

Debtor(s)**Block****Status**

1 NILEX INC.
6810 - 8TH STREET NW
EDMONTON, AB T6P0C5

Current

Secured Party / Parties**Block****Status**

1 FOSS NATIONAL LEASING LTD.
801-125 COMMERCE VALLEY DR. W.
MARKHAM, ON L3T7W4

Current

Collateral: Serial Number Goods

<u>Block</u>	<u>Serial Number</u>	<u>Year</u>	<u>Make and Model</u>	<u>Category</u>	<u>Status</u>
1	3C63R3HL6KG558900	2019	DODGE 3500 BIG HORN	MV - Motor Vehicle	Current

Search ID #: Z15447851

Business Debtor Search For:

NILEX INC.

Search ID #: Z15447851

Date of Search: 2022-Sep-27

Time of Search: 12:51:15

Registration Number: 19082618002

Registration Date: 2019-Aug-26

Registration Type: SECURITY AGREEMENT

Registration Status: Current

Expiry Date: 2024-Aug-26 23:59:59

Exact Match on:

Debtor

No: 1

Debtor(s)**Block****Status**

1 NILEX INC.
6810 - 8TH STREET NW
EDMONTON, AB T6P0C5

Current

Secured Party / Parties**Block****Status**

1 FOSS NATIONAL LEASING LTD.
801-125 COMMERCE VALLEY DR. W.
MARKHAM, ON L3T7W4

Current

Collateral: Serial Number Goods

<u>Block</u>	<u>Serial Number</u>	<u>Year</u>	<u>Make and Model</u>	<u>Category</u>	<u>Status</u>
1	3C63R3HL2KG586709	2019	DODGE 3500 BIG HORN	MV - Motor Vehicle	Current

Search ID #: Z15447851

Business Debtor Search For:

NILEX INC.

Search ID #: Z15447851

Date of Search: 2022-Sep-27

Time of Search: 12:51:15

Registration Number: 20072920394

Registration Date: 2020-Jul-29

Registration Type: SECURITY AGREEMENT

Registration Status: Current

Expiry Date: 2025-Jul-29 23:59:59

Exact Match on:

Debtor

No: 1

Debtor(s)**Block****Status**

1 NILEX INC.
6810 - 8TH STREET NW
EDMONTON, AB T6P0C5

Current

Secured Party / Parties**Block****Status**

1 FOSS NATIONAL LEASING LTD.
801-125 COMMERCE VALLEY DR. W.
MARKHAM, ON L3T7W4
Email: ppsaregistrations@fossnational.com

Current

Collateral: Serial Number Goods

<u>Block</u>	<u>Serial Number</u>	<u>Year</u>	<u>Make and Model</u>	<u>Category</u>	<u>Status</u>
1	1C6SRFFT6LN341405	2020	RAM 1500 BIG HORN	MV - Motor Vehicle	Current

Search ID #: Z15447851

Business Debtor Search For:

NILEX INC.

Search ID #: Z15447851

Date of Search: 2022-Sep-27

Time of Search: 12:51:15

Registration Number: 20073117233

Registration Date: 2020-Jul-31

Registration Type: SECURITY AGREEMENT

Registration Status: Current

Expiry Date: 2025-Jul-31 23:59:59

Exact Match on:

Debtor

No: 1

Debtor(s)**Block****Status**

1 NILEX INC.
6810 - 8TH STREET NW
EDMONTON, AB T6P0C5

Current

Secured Party / Parties**Block****Status**

1 FOSS NATIONAL LEASING LTD.
801-125 COMMERCE VALLEY DR. W.
MARKHAM, ON L3T7W4
Email: ppsaregistrations@fossnational.com

Current

Collateral: Serial Number Goods

<u>Block</u>	<u>Serial Number</u>	<u>Year</u>	<u>Make and Model</u>	<u>Category</u>	<u>Status</u>
1	3C6UR5DJ9LG192193	2020	DODGE 2500 BIG HORN	MV - Motor Vehicle	Current

Search ID #: Z15447851

Business Debtor Search For:

NILEX INC.

Search ID #: Z15447851

Date of Search: 2022-Sep-27

Time of Search: 12:51:15

Registration Number: 21091517352

Registration Date: 2021-Sep-15

Registration Type: SECURITY AGREEMENT

Registration Status: Current

Expiry Date: 2026-Sep-15 23:59:59

Exact Match on:

Debtor

No: 1

Debtor(s)**Block****Status**

1 NILEX INC.
6810 - 8TH STREET NW
EDMONTON, AB T6P0C5

Current

Secured Party / Parties**Block****Status**

1 FOSS NATIONAL LEASING LTD.
801-125 COMMERCE VALLEY DR. W.
MARKHAM, ON L3T7W4
Email: ppsaregistrations@fossnational.com

Current

Collateral: Serial Number Goods

<u>Block</u>	<u>Serial Number</u>	<u>Year</u>	<u>Make and Model</u>	<u>Category</u>	<u>Status</u>
1	3C63R3HL7MG692057	2021	DODGE 3500 BIG HORN	MV - Motor Vehicle	Current

Search ID #: Z15447851

Business Debtor Search For:

NILEX INC.

Search ID #: Z15447851

Date of Search: 2022-Sep-27

Time of Search: 12:51:15

Registration Number: 21091517385

Registration Date: 2021-Sep-15

Registration Type: SECURITY AGREEMENT

Registration Status: Current

Expiry Date: 2026-Sep-15 23:59:59

Exact Match on: Debtor No: 1

Debtor(s)**Block**

1 NILEX INC.
6810 - 8TH STREET NW
EDMONTON, AB T6P0C5

Status
Current

Secured Party / Parties**Block**

1 FOSS NATIONAL LEASING LTD.
801-125 COMMERCE VALLEY DR. W.
MARKHAM, ON L3T7W4
Email: ppsaregistrations@fossnational.com

Status
Current

Collateral: Serial Number Goods

<u>Block</u>	<u>Serial Number</u>	<u>Year</u>	<u>Make and Model</u>	<u>Category</u>	<u>Status</u>
1	3C63R3HL0MG647252	2021	DODGE 3500 BIG HORN	MV - Motor Vehicle	Current



Search ID #: Z15447851

Business Debtor Search For:

NILEX INC.

Search ID #: Z15447851

Date of Search: 2022-Sep-27

Time of Search: 12:51:15

Registration Number: 21092816779

Registration Date: 2021-Sep-28

Registration Type: SECURITY AGREEMENT

Registration Status: Current

Expiry Date: 2026-Sep-28 23:59:59

Exact Match on:

Debtor

No: 1

Debtor(s)**Block****Status**

1 NILEX INC.
6810 - 8TH STREET NW
EDMONTON, AB T6P0C5

Current

Secured Party / Parties**Block****Status**

1 FOSS NATIONAL LEASING LTD.
801-125 COMMERCE VALLEY DR. W.
MARKHAM, ON L3T7W4
Email: ppsaregistrations@fossnational.com

Current

Collateral: Serial Number Goods

<u>Block</u>	<u>Serial Number</u>	<u>Year</u>	<u>Make and Model</u>	<u>Category</u>	<u>Status</u>
1	3C63R3HL5MG692056	2021	DODGE 3500 BIG HORN	MV - Motor Vehicle	Current

Search ID #: Z15447851

Business Debtor Search For:

NILEX INC.

Search ID #: Z15447851

Date of Search: 2022-Sep-27

Time of Search: 12:51:15

Registration Number: 22060620459

Registration Type: WRIT OF ENFORCEMENT

Registration Date: 2022-Jun-06

Registration Status: Current

Expiry Date: 2024-Jun-06 23:59:59

Issued in Edmonton Judicial Centre

Court File Number is 2203 04447

Judgment Date is 2022-Jun-02

This Writ was issued on 2022-Jun-03

Type of Judgment is Other

Original Judgment Amount: \$636,843.26

Costs Are: \$2,624.00

Post Judgment Interest: \$0.00

Current Amount Owing: \$639,467.26

Exact Match on:

Debtor

No: 1

Amendments to Registration

22072706067

Amendment

2022-Jul-27

Solicitor / Agent

MILLER THOMSON LLP
2700, 10155 102 STREET
EDMONTON, AB T5J 4G8

Phone #: 780 429 9773

Fax #: 780 424 5866

Reference #: 0240854.0001

Email: BHOSKING@MILLERTHOMSON.COM

Debtor(s)**Block**

1

NILEX INC.
2500, 855 2 STREET SW
CALGARY, AB T2P 4J8

Status
Current

Search ID #: Z15447851

Creditor(s)**Block****Status**

Current

1 WILSON, IAN
C/O 2700, 10155 102 STREET
EDMONTON, AB T5J 4G8
Email: BHOSKING@MILLERTHOMSON.COM

Collateral: Serial Number Goods

<u>Block</u>	<u>Serial Number</u>	<u>Year</u>	<u>Make and Model</u>	<u>Category</u>	<u>Status</u>
1	1C6RRFFG6KN739097	2019	Ram 1500 BIG HORN 4	MV - Motor Vehicle	Current By 22072706067
2	1C6RRFFG5KN767473	2019	Ram 1500 BIG HORN 4	MV - Motor Vehicle	Current By 22072706067
3	3C63R3HL6KG558900	2019	Dodge 3500 BIG HORN	MV - Motor Vehicle	Current By 22072706067
4	3C63R3HL2KG586709	2019	Dodge 3500 BIG HORN	MV - Motor Vehicle	Current By 22072706067
5	1C6SRFFT6LN341405	2020	Ram 1500 BIG HORN	MV - Motor Vehicle	Current By 22072706067
6	3C6UR5DJ9LG192193	2020	Dodge 2500 Big Horn	MV - Motor Vehicle	Current By 22072706067
7	3C63R3HL7MG692057	2021	Dodge 3500 Big Horn	MV - Motor Vehicle	Current By 22072706067
8	3C63R3HL0MG647252	2021	Dodge 3500 Big Horn	MV - Motor Vehicle	Current By 22072706067
9	3C63R3HL5MG692056	2021	Dodge 3500 Big Horn	MV - Motor Vehicle	Current By 22072706067
10	HHKHFT23TK0000392	2019	Hyundai 160D-9	MV - Motor Vehicle	Current By 22072706067

Search ID #: Z15447851

Business Debtor Search For:

NILEX INC.

Search ID #: Z15447851

Date of Search: 2022-Sep-27

Time of Search: 12:51:15

Registration Number: 22062937083

Registration Date: 2022-Jun-29

Registration Type: SECURITY AGREEMENT

Registration Status: Current

Expiry Date: 2024-Jun-29 23:59:59

Exact Match on:

Debtor

No: 1

Debtor(s)**Block****Status**

1 NILEX INC
68610 8TH STREET NW
EDMONTON, AB T6P 0C5

Current

Secured Party / Parties**Block****Status**

1 LEAVITT MACHINERY CANADA INC.
24389 FRASER HWY
LANGLEY, BC V2Z 2L3
Email: abautonsp@teranet.ca

Current

Collateral: Serial Number Goods

<u>Block</u>	<u>Serial Number</u>	<u>Year</u>	<u>Make and Model</u>	<u>Category</u>	<u>Status</u>
1	HHKHFT23TK0000392	2019	Hyundai 160D-9	MV - Motor Vehicle	Current

Search ID #: Z15447851

Business Debtor Search For:

NILEX INC.

Search ID #: Z15447851

Date of Search: 2022-Sep-27

Time of Search: 12:51:15

Registration Number: 22071219384

Registration Type: WRIT OF ENFORCEMENT

Registration Date: 2022-Jul-12

Registration Status: Current

Expiry Date: 2024-Jul-12 23:59:59

Issued in Edmonton Judicial Centre

Court File Number is 1903 07838

Judgment Date is 2022-Mar-21

This Writ was issued on 2022-Jun-03

Type of Judgment is Other

Original Judgment Amount: \$473,550.59

Costs Are: \$0.00

Post Judgment Interest: \$4,157.90

Current Amount Owing: \$477,708.49

Exact Match on:

Debtor

No: 1

Solicitor / Agent

BENNETT JONES LLP
4500, 855 2ND STREET SW
CALGARY, AB T2P 4K7

Phone #: 780 917 5238

Fax #: 780 421 7951

Reference #: 87722.1

Email: HAWRELUKD@BENNETTJONES.COM

Debtor(s)**Block**

1 NILEX INC.
6810 8TH ST NW
EDMONTON, AB T6P 0C5

Status
Current
Creditor(s)**Block**

1 WATT, HUGH
#434 52422 RR224
SHERWOOD PARK, AB T8A 6N1

Status
Current



Search ID #: Z15447851

Email: HUGH.WATT@FOSTERPARK.CA

Result Complete

LB

- 22 -

This is Exhibit "G" referred to in the Affidavit of Jeff Allen sworn before me this 31st day of October, 2022.

A Commissioner for Oaths in and for Alberta

A handwritten signature in black ink, appearing to be the initials 'LS' or similar, located in the bottom right corner of the page.

Government Corporation/Non-Profit Search of Alberta ■ Corporate Registration System

Date of Search: 2022/10/24
Time of Search: 01:04 PM
Search provided by: BLAKE CASSELS & GRAYDON LLP
Service Request Number: 38509169
Customer Reference Number: 99580/ 8JMRD

Corporate Access Number: 2017393493

Business Number:

Legal Entity Name: 1739349 ALBERTA LTD.

Legal Entity Status: Amalgamated

Alberta Corporation Type: Numbered Alberta Corporation

Amalgamation Date: 2013/04/30 YYYY/MM/DD

Registration Date: 2013/04/01 YYYY/MM/DD

Registered Office:

Street: 855 - 2 STREET SW, SUITE 3500

City: CALGARY

Province: ALBERTA

Postal Code: T2P4J8

Records Address:

Street: 855 - 2 STREET SW, SUITE 3500

City: CALGARY

Province: ALBERTA

Postal Code: T2P4J8

Directors:

Last Name: ROWE

First Name: PAUL

Street/Box Number: 885 WEST GEORGIA STREET, SUITE 1020

City: VANCOUVER

Province: BRITISH COLUMBIA

Postal Code: V6C3E8



Details From Current Articles:**The information in this legal entity table supersedes equivalent electronic attachments**

Share Structure: THE ANNEXED SCHEDULE "A" IS INCORPORATED INTO AND FORMS PART OF THIS FORM.

Share Transfers Restrictions: THE ANNEXED SCHEDULE "B" IS INCORPORATED INTO AND FORMS PART OF THIS FORM.

Min Number Of Directors: 1

Max Number Of Directors: 15

Business Restricted To: NONE.

Business Restricted From: NONE.

Other Provisions: THE ANNEXED SCHEDULE "C" IS INCORPORATED INTO AND FORMS PART OF THIS FORM.

Other Information:**Amalgamation Successor:**

Corporate Access Number	Business Number	Legal Entity Name
2017455896		NILEX INC.

Filing History:

List Date (YYYY/MM/DD)	Type of Filing
2013/04/01	Incorporate Alberta Corporation
2013/04/29	Name/Structure Change Alberta Corporation
2013/04/30	Amalgamate Alberta Corporation

Attachments:

Attachment Type	Microfilm Bar Code	Date Recorded (YYYY/MM/DD)
Share Structure	ELECTRONIC	2013/04/01
Restrictions on Share Transfers	ELECTRONIC	2013/04/01
Other Rules or Provisions	ELECTRONIC	2013/04/01
Share Structure	ELECTRONIC	2013/04/29

The Registrar of Corporations certifies that, as of the date of this search, the above information is an accurate

reproduction of data contained in the official public records of Corporate Registry.



LB

10/24/22, 1:05 PM

Electronic Attachment: 2794446

SCHEDULE "B"
ARTICLES OF INCORPORATION
OF
1739349 ALBERTA LTD.
(the "Corporation")

(restrictions on share transfers)

The right to transfer shares of the Corporation is restricted in that no shareholder shall be entitled to transfer any share or shares in the capital of the Corporation unless the transfer has been approved by the directors of the Corporation, such approval to be signified by a resolution of the Board of Directors of the Corporation.



10/24/22, 1:06 PM

Corporate Registries Menu

SCHEDULE "C"
ARTICLES OF INCORPORATION
OF
1739349 ALBERTA LTD.
(the "Corporation")

(other rules or provisions)

1. The number of shareholders of the Corporation, exclusive of persons who are in its employment and are shareholders of the Corporation and exclusive of persons who, having been formerly in the employment of the Corporation, were, while in that employment, shareholders of the Corporation, and have continued to be shareholders of the Corporation after termination of that employment, is limited to not more than fifty persons, two or more persons who are the joint registered owners of one or more shares being counted as one shareholder.
2. Any invitation to the public to subscribe for securities of the Corporation is prohibited.
3. The Corporation has a lien on the shares of a shareholder or his legal representative for a debt of that shareholder to the Corporation, provided that such lien shall be released in respect of shares transferred by such shareholder (or his legal representative) as permitted pursuant to the terms of these Articles or any unanimous shareholders agreement in respect of the Corporation.
4. The directors may, between annual general meetings, appoint one or more additional directors of the Corporation to serve until the next annual meeting, but the number of additional directors shall not at any time exceed one-third of the number of directors who held office at the expiration of the last annual meeting of the Corporation.

Schedule "A"

1739349 ALBERTA LTD.
(the "Corporation")

SCHEDULE OF SHARE STRUCTURE AND
SPECIAL RIGHTS AND RESTRICTIONS

1. AUTHORIZED CAPITAL

The Corporation is authorized to issue:

(a) an unlimited number of Class A
Common Shares;

(b) an unlimited number of Class B
Common Shares;

(with the shares in (a) and (b) above being
the "Common Shares")

(c) an unlimited number of Class A
Preferred Shares;

(d) an unlimited number of Class B
Preferred Shares; and

(e) an unlimited number of Class C
Preferred Shares

(with the shares in (c), (d) and (e) above
being the "Preferred Shares")

all of which shares shall have the following rights,
restrictions, privileges and conditions, and all such
rights, restrictions, privileges and conditions
attaching to the shares of any class shall be subject
to the rights, restrictions, privileges and conditions
attaching to any other class of shares now existing
or hereafter created or amended.

2. COMMON SHARE RIGHTS AND RESTRICTIONS

The Common Shares shall have the
following rights, restrictions, privileges and
conditions attached thereto:

2.1 Voting

The holders of the Common Shares shall be
entitled to notice of and to attend at meetings of the
shareholders of the Corporation (the
"Shareholders"), and shall be entitled to one (1)
vote in respect of each such share so held and the
holder shall also be entitled to consent to and sign a
resolution in writing to be signed by the
Shareholders of the Corporation.

2.2 Dividends

(a) Subject to the rights of the holders of
the Preferred Shares to receive dividends, the
holders of the Common Shares shall be entitled to



receive, equally on a share for share basis among all issued and outstanding Common Shares, a dividend when, as, and if declared by the directors of the Corporation (the "Directors").

(b) Notwithstanding anything to the contrary herein contained, no dividends or other payment or distribution of assets or property of the Corporation shall be made to the holders, as such, of shares of the Corporation, if (i) prohibited by the Business Corporations Act (Alberta) (the "Act") or other applicable law, or (ii) the payment thereof would result in the fair market value of the Corporation's assets, net of liabilities owed by the Corporation and the stated capital of all the classes of shares of the Corporation (except the stated capital of the Preferred Shares) being less than the aggregate of the Redemption Price of all of the classes of Preferred Shares then outstanding and all unpaid dividends, whether declared or not, accrued thereon.

2.3 Dissolution

In the event of a liquidation, dissolution, or winding up of the Corporation or other distribution of assets of the Corporation among its shareholders for the purposes of winding-up its affairs, the holders of Common Shares, subject to the prior rights of the holders of the Preferred Shares, shall be entitled to share, equally on a share for share basis, in the distribution of any remaining property or assets of the Corporation.

2.4 Amendment

(a) The special rights and restrictions attached to the Class A Common Shares shall not be modified, abrogated or amended unless consented to by the holders of the Class A Common Shares in a separate resolution, with such consent to be obtained by (i) a resolution in writing signed by holders of all the issued and outstanding Class A Common Shares or (ii) a resolution passed by at least 75 percent of the votes cast at a separate meeting of the holders of the Class A Common Shares who are present in person or represented by proxy.

(b) The special rights and restrictions attached to the Class B Common Shares shall not be modified, abrogated or amended unless consented to by the holders of the Class B Common Shares in a separate resolution, with such consent to be obtained by (i) a resolution in writing signed by holders of all the issued and outstanding Class B Common Shares or (ii) a resolution passed by at least 80 percent of the votes cast at a separate meeting of the holders of the Class B Common Shares who are present in person or represented by proxy.

3. PREFERRED SHARE RIGHTS AND RESTRICTIONS

The Preferred Shares shall have the following

rights, restrictions, privileges and conditions attached thereto:

3.1 Voting

Except as provided in the Act as amended from time to time, the holders of the Preferred Shares shall not, as such, be entitled to vote at, nor to receive notice of or attend Shareholders meetings nor shall the holders be entitled to consent to or sign a resolution in writing to be signed by the shareholders of the Corporation.

3.2 Dividends

(a) The holders of the Preferred Shares shall be entitled to receive as and when declared by the Directors out of funds or assets of the Corporation properly available for the payment of dividends, in preference and priority to any dividends being declared and paid on any other classes of shares in the Corporation, a cumulative, non-compounding dividend at a rate of 15.830 percent per annum on the Redemption Price of each such share. Dividends on the Preferred Shares shall be deemed to accrue on a daily basis, whether or not declared, from and including the date of issuance of each such share until such dividends are declared and paid in full.

(b) Any dividends declared and paid on any Preferred Shares must be declared and paid proportionately on the Class A Preferred Shares, the Class B Preferred Shares and the Class C Preferred Shares based on the aggregate accrued and unpaid dividends attributable to each such Class A Preferred Share, Class B Preferred Share or Class C Preferred Share as compared to the aggregate accrued and unpaid dividends attributable to all of the Preferred Shares at the time of such declaration.

(c) The Directors shall be entitled to declare part of such cumulative dividends at anytime and from time to time notwithstanding that such cumulative dividend may not be declared in full. The holders of the Preferred Shares shall not, as such, be entitled to receive any dividends other than or in excess of the dividends herein provided.

(d) No dividends shall be declared and paid at any time on any other class of shares in any fiscal year of the Corporation unless and until all unpaid dividends, whether declared or not, that have accrued to the holders of the Preferred Shares have been declared and paid.

3.3 Dissolution

In the event of a liquidation, dissolution, or winding up of the Corporation or other distribution of assets of the Corporation among its shareholders for the purposes of winding-up its affairs:

(a) the holders of the Class A Preferred Shares shall be entitled to receive an aggregate

amount of CDN\$1.00 distributed pro rata among the holders of the Class A Preferred Shares (or as nearly thereto as the Directors may in good faith determine) before any amount shall be paid or any property or assets of the Corporation distributed to the holders of any other class of shares;

(b) the holders of the Class B Preferred Shares shall be entitled to receive an aggregate amount of CDN\$1.00 distributed pro rata among the holders of the Class B Preferred Shares (or as nearly thereto as the Directors may in good faith determine) before any amount shall be paid or any property or assets of the Corporation distributed to the holders of any other class of shares, other than the payment to the holders of the Class A Preferred Shares as provided in subsection (a) above;

(c) the holders of the Class C Preferred Shares shall be entitled to receive an aggregate amount of CDN\$1.00 distributed pro rata among the holders of the Class C Preferred Shares (or as nearly thereto as the Directors may in good faith determine) before any amount shall be paid or any property or assets of the Corporation distributed to the holders of any other class of shares, other than the payments to the holders of the Class A Preferred Shares and the Class B Preferred Shares as provided in subsection (a) and (b) above.

(d) subject to the prior rights of the holders of the Preferred Shares to receive distributions pursuant to subsections (a), (b) and (c) above, the holders of the Preferred Shares shall be entitled to receive, before any amount is paid or any property or assets of the Corporation is distributed to the holders of any other class of shares of the Corporation:

(i) firstly, an amount equal to the Redemption Price of each share; and

(ii) secondly, an amount equal to all unpaid dividends, whether declared or not, which shall have accrued thereon.

If the amount of remaining property or assets of the Corporation is less than the aggregate of the Redemption Price of all issued Preferred Shares, then the remaining property or assets of the Corporation shall be distributed to the holders of those shares equally on a share for share basis. If the amount of remaining property or assets of the Corporation is greater than the aggregate of the Redemption Price of all issued Preferred Shares but less than the amount required to satisfy all unpaid dividends, whether declared or not, which have accrued thereon, then the amount of the Corporation's remaining property or assets in excess of the aggregate Redemption Price of those shares shall be distributed to the holders of those shares proportionately, based on the amount of unpaid dividends, whether declared or not, accrued on the shares held by each particular holder as compared to the aggregate of all unpaid dividends, whether

declared or not, which shall have accrued on all the issued Preferred Shares. For greater certainty, upon payment of the Redemption Price in respect of all issued Preferred Shares and all unpaid dividends, whether declared or not, which have accrued thereon, the holders of the Preferred Shares shall not, as such, have any other right to participate or share in the remaining property of the Corporation whether in a liquidation, dissolution, winding up or a reduction, redemption, or purchase by the Corporation of its shares.

3.4 Redemption of Preferred Shares

(a) The redemption price for each Preferred Share shall be the sum of CDN\$1.00 (the "Redemption Price").

(b) Subject to the provisions of the Act, the Corporation may, by resolution of the Directors and upon giving notice as hereinafter provided, from time to time redeem or purchase the whole or any part of any of the Preferred Shares of any one or more holders, without redeeming or purchasing the whole or any part of the Preferred Shares of any other holder or holders of the same or any other class, by paying for each share to be redeemed or purchased the Redemption Price thereof, together with all unpaid dividends, whether declared or not, accrued thereon. Not less than ten (10) clear days' notice in writing, signed by any Director or officer of the Corporation, of such redemption or purchase (each a "Redemption Notice") shall be given by personal delivery or by mailing such notice to the registered holder(s) of the shares to be redeemed at the last address as they appear in the records of the Corporation or its transfer agent, provided that accidental failure to give a Redemption Notice to one or more of such holders shall not affect the validity of such redemption. In the case of each Redemption Notice so delivered or mailed, delivery thereof shall be deemed to have been received on the day of delivery if delivered and on the fifth business day following the day of mailing if mailed.

(c) The Redemption Notice shall specify the number of Preferred Shares to be redeemed, the aggregate Redemption Price and the amount of all unpaid dividends, whether declared or not, accrued on each share to be redeemed and the date and place of redemption or purchase which may be a Canadian Chartered Bank or a trust company. On or after the date so specified in the Redemption Notice, the Corporation shall pay to the order of each holder of the Preferred Shares to be redeemed, by way of certified cheque, bank draft or wire transfer or direct deposit of immediately available funds at the place of redemption or to an account specified by each holder of shares to be redeemed on or before the date fixed for redemption or purchase, an amount sufficient to redeem or purchase such shares thereof on presentation and surrender of the certificate or certificates representing such shares to be redeemed and such shares shall thereupon, without any further action

on the part of the Corporation or the holder of such shares, be redeemed. Surrender of the certificate or certificates for such shares to be redeemed or purchased is sufficient only if such certificate or certificates are duly and properly endorsed in blank for transfer or accompanied by a form of transfer acceptable to the Corporation and duly executed in blank.

(d) If share certificates representing any or all of the Preferred Shares to be redeemed have not been surrendered to the Corporation as required in the foregoing provisions on or before the time specified in the Redemption Notice for doing so, the Corporation may, at its option, at any time on or after such time, deposit the amount required to redeem or purchase such shares to a special account with any chartered bank or any trust company in Canada, with such amount to be paid without interest to or to the order of the holders of the Preferred Shares for which such deposit is being made, and such holders' rights shall be limited to receiving without interest their proportionate part of the total amount required to redeem such shares so deposited against presentation and surrender of the said certificates held by them respectively. Any interest accrued on such amounts shall belong to the Corporation.

(e) From and after the date specified in any Redemption Notice, the holders of the Preferred Shares to be redeemed shall not be entitled to exercise any of the rights of shareholders in respect thereof unless payment of the amount required to redeem the shares has not been made upon presentation of the certificates in accordance with the foregoing provisions, in which case the rights of the holders shall remain unaffected. Unless otherwise determined by the Directors, all Preferred Shares redeemed by the Corporation in accordance with the provisions hereof shall be cancelled and returned to the status of authorized but unissued shares in the capital of the Corporation.

3.5 Liquidity

Notwithstanding anything to the contrary herein contained, no dividends, redemptions, share purchases, capital reductions or other payments or distributions of assets or property of the Corporation shall be made or paid on or with respect to shares of the Corporation which rank subordinate to any of the Preferred Shares on a liquidation, dissolution or winding up, if the payment in respect thereof would result in the fair market value of the Corporation's assets, net of liabilities owed by the Corporation, being less than the aggregate of the Redemption Price for all of the then outstanding Preferred Shares and all unpaid dividends, whether declared or not, accrued thereon, and the Redemption Price or amount payable on redemption or purchase for all other shares then outstanding which rank equal to or in priority to the Preferred Shares on a liquidation, dissolution or winding up, or would otherwise be a breach of the

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Corporate Registries Menu

Act.

3.6 Specified Amount

For the purposes of subsection 191(4) of the Income Tax Act (Canada), the specified amount for each Preferred Share shall be equal to CDN\$1.00.



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This is Exhibit "H" referred to in the Affidavit of Jeff Allen sworn before me this 31st day of October, 2022.

A Commissioner for Oaths in and for Alberta

A handwritten signature in black ink, appearing to be the initials 'AB' in a cursive style.

This instrument and the rights and obligations evidenced hereby are subordinate in the manner and to the extent set forth in that certain Standstill and Subordination Agreement dated as of April 30, 2013 among HSBC Bank Canada, PEF 2010 Nilex Investment Limited Partnership, 1739349 Alberta Ltd., Nilex Inc., Nilex Construction Inc., and Nilex USA Inc., as such agreement may be amended, supplemented, restated or replaced from time to time (the "Standstill and Subordination Agreement"), and each holder of this instrument, by its acceptance hereof, irrevocably agrees to be bound by the provisions of the Standstill and Subordination Agreement.

SUBORDINATED PROMISSORY NOTE

April 30, 2013

CAD\$22,683,150

FOR VALUE RECEIVED, **1739349 ALBERTA LTD.** (including any amalgamation successor thereof) (the "**Borrower**") hereby promises to pay to or to the order of **PEF 2010 NILEX INVESTMENT LIMITED PARTNERSHIP** (the "**Lender**"), the principal amount of **CAD\$22,683,150** (the "**Principal Amount**") with interest thereon as and at the rate contemplated hereunder.

1. So long as there are any amounts outstanding on this Promissory Note, interest shall accrue at a rate of 18.00% per annum on the outstanding Principal Amount from the date of this Promissory Note, both before and after demand, default and judgment.
 - 1.1. Interest on the Principal Amount will be calculated in accordance with the following provisions:
 - (a) interest accruing hereunder will be calculated on the basis of a 365 day or a 366 day year, as the case may be; and
 - (b) interest shall be payable after as well as before maturity, demand, default and judgment and whether or not any bankruptcy case or proceeding has been commenced.
 - 1.2. Interest shall not compound on accrued and unpaid interest hereunder.
2. The Principal Amount and any accrued but unpaid interest shall come due on the Maturity Date and, subject to the provisions of the Standstill and Subordination Agreement, shall be paid and satisfied in full on such date. Notwithstanding the foregoing, the Borrower may make regular scheduled payments of interest in cash or in kind via the issuance of additional shares to the Lender in the capital of the Borrower.
3. Subject to any restrictions placed on the Borrower or the Lender under the Standstill and Subordination Agreement, the Borrower shall be permitted to make a prepayment of all or any portion of the Principal Amount or the accrued and unpaid interest thereon from time to time without penalty.
4. All amounts, paid by the Borrower to the Lender from time to time shall, unless otherwise agreed to in writing by the Borrower and the Lender, be applied first, towards payment of any outstanding interest and then towards repayment of any outstanding Principal Amount.

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5. As security for the obligations of the Borrower relating to or arising out of this Promissory Note, the Borrower and certain subsidiaries of the Borrower, agree to grant, execute and deliver to the Lender a security interest in all of their present and after-acquired personal property (collectively, the "Security") which security interest shall be junior and rank subordinate to any and all security interest granted by the Borrower and certain subsidiaries of the Borrower in favour of HSBC Bank Canada pursuant to the Standstill and Subordination Agreement.
6. All amounts payable by the Borrower to the Lender hereunder shall be made on or before 12:00 noon (Alberta time) by way of direct deposit or wire transfer of immediately available funds to such account as the Lender may direct in writing at the request of the Borrower made not less than two Business Days prior to the date such payment is to be made or such other method of payment to which the Lender may agree in writing from time to time. Payments received after the time specified above shall be deemed to have been made on the next following Business Day.
7. Except as otherwise stated in the Standstill and Subordination Agreement, the indebtedness and liabilities of the Borrower under this Promissory Note and the Security are hereby subordinated and postponed in right of payment to any and all Senior Indebtedness now or from time to time hereafter owing by the Borrower, and the Lender agrees to from time to time do all such acts and things and execute and deliver all such instruments, agreements and documents as may from time to time reasonably be required by any holder of any Senior Indebtedness to evidence, confirm and give full force and effect to the subordination and postponement in favour of any Senior Indebtedness contemplated herein.
8. The Borrower shall notify the Lender in writing within three (3) days after the occurrence of any Event of Default of which the Borrower becomes aware. If the Event of Default has not been cured by the Borrower within 30 days of the Borrower becoming aware of such Event of Default, the Lender may, at its option, but subject to the Standstill and Subordination Agreement (i) by written notice to the Borrower, declare the entire Principal Amount owing under this Promissory Note together with all interest accrued thereon, immediately due and payable regardless of any prior forbearance and the Security shall at the option of the Lender, become immediately enforceable in each and every Event of Default, and (ii) exercise any and all rights and remedies available to it under applicable law, including, without limitation, the right to collect from the Borrower all sums due under this Promissory Note.
9. Time shall be of the essence of this Promissory Note.
10. This Promissory Note is not a negotiable instrument.
11. This Promissory Note will be governed by and construed in accordance with the laws of the Province of Alberta and the federal laws of Canada applicable therein.

12. All communications between the Lender and the Borrower in connection with this Promissory Note, shall be in writing and shall be given by delivery service, by hand delivery, facsimile or email to the addressee as follows:

(a) to the Borrower:

1739349 Alberta Ltd.
885 West Georgia Street, Suite 1020
Vancouver, British Columbia
V6C 3E8
Attention: Paul W. Rowe

Fax: (604) 408-8892
email: paul.rowe@fulcrumcapital.ca

with a copy to:

Blake, Cassels & Graydon LLP
595 Burrard Street
P.O. Box 49314
Suite 2600, Three Bentall Centre
Vancouver, B.C.
V7X 1L3
Attention: J-P Bogden

Fax No.: (604) 631-3375
email: jp.bogden@blakes.com

(b) to the Lender:

PEF 2010 Nilex Investment Limited Partnership
885 West Georgia Street, Suite 1020
Vancouver, British Columbia
V6C 3E8
Attention: Paul W. Rowe

Fax: (604) 408-8892
email: paul.rowe@fulcrumcapital.ca

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with a copy to:

Blake, Cassels & Graydon LLP
 595 Burrard Street
 P.O. Box 49314
 Suite 2600, Three Bentall Centre
 Vancouver, B.C.
 V7X 1L3
 Attention: J-P Bogden

Fax No.: (604) 631-3375
 email: jp.bogden@blakes.com

Any party may from time to time change its address under this section by notice to the other party given in the manner provided in this section.

13. This Promissory Note and all of its provisions will enure to the benefit of the Lender and its successors and permitted assigns, and will be binding on the Borrower and its successors and permitted assigns.
14. The Borrower hereby waives demand and presentment for payment, notice of dishonour, notice of non-payment, protest and notice of protest of this Promissory Note.
15. For the purposes of this Promissory Note, the following terms shall have the following meanings:
 - 15.1. "**Business Day**" means any day that is not a Saturday, Sunday or a legal holiday on which banks are authorized or required to be closed in Vancouver, British Columbia or Edmonton, Alberta;
 - 15.2. "**Event of Default**" means the occurrence of any one or more of the following events with respect to Borrower:
 - 15.2.1. If Borrower shall fail to pay when due any payment under this Promissory Note.
 - 15.2.2. Borrower instituting any proceeding or executing any agreement to authorize its participation in or commencement of any proceeding seeking to adjudicate it a bankrupt or insolvent or seeking liquidation, arrangement, protection, relief or composition of it or any of its property or debt or making a proposal with respect to it under any law relating to bankruptcy, insolvency or compromise of debts or other similar laws or any arrangement or compromise of debt under the applicable laws.
 - 15.2.3. Any proceeding being commenced against or affecting Borrower seeking to adjudicate it a bankrupt or insolvent, seeking liquidation, arrangement, protection, relief or composition of it or any of its property or debt or making a proposal with respect to Borrower under any law relating to

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bankruptcy, insolvency or compromise of debts or other similar laws (including any arrangement or compromise of debt under the applicable laws), or seeking appointment of a receiver, trustee, agent, custodian or other similar official for Borrower or for any substantial part of its assets.


- 15.2.4. Any creditor of Borrower or any other person privately appoints a receiver, trustee or similar official for all or a substantial part of the assets of Borrower.
- 15.2.5. Any execution, distress or other enforcement process, whether by court order or otherwise, becomes enforceable against all or a substantial part of property of Borrower; or
- 15.2.6. The lender under the Senior Credit Agreement taking any action to enforce its rights against the Borrower due to the Borrower being in default of its obligations under the Senior Credit Agreement;
- 15.3. **"Maturity Date"** means April 30, 2023;
- 15.4. **"Principal Amount"** has the meaning given to such term in the endorsement on the face of this Promissory Note;
- 15.5. **"Promissory Note"** means this promissory note;
- 15.6. **"Senior Credit Agreement"** means the acceptance letter dated April 30, 2013 from HSBC Bank Canada to the Borrower and accepted by the Borrower on April 30, 2013, as amended, supplemented, restated or replaced from time to time;
- 15.7. **"Senior Indebtedness"** means any and all indebtedness and liabilities now or from time to time hereafter owing by the Borrower, direct or indirect, absolute or contingent, under or in connection with any one or more loans or other credit facilities from time to time made available to the Borrower or any of its subsidiaries by any chartered bank, credit union, trust company, insurance company or other financial institution to assist in financing the working capital, day to day operating requirements, capital expenditures or other capital requirements of the Borrower and its subsidiaries, or any of them and, at the date hereof, includes, without limitation, the indebtedness and liabilities of the Borrower arising under or in connection with the Senior Credit Agreement; and
- 15.8. **"Standstill and Subordination Agreement"** has the meaning given to such term in the endorsement on the face of this Promissory Note;

[Signature on next following page]



1739349 ALBERTA LTD.

Per: _____


Name: PAUL ROWE
Title: DIRECTOR



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This is Exhibit "I" referred to in the Affidavit of Jeff Allen sworn before me this 31st day of October, 2022.

A Commissioner for Oaths in and for Alberta



This instrument and the rights and obligations evidenced hereby are subordinate in the manner and to the extent set forth in that certain Standstill and Subordination Agreement dated as of April 30, 2013 among HSBC Bank Canada, PEF 2010 Nilex Investment Limited Partnership., Nilex Inc. (as successor by way of amalgamation to 1739349 Alberta Ltd. and Nilex Inc., and by amalgamation of the amalgamated entity resulting therefrom with Nilex Construction Inc.) and Nilex USA Inc., as such agreement may be amended, supplemented, restated or replaced from time to time (the "Standstill and Subordination Agreement"), and each holder of this instrument, by its acceptance hereof, irrevocably agrees to be bound by the provisions of the Standstill and Subordination Agreement.

SUBORDINATED PROMISSORY NOTE

June 14, 2017

CAD\$2,000,000

FOR VALUE RECEIVED, **NILEX INC.** (the "**Borrower**") hereby promises to pay to or to the order of **PEF 2010 NILEX INVESTMENT LIMITED PARTNERSHIP** (the "**Lender**"), the principal amount of **CAD\$2,000,000** (the "**Principal Amount**") with interest thereon as and at the rate contemplated hereunder.

1. So long as there are any amounts outstanding on this Promissory Note, interest shall accrue at a rate of 12.00% per annum on the outstanding Principal Amount from the date of this Promissory Note, both before and after demand, default and judgment.
 - 1.1. Interest on the Principal Amount will be calculated in accordance with the following provisions:
 - (a) interest accruing hereunder will be calculated on the basis of a 365 day or a 366 day year, as the case may be; and
 - (b) interest shall be payable after as well as before maturity, demand, default and judgment and whether or not any bankruptcy case or proceeding has been commenced.
 - 1.2. Interest shall not compound on accrued and unpaid interest hereunder.
2. Subject to the provisions of the Standstill and Subordination Agreement, interest will accrue quarterly on the last day of each fiscal quarter of the Borrower (each, an "**Interest Accrual Date**"). Such accrued interest as of each Interest Accrual Date will be added to the unpaid Principal Amount of this promissory note on each Interest Accrual Date and will bear interest thereafter in accordance with the terms of this Promissory Note until paid. Notwithstanding the foregoing, the Borrower may elect to make regular scheduled payments of interest in cash or in kind via the issuance of additional shares to the Lender in the capital of the Borrower.
3. The Principal Amount (including, for certainty, all accrued by unpaid interest that was added to the Principal Amount pursuant to Section 2 above) and any accrued but unpaid interest shall come due on the Maturity Date and, subject to the provisions of the Standstill and Subordination Agreement, shall be paid and satisfied in full on such date.



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4. Subject to any restrictions placed on the Borrower or the Lender under the Standstill and Subordination Agreement, the Borrower shall be permitted to make a prepayment of all or any portion of the Principal Amount or the accrued and unpaid interest thereon from time to time without penalty.
5. All amounts, paid by the Borrower to the Lender from time to time shall, unless otherwise agreed to in writing by the Borrower and the Lender, be applied first, towards payment of any outstanding interest and then towards repayment of any outstanding Principal Amount.
6. The Borrower agrees that certain security previously granted by the Borrower and Nilex USA Inc. will secure the obligations of the Borrower relating to or arising out of this Promissory Note, provided that such security and the security interest granted by the Borrower and Nilex USA Inc. thereunder shall continue to be junior and rank subordinate to any and all security interest granted by the Borrower and certain subsidiaries of the Borrower in favour of HSBC Bank Canada pursuant to the Standstill and Subordination Agreement.
7. All amounts payable by the Borrower to the Lender hereunder shall be made on or before 12:00 noon (Alberta time) by way of direct deposit or wire transfer of immediately available funds to such account as the Lender may direct in writing at the request of the Borrower made not less than two Business Days prior to the date such payment is to be made or such other method of payment to which the Lender may agree in writing from time to time. Payments received after the time specified above shall be deemed to have been made on the next following Business Day.
8. Except as otherwise stated in the Standstill and Subordination Agreement, the indebtedness and liabilities of the Borrower under this Promissory Note and the Security are hereby subordinated and postponed in right of payment to any and all Senior Indebtedness now or from time to time hereafter owing by the Borrower, and the Lender agrees to from time to time do all such acts and things and execute and deliver all such instruments, agreements and documents as may from time to time reasonably be required by any holder of any Senior Indebtedness to evidence, confirm and give full force and effect to the subordination and postponement in favour of any Senior Indebtedness contemplated herein.
9. The Borrower shall notify the Lender in writing within three (3) days after the occurrence of any Event of Default of which the Borrower becomes aware. If the Event of Default has not been cured by the Borrower within 30 days of the Borrower becoming aware of such Event of Default, the Lender may, at its option, but subject to the Standstill and Subordination Agreement (i) by written notice to the Borrower, declare the entire Principal Amount owing under this Promissory Note together with all interest accrued thereon, immediately due and payable regardless of any prior forbearance and the Security shall at the option of the Lender, become immediately enforceable in each and every Event of Default, and (ii) exercise any and all rights and remedies available to it under applicable law, including, without limitation, the right to collect from the Borrower all sums due under this Promissory Note.

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10. Time shall be of the essence of this Promissory Note.
11. This Promissory Note is not a negotiable instrument.
12. This Promissory Note will be governed by and construed in accordance with the laws of the Province of Alberta and the federal laws of Canada applicable therein.
13. All communications between the Lender and the Borrower in connection with this Promissory Note, shall be in writing and shall be given by delivery service, by hand delivery, facsimile or email to the addressee as follows:

(a) to the Borrower:

Nilex Inc.
885 West Georgia Street, Suite 1020
Vancouver, British Columbia
V6C 3E8
Attention: Paul W. Rowe
Fax: (604) 408-8892
email: paul.rowe@fulcrumcapital.ca

with a copy to:

Blake, Cassels & Graydon LLP
595 Burrard Street
P.O. Box 49314
Suite 2600, Three Bentall Centre
Vancouver, B.C.
V7X 1L3
Attention: J-P Bogden

Fax No.: (604) 631-3375
email: jp.bogden@blakes.com

(b) to the Lender:

PEF 2010 Nilex Investment Limited Partnership
885 West Georgia Street, Suite 1020
Vancouver, British Columbia
V6C 3E8
Attention: Paul W. Rowe
Fax: (604) 408-8892
email: paul.rowe@fulcrumcapital.ca

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with a copy to:

Blake, Cassels & Graydon LLP
595 Burrard Street
P.O. Box 49314
Suite 2600, Three Bentall Centre
Vancouver, B.C.
V7X 1L3
Attention: J-P Bogden


Fax No.: (604) 631-3375
email: jp.bogden@blakes.com

Any party may from time to time change its address under this section by notice to the other party given in the manner provided in this section.

14. This Promissory Note and all of its provisions will enure to the benefit of the Lender and its successors and permitted assigns, and will be binding on the Borrower and its successors and permitted assigns.
15. The Borrower hereby waives demand and presentment for payment, notice of dishonour, notice of non-payment, protest and notice of protest of this Promissory Note.
16. For the purposes of this Promissory Note, the following terms shall have the following meanings:
 - 16.1. **"Business Day"** means any day that is not a Saturday, Sunday or a legal holiday on which banks are authorized or required to be closed in Vancouver, British Columbia or Edmonton, Alberta;
 - 16.2. **"Event of Default"** means the occurrence of any one or more of the following events with respect to Borrower:
 - 16.2.1. If Borrower shall fail to pay when due any payment under this Promissory Note.
 - 16.2.2. Borrower instituting any proceeding or executing any agreement to authorize its participation in or commencement of any proceeding seeking to adjudicate it a bankrupt or insolvent or seeking liquidation, arrangement, protection, relief or composition of it or any of its property or debt or making a proposal with respect to it under any law relating to bankruptcy, insolvency or compromise of debts or other similar laws or any arrangement or compromise of debt under the applicable laws.
 - 16.2.3. Any proceeding being commenced against or affecting Borrower seeking to adjudicate it a bankrupt or insolvent, seeking liquidation, arrangement, protection, relief or composition of it or any of its property or debt or making a proposal with respect to Borrower under any law relating to

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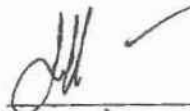
bankruptcy, insolvency or compromise of debts or other similar laws (including any arrangement or compromise of debt under the applicable laws), or seeking appointment of a receiver, trustee, agent, custodian or other similar official for Borrower or for any substantial part of its assets.

- 16.2.4. Any creditor of Borrower or any other person privately appoints a receiver, trustee or similar official for all or a substantial part of the assets of Borrower.
- 16.2.5. Any execution, distress or other enforcement process, whether by court order or otherwise, becomes enforceable against all or a substantial part of property of Borrower; or
- 16.2.6. The lender under the Senior Credit Agreement taking any action to enforce its rights against the Borrower due to the Borrower being in default of its obligations under the Senior Credit Agreement;
- 16.3. **"Maturity Date"** means June 14, ~~2027~~ 
- 16.4. **"Principal Amount"** has the meaning given to such term in the endorsement on the face of this Promissory Note;
- 16.5. **"Promissory Note"** means this promissory note;
- 16.6. **"Senior Credit Agreement"** means the facility letter dated April 30, 2013 from HSBC Bank Canada to the Borrower and accepted by the Borrower on April 30, 2013, as amended, supplemented, restated or replaced from time to time;
- 16.7. **"Senior Indebtedness"** means any and all indebtedness and liabilities now or from time to time hereafter owing by the Borrower, direct or indirect, absolute or contingent, under or in connection with any one or more loans or other credit facilities from time to time made available to the Borrower or any of its subsidiaries by any chartered bank, credit union, trust company, insurance company or other financial institution to assist in financing the working capital, day to day operating requirements, capital expenditures or other capital requirements of the Borrower and its subsidiaries, or any of them and, at the date hereof, includes, without limitation, the indebtedness and liabilities of the Borrower arising under or in connection with the Senior Credit Agreement; and
- 16.8. **"Standstill and Subordination Agreement"** has the meaning given to such term in the endorsement on the face of this Promissory Note;

[Signature on next following page]



NILEX INC.

Per:  ✓
Name: Jeff Allen
Title: Director, Finance.



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This is Exhibit "J" referred to in the Affidavit of Jeff Allen sworn before me this 31st day of October, 2022.

A Commissioner for Oaths in and for Alberta

LB

GENERAL SECURITY AGREEMENT

(British Columbia, Alberta, New Brunswick, Nova Scotia, Newfoundland and Labrador, Prince Edward Island)

This General Security Agreement made as of the 30 day of APRIL, 2013

Between:

NILEX INC.
9304 – 39 Avenue
Edmonton, Alberta T6E 6L8

(the "Debtor")

And:

PEF 2010 Nilex Investment Limited Partnership, a limited partnership under the laws of the Province of British Columbia located at

1020 – 885 West Georgia Street
Vancouver, British Columbia V6C 3E8

(the "Lender")

I Security

- 1.1 For value received, the Debtor grants and creates the security constituted by this General Security Agreement and agrees to the terms, covenants, agreements, conditions, provisos and other matters set out in this General Security Agreement.
- 1.2 As general and continuing security for the Obligations (as defined in clause 2.1 hereof), the Debtor:
- 1.2.1 hereby grants to the Lender, by way of mortgage, charge, assignment and transfer, a security interest in all presently owned and hereafter acquired personal property of the Debtor of whatsoever nature and kind and wheresoever situate and all proceeds thereof and therefrom, renewals thereof, Accessions thereto and substitutions therefor, (all of which are herein collectively called the "Personal Property Collateral"), including, without limiting the generality of the foregoing, all the presently owned or held and hereafter acquired right, title and interest of the Debtor in and to all Goods (including all accessories, attachments, additions and Accessions thereto), Chattel Paper, Documents of Title (whether negotiable or not), Instruments, Intangibles (subject to Clause 1.2.2 hereof), Licences, Money, Securities, Investment Property and all:
- (a) Inventory of whatsoever nature and kind and wheresoever situate;

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- (b) Equipment (other than Inventory) of whatsoever nature and kind and wheresoever situate, including, without limitation, all machinery, tools, apparatus, plant, furniture, fixtures and vehicles of whatsoever nature and kind;
- (c) book accounts and book debts and generally all Accounts, debts, dues, claims, choses in action and demands of every nature and kind howsoever arising or secured including letters of credit, letters of guarantee and advices of credit, which are now due, owing or accruing or growing due to or owned by or which may hereafter become due, owing or accruing or growing due to or owned by the Debtor (all of which are herein collectively called the "Debts");
- (d) deeds, documents, writings, papers, books of account and other books relating to or being records of Debts, Chattel Paper or Documents of Title or by which such are or may hereafter be secured, evidenced, acknowledged or made payable;
- (e) contractual rights and insurance claims and all goodwill;
- (f) monies other than trust monies lawfully belonging to others; and
- (g) personal property described in any schedule now or hereafter annexed hereto; and

1.2.2 hereby grants to the Lender, by way of mortgage and charge a security interest in all presently owned and hereafter acquired patents, trade-marks, copyrights, industrial designs and other intellectual property and all proceeds thereof and therefrom, renewals thereof, Accessions thereto and substitutions therefor, **including without limitation all intellectual property rights set out in the Intellectual Property Schedule** (all of which is deemed to be included in the definition of "Personal Property Collateral" referred to in Clauses 1.2.1 and 1.3.2 hereof); and

1.2.3 hereby charges as and by way of a floating charge in favour of the Lender all the presently owned or held and hereafter acquired property, assets, effects and undertakings of the Debtor of whatsoever nature and kind and wheresoever situate, other than such of the property, assets, effects and undertakings of the Debtor as are validly and effectively subjected to the security interest granted to the Lender pursuant to clause 1.2.1, (all of which property, assets, effects and undertakings so charged by this clause 1.2.3 are herein collectively called the "Other Collateral") including, without limiting the generality of the foregoing, all presently owned or held and hereafter acquired right, title and interest of the Debtor in and to real and immovable and leasehold property and rights whether in fee or of a less estate and all interest in and rights relating to lands and all easements, rights of way, privilege, benefits, licences, improvements and rights whether connected therewith or appurtenant thereto or separately owned or held and all structures, buildings, plant, machinery, fixtures, apparatus and fixed assets and the charge created by this clause 1.2.3 shall be a floating charge such that the Debtor shall not have power without the prior written consent of the Lender to:

- (a) create or permit to exist any Encumbrance against any of the Other Collateral which ranks or could in any event rank in priority to or pari passu with the security constituted by this General Security Agreement, save for:
 - (1) those Encumbrances shown in the Encumbrance Schedule; and
 - (2) Encumbrances approved in writing by the Lender prior to creation or assumption; or
- (b) grant, sell, exchange, transfer, assign, lease or otherwise dispose of the Other Collateral.

- 1.3 In this General Security Agreement:
- 1.3.1 any reference to "Premises" shall mean all property owned or leased by the Debtor;
 - 1.3.2 the Personal Property Collateral and the Other Collateral are herein together called the "Collateral";
 - 1.3.3 any reference to "Collateral" shall, unless the context otherwise requires, be deemed a reference to "Collateral or any part thereof";
 - 1.3.4 any reference to "Debtor" and the personal pronoun "it" or "its" and any verb relating thereto and used therewith shall be read and construed as required by and in accordance with the context in which such words are used depending upon whether the Debtor is one or more corporations and, if more than one Debtor executes this General Security Agreement, this General Security Agreement shall apply and be binding upon each of them jointly and severally and all obligations hereunder shall be joint and several;
 - 1.3.5 any reference to "Environmental Laws" shall mean any laws, regulations, orders, by-laws, permits or lawful requirements of any governmental authority with respect to environmental protection or regulating hazardous materials;
 - 1.3.6 any reference to "General Security Agreement" shall, unless the context otherwise requires, be deemed a reference to this General Security Agreement as amended from time to time by written agreement together with the schedules hereto and any schedules added hereto pursuant to the provisions hereof;
 - 1.3.7 any reference to "Hazardous Materials" shall mean any asbestos material, urea formaldehyde, explosives, radioactive materials, pollutants, contaminants, hazardous substances, corrosive substances, toxic substances, special waste or waste of any kind including, without limitation, compounds known as chlorobiphenyls and any substance the storage, manufacture, disposal, treatment, generation, use, transport, remediation or release of which into the environment is prohibited, controlled or licensed under Environmental Laws, all excluding similar or like substances used in the ordinary course of the Debtor's business provided that such excluded substances continue to be used, stored, disposed of or otherwise handled in accordance with Environmental Laws and other applicable laws;
 - 1.3.8 any reference to "PPSA" shall mean the Personal Property Security Act of the Province as amended from time to time, including any amendments thereto and any Act substituted therefor and amendments thereto;
 - 1.3.9 any reference to the "Province" shall mean the Province of Alberta;
and
 - 1.3.10 the terms "Goods", "Chattel Paper", "Documents of Title", "Equipment", "Accounts" "Consumer Goods", "Instruments", "Intangibles", "Licences"(Alberta and British Columbia only), "Money", "Securities", "Investment Property", "Proceeds", "Inventory" and "Accessions" and other words and expressions which have been defined in the PPSA shall be interpreted in accordance with their respective meanings given in the PPSA (either in the singular or plural thereof), as the context requires unless otherwise defined herein or unless the context otherwise requires.
- 1.4 The Lender and the Debtor have not agreed to postpone the time for attachment of the security interests granted hereby.
- 1.5 The security interest in Consumer Goods hereby granted shall not become effective until, but shall become effective immediately when, the Lender notifies the Debtor in writing that it is effective.
- 1.6 The last day of the term of any lease held by the Debtor with respect to any of the Collateral is excluded from the security constituted by this General Security Agreement.

II Obligations Secured

- 2.1 The security constituted by this General Security Agreement is general and continuing security for payment, performance and satisfaction of each and every obligation, indebtedness and liability of the Debtor to the Lender (including interest thereon), present or future, direct or indirect, absolute or contingent, matured or not, extended or renewed, wheresoever and howsoever incurred, and any ultimate unpaid balance thereof, including all future advances and re-advances, and whether the same is from time to time reduced and thereafter increased or entirely extinguished and thereafter incurred again and whether the Debtor be bound alone or with another or others and whether as principal or surety, (all of which obligations, indebtedness and liabilities are herein collectively called the "Obligations").
- 2.2 This General Security Agreement and the security constituted hereby are in addition to and not in substitution for any other security or securities which the Lender may now or from time to time hold or take from the Debtor or from any other person whomsoever.

III Representations and Warranties of the Debtor

- 3.1 The Debtor represents and warrants that, and, so long as this General Security Agreement remains in effect, shall be deemed to continuously represent and warrant that:
- 3.1.1 this General Security Agreement has been authorized, executed and delivered in accordance with resolutions of the directors (and of the shareholders as applicable) of the Debtor and all other matters and things have been done and performed so as to authorize and make the execution and delivery of this General Security Agreement, the creation of the security constituted hereby and the performance of the Debtor's obligations hereunder, legal, valid and binding;
- 3.1.2 the Collateral is genuine and is owned by the Debtor free of all security interests, mortgages, liens, claims, charges and other encumbrances (herein collectively called "Encumbrances"), save for the security constituted by this General Security Agreement, those Encumbrances shown on the Encumbrance Schedule and those Encumbrances approved in writing by the Lender;
- 3.1.3 the Debtor has good and lawful authority to create the security in the Collateral constituted by this General Security Agreement;
- 3.1.4 each Debt, Chattel Paper and Instrument included in Collateral is enforceable in accordance with its terms against the party obligated to pay the same (the "Account Debtor"), and the amount represented by the Debtor to the Lender from time to time as owing by each Account Debtor or by all Account Debtors will be the correct amount actually and unconditionally owing by such Account Debtor or Account Debtors, except for normal cash discounts where applicable, and no Account Debtor will have any defense, set off, claim or counterclaim against the Debtor which can be asserted against the Lender, whether in any proceeding to enforce the Collateral or otherwise;
- 3.1.5 with respect to Goods (including Inventory) comprised in the Collateral, the locations specified in the Location Schedule are accurate and complete (save for Goods in transit to such locations and Inventory on lease or consignment) and all fixtures or Goods about to become fixtures which form part of the Collateral will be situate at one of the locations specified in the Location Schedule;
- 3.1.6 none of the Premises are insulated with urea formaldehyde nor contain any asbestos material or underground tanks;
- 3.1.7 the Premises are free of any Hazardous Materials;

- 3.1.8 the Premises are not currently used in a manner, and, to the Debtor's knowledge, after having made due inquiry, no prior use has occurred, which is contrary to any laws, regulations, orders, bylaws, permits or lawful requirements of any Environmental Laws; and
- 3.1.9 there are no existing or threatened claims, actions, orders or investigations under any Environmental Laws against the Debtor or against the Premises;
- 3.1.10 the Debtor is the owner of any intellectual property applications and registrations and there are no outstanding claims of ownership by third parties in respect of these registrations and applications;
- 3.1.11 all intellectual property applications and registrations are valid and in good standing;
- 3.1.12 all trade-mark and industrial designs have been in continuous use and that the use has been proper in relation to the wares and/or services of Debtor;
- 3.1.13 only the Debtor has used the trade-marks, or if there are any third party users of the Debtor's trade-marks, such third party users are properly licensed to use such trademarks;
- 3.1.14 all assignments and other documents affecting intellectual property rights have been disclosed and provided to the Lender;
- 3.1.15 there are no outstanding or threatened claims or proceedings with respect to the intellectual property; and,
- 3.1.16 all necessary assignments and license agreements have been properly executed by the Debtor for use of third party intellectual property.

IV Covenants of the Debtor

- 4.1 The Debtor covenants and agrees that at all times while this General Security Agreement remains in effect the Debtor will:
 - 4.1.1 defend the Collateral for the benefit of the Lender against the claims and demands of all other persons;
 - 4.1.2 not, without the prior written consent of the Lender:
 - (a) create or permit to exist any Encumbrance against any of the Personal Property Collateral which ranks or could in any event rank in priority to or pari passu with the security constituted by this General Security Agreement, save for:
 - (i) those Encumbrances shown in the Encumbrance Schedule; and
 - (ii) Encumbrances approved in writing by the Lender prior to creation or assumption; or
 - (b) grant, sell, exchange, transfer, assign, lease or otherwise dispose of the Collateral; provided always, that, until default, the Debtor may, in the ordinary course of the Debtor's business, sell or lease Inventory and, subject to clause 5.2 hereof, use monies available to the Debtor;
 - 4.1.3 fully and effectively maintain and keep maintained valid and effective the security constituted by this General Security Agreement;
 - 4.1.4 notify the Lender promptly of:

- (a) any change in the information contained herein or in the Schedules hereto relating to the Debtor, the Debtor's name, the Debtor's business or the Collateral;
 - (b) the details of any significant acquisition of Collateral;
 - (c) the details of any claims or litigation affecting the Debtor or the Collateral;
 - (d) any loss or damage to the Collateral;
 - (e) any default by any Account Debtor in payment or other performance of obligations of the Account Debtor comprised in the Collateral; and
 - (f) the return to, or repossession by, the Debtor of Collateral;
- 4.1.5 keep the Collateral in good order, condition and repair (in the locations specified in the Location Schedule or such other locations as the Lender may approve in writing) and not use the Collateral in violation of the provisions of this General Security Agreement or any other agreement relating to the Collateral or any policy insuring the Collateral or any applicable statute, law, by-law, rule, regulation or ordinance;
- 4.1.6 carry on and conduct the business of the Debtor in a proper and efficient manner and so as to protect and preserve the Collateral and to keep, in accordance with generally accepted accounting principles, consistently applied, proper books of account for the Debtor's business as well as accurate and complete records concerning the Collateral and, at the Lender's request, mark any and all such records and the Collateral so as to indicate the security constituted by this General Security Agreement;
- 4.1.7 forthwith pay:
- (a) all obligations to its employees and all obligations to others which relate to its employees when due, including, without limitation, all taxes, duties, levies, government fees, claims and dues related to its employees;
 - (b) all taxes, assessments, rates, duties, levies, government fees, claims and dues lawfully levied, assessed or imposed upon it or the Collateral when due, unless the Debtor shall in good faith contest its obligations so to pay and shall furnish such security as the Lender may require; and
 - (c) all Encumbrances which rank or could in any event rank in priority to or pari passu with the security constituted by this General Security Agreement, other than the Encumbrances, if any, shown in the Encumbrance Schedule hereto and those approved in writing by the Lender;
- 4.1.8 prevent the Collateral, save Inventory sold or leased as permitted hereby, from being or becoming an Accession to other property not covered by this General Security Agreement;
- 4.1.9 insure the Collateral for such periods, in such amounts, on such terms and against loss or damage by fire and such other risks as the Lender shall reasonably direct (but in any event in accordance with prudent business practice and for not less than the full replacement cost thereof) with loss payable to the Lender and the Debtor, as insureds, as their respective interests may appear, and to pay all premiums for such insurance;
- 4.1.10 deliver to the Lender from time to time promptly upon request:
- (a) any Documents of Title, Instruments, Securities and Chattel Paper comprised in or relating to the Collateral;

- (b) all books of account and all records, ledgers, reports, correspondence, schedules, documents, statements, lists and other writings relating to the Collateral for the purpose of inspecting, auditing or copying the same;
 - (c) all financial statements prepared by or for the Debtor regarding the Debtor's business;
 - (d) all policies and certificates of insurance relating to the Collateral; and
 - (e) such information concerning the Collateral, the Debtor and Debtor's business and affairs as the Lender may reasonably require;
- 4.1.11 forthwith pay all costs, charges, expenses and legal fees and disbursements (on a solicitor and his own client basis) which may be incurred by the Lender in:
- (a) inspecting the Collateral;
 - (b) negotiating, preparing, perfecting and registering this General Security Agreement and other documents, whether or not relating to this General Security Agreement;
 - (c) investigating title to the Collateral;
 - (d) taking, recovering, keeping possession of and insuring the Collateral;
 - (e) connection with any disclosure requirements under the PPSA; and
 - (f) all other actions and proceedings taken in connection with the preservation of the Collateral and the confirmation, perfection and enforcement of this General Security Agreement and of any other security held by the Lender as security for the Obligations;
- 4.1.12 at the Lender's request at any time and from time to time create in favour of the Lender, as security for the Obligations, a fixed charge or charges upon any of the Other Collateral;
- 4.1.13 at the Lender's request at any time and from time to time execute and deliver such further and other documents and instruments and do all other acts and things as the Lender reasonably requires in order to give effect to this General Security Agreement or to confirm and perfect, and maintain perfection of, the security constituted by this General Security Agreement in favour of the Lender;
- 4.1.14 permit the Lender and its representatives, at all reasonable times, access to all the Debtor's property, assets and undertakings and to all its books of account and records for the purpose of inspection and render all assistance necessary for such inspection;
- 4.1.15 comply with the covenants, if any, set out in the Additional Covenants Schedule;
- 4.1.16 develop and use the Premises only in compliance with all Environmental Laws;
- 4.1.17 permit the Lender to investigate the Premises, any goods on the Premises and the Debtor's records at any time and from time to time to verify such compliance with Environmental Laws and this General Security Agreement;
- 4.1.18 upon the request of the Lender, obtain from time to time at the Debtor's cost a report from an independent consultant designated or approved by the Lender verifying compliance with Environmental Laws and this General Security Agreement or the extent of any non-compliance therewith;
- 4.1.19 not store, manufacture, dispose, treat, generate, use, transport, remediate or release Hazardous Materials on or from any of the Premises without notifying the Lender in writing;

- 4.1.20 promptly remove any Hazardous Materials from the Premises in a manner which conforms to Environmental Laws governing their removal; and,
- 4.1.21 notify the Lender in writing of:
- (a) any enforcement, clean-up, removal, litigation or other governmental, regulatory, judicial or administrative action instituted, contemplated or threatened against the Debtor or the Premises pursuant to any Environmental Laws;
 - (b) all claims, actions, orders or investigations, made or threatened by any third party against the Debtor or any of the Premises relating to damage, contribution, cost recovery, compensation, loss or injuries resulting from any Hazardous Materials or any breach of the Environmental Laws; and
 - (c) the discovery of any Hazardous Materials or any occurrence or condition on any of the Premises or any real property adjoining or in the vicinity of any of the Premises which could subject the Debtor or any of the Premises to any fines, penalties, orders or proceedings under any Environmental Laws;
- 4.1.22 apply to file applications and complete registrations on any present intellectual property which is not currently protected by an application or registration where commercially reasonable, including any and all improvements to intellectual property and apply to file registrations on unregistered trade-marks in Canada and the United States;
- 4.1.23 apply to file applications and complete registrations of all after acquired intellectual property in all jurisdictions where commercially reasonable;
- 4.1.24 keep up-to-date witnessed records regarding intellectual property;
- 4.1.25 enter into confidentiality agreements with employees and other third parties who may invent, create, discover, author and/or reduce to practice intellectual property for the Debtor and who may have access to confidential information of the Debtor;
- 4.1.26 ensure that all after acquired intellectual property obtained from third parties is properly acquired by way of a written license agreement or assignment;
- 4.1.27 provide, upon written request by the Lender, a list of all registered and unregistered trade-marks, patent applications, issued patents, copyright, industrial designs and other intellectual property; and,
- 4.1.28 mark all products and advertising appropriately to maintain the validity of all intellectual property rights.

V Payments and Proceeds

- 5.1 Before or after default under this General Security Agreement, the Lender may notify all or any Account Debtors of the security constituted by this General Security Agreement and may also direct such Account Debtors to make all payments on the Collateral to the Lender.
- 5.2 The Debtor acknowledges that any payments on or other proceeds of the Collateral received by the Debtor from Account Debtors, whether before or after notification of the security constituted by this General Security Agreement to Account Debtors and whether before or after default under this General Security Agreement, shall be received and held by the Debtor in trust for the Lender and shall be turned over to the Lender forthwith upon request.

VI Lender Actions

- 6.1 The Debtor hereby authorizes the Lender to:

- (a) file such financing statements and other documents and do such acts, matters and things (including completing and adding schedules hereto identifying the Collateral or any permitted Encumbrances affecting collateral or identifying the locations at which the Debtor's business is carried on and the Collateral and records relating thereto are situate) as the Lender may deem appropriate to perfect and continue the security constituted hereby, to protect and preserve the Collateral and to realize upon the security constituted hereby and the Debtor hereby irrevocably constitutes and appoints the Lender the true and lawful attorney of the Debtor, with full power of substitution, to do any of the foregoing in the name of the Debtor whenever and wherever it may be deemed necessary or expedient by the Lender; and
 - (b) make enquiries from time to time of any governmental authority with respect to the Debtor's compliance with Environmental Laws and the Debtor agrees that the Debtor will from time to time provide to the Lender with such written authorization as the Lender may reasonably require in order to facilitate the obtaining of such information.
- 6.2 The Lender may charge for its reasonable costs incurred in connection with any disclosure requirements under the PPSA.
- 6.3 If the Debtor fails to perform any of its Obligations hereunder, the Lender may, but shall not be obliged to, perform any or all of such Obligations without prejudice to any other rights and remedies of the Lender hereunder, and any payments made and any costs, charges, expenses and legal fees and disbursements (on a solicitor and his own client basis) incurred in connection therewith shall be payable by the Debtor to the Lender forthwith with interest until paid at the highest rate borne by any of the Obligations and such amounts shall form part of the Obligations and constitute a charge upon the Collateral in favour of the Lender prior to all claims subsequent to this General Security Agreement.
- 6.4 The Debtor covenants and agrees that the Lender may, but shall be under no obligation to, at any time or times as the Lender deems necessary and without the concurrence of the Debtor or any other person make such arrangements for the repairing, finishing and putting in order of the Premises, including, without limitation, such repairs, replacements and improvements as are necessary so that the Debtor and the Premises comply with Environmental Laws, and all reasonable costs, charges and expenses including an allowance for the time and services of the Lender, the Lender's servants or agents or any other person or persons appointed for the above purposes including, without limitation, the full amount of all legal fees, disbursements, costs, charges and expenses incurred by the Lender and any amount due hereunder shall be payable forthwith to the Lender, shall be deemed an advance to the Debtor by the Lender, shall be deemed to be Obligations, and shall bear interest at the highest rate per annum from time to time charged by the Lender on any of the other Obligations until paid.

VII Default

- 7.1 The Debtor shall be in default under this General Security Agreement, unless otherwise agreed in writing by the Lender, upon the occurrence of any of the following events:
- 7.1.1 the Debtor makes default in payment when due of any of the Obligations which are indebtedness or liabilities or the Debtor fails to perform or satisfy any other of the Obligations; or
 - 7.1.2 the Debtor is in breach of any term, condition, proviso, agreement or covenant to the Lender, or any representation or warranty given by the Debtor to the Lender is untrue, whether or not any such term, condition, proviso, agreement or covenant, representation or warranty is contained in this General Security Agreement; or

- 7.1.3 the Debtor makes an assignment for the benefit of its creditors, is declared bankrupt, makes a proposal or otherwise takes advantage of provisions for relief under the Bankruptcy and Insolvency Act (Canada), the Companies Creditors' Arrangement Act (Canada) or similar legislation in any jurisdiction, or makes an authorized assignment; or
- 7.1.4 there is instituted by or against the Debtor any formal or informal proceeding for the dissolution or liquidation of, settlement of claims against, or winding-up of affairs of, the Debtor; or
- 7.1.5 the Debtor ceases or threatens to cease to carry on business or makes or agrees to make a bulk sale of assets or commits or threatens to commit an act of bankruptcy; or
- 7.1.6 a receiver, receiver and manager or receiver-manager of all or any part of the Collateral or of any other property, assets or undertakings of the Debtor is appointed; or
- 7.1.7 any execution, sequestration, extent or other process of any court becomes enforceable against the Debtor or a distress or analogous process is levied upon the Collateral or any part thereof; or
- 7.1.8 an order is made or an effective resolution is passed for winding-up the Debtor; or
- 7.1.9 without the prior written consent of the Lender, the Debtor creates or permits to exist any Encumbrance against any of the Collateral which ranks or could in any event rank in priority to or *pari passu* with the security constituted by this General Security Agreement; or
- 7.1.10 the holder of any Encumbrance against any of the Collateral does anything to enforce or realize on such Encumbrance; or
- 7.1.11 the Debtor enters into any reconstruction, reorganization, amalgamation, merger or other similar arrangement with any other person; or
- 7.1.12 the Lender in good faith believes and has commercially reasonable grounds to believe that the prospect of payment or performance of any of the Obligations is impaired or that any of the Collateral is or is about to be placed in jeopardy; or
- 7.1.13 any certificate, statement, representation, warranty or audit report herewith, heretofore or hereafter furnished by or on behalf of the Debtor to the Lender, whether in connection with this General Security Agreement or otherwise, and whether furnished as an inducement to the Lender to extend any credit to or to enter into this or any other agreement with the Debtor or not:
 - (a) proves to have been false in any material respect at the time as of which the facts therein set forth were stated or certified; or
 - (b) proves to have omitted any substantial contingent or unliquidated liability or claim against the Debtor;

or, upon the date of execution of this General Security Agreement, there shall have been any material adverse change in any of the facts disclosed by any such certificate, statement, representation, warranty or audit report, which change was not disclosed to the Lender at or prior to the time of such execution.

- 7.2 For the purposes of Section 203 of the Land Title Act of British Columbia, the floating charge created by this General Security Agreement over land shall become a fixed charge thereon upon the earliest of:
 - 7.2.1 the occurrence of an event described in any of clauses 7.1.3, 7.1.4, 7.1.5, 7.1.6, 7.1.7, or 7.1.8; or

7.2.2 the Lender taking any action to enforce and realize on the security constituted by this General Security Agreement.

VIII Enforcement

- 8.1 The Lender may make demand for payment at any time of any or all of the Obligations which are payable upon demand (whether or not there is any default under this General Security Agreement) and, upon any default under this General Security Agreement, the Lender may declare any or all of the Obligations which are not payable on demand to become immediately due and payable.
- 8.2 Upon default under this General Security Agreement, the security hereby constituted will immediately become enforceable.
- 8.3 To enforce and realize on the security constituted by this General Security Agreement, the Lender may take any action permitted by law or in equity, as it may deem expedient, and in particular, without limiting the generality of the foregoing, the Lender may do any one or more of the following:
- 8.3.1 appoint by instrument a receiver, receiver and manager or receiver-manager (the person so appointed is herein called the "Receiver") of the Collateral, with or without bond as the Lender may determine, and from time to time in its sole discretion remove such Receiver and appoint another in its stead;
 - 8.3.2 enter upon any of the Premises and take possession of the Collateral with power to exclude the Debtor, its agents and its servants therefrom, without becoming liable as a mortgagee in possession;
 - 8.3.3 preserve, protect and maintain the Collateral and make such replacements thereof and repairs and additions thereto as the Lender may deem advisable;
 - 8.3.4 sell, lease or otherwise dispose of or concur in selling, leasing or otherwise disposing of all or any part of the Collateral, whether by public or private sale or lease or otherwise, in such manner, at such price as can be reasonably obtained therefor and on such terms as to credit and with such conditions of sale and stipulations as to title or conveyance or evidence of title or otherwise as to the Lender may seem reasonable, provided that the Debtor will not be entitled to be credited with the proceeds of any such sale, lease or other disposition until the monies therefor are actually received; and
 - 8.3.5 exercise all of the rights and remedies of a secured party under the PPSA.
- 8.4 A Receiver appointed pursuant to this General Security Agreement shall be the agent of the Debtor and not of the Lender and, to the extent permitted by law or to such lesser extent permitted by its appointment, shall have all the powers of the Lender hereunder, and in addition shall have power to carry on the business of the Debtor and for such purpose from time to time to borrow money either secured or unsecured, and if secured by a security on any of the Collateral, any such security may rank in priority to or pari passu with or behind the security constituted by this General Security Agreement, and if it does not so specify such security shall rank in priority to the security constituted by this General Security Agreement.
- 8.5 Subject to applicable law and the claims, if any, of the creditors of the Debtor ranking in priority to the security constituted by this General Security Agreement, all amounts realized from the disposition of the Collateral pursuant to this General Security Agreement will be applied as the Lender, in its sole discretion, may direct as follows:

- Firstly:** in or toward payment of all costs, charges and expenses (including legal fees and disbursements on a solicitor and his own client basis) incurred by the Lender in connection with or incidental to:
- (a) the exercise by the Lender of all or any of the powers granted to it pursuant to this General Security Agreement; and
 - (b) the appointment of the Receiver and the exercise by the Receiver of all or any of the powers granted to the Receiver pursuant to this General Security Agreement, including the Receiver's reasonable remuneration and all outgoings properly payable by the Receiver;
- Secondly:** in or toward payment to the Lender of all principal and other monies (except interest) due in respect of the Obligations;
- Thirdly:** in or toward payment to the Lender of all interest remaining unpaid in respect of the Obligations; and
- Fourthly:** any surplus will be paid to the Debtor.

IX Deficiency

- 9.1 If the amounts realized from the disposition of the Collateral are not sufficient to pay the Obligations in full to the Lender, the Debtor will immediately pay to the Lender the amount of such deficiency.

X Rights Cumulative

- 10.1 All rights and remedies of the Lender set out in this General Security Agreement are cumulative and no right or remedy contained herein is intended to be exclusive but each will be in addition to every other right or remedy contained herein or in any existing or future general security agreement or now or hereafter existing at law or in equity or pursuant to any other agreement between the Debtor and the Lender that may be in effect from time to time.

XI Appointment of Attorney

- 11.1 The Debtor hereby irrevocably appoints the Lender or the Receiver, as the case may be, with full power of substitution, to be the attorney of the Debtor for and in the name of the Debtor to sign, endorse or execute under seal or otherwise any deeds, documents, transfers, cheques, instruments, demands, assignments, assurances or consents that the Debtor is obliged to sign, endorse or execute and generally to use the name of the Debtor and to do all things as may be necessary or incidental to the exercise of all or any of the powers conferred on the Lender or the Receiver, as the case may be, pursuant to this General Security Agreement.

XII Liability of Lender

- 12.1 The Lender shall not be responsible or liable for any debts contracted by it, for damages to persons or property or for salaries or non-fulfilment of contracts during any period when the Lender shall manage the Collateral upon entry of the business of the Debtor, as herein provided, nor shall the Lender be liable to account as mortgagee in possession or for anything except actual receipts or be liable for any loss or realization or for any default or omission for which a mortgagee in possession may be liable.
- 12.2 The Lender shall not be bound to do, observe or perform or to see to the observance or performance by the Debtor of any obligations or covenants imposed upon the Debtor nor shall the Lender, in the case of Securities, Instruments or Chattel Paper, be obliged to reserve rights against other persons, nor shall the Lender be obliged to keep any of the Collateral identifiable.
- 12.3 The Lender shall not be obliged to inquire into the right of any person purporting to be entitled under the PPSA to information and materials from the Lender by making a demand upon the

Lender for such information and materials and the Lender shall be entitled to comply with such demand and shall not be liable for having complied with such demand notwithstanding that such person may in fact not be entitled to make such demand.

- 12.4 The Debtor will indemnify the Lender and hold the Lender harmless from and against any and all claims, costs, losses, demands, actions, causes of action, lawsuits, damages, penalties, judgments and liabilities of whatsoever nature and kind in connection with or arising out of any representation or warranty given by the Debtor, being untrue, the breach of any term, condition, proviso, agreement or covenant to the Lender, or the exercise of any of the rights and or remedies of the Lender, or any transaction contemplated in this General Security Agreement.
- 12.5 The Debtor hereby waives any applicable provision of law permitted to be waived by it which imposes higher or greater obligations upon the Lender than provided in this General Security Agreement.
- 12.6 The Debtor shall indemnify, reimburse and save harmless the Lender, any receiver, its directors, officers, employees, agents, and successors and assigns, from any and all liabilities, actions, damages, claims, losses, costs and expenses whatsoever (including without limitation, the full amount of all legal fees, costs, charges and expenses and the cost of removal, treatment, storage and disposal of any Hazardous Materials and remediation of the Premises) which may be paid, incurred or asserted against the Lender for, with respect to or as a direct or indirect result of the presence on or under, or the escape, seepage, leakage, spillage, discharge, emission or release from the Premises or into or upon any other land, the atmosphere or any watercourse, body of water or wetland of any Hazardous Materials.
- 12.7 Any amount owing by the Debtor hereunder shall, from the date of disbursement until the date the Lender receives reimbursement, be deemed advanced to the Debtor by the Lender, shall be deemed to be Obligations and shall bear interest at the highest rate per annum from time to time charged by the Lender on any of the other Obligations until paid.
- 12.8 The Debtor agrees that the indemnity obligations hereunder shall survive the release of the security of this General Security Agreement and the payment and satisfaction of the indebtedness and liabilities hereby secured.

XIII Appropriation of Payments and Offset

- 13.1 Subject to any applicable provisions of the PPSA, any and all payments made in respect of the Obligations from time to time and monies realized from any security held therefor (including monies collected in accordance with or realized on any enforcement of this General Security Agreement) may be applied to such part or parts of the Obligations as the Lender may see fit, and the Lender may at all times and from time to time change any appropriation as the Lender may see fit or, at the option of the Lender, such payments and monies may be held unappropriated in a collateral account or released to the Debtor, all without prejudice to the liability of the Debtor or to the rights of the Lender hereunder.
- 13.2 Without limiting any other right of the Lender, whenever any of the Obligations is immediately due and payable or the Lender has the right to declare any of the Obligations to be immediately due and payable (whether or not it has so declared), the Lender may, in its sole discretion, set off against any of the Obligations any and all monies then owed to the Debtor by the Lender in any capacity, whether or not due and to do so even though any charge therefor is made or entered on the Lender's records subsequent thereto, and the Lender shall be deemed to have exercised such right to set off immediately at the time of making its decision.

XIV Liability to Advance, Etc.

- 14.1 Except to the extent that the Lender:

- 14.1.1 by accepting bills of exchange drawn on it by the Debtor; or
- 14.1.2 by issuing letters of credit or letters of guarantee on the application of the Debtor; is required to advance monies on the maturity of such bills or pursuant to such letters of credit or letters of guarantee, as the case may be, none of the preparation, execution, perfection and registration of this General Security Agreement or the advance of any monies shall bind the Lender to make any advance or loan or further advance or loan, or renew any note or extend any time for payment of any indebtedness or liability of the Debtor to the Lender or extend any term for performance or satisfaction of any obligation of the Debtor to the Lender.

14.2 Nothing herein contained shall in any way oblige the Lender to grant, continue, renew, extend time for payment of or accept anything which constitutes or would constitute Obligations or any of them.

XV Waiver

- 15.1 No delay or omission by the Lender in exercising any right or remedy hereunder or with respect to any of the Obligations shall operate as a waiver thereof or of any other right or remedy, and no single or partial exercise thereof shall preclude any other or further exercise thereof or the exercise of any other right or remedy.
- 15.2 The Lender may from time to time and at any time waive in whole or in part any right, benefit or default under any clause of this General Security Agreement but any such waiver of any right, benefit or default on any occasion shall be deemed not to be a waiver of any such right, benefit or default thereafter, or of any other right, benefit or default, as the case may be.

XVI Extensions

- 16.1 The Lender may grant extensions of time and other indulgences, take and give up security, accept compositions, compound, compromise, settle, grant releases and discharges, refrain from perfecting or maintaining perfection of security, and otherwise deal with the Debtor, Account Debtors of the Debtor, sureties and others and with the Collateral and other security as the Lender may see fit without prejudice to the liability of the Debtor or the Lender's right to hold and realize on the security constituted by this General Security Agreement.

XVII Assignment

- 17.1 The Lender may, without further notice to the Debtor, at any time mortgage, charge, assign, transfer or grant a security interest in this General Security Agreement and the security constituted hereby.
- 17.2 The Debtor expressly agrees that the assignee, transferee or secured party of the Lender, as the case may be, shall have all of the Lender's rights and remedies under this General Security Agreement and the Debtor will not assert any defence, counterclaim, right of set-off or otherwise any claim which it now has or hereafter acquires against the Lender in any action commenced by such assignee, transferee or secured party, as the case may be, and will pay the Obligations to the assignee, transferee or secured party, as the case may be, as the Obligations become due.

XVIII Satisfaction and Discharge

- 18.1 Any partial payment or satisfaction of the Obligations, or any ceasing by the Debtor to be indebted to the Lender, shall be deemed not to be redemption or discharge of the security constituted by this General Security Agreement.

- 18.2 The Debtor shall be entitled to a release and discharge of the security constituted by this General Security Agreement upon full payment, performance and satisfaction of all Obligations, or the securing of the Obligations to the satisfaction of the Lender, and upon written request by the Debtor and payment to the Lender of all costs, charges, expenses and legal fees and disbursements (on a solicitor and his own client basis) incurred by the Lender in connection with the Obligations and such release and discharge.

XIX No Merger

- 19.1 This General Security Agreement shall not operate so as to create any merger or discharge of any of the Obligations, or any assignment, transfer, guarantee, lien, contract, promissory note, bill of exchange or security in any form held or which may hereafter be held by the Lender from the Debtor or from any other person whomsoever.
- 19.2 The taking of a judgment with respect to any of the Obligations will not operate as a merger of any of the terms, conditions, covenants, agreements or provisos contained in this General Security Agreement.
- 19.3 The release and discharge of the security constituted by this General Security Agreement by the Lender shall not operate as a release or discharge of any right of the Lender to be indemnified and held harmless by the Debtor pursuant to clause 12.4 hereof or of any other right of the Lender against the Debtor arising under this General Security Agreement prior to such release and discharge.

XX Interpretation

- 20.1 In this General Security Agreement:
- 20.1.1 the invalidity or unenforceability of the whole or any part of any clause shall not affect the validity or enforceability of any other clause or the remainder of such clause;
- 20.1.2 the headings have been inserted for reference only and shall not define, limit, alter or enlarge the meaning of any provision of this General Security Agreement; and
- 20.1.3 when the context so requires, the singular shall be read as if the plural were expressed and the provisions hereof shall be read with all grammatical changes necessary dependent upon the person referred to being a male, female, firm or corporation.

XXI Notice

- 21.1 Whenever either the Lender or the Debtor is required or entitled to notify or direct the other or to make a demand upon or request of the other relating to the Collateral, this General Security Agreement or the PPSA, such notice, direction, demand or request shall be sufficiently given if given in writing and delivered to the party for whom it is intended at the address of such party herein or as changed pursuant hereto or if sent by prepaid registered mail addressed to the party for whom it is intended at the address of such party herein set forth or as changed pursuant hereto.
- 21.2 Either the Lender or the Debtor may notify the other in accordance herewith of any change in its principal address to be used for the purposes hereof.

XXII Variation

- 22.1 Save for any schedules which may be added hereto pursuant to the provisions hereof, no modification, variation or amendment of any provision of this General Security Agreement shall be made except by written agreement, executed by the parties hereto and no waiver of any provision hereof shall be effective unless in writing.

XXIII Enurement

23.1 This General Security Agreement shall enure to the benefit of the Lender and its successors and assigns and shall be binding upon the respective heirs, executors, personal representatives, successors and permitted assigns of the Debtor.

XXIV Copy of Agreement and Financing Statement

24.1 The Debtor hereby:

24.1.1 acknowledges receiving a copy of this General Security Agreement; and

24.1.2 waives all rights to receive from the Lender a copy of any financing statement, financing change statement or verification statement filed at any time or from time to time in respect of this General Security Agreement.

XXV Governing Law

25.1 This General Security Agreement shall be governed by and construed in accordance with the laws of the Province.

25.2 For the purpose of legal proceedings this General Security Agreement shall be deemed to have been made in the Province and to be performed there and the courts of the Province shall have jurisdiction over all disputes which may arise under this General Security Agreement and the Debtor hereby irrevocably and unconditionally submits to the non-exclusive jurisdiction of such courts, provided always that nothing herein contained shall prevent the Lender from proceeding at its election against the Debtor in the courts of any other Province, country or jurisdiction.

In Witness Whereof the Debtor has executed this General Security Agreement as of the day and year first above written.

FOR BRITISH COLUMBIA

Officer Signature(s)	Execution Date	Debtor(s) Signature(s)			
<p>(For Corporation)</p> <p>_____</p> <p><i>Officer Signature</i></p> <p>_____</p> <p><i>Name</i></p> <p>_____</p> <p><i>Address</i></p>	<table border="1" style="margin: auto; border-collapse: collapse;"> <tr> <td style="width: 33%; text-align: center;">Y</td> <td style="width: 33%; text-align: center;">M</td> <td style="width: 33%; text-align: center;">D</td> </tr> </table>	Y	M	D	<p>_____</p> <p>(Corporation Name) by its authorized signatories</p> <p>_____</p> <p><i>Signature</i></p> <p>_____</p> <p><i>Name</i></p> <p>_____</p> <p><i>Title</i></p> <p>_____</p> <p><i>Signature</i></p> <p>_____</p>
Y	M	D			

(For Individual)

Officer Signature

Name

Address

--	--	--

Name

Title

Debtor Signature

Name

Officer Certification: Your signature constitutes a representation that you are a solicitor, notary public or other person authorized by the Evidence Act, R.S.B.C. 1996, c. 124, to take affidavits for use in British Columbia and certifies the matters set out in Part 5 of the Land Title Act as they pertain to the execution of this instrument.

FOR ALBERTA, NEW BRUNSWICK, NOVA SCOTIA, NEWFOUNDLAND AND LABRADOR

(For Corporation)

NILEX INC.

Per: _____
Name of Corporation

_____ *Signature*
 IAN WILSON

_____ *Name*
 PRESIDENT

_____ *Title*

Per: _____
 _____ *Signature*

_____ *Name*

_____ *Title*

} C/S

FOR INDIVIDUAL

DEBTOR'S SIGNATURE

Per: _____
 _____ *Signature*

_____ *Name*

_____ *Address*

_____ *Occupation*

_____ *Signature of Debtor*

_____ *Name*

LB

Encumbrance Schedule

Prior Encumbrances:

1. General:
 - a. Any and all mortgages, charges, liens, encumbrances and security interests granted by the Debtor to PEF 2010 Nilex Investment Limited Partnership
2. Alberta:
 - a. Registration No. 08071107693 in favour of JIM PEPLINSKI LEASING INC.
 - b. Registration No. 09030227633 in favour of KONICA MINOLTA BUSINESS SOLUTIONS (CANADA) LTD.
 - c. Registration No. 09070716897 in favour of JIM PEPLINSKI'S AUTO LEASING LTD. and JIM PEPLINSKI'S LEASEMASTER NATIONAL
 - d. Registration No. 09101319386 in favour of JIM PEPLINSKI'S AUTO LEASING LTD. and JIM PEPLINSKI'S LEASEMASTER NATIONAL
 - e. Registration No. 10010720861 in favour of TRANSPORTACTION LEASE SYSTEMS INC.
 - f. Registration No. 12122027866 in favour of DE LAGE LANDEN FINANCIAL SERVICES CANADA INC.
 - g. Registration No. 13021928004 in favour of INTEGRATED DISTRIBUTION SYSTEMS LP O/A WAJAX INDUSTRIES
 - h. Registration No. 13032800044 in favour of INTEGRATED DISTRIBUTION SYSTEMS LP O/A WAJAX EQUIPMENT
3. Ontario:
 - a. Registration No. 20091102 0852 5064 2446 in favour of JIM PEPLINSKI'S AUTO LEASING LTD. and JIM PEPLINSKI'S LEASEMASTER NATIONAL
4. Saskatchewan:
 - a. Registration No. 300534960 in favour of JIM PEPLINSKI'S AUTO LEASING LTD. and JIM PEPLINSKI'S LEASEMASTER NATIONAL

Location Schedule**Address(es) for Location of the Collateral**

1. 1781 Clearbrook Road, Abbotsford, BC V2T 5X5
2. 3963 and 3981 Phillips Avenue, Burnaby, BC V5A 3K4
3. 9222 – 40 Street SE, Calgary, AB T2C 2P3
4. 15253 East Fremont Drive, Centennial, CO 80112 (Lot 1, 5th Filing, Cherry Creek Business Center)
5. 9304 – 39 Avenue NW, Edmonton, AB T6E 6L8
6. 315, 845 Broad Street, Regina, SK S4R 8G9
7. 130 Yorkland Boulevard, Toronto, ON M2J 1R5
8. VERNON, BC (P: 250.260.3300, F: 250.260.3520)



Additional Covenants Schedule**Additional Covenants of the Debtor further to Clause 4.1.15**

Comply with all terms, conditions and covenants set forth in any and all offer of credit letters executed by the Lender and the Debtor, as such letters may be amended, extended, renewed, altered, modified, substituted or replaced from time to time.

Intellectual Property Schedule

Patent:	REINFORCED NETWORKED POLYMER/CLAY ALLOY COMPOSITE / ALLIAGE COMPOSITE ARGILE-POLYMERE, RENFORCE ET EN RESEAU
Registration Number (Canadian Intellectual Property Office ("CIPO")):	CA 2310483

Patent:	DEGRADABLE EROSION CONTROL BARRIER / BARRIERE DEGRADABLE DE LUTTE CONTRE L'EROSION
Registration Number (CIPO):	CA 2588196

Patent:	METHOD FOR STABILIZING SOIL USING A CATIONIC SURFACTANT, SOIL STABILIZING AGENT AND STABILIZED SOIL / METHODE PERMETTANT DE STABILISER LES SOLS A L'AIDE D'UN SURFACTIF CATIONIQUE, AGENT STABILISANT DE SOL ET SOL STABILISE
Registration Number (CIPO):	CA 2281164

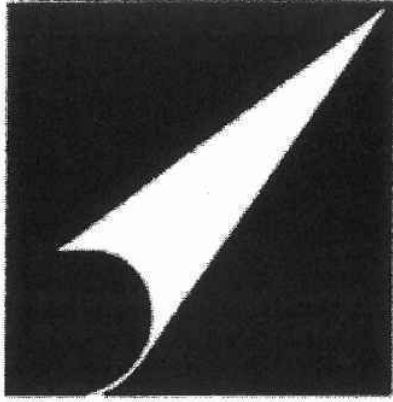
Patent:	BARRIER SYSTEMS / STRUCTURE CONSTITUANT UNE BARRIERE
Registration Number (CIPO):	CA 1304975
Application Number (CIPO):	560501

Trademark:	GEO-RIDGE
Registration Number (CIPO):	TMA491878
Application Number (CIPO):	0813762

Trademark:	Unearthing Better Results
Registration Number (CIPO):	TMA758094
Application Number (CIPO):	1395721

Trademark:	Mulchmax
Registration Number (CIPO):	TMA833996
Application Number (CIPO):	1539033

Trademark:	GOOD STUFF FOR THE EARTH
Registration Number (CIPO):	TMA521260
Application Number (CIPO):	0884022

Trademark:	 <p>(Square with slanted triangle in the middle)</p>
Registration Number (CIPO):	TMA757659
Application Number (CIPO):	1395720

Trademark:	NILEX
Registration Number (CIPO):	TMA521575
Application Number (CIPO):	0884024


Trademark:	NRS
Registration Number (CIPO):	TMA513690
Application Number (CIPO):	0884023

Trademark:	 NILEX (NILEX & DESIGN)
Registration Number (CIPO):	TMA508923
Application Number (CIPO):	0834754
Patent:	Reinforced networked polymer/clay alloy composite
Registration Number (United States Patent and Trademarks Office ("USPTO")):	6,737,472
Application Number (USPTO):	10/413,679
Patent:	Reinforced networked polymer/clay alloy composite
Registration Number (USPTO):	6,610,781
Application Number (USPTO):	09/579,701
Trademark:	MULCHMAX
Serial Number (USPTO):	85393629

Trademark:	GEORIDGE
Serial Number (USPTO):	85023247
Registration Number (USPTO):	3877087

Trademark:	UNEARTHING BETTER RESULTS
Serial Number (USPTO):	85012084
Registration Number (USPTO):	3899606

Trademark:	GEO-RIDGE
Serial Number (USPTO):	85010781
Registration Number (USPTO):	3877000

Trademark:	
Serial Number (USPTO):	85010716
Registration Number (USPTO):	3879662

Trademark:	NILEX
Serial Number (USPTO):	85010663
Registration Number (USPTO):	3879659

This is Exhibit "K" referred to in the Affidavit of Jeff Allen sworn before me this 31st day of October, 2022.

A Commissioner for Oaths in and for Alberta

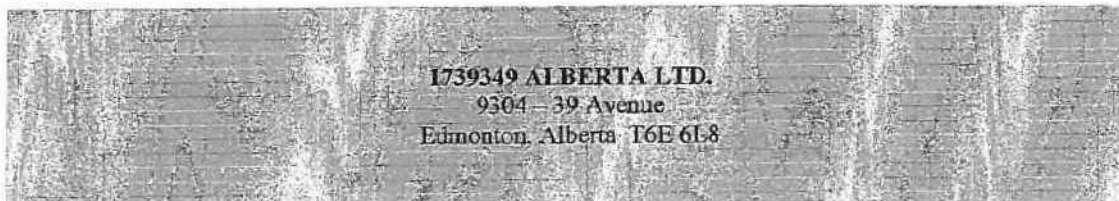
AB

GENERAL SECURITY AGREEMENT

(British Columbia, Alberta, New Brunswick, Nova Scotia, Newfoundland and Labrador, Prince Edward Island)

This General Security Agreement made as of the 30 day of APRIL, 2013

Between:



(the "Debtor")

And:

PEF 2010 Nilex Investment Limited Partnership, a limited partnership under the laws of the Province of British Columbia having a registered office at



(the "Lender")

I Security

- 1.1 For value received, the Debtor grants and creates the security constituted by this General Security Agreement and agrees to the terms, covenants, agreements, conditions, provisos and other matters set out in this General Security Agreement.
- 1.2 As general and continuing security for the Obligations (as defined in clause 2.1 hereof), the Debtor:
- 1.2.1 hereby grants to the Lender, by way of mortgage, charge, assignment and transfer, a security interest in all presently owned and hereafter acquired personal property of the Debtor of whatsoever nature and kind and wheresoever situate and all proceeds thereof and therefrom, renewals thereof, Accessions thereto and substitutions therefor, (all of which are herein collectively called the "Personal Property Collateral"), including, without limiting the generality of the foregoing, all the presently owned or held and hereafter acquired right, title and interest of the Debtor in and to all Goods (including all accessories, attachments, additions and Accessions thereto), Chattel Paper, Documents of Title (whether negotiable or not), Instruments, Intangibles (subject to Clause 1.2.2 hereof), Licences, Money, Securities, Investment Property and all:
- (a) Inventory of whatsoever nature and kind and wheresoever situate;

AB

- (b) Equipment (other than Inventory) of whatsoever nature and kind and wheresoever situate, including, without limitation, all machinery, tools, apparatus, plant, furniture, fixtures and vehicles of whatsoever nature and kind;
- (c) book accounts and book debts and generally all Accounts, debts, dues, claims, choses in action and demands of every nature and kind howsoever arising or secured including letters of credit, letters of guarantee and advices of credit, which are now due, owing or accruing or growing due to or owned by or which may hereafter become due, owing or accruing or growing due to or owned by the Debtor (all of which are herein collectively called the "Debts");
- (d) deeds, documents, writings, papers, books of account and other books relating to or being records of Debts, Chattel Paper or Documents of Title or by which such are or may hereafter be secured, evidenced, acknowledged or made payable;
- (e) contractual rights and insurance claims and all goodwill;
- (f) monies other than trust monies lawfully belonging to others; and
- (g) personal property described in any schedule now or hereafter annexed hereto; and

1.2.2 hereby grants to the Lender, by way of mortgage and charge a security interest in all presently owned and hereafter acquired patents, trade-marks, copyrights, industrial designs and other intellectual property and all proceeds thereof and therefrom, renewals thereof, Accessions thereto and substitutions therefor (all of which is deemed to be included in the definition of "Personal Property Collateral" referred to in Clauses 1.2.1 and 1.3.2 hereof); and

1.2.3 hereby charges as and by way of a floating charge in favour of the Lender all the presently owned or held and hereafter acquired property, assets, effects and undertakings of the Debtor of whatsoever nature and kind and wheresoever situate, other than such of the property, assets, effects and undertakings of the Debtor as are validly and effectively subjected to the security interest granted to the Lender pursuant to clause 1.2.1, (all of which property, assets, effects and undertakings so charged by this clause 1.2.3 are herein collectively called the "Other Collateral") including, without limiting the generality of the foregoing, all presently owned or held and hereafter acquired right, title and interest of the Debtor in and to real and immovable and leasehold property and rights whether in fee or of a less estate and all interest in and rights relating to lands and all easements, rights of way, privilege, benefits, licences, improvements and rights whether connected therewith or appurtenant thereto or separately owned or held and all structures, buildings, plant, machinery, fixtures, apparatus and fixed assets and the charge created by this clause 1.2.3 shall be a floating charge such that the Debtor shall not have power without the prior written consent of the Lender to:

- (a) create or permit to exist any Encumbrance against any of the Other Collateral which ranks or could in any event rank in priority to or pari passu with the security constituted by this General Security Agreement, save for:
 - (1) those Encumbrances shown in the Encumbrance Schedule; and
 - (2) Encumbrances approved in writing by the Lender prior to creation or assumption; or
- (b) grant, sell, exchange, transfer, assign, lease or otherwise dispose of the Other Collateral.

1.3 In this General Security Agreement:

- 1.3.1 any reference to "Premises" shall mean all property owned or leased by the Debtor;
- 1.3.2 the Personal Property Collateral and the Other Collateral are herein together called the "Collateral";
- 1.3.3 any reference to "Collateral" shall, unless the context otherwise requires, be deemed a reference to "Collateral or any part thereof";
- 1.3.4 any reference to "Debtor" and the personal pronoun "it" or "its" and any verb relating thereto and used therewith shall be read and construed as required by and in accordance with the context in which such words are used depending upon whether the Debtor is one or more corporations and, if more than one Debtor executes this General Security Agreement, this General Security Agreement shall apply and be binding upon each of them jointly and severally and all obligations hereunder shall be joint and several;
- 1.3.5 any reference to "Environmental Laws" shall mean any laws, regulations, orders, by-laws, permits or lawful requirements of any governmental authority with respect to environmental protection or regulating hazardous materials;
- 1.3.6 any reference to "General Security Agreement" shall, unless the context otherwise requires, be deemed a reference to this General Security Agreement as amended from time to time by written agreement together with the schedules hereto and any schedules added hereto pursuant to the provisions hereof;
- 1.3.7 any reference to "Hazardous Materials" shall mean any asbestos material, urea formaldehyde, explosives, radioactive materials, pollutants, contaminants, hazardous substances, corrosive substances, toxic substances, special waste or waste of any kind including, without limitation, compounds known as chlorobiphenyls and any substance the storage, manufacture, disposal, treatment, generation, use, transport, remediation or release of which into the environment is prohibited, controlled or licensed under Environmental Laws, all excluding similar or like substances used in the ordinary course of the Debtor's business provided that such excluded substances continue to be used, stored, disposed of or otherwise handled in accordance with Environmental Laws and other applicable laws;
- 1.3.8 any reference to "PPSA" shall mean the Personal Property Security Act of the Province as amended from time to time, including any amendments thereto and any Act substituted therefor and amendments thereto;
- 1.3.9 any reference to the "Province" shall mean the Province of Alberta;
and
- 1.3.10 the terms "Goods", "Chattel Paper", "Documents of Title", "Equipment", "Accounts" "Consumer Goods", "Instruments", "Intangibles", "Licences"(Alberta and British Columbia only), "Money", "Securities", "Investment Property", "Proceeds", "Inventory" and "Accessions" and other words and expressions which have been defined in the PPSA shall be interpreted in accordance with their respective meanings given in the PPSA (either in the singular or plural thereof), as the context requires unless otherwise defined herein or unless the context otherwise requires.
- 1.4 The Lender and the Debtor have not agreed to postpone the time for attachment of the security interests granted hereby.
- 1.5 The security interest in Consumer Goods hereby granted shall not become effective until, but shall become effective immediately when, the Lender notifies the Debtor in writing that it is effective.
- 1.6 The last day of the term of any lease held by the Debtor with respect to any of the Collateral is excluded from the security constituted by this General Security Agreement.

II Obligations Secured

- 2.1 The security constituted by this General Security Agreement is general and continuing security for payment, performance and satisfaction of each and every obligation, indebtedness and liability of the Debtor to the Lender (including interest thereon), present or future, direct or indirect, absolute or contingent, matured or not, extended or renewed, wheresoever and howsoever incurred, and any ultimate unpaid balance thereof, including all future advances and re-advances, and whether the same is from time to time reduced and thereafter increased or entirely extinguished and thereafter incurred again and whether the Debtor be bound alone or with another or others and whether as principal or surety, (all of which obligations, indebtedness and liabilities are herein collectively called the "Obligations").
- 2.2 This General Security Agreement and the security constituted hereby are in addition to and not in substitution for any other security or securities which the Lender may now or from time to time hold or take from the Debtor or from any other person whomsoever.

III Representations and Warranties of the Debtor

- 3.1 The Debtor represents and warrants that, and, so long as this General Security Agreement remains in effect, shall be deemed to continuously represent and warrant that:
- 3.1.1 this General Security Agreement has been authorized, executed and delivered in accordance with resolutions of the directors (and of the shareholders as applicable) of the Debtor and all other matters and things have been done and performed so as to authorize and make the execution and delivery of this General Security Agreement, the creation of the security constituted hereby and the performance of the Debtor's obligations hereunder, legal, valid and binding;
- 3.1.2 the Collateral is genuine and is owned by the Debtor free of all security interests, mortgages, liens, claims, charges and other encumbrances (herein collectively called "Encumbrances"), save for the security constituted by this General Security Agreement, those Encumbrances shown on the Encumbrance Schedule and those Encumbrances approved in writing by the Lender;
- 3.1.3 the Debtor has good and lawful authority to create the security in the Collateral constituted by this General Security Agreement;
- 3.1.4 each Debt, Chattel Paper and Instrument included in Collateral is enforceable in accordance with its terms against the party obligated to pay the same (the "Account Debtor"), and the amount represented by the Debtor to the Lender from time to time as owing by each Account Debtor or by all Account Debtors will be the correct amount actually and unconditionally owing by such Account Debtor or Account Debtors, except for normal cash discounts where applicable, and no Account Debtor will have any defense, set off, claim or counterclaim against the Debtor which can be asserted against the Lender, whether in any proceeding to enforce the Collateral or otherwise;
- 3.1.5 with respect to Goods (including Inventory) comprised in the Collateral, the locations specified in the Location Schedule are accurate and complete (save for Goods in transit to such locations and Inventory on lease or consignment) and all fixtures or Goods about to become fixtures which form part of the Collateral will be situate at one of the locations specified in the Location Schedule;
- 3.1.6 none of the Premises are insulated with urea formaldehyde nor contain any asbestos material or underground tanks;
- 3.1.7 the Premises are free of any Hazardous Materials;

- 3.1.8 the Premises are not currently used in a manner, and, to the Debtor's knowledge, after having made due inquiry, no prior use has occurred, which is contrary to any laws, regulations, orders, bylaws, permits or lawful requirements of any Environmental Laws; and
- 3.1.9 there are no existing or threatened claims, actions, orders or investigations under any Environmental Laws against the Debtor or against the Premises;
- 3.1.10 the Debtor is the owner of any intellectual property applications and registrations and there are no outstanding claims of ownership by third parties in respect of these registrations and applications;
- 3.1.11 all intellectual property applications and registrations are valid and in good standing;
- 3.1.12 all trade-mark and industrial designs have been in continuous use and that the use has been proper in relation to the wares and/or services of Debtor;
- 3.1.13 only the Debtor has used the trade-marks, or if there are any third party users of the Debtor's trade-marks, such third party users are properly licensed to use such trademarks;
- 3.1.14 all assignments and other documents affecting intellectual property rights have been disclosed and provided to the Lender;
- 3.1.15 there are no outstanding or threatened claims or proceedings with respect to the intellectual property; and,
- 3.1.16 all necessary assignments and license agreements have been properly executed by the Debtor for use of third party intellectual property.

IV Covenants of the Debtor

- 4.1 The Debtor covenants and agrees that at all times while this General Security Agreement remains in effect the Debtor will:
 - 4.1.1 defend the Collateral for the benefit of the Lender against the claims and demands of all other persons;
 - 4.1.2 not, without the prior written consent of the Lender:
 - (a) create or permit to exist any Encumbrance against any of the Personal Property Collateral which ranks or could in any event rank in priority to or pari passu with the security constituted by this General Security Agreement, save for:
 - (i) those Encumbrances shown in the Encumbrance Schedule; and
 - (ii) Encumbrances approved in writing by the Lender prior to creation or assumption; or
 - (b) grant, sell, exchange, transfer, assign, lease or otherwise dispose of the Collateral; provided always, that, until default, the Debtor may, in the ordinary course of the Debtor's business, sell or lease Inventory and, subject to clause 5.2 hereof, use monies available to the Debtor;
 - 4.1.3 fully and effectively maintain and keep maintained valid and effective the security constituted by this General Security Agreement;
 - 4.1.4 notify the Lender promptly of:

- (a) any change in the information contained herein or in the Schedules hereto relating to the Debtor, the Debtor's name, the Debtor's business or the Collateral;
 - (b) the details of any significant acquisition of Collateral;
 - (c) the details of any claims or litigation affecting the Debtor or the Collateral;
 - (d) any loss or damage to the Collateral;
 - (e) any default by any Account Debtor in payment or other performance of obligations of the Account Debtor comprised in the Collateral; and
 - (f) the return to, or repossession by, the Debtor of Collateral;
- 4.1.5 keep the Collateral in good order, condition and repair (in the locations specified in the Location Schedule or such other locations as the Lender may approve in writing) and not use the Collateral in violation of the provisions of this General Security Agreement or any other agreement relating to the Collateral or any policy insuring the Collateral or any applicable statute, law, by-law, rule, regulation or ordinance;
- 4.1.6 carry on and conduct the business of the Debtor in a proper and efficient manner and so as to protect and preserve the Collateral and to keep, in accordance with generally accepted accounting principles, consistently applied, proper books of account for the Debtor's business as well as accurate and complete records concerning the Collateral and, at the Lender's request, mark any and all such records and the Collateral so as to indicate the security constituted by this General Security Agreement;
- 4.1.7 forthwith pay:
- (a) all obligations to its employees and all obligations to others which relate to its employees when due, including, without limitation, all taxes, duties, levies, government fees, claims and dues related to its employees;
 - (b) all taxes, assessments, rates, duties, levies, government fees, claims and dues lawfully levied, assessed or imposed upon it or the Collateral when due, unless the Debtor shall in good faith contest its obligations so to pay and shall furnish such security as the Lender may require; and
 - (c) all Encumbrances which rank or could in any event rank in priority to or pari passu with the security constituted by this General Security Agreement, other than the Encumbrances, if any, shown in the Encumbrance Schedule hereto and those approved in writing by the Lender;
- 4.1.8 prevent the Collateral, save Inventory sold or leased as permitted hereby, from being or becoming an Accession to other property not covered by this General Security Agreement;
- 4.1.9 insure the Collateral for such periods, in such amounts, on such terms and against loss or damage by fire and such other risks as the Lender shall reasonably direct (but in any event in accordance with prudent business practice and for not less than the full replacement cost thereof) with loss payable to the Lender and the Debtor, as insureds, as their respective interests may appear, and to pay all premiums for such insurance;
- 4.1.10 deliver to the Lender from time to time promptly upon request:
- (a) any Documents of Title, Instruments, Securities and Chattel Paper comprised in or relating to the Collateral;

- (b) all books of account and all records, ledgers, reports, correspondence, schedules, documents, statements, lists and other writings relating to the Collateral for the purpose of inspecting, auditing or copying the same;
 - (c) all financial statements prepared by or for the Debtor regarding the Debtor's business;
 - (d) all policies and certificates of insurance relating to the Collateral; and
 - (e) such information concerning the Collateral, the Debtor and Debtor's business and affairs as the Lender may reasonably require;
- 4.1.11 forthwith pay all costs, charges, expenses and legal fees and disbursements (on a solicitor and his own client basis) which may be incurred by the Lender in:
- (a) inspecting the Collateral;
 - (b) negotiating, preparing, perfecting and registering this General Security Agreement and other documents, whether or not relating to this General Security Agreement;
 - (c) investigating title to the Collateral;
 - (d) taking, recovering, keeping possession of and insuring the Collateral;
 - (e) connection with any disclosure requirements under the PPSA; and
 - (f) all other actions and proceedings taken in connection with the preservation of the Collateral and the confirmation, perfection and enforcement of this General Security Agreement and of any other security held by the Lender as security for the Obligations;
- 4.1.12 at the Lender's request at any time and from time to time create in favour of the Lender, as security for the Obligations, a fixed charge or charges upon any of the Other Collateral;
- 4.1.13 at the Lender's request at any time and from time to time execute and deliver such further and other documents and instruments and do all other acts and things as the Lender reasonably requires in order to give effect to this General Security Agreement or to confirm and perfect, and maintain perfection of, the security constituted by this General Security Agreement in favour of the Lender;
- 4.1.14 permit the Lender and its representatives, at all reasonable times, access to all the Debtor's property, assets and undertakings and to all its books of account and records for the purpose of inspection and render all assistance necessary for such inspection;
- 4.1.15 comply with the covenants, if any, set out in the Additional Covenants Schedule;
- 4.1.16 develop and use the Premises only in compliance with all Environmental Laws;
- 4.1.17 permit the Lender to investigate the Premises, any goods on the Premises and the Debtor's records at any time and from time to time to verify such compliance with Environmental Laws and this General Security Agreement;
- 4.1.18 upon the request of the Lender, obtain from time to time at the Debtor's cost a report from an independent consultant designated or approved by the Lender verifying compliance with Environmental Laws and this General Security Agreement or the extent of any non-compliance therewith;
- 4.1.19 not store, manufacture, dispose, treat, generate, use, transport, remediate or release Hazardous Materials on or from any of the Premises without notifying the Lender in writing;

- 4.1.20 promptly remove any Hazardous Materials from the Premises in a manner which conforms to Environmental Laws governing their removal; and,
- 4.1.21 notify the Lender in writing of:
- (a) any enforcement, clean-up, removal, litigation or other governmental, regulatory, judicial or administrative action instituted, contemplated or threatened against the Debtor or the Premises pursuant to any Environmental Laws;
 - (b) all claims, actions, orders or investigations, made or threatened by any third party against the Debtor or any of the Premises relating to damage, contribution, cost recovery, compensation, loss or injuries resulting from any Hazardous Materials or any breach of the Environmental Laws; and
 - (c) the discovery of any Hazardous Materials or any occurrence or condition on any of the Premises or any real property adjoining or in the vicinity of any of the Premises which could subject the Debtor or any of the Premises to any fines, penalties, orders or proceedings under any Environmental Laws;
- 4.1.22 apply to file applications and complete registrations on any present intellectual property which is not currently protected by an application or registration where commercially reasonable, including any and all improvements to intellectual property and apply to file registrations on unregistered trade-marks in Canada and the United States;
- 4.1.23 apply to file applications and complete registrations of all after acquired intellectual property in all jurisdictions where commercially reasonable;
- 4.1.24 keep up-to-date witnessed records regarding intellectual property;
- 4.1.25 enter into confidentiality agreements with employees and other third parties who may invent, create, discover, author and/or reduce to practice intellectual property for the Debtor and who may have access to confidential information of the Debtor;
- 4.1.26 ensure that all after acquired intellectual property obtained from third parties is properly acquired by way of a written license agreement or assignment;
- 4.1.27 provide, upon written request by the Lender, a list of all registered and unregistered trade-marks, patent applications, issued patents, copyright, industrial designs and other intellectual property; and,
- 4.1.28 mark all products and advertising appropriately to maintain the validity of all intellectual property rights.

V Payments and Proceeds

- 5.1 Before or after default under this General Security Agreement, the Lender may notify all or any Account Debtors of the security constituted by this General Security Agreement and may also direct such Account Debtors to make all payments on the Collateral to the Lender.
- 5.2 The Debtor acknowledges that any payments on or other proceeds of the Collateral received by the Debtor from Account Debtors, whether before or after notification of the security constituted by this General Security Agreement to Account Debtors and whether before or after default under this General Security Agreement, shall be received and held by the Debtor in trust for the Lender and shall be turned over to the Lender forthwith upon request.

VI Lender Actions

- 6.1 The Debtor hereby authorizes the Lender to:

- (a) file such financing statements and other documents and do such acts, matters and things (including completing and adding schedules hereto identifying the Collateral or any permitted Encumbrances affecting collateral or identifying the locations at which the Debtor's business is carried on and the Collateral and records relating thereto are situate) as the Lender may deem appropriate to perfect and continue the security constituted hereby, to protect and preserve the Collateral and to realize upon the security constituted hereby and the Debtor hereby irrevocably constitutes and appoints the Lender the true and lawful attorney of the Debtor, with full power of substitution, to do any of the foregoing in the name of the Debtor whenever and wherever it may be deemed necessary or expedient by the Lender; and
 - (b) make enquiries from time to time of any governmental authority with respect to the Debtor's compliance with Environmental Laws and the Debtor agrees that the Debtor will from time to time provide to the Lender with such written authorization as the Lender may reasonably require in order to facilitate the obtaining of such information.
- 6.2 The Lender may charge for its reasonable costs incurred in connection with any disclosure requirements under the PPSA.
- 6.3 If the Debtor fails to perform any of its Obligations hereunder, the Lender may, but shall not be obliged to, perform any or all of such Obligations without prejudice to any other rights and remedies of the Lender hereunder, and any payments made and any costs, charges, expenses and legal fees and disbursements (on a solicitor and his own client basis) incurred in connection therewith shall be payable by the Debtor to the Lender forthwith with interest until paid at the highest rate borne by any of the Obligations and such amounts shall form part of the Obligations and constitute a charge upon the Collateral in favour of the Lender prior to all claims subsequent to this General Security Agreement.
- 6.4 The Debtor covenants and agrees that the Lender may, but shall be under no obligation to, at any time or times as the Lender deems necessary and without the concurrence of the Debtor or any other person make such arrangements for the repairing, finishing and putting in order of the Premises, including, without limitation, such repairs, replacements and improvements as are necessary so that the Debtor and the Premises comply with Environmental Laws, and all reasonable costs, charges and expenses including an allowance for the time and services of the Lender, the Lender's servants or agents or any other person or persons appointed for the above purposes including, without limitation, the full amount of all legal fees, disbursements, costs, charges and expenses incurred by the Lender and any amount due hereunder shall be payable forthwith to the Lender, shall be deemed an advance to the Debtor by the Lender, shall be deemed to be Obligations, and shall bear interest at the highest rate per annum from time to time charged by the Lender on any of the other Obligations until paid.

VII Default

- 7.1 The Debtor shall be in default under this General Security Agreement, unless otherwise agreed in writing by the Lender, upon the occurrence of any of the following events:
- 7.1.1 the Debtor makes default in payment when due of any of the Obligations which are indebtedness or liabilities or the Debtor fails to perform or satisfy any other of the Obligations; or
 - 7.1.2 the Debtor is in breach of any term, condition, proviso, agreement or covenant to the Lender, or any representation or warranty given by the Debtor to the Lender is untrue,

whether or not any such term, condition, proviso, agreement or covenant, representation or warranty is contained in this General Security Agreement; or

- 7.1.3 the Debtor makes an assignment for the benefit of its creditors, is declared bankrupt, makes a proposal or otherwise takes advantage of provisions for relief under the Bankruptcy and Insolvency Act (Canada), the Companies Creditors' Arrangement Act (Canada) or similar legislation in any jurisdiction, or makes an authorized assignment; or
- 7.1.4 there is instituted by or against the Debtor any formal or informal proceeding for the dissolution or liquidation of, settlement of claims against, or winding-up of affairs of, the Debtor; or
- 7.1.5 the Debtor ceases or threatens to cease to carry on business or makes or agrees to make a bulk sale of assets or commits or threatens to commit an act of bankruptcy; or
- 7.1.6 a receiver, receiver and manager or receiver-manager of all or any part of the Collateral or of any other property, assets or undertakings of the Debtor is appointed; or
- 7.1.7 any execution, sequestration, extent or other process of any court becomes enforceable against the Debtor or a distress or analogous process is levied upon the Collateral or any part thereof; or
- 7.1.8 an order is made or an effective resolution is passed for winding-up the Debtor; or
- 7.1.9 without the prior written consent of the Lender, the Debtor creates or permits to exist any Encumbrance against any of the Collateral which ranks or could in any event rank in priority to or pari passu with the security constituted by this General Security Agreement; or
- 7.1.10 the holder of any Encumbrance against any of the Collateral does anything to enforce or realize on such Encumbrance; or
- 7.1.11 the Debtor enters into any reconstruction, reorganization, amalgamation, merger or other similar arrangement with any other person; or
- 7.1.12 the Lender in good faith believes and has commercially reasonable grounds to believe that the prospect of payment or performance of any of the Obligations is impaired or that any of the Collateral is or is about to be placed in jeopardy; or
- 7.1.13 any certificate, statement, representation, warranty or audit report herewith, heretofore or hereafter furnished by or on behalf of the Debtor to the Lender, whether in connection with this General Security Agreement or otherwise, and whether furnished as an inducement to the Lender to extend any credit to or to enter into this or any other agreement with the Debtor or not:
 - (a) proves to have been false in any material respect at the time as of which the facts therein set forth were stated or certified; or
 - (b) proves to have omitted any substantial contingent or unliquidated liability or claim against the Debtor;

or, upon the date of execution of this General Security Agreement, there shall have been any material adverse change in any of the facts disclosed by any such certificate, statement, representation, warranty or audit report, which change was not disclosed to the Lender at or prior to the time of such execution.

- 7.2 For the purposes of Section 203 of the Land Title Act of British Columbia, the floating charge created by this General Security Agreement over land shall become a fixed charge thereon upon the earliest of:

- 7.2.1 the occurrence of an event described in any of clauses 7.1.3, 7.1.4, 7.1.5, 7.1.6, 7.1.7, or 7.1.8; or
- 7.2.2 the Lender taking any action to enforce and realize on the security constituted by this General Security Agreement.

VIII Enforcement

- 8.1 The Lender may make demand for payment at any time of any or all of the Obligations which are payable upon demand (whether or not there is any default under this General Security Agreement) and, upon any default under this General Security Agreement, the Lender may declare any or all of the Obligations which are not payable on demand to become immediately due and payable.
- 8.2 Upon default under this General Security Agreement, the security hereby constituted will immediately become enforceable.
- 8.3 To enforce and realize on the security constituted by this General Security Agreement, the Lender may take any action permitted by law or in equity, as it may deem expedient, and in particular, without limiting the generality of the foregoing, the Lender may do any one or more of the following:
 - 8.3.1 appoint by instrument a receiver, receiver and manager or receiver-manager (the person so appointed is herein called the "Receiver") of the Collateral, with or without bond as the Lender may determine, and from time to time in its sole discretion remove such Receiver and appoint another in its stead;
 - 8.3.2 enter upon any of the Premises and take possession of the Collateral with power to exclude the Debtor, its agents and its servants therefrom, without becoming liable as a mortgagee in possession;
 - 8.3.3 preserve, protect and maintain the Collateral and make such replacements thereof and repairs and additions thereto as the Lender may deem advisable;
 - 8.3.4 sell, lease or otherwise dispose of or concur in selling, leasing or otherwise disposing of all or any part of the Collateral, whether by public or private sale or lease or otherwise, in such manner, at such price as can be reasonably obtained therefor and on such terms as to credit and with such conditions of sale and stipulations as to title or conveyance or evidence of title or otherwise as to the Lender may seem reasonable, provided that the Debtor will not be entitled to be credited with the proceeds of any such sale, lease or other disposition until the monies therefor are actually received; and
 - 8.3.5 exercise all of the rights and remedies of a secured party under the PPSA.
- 8.4 A Receiver appointed pursuant to this General Security Agreement shall be the agent of the Debtor and not of the Lender and, to the extent permitted by law or to such lesser extent permitted by its appointment, shall have all the powers of the Lender hereunder, and in addition shall have power to carry on the business of the Debtor and for such purpose from time to time to borrow money either secured or unsecured, and if secured by a security on any of the Collateral, any such security may rank in priority to or pari passu with or behind the security constituted by this General Security Agreement, and if it does not so specify such security shall rank in priority to the security constituted by this General Security Agreement.
- 8.5 Subject to applicable law and the claims, if any, of the creditors of the Debtor ranking in priority to the security constituted by this General Security Agreement, all amounts realized from the disposition of the Collateral pursuant to this General Security Agreement will be applied as the Lender, in its sole discretion, may direct as follows:

- Firstly:** in or toward payment of all costs, charges and expenses (including legal fees and disbursements on a solicitor and his own client basis) incurred by the Lender in connection with or incidental to:
- (a) the exercise by the Lender of all or any of the powers granted to it pursuant to this General Security Agreement; and
 - (b) the appointment of the Receiver and the exercise by the Receiver of all or any of the powers granted to the Receiver pursuant to this General Security Agreement, including the Receiver's reasonable remuneration and all outgoings properly payable by the Receiver;
- Secondly:** in or toward payment to the Lender of all principal and other monies (except interest) due in respect of the Obligations;
- Thirdly:** in or toward payment to the Lender of all interest remaining unpaid in respect of the Obligations; and
- Fourthly:** any surplus will be paid to the Debtor.

IX Deficiency

- 9.1 If the amounts realized from the disposition of the Collateral are not sufficient to pay the Obligations in full to the Lender, the Debtor will immediately pay to the Lender the amount of such deficiency.

X Rights Cumulative

- 10.1 All rights and remedies of the Lender set out in this General Security Agreement are cumulative and no right or remedy contained herein is intended to be exclusive but each will be in addition to every other right or remedy contained herein or in any existing or future general security agreement or now or hereafter existing at law or in equity or pursuant to any other agreement between the Debtor and the Lender that may be in effect from time to time.

XI Appointment of Attorney

- 11.1 The Debtor hereby irrevocably appoints the Lender or the Receiver, as the case may be, with full power of substitution, to be the attorney of the Debtor for and in the name of the Debtor to sign, endorse or execute under seal or otherwise any deeds, documents, transfers, cheques, instruments, demands, assignments, assurances or consents that the Debtor is obliged to sign, endorse or execute and generally to use the name of the Debtor and to do all things as may be necessary or incidental to the exercise of all or any of the powers conferred on the Lender or the Receiver, as the case may be, pursuant to this General Security Agreement.

XII Liability of Lender

- 12.1 The Lender shall not be responsible or liable for any debts contracted by it, for damages to persons or property or for salaries or non-fulfilment of contracts during any period when the Lender shall manage the Collateral upon entry of the business of the Debtor, as herein provided, nor shall the Lender be liable to account as mortgagee in possession or for anything except actual receipts or be liable for any loss or realization or for any default or omission for which a mortgagee in possession may be liable.
- 12.2 The Lender shall not be bound to do, observe or perform or to see to the observance or performance by the Debtor of any obligations or covenants imposed upon the Debtor nor shall the Lender, in the case of Securities, Instruments or Chattel Paper, be obliged to reserve rights against other persons, nor shall the Lender be obliged to keep any of the Collateral identifiable.
- 12.3 The Lender shall not be obliged to inquire into the right of any person purporting to be entitled under the PPSA to information and materials from the Lender by making a demand upon the

Lender for such information and materials and the Lender shall be entitled to comply with such demand and shall not be liable for having complied with such demand notwithstanding that such person may in fact not be entitled to make such demand.

- 12.4 The Debtor will indemnify the Lender and hold the Lender harmless from and against any and all claims, costs, losses, demands, actions, causes of action, lawsuits, damages, penalties, judgments and liabilities of whatsoever nature and kind in connection with or arising out of any representation or warranty given by the Debtor, being untrue, the breach of any term, condition, proviso, agreement or covenant to the Lender, or the exercise of any of the rights and or remedies of the Lender, or any transaction contemplated in this General Security Agreement.
- 12.5 The Debtor hereby waives any applicable provision of law permitted to be waived by it which imposes higher or greater obligations upon the Lender than provided in this General Security Agreement.
- 12.6 The Debtor shall indemnify, reimburse and save harmless the Lender, any receiver, its directors, officers, employees, agents, and successors and assigns, from any and all liabilities, actions, damages, claims, losses, costs and expenses whatsoever (including without limitation, the full amount of all legal fees, costs, charges and expenses and the cost of removal, treatment, storage and disposal of any Hazardous Materials and remediation of the Premises) which may be paid, incurred or asserted against the Lender for, with respect to or as a direct or indirect result of the presence on or under, or the escape, seepage, leakage, spillage, discharge, emission or release from the Premises or into or upon any other land, the atmosphere or any watercourse, body of water or wetland of any Hazardous Materials.
- 12.7 Any amount owing by the Debtor hereunder shall, from the date of disbursement until the date the Lender receives reimbursement, be deemed advanced to the Debtor by the Lender, shall be deemed to be Obligations and shall bear interest at the highest rate per annum from time to time charged by the Lender on any of the other Obligations until paid.
- 12.8 The Debtor agrees that the indemnity obligations hereunder shall survive the release of the security of this General Security Agreement and the payment and satisfaction of the indebtedness and liabilities hereby secured.

XIII Appropriation of Payments and Offset

- 13.1 Subject to any applicable provisions of the PPSA, any and all payments made in respect of the Obligations from time to time and monies realized from any security held therefor (including monies collected in accordance with or realized on any enforcement of this General Security Agreement) may be applied to such part or parts of the Obligations as the Lender may see fit, and the Lender may at all times and from time to time change any appropriation as the Lender may see fit or, at the option of the Lender, such payments and monies may be held unappropriated in a collateral account or released to the Debtor, all without prejudice to the liability of the Debtor or to the rights of the Lender hereunder.
- 13.2 Without limiting any other right of the Lender, whenever any of the Obligations is immediately due and payable or the Lender has the right to declare any of the Obligations to be immediately due and payable (whether or not it has so declared), the Lender may, in its sole discretion, set off against any of the Obligations any and all monies then owed to the Debtor by the Lender in any capacity, whether or not due and to do so even though any charge therefor is made or entered on the Lender's records subsequent thereto, and the Lender shall be deemed to have exercised such right to set off immediately at the time of making its decision.

XIV Liability to Advance, Etc.

- 14.1 Except to the extent that the Lender:

- 14.1.1 by accepting bills of exchange drawn on it by the Debtor; or
- 14.1.2 by issuing letters of credit or letters of guarantee on the application of the Debtor; is required to advance monies on the maturity of such bills or pursuant to such letters of credit or letters of guarantee, as the case may be, none of the preparation, execution, perfection and registration of this General Security Agreement or the advance of any monies shall bind the Lender to make any advance or loan or further advance or loan, or renew any note or extend any time for payment of any indebtedness or liability of the Debtor to the Lender or extend any term for performance or satisfaction of any obligation of the Debtor to the Lender.

- 14.2 Nothing herein contained shall in any way oblige the Lender to grant, continue, renew, extend time for payment of or accept anything which constitutes or would constitute Obligations or any of them.

XV Waiver

- 15.1 No delay or omission by the Lender in exercising any right or remedy hereunder or with respect to any of the Obligations shall operate as a waiver thereof or of any other right or remedy, and no single or partial exercise thereof shall preclude any other or further exercise thereof or the exercise of any other right or remedy.
- 15.2 The Lender may from time to time and at any time waive in whole or in part any right, benefit or default under any clause of this General Security Agreement but any such waiver of any right, benefit or default on any occasion shall be deemed not to be a waiver of any such right, benefit or default thereafter, or of any other right, benefit or default, as the case may be.

XVI Extensions

- 16.1 The Lender may grant extensions of time and other indulgences, take and give up security, accept compositions, compound, compromise, settle, grant releases and discharges, refrain from perfecting or maintaining perfection of security, and otherwise deal with the Debtor, Account Debtors of the Debtor, sureties and others and with the Collateral and other security as the Lender may see fit without prejudice to the liability of the Debtor or the Lender's right to hold and realize on the security constituted by this General Security Agreement.

XVII Assignment

- 17.1 The Lender may, without further notice to the Debtor, at any time mortgage, charge, assign, transfer or grant a security interest in this General Security Agreement and the security constituted hereby.
- 17.2 The Debtor expressly agrees that the assignee, transferee or secured party of the Lender, as the case may be, shall have all of the Lender's rights and remedies under this General Security Agreement and the Debtor will not assert any defence, counterclaim, right of set-off or otherwise any claim which it now has or hereafter acquires against the Lender in any action commenced by such assignee, transferee or secured party, as the case may be, and will pay the Obligations to the assignee, transferee or secured party, as the case may be, as the Obligations become due.

XVIII Satisfaction and Discharge

- 18.1 Any partial payment or satisfaction of the Obligations, or any ceasing by the Debtor to be indebted to the Lender, shall be deemed not to be redemption or discharge of the security constituted by this General Security Agreement.

- 18.2 The Debtor shall be entitled to a release and discharge of the security constituted by this General Security Agreement upon full payment, performance and satisfaction of all Obligations, or the securing of the Obligations to the satisfaction of the Lender, and upon written request by the Debtor and payment to the Lender of all costs, charges, expenses and legal fees and disbursements (on a solicitor and his own client basis) incurred by the Lender in connection with the Obligations and such release and discharge.

XIX No Merger

- 19.1 This General Security Agreement shall not operate so as to create any merger or discharge of any of the Obligations, or any assignment, transfer, guarantee, lien, contract, promissory note, bill of exchange or security in any form held or which may hereafter be held by the Lender from the Debtor or from any other person whomsoever.
- 19.2 The taking of a judgment with respect to any of the Obligations will not operate as a merger of any of the terms, conditions, covenants, agreements or provisos contained in this General Security Agreement.
- 19.3 The release and discharge of the security constituted by this General Security Agreement by the Lender shall not operate as a release or discharge of any right of the Lender to be indemnified and held harmless by the Debtor pursuant to clause 12.4 hereof or of any other right of the Lender against the Debtor arising under this General Security Agreement prior to such release and discharge.

XX Interpretation

- 20.1 In this General Security Agreement:
- 20.1.1 the invalidity or unenforceability of the whole or any part of any clause shall not affect the validity or enforceability of any other clause or the remainder of such clause;
- 20.1.2 the headings have been inserted for reference only and shall not define, limit, alter or enlarge the meaning of any provision of this General Security Agreement; and
- 20.1.3 when the context so requires, the singular shall be read as if the plural were expressed and the provisions hereof shall be read with all grammatical changes necessary dependent upon the person referred to being a male, female, firm or corporation.

XXI Notice

- 21.1 Whenever either the Lender or the Debtor is required or entitled to notify or direct the other or to make a demand upon or request of the other relating to the Collateral, this General Security Agreement or the PPSA, such notice, direction, demand or request shall be sufficiently given if given in writing and delivered to the party for whom it is intended at the address of such party herein or as changed pursuant hereto or if sent by prepaid registered mail addressed to the party for whom it is intended at the address of such party herein set forth or as changed pursuant hereto.
- 21.2 Either the Lender or the Debtor may notify the other in accordance herewith of any change in its principal address to be used for the purposes hereof.

XXII Variation

- 22.1 Save for any schedules which may be added hereto pursuant to the provisions hereof, no modification, variation or amendment of any provision of this General Security Agreement shall be made except by written agreement, executed by the parties hereto and no waiver of any provision hereof shall be effective unless in writing.

XXIII Enurement

23.1 This General Security Agreement shall enure to the benefit of the Lender and its successors and assigns and shall be binding upon the respective heirs, executors, personal representatives, successors and permitted assigns of the Debtor.

XXIV Copy of Agreement and Financing Statement

24.1 The Debtor hereby:

24.1.1 acknowledges receiving a copy of this General Security Agreement; and

24.1.2 waives all rights to receive from the Lender a copy of any financing statement, financing change statement or verification statement filed at any time or from time to time in respect of this General Security Agreement.

XXV Governing Law

25.1 This General Security Agreement shall be governed by and construed in accordance with the laws of the Province.

25.2 For the purpose of legal proceedings this General Security Agreement shall be deemed to have been made in the Province and to be performed there and the courts of the Province shall have jurisdiction over all disputes which may arise under this General Security Agreement and the Debtor hereby irrevocably and unconditionally submits to the non-exclusive jurisdiction of such courts, provided always that nothing herein contained shall prevent the Lender from proceeding at its election against the Debtor in the courts of any other Province, country or jurisdiction.

In Witness Whereof the Debtor has executed this General Security Agreement as of the day and year first above written.

FOR BRITISH COLUMBIA

<p>Officer Signature(s)</p> <p>(For Corporation)</p> <p>_____</p> <p><i>Officer Signature</i></p> <p>_____</p> <p><i>Name</i></p> <p>_____</p> <p><i>Address</i></p>	<p>Execution Date</p> <table border="1" style="border-collapse: collapse; width: 100px; height: 100px;"> <tr> <td style="text-align: center; width: 33px;">Y</td> <td style="text-align: center; width: 33px;">M</td> <td style="text-align: center; width: 33px;">D</td> </tr> </table>	Y	M	D	<p>Debtor(s) Signature(s)</p> <p>_____</p> <p>(Corporation Name) by its authorized signatories</p> <p>_____</p> <p><i>Signature</i></p> <p>_____</p> <p><i>Name</i></p> <p>_____</p> <p><i>Title</i></p> <p>_____</p> <p><i>Signature</i></p> <p>_____</p>
Y	M	D			

<p>(For Individual)</p>	<table border="1"><tr><td></td><td></td><td></td></tr></table>				<p>Name</p>
		<p>Title</p>			
<p>Officer Signature</p>					
<p>Name</p>		<p>Debtor Signature</p>			
<p>Address</p>		<p>Name</p>			

Officer Certification: Your signature constitutes a representation that you are a solicitor, notary public or other person authorized by the Evidence Act, R.S.B.C. 1996, c. 124, to take affidavits for use in British Columbia and certifies the matters set out in Part 5 of the Land Title Act as they pertain to the execution of this instrument.

LB

FOR ALBERTA, NEW BRUNSWICK, NOVA SCOTIA, NEWFOUNDLAND AND LABRADOR

(For Corporation)

1739349 ALBERTA LTD.

Per: _____
Name of Corporation

Signature

Name

Title

Per: _____
Signature

Name

Title

} C/S

FOR INDIVIDUAL

DEBTOR'S SIGNATURE

Per: _____
Signature

Name

Address

Occupation

Signature of Debtor

Name

LB

Encumbrance Schedule

Prior Encumbrances:

Any and all mortgages, charges, liens, encumbrances and security interests granted by the Debtor to PEF 2010 Nilex Investment Limited Partnership.



Location Schedule**Address(es) for Location of the Collateral****Prior to the amalgamation of the Debtor and Nilex Inc. to form Nilex Inc. (amalgamated):**

1. 9304 – 39 Avenue NW, Edmonton, AB T6E 6L8

Subsequent to the amalgamation of the Debtor and Nilex Inc. to form Nilex Inc. (amalgamated):

1. 1781 Clearbrook Road, Abbotsford, BC V2T 5X5
2. 3963 and 3981 Phillips Avenue, Burnaby, BC V5A 3K4
3. 9222 – 40 Street SE, Calgary, AB T2C 2P3
4. 15253 East Fremont Drive, Centennial, CO 80112 (Lot 1, 5th Filing, Cherry Creek Business Center)
5. 9304 – 39 Avenue NW, Edmonton, AB T6E 6L8
6. 315, 845 Broad Street, Regina, SK S4R 8G9
7. 130 Yorkland Boulevard, Toronto, ON M2J 1R5
8. VERNON, BC (P: 250.260.3300, F: 250.260.3520)



Additional Covenants Schedule**Additional Covenants of the Debtor further to Clause 4.1.15**

Comply with all terms, conditions and covenants set forth in any and all offer of credit letters executed by the Lender and the Debtor, as such letters may be amended, extended, renewed, altered, modified, substituted or replaced from time to time.

LB

- 27 -

This is Exhibit "L" referred to in the Affidavit of Jeff Allen sworn before me this 31st day of October, 2022.

A Commissioner for Oaths in and for Alberta

LB

GENERAL SECURITY AGREEMENT

(British Columbia, Alberta, New Brunswick, Nova Scotia, Newfoundland and Labrador, Prince Edward Island)

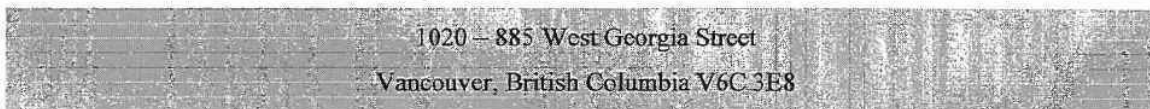
This General Security Agreement made as of the 30 day of APRIL, 2013

Between:

(the "Debtor")

And:

PEF 2010 Nilex Investment Limited Partnership, a limited partnership under the laws of the Province of British Columbia having a registered office at



(the "Lender")

I Security

- 1.1 For value received, the Debtor grants and creates the security constituted by this General Security Agreement and agrees to the terms, covenants, agreements, conditions, provisos and other matters set out in this General Security Agreement.
- 1.2 As general and continuing security for the Obligations (as defined in clause 2.1 hereof), the Debtor:
- 1.2.1 hereby grants to the Lender, by way of mortgage, charge, assignment and transfer, a security interest in all presently owned and hereafter acquired personal property of the Debtor of whatsoever nature and kind and wheresoever situate and all proceeds thereof and therefrom, renewals thereof, Accessions thereto and substitutions therefor, (all of which are herein collectively called the "Personal Property Collateral"), including, without limiting the generality of the foregoing, all the presently owned or held and hereafter acquired right, title and interest of the Debtor in and to all Goods (including all accessories, attachments, additions and Accessions thereto), Chattel Paper, Documents of Title (whether negotiable or not), Instruments, Intangibles (subject to Clause 1.2.2 hereof), Licences, Money, Securities, Investment Property and all:
- (a) Inventory of whatsoever nature and kind and wheresoever situate;

- (b) Equipment (other than Inventory) of whatsoever nature and kind and wheresoever situate, including, without limitation, all machinery, tools, apparatus, plant, furniture, fixtures and vehicles of whatsoever nature and kind;
- (c) book accounts and book debts and generally all Accounts, debts, dues, claims, choses in action and demands of every nature and kind howsoever arising or secured including letters of credit, letters of guarantee and advices of credit, which are now due, owing or accruing or growing due to or owned by or which may hereafter become due, owing or accruing or growing due to or owned by the Debtor (all of which are herein collectively called the "Debts");
- (d) deeds, documents, writings, papers, books of account and other books relating to or being records of Debts, Chattel Paper or Documents of Title or by which such are or may hereafter be secured, evidenced, acknowledged or made payable;
- (e) contractual rights and insurance claims and all goodwill;
- (f) monies other than trust monies lawfully belonging to others; and
- (g) personal property described in any schedule now or hereafter annexed hereto; and

1.2.2 hereby grants to the Lender, by way of mortgage and charge a security interest in all presently owned and hereafter acquired patents, trade-marks, copyrights, industrial designs and other intellectual property and all proceeds thereof and therefrom, renewals thereof, Accessions thereto and substitutions therefor (all of which is deemed to be included in the definition of "Personal Property Collateral" referred to in Clauses 1.2.1 and 1.3.2 hereof); and

1.2.3 hereby charges as and by way of a floating charge in favour of the Lender all the presently owned or held and hereafter acquired property, assets, effects and undertakings of the Debtor of whatsoever nature and kind and wheresoever situate, other than such of the property, assets, effects and undertakings of the Debtor as are validly and effectively subjected to the security interest granted to the Lender pursuant to clause 1.2.1, (all of which property, assets, effects and undertakings so charged by this clause 1.2.3 are herein collectively called the "Other Collateral") including, without limiting the generality of the foregoing, all presently owned or held and hereafter acquired right, title and interest of the Debtor in and to real and immovable and leasehold property and rights whether in fee or of a less estate and all interest in and rights relating to lands and all easements, rights of way, privilege, benefits, licences, improvements and rights whether connected therewith or appurtenant thereto or separately owned or held and all structures, buildings, plant, machinery, fixtures, apparatus and fixed assets and the charge created by this clause 1.2.3 shall be a floating charge such that the Debtor shall not have power without the prior written consent of the Lender to:

- (a) create or permit to exist any Encumbrance against any of the Other Collateral which ranks or could in any event rank in priority to or pari passu with the security constituted by this General Security Agreement, save for:
 - (1) those Encumbrances shown in the Encumbrance Schedule; and
 - (2) Encumbrances approved in writing by the Lender prior to creation or assumption; or
- (b) grant, sell, exchange, transfer, assign, lease or otherwise dispose of the Other Collateral.

1.3 In this General Security Agreement:

1.3.1 any reference to "Premises" shall mean all property owned or leased by the Debtor;

- 1.3.2 the Personal Property Collateral and the Other Collateral are herein together called the "Collateral";
- 1.3.3 any reference to "Collateral" shall, unless the context otherwise requires, be deemed a reference to "Collateral or any part thereof";
- 1.3.4 any reference to "Debtor" and the personal pronoun "it" or "its" and any verb relating thereto and used therewith shall be read and construed as required by and in accordance with the context in which such words are used depending upon whether the Debtor is one or more corporations and, if more than one Debtor executes this General Security Agreement, this General Security Agreement shall apply and be binding upon each of them jointly and severally and all obligations hereunder shall be joint and several;
- 1.3.5 any reference to "Environmental Laws" shall mean any laws, regulations, orders, by-laws, permits or lawful requirements of any governmental authority with respect to environmental protection or regulating hazardous materials;
- 1.3.6 any reference to "General Security Agreement" shall, unless the context otherwise requires, be deemed a reference to this General Security Agreement as amended from time to time by written agreement together with the schedules hereto and any schedules added hereto pursuant to the provisions hereof;
- 1.3.7 any reference to "Hazardous Materials" shall mean any asbestos material, urea formaldehyde, explosives, radioactive materials, pollutants, contaminants, hazardous substances, corrosive substances, toxic substances, special waste or waste of any kind including, without limitation, compounds known as chlorobiphenyls and any substance the storage, manufacture, disposal, treatment, generation, use, transport, remediation or release of which into the environment is prohibited, controlled or licensed under Environmental Laws, all excluding similar or like substances used in the ordinary course of the Debtor's business provided that such excluded substances continue to be used, stored, disposed of or otherwise handled in accordance with Environmental Laws and other applicable laws;
- 1.3.8 any reference to "PPSA" shall mean the Personal Property Security Act of the Province as amended from time to time, including any amendments thereto and any Act substituted therefor and amendments thereto;
- 1.3.9 any reference to the "Province" shall mean the Province of Alberta;
and
- 1.3.10 the terms "Goods", "Chattel Paper", "Documents of Title", "Equipment", "Accounts" "Consumer Goods", "Instruments", "Intangibles", "Licences"(Alberta and British Columbia only), "Money", "Securities", "Investment Property", "Proceeds", "Inventory" and "Accessions" and other words and expressions which have been defined in the PPSA shall be interpreted in accordance with their respective meanings given in the PPSA (either in the singular or plural thereof), as the context requires unless otherwise defined herein or unless the context otherwise requires.
- 1.4 The Lender and the Debtor have not agreed to postpone the time for attachment of the security interests granted hereby.
- 1.5 The security interest in Consumer Goods hereby granted shall not become effective until, but shall become effective immediately when, the Lender notifies the Debtor in writing that it is effective.
- 1.6 The last day of the term of any lease held by the Debtor with respect to any of the Collateral is excluded from the security constituted by this General Security Agreement.

II Obligations Secured

- 2.1 The security constituted by this General Security Agreement is general and continuing security for payment, performance and satisfaction of each and every obligation, indebtedness

and liability of the Debtor to the Lender (including interest thereon), present or future, direct or indirect, absolute or contingent, matured or not, extended or renewed, wheresoever and howsoever incurred, and any ultimate unpaid balance thereof, including all future advances and re-advances, and whether the same is from time to time reduced and thereafter increased or entirely extinguished and thereafter incurred again and whether the Debtor be bound alone or with another or others and whether as principal or surety, (all of which obligations, indebtedness and liabilities are herein collectively called the "Obligations").

- 2.2 This General Security Agreement and the security constituted hereby are in addition to and not in substitution for any other security or securities which the Lender may now or from time to time hold or take from the Debtor or from any other person whomsoever.

III Representations and Warranties of the Debtor

- 3.1 The Debtor represents and warrants that, and, so long as this General Security Agreement remains in effect, shall be deemed to continuously represent and warrant that:
- 3.1.1 this General Security Agreement has been authorized, executed and delivered in accordance with resolutions of the directors (and of the shareholders as applicable) of the Debtor and all other matters and things have been done and performed so as to authorize and make the execution and delivery of this General Security Agreement, the creation of the security constituted hereby and the performance of the Debtor's obligations hereunder, legal, valid and binding;
 - 3.1.2 the Collateral is genuine and is owned by the Debtor free of all security interests, mortgages, liens, claims, charges and other encumbrances (herein collectively called "Encumbrances"), save for the security constituted by this General Security Agreement, those Encumbrances shown on the Encumbrance Schedule and those Encumbrances approved in writing by the Lender;
 - 3.1.3 the Debtor has good and lawful authority to create the security in the Collateral constituted by this General Security Agreement;
 - 3.1.4 each Debt, Chattel Paper and Instrument included in Collateral is enforceable in accordance with its terms against the party obligated to pay the same (the "Account Debtor"), and the amount represented by the Debtor to the Lender from time to time as owing by each Account Debtor or by all Account Debtors will be the correct amount actually and unconditionally owing by such Account Debtor or Account Debtors, except for normal cash discounts where applicable, and no Account Debtor will have any defense, set off, claim or counterclaim against the Debtor which can be asserted against the Lender, whether in any proceeding to enforce the Collateral or otherwise;
 - 3.1.5 with respect to Goods (including Inventory) comprised in the Collateral, the locations specified in the Location Schedule are accurate and complete (save for Goods in transit to such locations and Inventory on lease or consignment) and all fixtures or Goods about to become fixtures which form part of the Collateral will be situate at one of the locations specified in the Location Schedule;
 - 3.1.6 none of the Premises are insulated with urea formaldehyde nor contain any asbestos material or underground tanks;
 - 3.1.7 the Premises are free of any Hazardous Materials;
 - 3.1.8 the Premises are not currently used in a manner, and, to the Debtor's knowledge, after having made due inquiry, no prior use has occurred, which is contrary to any laws, regulations, orders, bylaws, permits or lawful requirements of any Environmental Laws; and

- 3.1.9 there are no existing or threatened claims, actions, orders or investigations under any Environmental Laws against the Debtor or against the Premises;
- 3.1.10 the Debtor is the owner of any intellectual property applications and registrations and there are no outstanding claims of ownership by third parties in respect of these registrations and applications;
- 3.1.11 all intellectual property applications and registrations are valid and in good standing;
- 3.1.12 all trade-mark and industrial designs have been in continuous use and that the use has been proper in relation to the wares and/or services of Debtor;
- 3.1.13 only the Debtor has used the trade-marks, or if there are any third party users of the Debtor's trade-marks, such third party users are properly licensed to use such trademarks;
- 3.1.14 all assignments and other documents affecting intellectual property rights have been disclosed and provided to the Lender;
- 3.1.15 there are no outstanding or threatened claims or proceedings with respect to the intellectual property; and,
- 3.1.16 all necessary assignments and license agreements have been properly executed by the Debtor for use of third party intellectual property.

IV Covenants of the Debtor

- 4.1 The Debtor covenants and agrees that at all times while this General Security Agreement remains in effect the Debtor will:
 - 4.1.1 defend the Collateral for the benefit of the Lender against the claims and demands of all other persons;
 - 4.1.2 not, without the prior written consent of the Lender:
 - (a) create or permit to exist any Encumbrance against any of the Personal Property Collateral which ranks or could in any event rank in priority to or pari passu with the security constituted by this General Security Agreement, save for:
 - (i) those Encumbrances shown in the Encumbrance Schedule; and
 - (ii) Encumbrances approved in writing by the Lender prior to creation or assumption; or
 - (b) grant, sell, exchange, transfer, assign, lease or otherwise dispose of the Collateral; provided always, that, until default, the Debtor may, in the ordinary course of the Debtor's business, sell or lease Inventory and, subject to clause 5.2 hereof, use monies available to the Debtor;
 - 4.1.3 fully and effectively maintain and keep maintained valid and effective the security constituted by this General Security Agreement;
 - 4.1.4 notify the Lender promptly of:
 - (a) any change in the information contained herein or in the Schedules hereto relating to the Debtor, the Debtor's name, the Debtor's business or the Collateral;
 - (b) the details of any significant acquisition of Collateral;
 - (c) the details of any claims or litigation affecting the Debtor or the Collateral;
 - (d) any loss or damage to the Collateral;

- (e) any default by any Account Debtor in payment or other performance of obligations of the Account Debtor comprised in the Collateral; and
 - (f) the return to, or repossession by, the Debtor of Collateral;
- 4.1.5 keep the Collateral in good order, condition and repair (in the locations specified in the Location Schedule or such other locations as the Lender may approve in writing) and not use the Collateral in violation of the provisions of this General Security Agreement or any other agreement relating to the Collateral or any policy insuring the Collateral or any applicable statute, law, by-law, rule, regulation or ordinance;
- 4.1.6 carry on and conduct the business of the Debtor in a proper and efficient manner and so as to protect and preserve the Collateral and to keep, in accordance with generally accepted accounting principles, consistently applied, proper books of account for the Debtor's business as well as accurate and complete records concerning the Collateral and, at the Lender's request, mark any and all such records and the Collateral so as to indicate the security constituted by this General Security Agreement;
- 4.1.7 forthwith pay:
- (a) all obligations to its employees and all obligations to others which relate to its employees when due, including, without limitation, all taxes, duties, levies, government fees, claims and dues related to its employees;
 - (b) all taxes, assessments, rates, duties, levies, government fees, claims and dues lawfully levied, assessed or imposed upon it or the Collateral when due, unless the Debtor shall in good faith contest its obligations so to pay and shall furnish such security as the Lender may require; and
 - (c) all Encumbrances which rank or could in any event rank in priority to or *pari passu* with the security constituted by this General Security Agreement, other than the Encumbrances, if any, shown in the Encumbrance Schedule hereto and those approved in writing by the Lender;
- 4.1.8 prevent the Collateral, save Inventory sold or leased as permitted hereby, from being or becoming an Accession to other property not covered by this General Security Agreement;
- 4.1.9 insure the Collateral for such periods, in such amounts, on such terms and against loss or damage by fire and such other risks as the Lender shall reasonably direct (but in any event in accordance with prudent business practice and for not less than the full replacement cost thereof) with loss payable to the Lender and the Debtor, as insureds, as their respective interests may appear, and to pay all premiums for such insurance;
- 4.1.10 deliver to the Lender from time to time promptly upon request:
- (a) any Documents of Title, Instruments, Securities and Chattel Paper comprised in or relating to the Collateral;
 - (b) all books of account and all records, ledgers, reports, correspondence, schedules, documents, statements, lists and other writings relating to the Collateral for the purpose of inspecting, auditing or copying the same;
 - (c) all financial statements prepared by or for the Debtor regarding the Debtor's business;
 - (d) all policies and certificates of insurance relating to the Collateral; and
 - (e) such information concerning the Collateral, the Debtor and Debtor's business and affairs as the Lender may reasonably require;

- 4.1.11 forthwith pay all costs, charges, expenses and legal fees and disbursements (on a solicitor and his own client basis) which may be incurred by the Lender in:
- (a) inspecting the Collateral;
 - (b) negotiating, preparing, perfecting and registering this General Security Agreement and other documents, whether or not relating to this General Security Agreement;
 - (c) investigating title to the Collateral;
 - (d) taking, recovering, keeping possession of and insuring the Collateral;
 - (e) connection with any disclosure requirements under the PPSA; and
 - (f) all other actions and proceedings taken in connection with the preservation of the Collateral and the confirmation, perfection and enforcement of this General Security Agreement and of any other security held by the Lender as security for the Obligations;
- 4.1.12 at the Lender's request at any time and from time to time create in favour of the Lender, as security for the Obligations, a fixed charge or charges upon any of the Other Collateral;
- 4.1.13 at the Lender's request at any time and from time to time execute and deliver such further and other documents and instruments and do all other acts and things as the Lender reasonably requires in order to give effect to this General Security Agreement or to confirm and perfect, and maintain perfection of, the security constituted by this General Security Agreement in favour of the Lender;
- 4.1.14 permit the Lender and its representatives, at all reasonable times, access to all the Debtor's property, assets and undertakings and to all its books of account and records for the purpose of inspection and render all assistance necessary for such inspection;
- 4.1.15 comply with the covenants, if any, set out in the Additional Covenants Schedule;
- 4.1.16 develop and use the Premises only in compliance with all Environmental Laws;
- 4.1.17 permit the Lender to investigate the Premises, any goods on the Premises and the Debtor's records at any time and from time to time to verify such compliance with Environmental Laws and this General Security Agreement;
- 4.1.18 upon the request of the Lender, obtain from time to time at the Debtor's cost a report from an independent consultant designated or approved by the Lender verifying compliance with Environmental Laws and this General Security Agreement or the extent of any non-compliance therewith;
- 4.1.19 not store, manufacture, dispose, treat, generate, use, transport, remediate or release Hazardous Materials on or from any of the Premises without notifying the Lender in writing;
- 4.1.20 promptly remove any Hazardous Materials from the Premises in a manner which conforms to Environmental Laws governing their removal; and,
- 4.1.21 notify the Lender in writing of:
- (a) any enforcement, clean-up, removal, litigation or other governmental, regulatory, judicial or administrative action instituted, contemplated or threatened against the Debtor or the Premises pursuant to any Environmental Laws;
 - (b) all claims, actions, orders or investigations, made or threatened by any third party against the Debtor or any of the Premises relating to damage, contribution, cost

recovery, compensation, loss or injuries resulting from any Hazardous Materials or any breach of the Environmental Laws; and

- (c) the discovery of any Hazardous Materials or any occurrence or condition on any of the Premises or any real property adjoining or in the vicinity of any of the Premises which could subject the Debtor or any of the Premises to any fines, penalties, orders or proceedings under any Environmental Laws;
- 4.1.22 apply to file applications and complete registrations on any present intellectual property which is not currently protected by an application or registration where commercially reasonable, including any and all improvements to intellectual property and apply to file registrations on unregistered trade-marks in Canada and the United States;
- 4.1.23 apply to file applications and complete registrations of all after acquired intellectual property in all jurisdictions where commercially reasonable;
- 4.1.24 keep up-to-date witnessed records regarding intellectual property;
- 4.1.25 enter into confidentiality agreements with employees and other third parties who may invent, create, discover, author and/or reduce to practice intellectual property for the Debtor and who may have access to confidential information of the Debtor;
- 4.1.26 ensure that all after acquired intellectual property obtained from third parties is properly acquired by way of a written license agreement or assignment;
- 4.1.27 provide, upon written request by the Lender, a list of all registered and unregistered trade-marks, patent applications, issued patents, copyright, industrial designs and other intellectual property; and,
- 4.1.28 mark all products and advertising appropriately to maintain the validity of all intellectual property rights.

V Payments and Proceeds

- 5.1 Before or after default under this General Security Agreement, the Lender may notify all or any Account Debtors of the security constituted by this General Security Agreement and may also direct such Account Debtors to make all payments on the Collateral to the Lender.
- 5.2 The Debtor acknowledges that any payments on or other proceeds of the Collateral received by the Debtor from Account Debtors, whether before or after notification of the security constituted by this General Security Agreement to Account Debtors and whether before or after default under this General Security Agreement, shall be received and held by the Debtor in trust for the Lender and shall be turned over to the Lender forthwith upon request.

VI Lender Actions

- 6.1 The Debtor hereby authorizes the Lender to:
 - (a) file such financing statements and other documents and do such acts, matters and things (including completing and adding schedules hereto identifying the Collateral or any permitted Encumbrances affecting collateral or identifying the locations at which the Debtor's business is carried on and the Collateral and records relating thereto are situate) as the Lender may deem appropriate to perfect and continue the security constituted hereby, to protect and preserve the Collateral and to realize upon the security constituted hereby and the Debtor hereby irrevocably constitutes and appoints the Lender the true and lawful attorney of the Debtor, with full power of substitution, to do any of the foregoing in the name of the Debtor whenever and wherever it may be deemed necessary or expedient by the Lender; and

- (b) make enquiries from time to time of any governmental authority with respect to the Debtor's compliance with Environmental Laws and the Debtor agrees that the Debtor will from time to time provide to the Lender with such written authorization as the Lender may reasonably require in order to facilitate the obtaining of such information.
- 6.2 The Lender may charge for its reasonable costs incurred in connection with any disclosure requirements under the PPSA.
- 6.3 If the Debtor fails to perform any of its Obligations hereunder, the Lender may, but shall not be obliged to, perform any or all of such Obligations without prejudice to any other rights and remedies of the Lender hereunder, and any payments made and any costs, charges, expenses and legal fees and disbursements (on a solicitor and his own client basis) incurred in connection therewith shall be payable by the Debtor to the Lender forthwith with interest until paid at the highest rate borne by any of the Obligations and such amounts shall form part of the Obligations and constitute a charge upon the Collateral in favour of the Lender prior to all claims subsequent to this General Security Agreement.
- 6.4 The Debtor covenants and agrees that the Lender may, but shall be under no obligation to, at any time or times as the Lender deems necessary and without the concurrence of the Debtor or any other person make such arrangements for the repairing, finishing and putting in order of the Premises, including, without limitation, such repairs, replacements and improvements as are necessary so that the Debtor and the Premises comply with Environmental Laws, and all reasonable costs, charges and expenses including an allowance for the time and services of the Lender, the Lender's servants or agents or any other person or persons appointed for the above purposes including, without limitation, the full amount of all legal fees, disbursements, costs, charges and expenses incurred by the Lender and any amount due hereunder shall be payable forthwith to the Lender, shall be deemed an advance to the Debtor by the Lender, shall be deemed to be Obligations, and shall bear interest at the highest rate per annum from time to time charged by the Lender on any of the other Obligations until paid.

VII Default

- 7.1 The Debtor shall be in default under this General Security Agreement, unless otherwise agreed in writing by the Lender, upon the occurrence of any of the following events:
- 7.1.1 the Debtor makes default in payment when due of any of the Obligations which are indebtedness or liabilities or the Debtor fails to perform or satisfy any other of the Obligations; or
- 7.1.2 the Debtor is in breach of any term, condition, proviso, agreement or covenant to the Lender, or any representation or warranty given by the Debtor to the Lender is untrue, whether or not any such term, condition, proviso, agreement or covenant, representation or warranty is contained in this General Security Agreement; or
- 7.1.3 the Debtor makes an assignment for the benefit of its creditors, is declared bankrupt, makes a proposal or otherwise takes advantage of provisions for relief under the Bankruptcy and Insolvency Act (Canada), the Companies Creditors' Arrangement Act (Canada) or similar legislation in any jurisdiction, or makes an authorized assignment; or
- 7.1.4 there is instituted by or against the Debtor any formal or informal proceeding for the dissolution or liquidation of, settlement of claims against, or winding-up of affairs of, the Debtor; or
- 7.1.5 the Debtor ceases or threatens to cease to carry on business or makes or agrees to make a bulk sale of assets or commits or threatens to commit an act of bankruptcy; or
- 7.1.6 a receiver, receiver and manager or receiver-manager of all or any part of the Collateral or of any other property, assets or undertakings of the Debtor is appointed; or

- 7.1.7 any execution, sequestration, extent or other process of any court becomes enforceable against the Debtor or a distress or analogous process is levied upon the Collateral or any part thereof; or
- 7.1.8 an order is made or an effective resolution is passed for winding-up the Debtor; or
- 7.1.9 without the prior written consent of the Lender, the Debtor creates or permits to exist any Encumbrance against any of the Collateral which ranks or could in any event rank in priority to or pari passu with the security constituted by this General Security Agreement; or
- 7.1.10 the holder of any Encumbrance against any of the Collateral does anything to enforce or realize on such Encumbrance; or
- 7.1.11 the Debtor enters into any reconstruction, reorganization, amalgamation, merger or other similar arrangement with any other person; or
- 7.1.12 the Lender in good faith believes and has commercially reasonable grounds to believe that the prospect of payment or performance of any of the Obligations is impaired or that any of the Collateral is or is about to be placed in jeopardy; or
- 7.1.13 any certificate, statement, representation, warranty or audit report herewith, heretofore or hereafter furnished by or on behalf of the Debtor to the Lender, whether in connection with this General Security Agreement or otherwise, and whether furnished as an inducement to the Lender to extend any credit to or to enter into this or any other agreement with the Debtor or not:
 - (a) proves to have been false in any material respect at the time as of which the facts therein set forth were stated or certified; or
 - (b) proves to have omitted any substantial contingent or unliquidated liability or claim against the Debtor;

or, upon the date of execution of this General Security Agreement, there shall have been any material adverse change in any of the facts disclosed by any such certificate, statement, representation, warranty or audit report, which change was not disclosed to the Lender at or prior to the time of such execution.
- 7.2 For the purposes of Section 203 of the Land Title Act of British Columbia, the floating charge created by this General Security Agreement over land shall become a fixed charge thereon upon the earliest of:
 - 7.2.1 the occurrence of an event described in any of clauses 7.1.3, 7.1.4, 7.1.5, 7.1.6, 7.1.7, or 7.1.8; or
 - 7.2.2 the Lender taking any action to enforce and realize on the security constituted by this General Security Agreement.

VIII Enforcement

- 8.1 The Lender may make demand for payment at any time of any or all of the Obligations which are payable upon demand (whether or not there is any default under this General Security Agreement) and, upon any default under this General Security Agreement, the Lender may declare any or all of the Obligations which are not payable on demand to become immediately due and payable.
- 8.2 Upon default under this General Security Agreement, the security hereby constituted will immediately become enforceable.

- 8.3 To enforce and realize on the security constituted by this General Security Agreement, the Lender may take any action permitted by law or in equity, as it may deem expedient, and in particular, without limiting the generality of the foregoing, the Lender may do any one or more of the following:
- 8.3.1 appoint by instrument a receiver, receiver and manager or receiver-manager (the person so appointed is herein called the "Receiver") of the Collateral, with or without bond as the Lender may determine, and from time to time in its sole discretion remove such Receiver and appoint another in its stead;
 - 8.3.2 enter upon any of the Premises and take possession of the Collateral with power to exclude the Debtor, its agents and its servants therefrom, without becoming liable as a mortgagee in possession;
 - 8.3.3 preserve, protect and maintain the Collateral and make such replacements thereof and repairs and additions thereto as the Lender may deem advisable;
 - 8.3.4 sell, lease or otherwise dispose of or concur in selling, leasing or otherwise disposing of all or any part of the Collateral, whether by public or private sale or lease or otherwise, in such manner, at such price as can be reasonably obtained therefor and on such terms as to credit and with such conditions of sale and stipulations as to title or conveyance or evidence of title or otherwise as to the Lender may seem reasonable, provided that the Debtor will not be entitled to be credited with the proceeds of any such sale, lease or other disposition until the monies therefor are actually received; and
 - 8.3.5 exercise all of the rights and remedies of a secured party under the PPSA.
- 8.4 A Receiver appointed pursuant to this General Security Agreement shall be the agent of the Debtor and not of the Lender and, to the extent permitted by law or to such lesser extent permitted by its appointment, shall have all the powers of the Lender hereunder, and in addition shall have power to carry on the business of the Debtor and for such purpose from time to time to borrow money either secured or unsecured, and if secured by a security on any of the Collateral, any such security may rank in priority to or pari passu with or behind the security constituted by this General Security Agreement, and if it does not so specify such security shall rank in priority to the security constituted by this General Security Agreement.
- 8.5 Subject to applicable law and the claims, if any, of the creditors of the Debtor ranking in priority to the security constituted by this General Security Agreement, all amounts realized from the disposition of the Collateral pursuant to this General Security Agreement will be applied as the Lender, in its sole discretion, may direct as follows:
- Firstly:** in or toward payment of all costs, charges and expenses (including legal fees and disbursements on a solicitor and his own client basis) incurred by the Lender in connection with or incidental to:
 - (a) the exercise by the Lender of all or any of the powers granted to it pursuant to this General Security Agreement; and
 - (b) the appointment of the Receiver and the exercise by the Receiver of all or any of the powers granted to the Receiver pursuant to this General Security Agreement, including the Receiver's reasonable remuneration and all outgoings properly payable by the Receiver;
 - Secondly:** in or toward payment to the Lender of all principal and other monies (except interest) due in respect of the Obligations;
 - Thirdly:** in or toward payment to the Lender of all interest remaining unpaid in respect of the Obligations; and
 - Fourthly:** any surplus will be paid to the Debtor.

IX Deficiency

- 9.1 If the amounts realized from the disposition of the Collateral are not sufficient to pay the Obligations in full to the Lender, the Debtor will immediately pay to the Lender the amount of such deficiency.

X Rights Cumulative

- 10.1 All rights and remedies of the Lender set out in this General Security Agreement are cumulative and no right or remedy contained herein is intended to be exclusive but each will be in addition to every other right or remedy contained herein or in any existing or future general security agreement or now or hereafter existing at law or in equity or pursuant to any other agreement between the Debtor and the Lender that may be in effect from time to time.

XI Appointment of Attorney

- 11.1 The Debtor hereby irrevocably appoints the Lender or the Receiver, as the case may be, with full power of substitution, to be the attorney of the Debtor for and in the name of the Debtor to sign, endorse or execute under seal or otherwise any deeds, documents, transfers, cheques, instruments, demands, assignments, assurances or consents that the Debtor is obliged to sign, endorse or execute and generally to use the name of the Debtor and to do all things as may be necessary or incidental to the exercise of all or any of the powers conferred on the Lender or the Receiver, as the case may be, pursuant to this General Security Agreement.

XII Liability of Lender

- 12.1 The Lender shall not be responsible or liable for any debts contracted by it, for damages to persons or property or for salaries or non-fulfilment of contracts during any period when the Lender shall manage the Collateral upon entry of the business of the Debtor, as herein provided, nor shall the Lender be liable to account as mortgagee in possession or for anything except actual receipts or be liable for any loss or realization or for any default or omission for which a mortgagee in possession may be liable.
- 12.2 The Lender shall not be bound to do, observe or perform or to see to the observance or performance by the Debtor of any obligations or covenants imposed upon the Debtor nor shall the Lender, in the case of Securities, Instruments or Chattel Paper, be obliged to reserve rights against other persons, nor shall the Lender be obliged to keep any of the Collateral identifiable.
- 12.3 The Lender shall not be obliged to inquire into the right of any person purporting to be entitled under the PPSA to information and materials from the Lender by making a demand upon the Lender for such information and materials and the Lender shall be entitled to comply with such demand and shall not be liable for having complied with such demand notwithstanding that such person may in fact not be entitled to make such demand.
- 12.4 The Debtor will indemnify the Lender and hold the Lender harmless from and against any and all claims, costs, losses, demands, actions, causes of action, lawsuits, damages, penalties, judgments and liabilities of whatsoever nature and kind in connection with or arising out of any representation or warranty given by the Debtor, being untrue, the breach of any term, condition, proviso, agreement or covenant to the Lender, or the exercise of any of the rights and or remedies of the Lender, or any transaction contemplated in this General Security Agreement.
- 12.5 The Debtor hereby waives any applicable provision of law permitted to be waived by it which imposes higher or greater obligations upon the Lender than provided in this General Security Agreement.
- 12.6 The Debtor shall indemnify, reimburse and save harmless the Lender, any receiver, its directors, officers, employees, agents, and successors and assigns, from any and all liabilities, actions, damages, claims, losses, costs and expenses whatsoever (including without limitation, the full

amount of all legal fees, costs, charges and expenses and the cost of removal, treatment, storage and disposal of any Hazardous Materials and remediation of the Premises) which may be paid, incurred or asserted against the Lender for, with respect to or as a direct or indirect result of the presence on or under, or the escape, seepage, leakage, spillage, discharge, emission or release from the Premises or into or upon any other land, the atmosphere or any watercourse, body of water or wetland of any Hazardous Materials.

- 12.7 Any amount owing by the Debtor hereunder shall, from the date of disbursement until the date the Lender receives reimbursement, be deemed advanced to the Debtor by the Lender, shall be deemed to be Obligations and shall bear interest at the highest rate per annum from time to time charged by the Lender on any of the other Obligations until paid.
- 12.8 The Debtor agrees that the indemnity obligations hereunder shall survive the release of the security of this General Security Agreement and the payment and satisfaction of the indebtedness and liabilities hereby secured.

XIII Appropriation of Payments and Offset

- 13.1 Subject to any applicable provisions of the PPSA, any and all payments made in respect of the Obligations from time to time and monies realized from any security held therefor (including monies collected in accordance with or realized on any enforcement of this General Security Agreement) may be applied to such part or parts of the Obligations as the Lender may see fit, and the Lender may at all times and from time to time change any appropriation as the Lender may see fit or, at the option of the Lender, such payments and monies may be held unappropriated in a collateral account or released to the Debtor, all without prejudice to the liability of the Debtor or to the rights of the Lender hereunder.
- 13.2 Without limiting any other right of the Lender, whenever any of the Obligations is immediately due and payable or the Lender has the right to declare any of the Obligations to be immediately due and payable (whether or not it has so declared), the Lender may, in its sole discretion, set off against any of the Obligations any and all monies then owed to the Debtor by the Lender in any capacity, whether or not due and to do so even though any charge therefor is made or entered on the Lender's records subsequent thereto, and the Lender shall be deemed to have exercised such right to set off immediately at the time of making its decision.

XIV Liability to Advance, Etc.

- 14.1 Except to the extent that the Lender:
- 14.1.1 by accepting bills of exchange drawn on it by the Debtor; or
- 14.1.2 by issuing letters of credit or letters of guarantee on the application of the Debtor; is required to advance monies on the maturity of such bills or pursuant to such letters of credit or letters of guarantee, as the case may be, none of the preparation, execution, perfection and registration of this General Security Agreement or the advance of any monies shall bind the Lender to make any advance or loan or further advance or loan, or renew any note or extend any time for payment of any indebtedness or liability of the Debtor to the Lender or extend any term for performance or satisfaction of any obligation of the Debtor to the Lender.
- 14.2 Nothing herein contained shall in any way oblige the Lender to grant, continue, renew, extend time for payment of or accept anything which constitutes or would constitute Obligations or any of them.

XV Waiver

- 15.1 No delay or omission by the Lender in exercising any right or remedy hereunder or with respect to any of the Obligations shall operate as a waiver thereof or of any other right or remedy,

and no single or partial exercise thereof shall preclude any other or further exercise thereof or the exercise of any other right or remedy.

- 15.2 The Lender may from time to time and at any time waive in whole or in part any right, benefit or default under any clause of this General Security Agreement but any such waiver of any right, benefit or default on any occasion shall be deemed not to be a waiver of any such right, benefit or default thereafter, or of any other right, benefit or default, as the case may be.

XVI Extensions

- 16.1 The Lender may grant extensions of time and other indulgences, take and give up security, accept compositions, compound, compromise, settle, grant releases and discharges, refrain from perfecting or maintaining perfection of security, and otherwise deal with the Debtor, Account Debtors of the Debtor, sureties and others and with the Collateral and other security as the Lender may see fit without prejudice to the liability of the Debtor or the Lender's right to hold and realize on the security constituted by this General Security Agreement.

XVII Assignment

- 17.1 The Lender may, without further notice to the Debtor, at any time mortgage, charge, assign, transfer or grant a security interest in this General Security Agreement and the security constituted hereby.
- 17.2 The Debtor expressly agrees that the assignee, transferee or secured party of the Lender, as the case may be, shall have all of the Lender's rights and remedies under this General Security Agreement and the Debtor will not assert any defence, counterclaim, right of set-off or otherwise any claim which it now has or hereafter acquires against the Lender in any action commenced by such assignee, transferee or secured party, as the case may be, and will pay the Obligations to the assignee, transferee or secured party, as the case may be, as the Obligations become due.

XVIII Satisfaction and Discharge

- 18.1 Any partial payment or satisfaction of the Obligations, or any ceasing by the Debtor to be indebted to the Lender, shall be deemed not to be redemption or discharge of the security constituted by this General Security Agreement.
- 18.2 The Debtor shall be entitled to a release and discharge of the security constituted by this General Security Agreement upon full payment, performance and satisfaction of all Obligations, or the securing of the Obligations to the satisfaction of the Lender, and upon written request by the Debtor and payment to the Lender of all costs, charges, expenses and legal fees and disbursements (on a solicitor and his own client basis) incurred by the Lender in connection with the Obligations and such release and discharge.

XIX No Merger

- 19.1 This General Security Agreement shall not operate so as to create any merger or discharge of any of the Obligations, or any assignment, transfer, guarantee, lien, contract, promissory note, bill of exchange or security in any form held or which may hereafter be held by the Lender from the Debtor or from any other person whomsoever.
- 19.2 The taking of a judgment with respect to any of the Obligations will not operate as a merger of any of the terms, conditions, covenants, agreements or provisos contained in this General Security Agreement.
- 19.3 The release and discharge of the security constituted by this General Security Agreement by the Lender shall not operate as a release or discharge of any right of the Lender to be indemnified and held harmless by the Debtor pursuant to clause 12.4 hereof or of any other right of the

Lender against the Debtor arising under this General Security Agreement prior to such release and discharge.

XX Interpretation

20.1 In this General Security Agreement:

- 20.1.1 the invalidity or unenforceability of the whole or any part of any clause shall not affect the validity or enforceability of any other clause or the remainder of such clause;
- 20.1.2 the headings have been inserted for reference only and shall not define, limit, alter or enlarge the meaning of any provision of this General Security Agreement; and
- 20.1.3 when the context so requires, the singular shall be read as if the plural were expressed and the provisions hereof shall be read with all grammatical changes necessary dependent upon the person referred to being a male, female, firm or corporation.

XXI Notice

- 21.1 Whenever either the Lender or the Debtor is required or entitled to notify or direct the other or to make a demand upon or request of the other relating to the Collateral, this General Security Agreement or the PPSA, such notice, direction, demand or request shall be sufficiently given if given in writing and delivered to the party for whom it is intended at the address of such party herein or as changed pursuant hereto or if sent by prepaid registered mail addressed to the party for whom it is intended at the address of such party herein set forth or as changed pursuant hereto.
- 21.2 Either the Lender or the Debtor may notify the other in accordance herewith of any change in its principal address to be used for the purposes hereof.

XXII Variation

- 22.1 Save for any schedules which may be added hereto pursuant to the provisions hereof, no modification, variation or amendment of any provision of this General Security Agreement shall be made except by written agreement, executed by the parties hereto and no waiver of any provision hereof shall be effective unless in writing.

XXIII Enurement

- 23.1 This General Security Agreement shall enure to the benefit of the Lender and its successors and assigns and shall be binding upon the respective heirs, executors, personal representatives, successors and permitted assigns of the Debtor.

XXIV Copy of Agreement and Financing Statement

24.1 The Debtor hereby:

- 24.1.1 acknowledges receiving a copy of this General Security Agreement; and
- 24.1.2 waives all rights to receive from the Lender a copy of any financing statement, financing change statement or verification statement filed at any time or from time to time in respect of this General Security Agreement.

XXV Governing Law

- 25.1 This General Security Agreement shall be governed by and construed in accordance with the laws of the Province.
- 25.2 For the purpose of legal proceedings this General Security Agreement shall be deemed to have been made in the Province and to be performed there and the courts of the Province shall have

jurisdiction over all disputes which may arise under this General Security Agreement and the Debtor hereby irrevocably and unconditionally submits to the non-exclusive jurisdiction of such courts, provided always that nothing herein contained shall prevent the Lender from proceeding at its election against the Debtor in the courts of any other Province, country or jurisdiction.

In Witness Whereof the Debtor has executed this General Security Agreement as of the day and year first above written.

FOR BRITISH COLUMBIA

Officer Signature(s)	Execution Date	Debtor(s) Signature(s)						
<p>(For Corporation)</p> <p>_____</p> <p><i>Officer Signature</i></p> <p>_____</p> <p><i>Name</i></p> <p>_____</p> <p><i>Address</i></p> <p>(For Individual)</p> <p>_____</p> <p><i>Officer Signature</i></p> <p>_____</p> <p><i>Name</i></p> <p>_____</p> <p><i>Address</i></p>	<table border="1" style="margin: auto; border-collapse: collapse;"> <tr> <td style="width: 33%; text-align: center;">Y</td> <td style="width: 33%; text-align: center;">M</td> <td style="width: 33%; text-align: center;">D</td> </tr> <tr> <td style="height: 400px;"></td> <td style="height: 400px;"></td> <td style="height: 400px;"></td> </tr> </table>	Y	M	D				<p>_____</p> <p>(Corporation Name) by its authorized signatories</p> <p>_____</p> <p><i>Signature</i></p> <p>_____</p> <p><i>Name</i></p> <p>_____</p> <p><i>Title</i></p> <p>_____</p> <p><i>Signature</i></p> <p>_____</p> <p><i>Name</i></p> <p>_____</p> <p><i>Title</i></p> <p>_____</p> <p><i>Debtor Signature</i></p> <p>_____</p> <p><i>Name</i></p>
Y	M	D						

Officer Certification: Your signature constitutes a representation that you are a solicitor, notary public or other person authorized by the Evidence Act, R.S.B.C. 1996, c. 124, to take affidavits for use in British Columbia and certifies the matters set out in Part 5 of the Land Title Act as they pertain to the execution of this instrument.

AB

FOR ALBERTA, NEW BRUNSWICK, NOVA SCOTIA, NEWFOUNDLAND AND LABRADOR

(For Corporation)

NILEX CONSTRUCTION INC.

Per: _____
Name of Corporation

Signature *IAN WILSON*

Name *PRESIDENT*

Title

Per: _____
Signature

Name

Title

} C/S

FOR INDIVIDUAL

DEBTOR'S SIGNATURE

Per: _____
Signature

Name

Address

Occupation

Signature of Debtor

Name

LB

Encumbrance Schedule**Prior Encumbrances:**

1. General:
 - a. Any and all mortgages, charges, liens, encumbrances and security interests granted by the Debtor to PEF 2010 Nilex Investment Limited Partnership
2. Alberta:
 - a. Registration No. 09120724118 in favour of JIM PEPLINSKI'S AUTO LEASING LTD. and JIM PEPLINSKI'S LEASEMASTER NATIONAL
 - b. Registration No. 10010720861 in favour of TRANSPORTACTION LEASE SYSTEMS INC.

Location Schedule**Address(es) for Location of the Collateral**

1. 1781 Clearbrook Road, Abbotsford, BC V2T 5X5
2. 3963 and 3981 Phillips Avenue, Burnaby, BC V5A 3K4
3. 9222 – 40 Street SE, Calgary, AB T2C 2P3
4. 15253 East Fremont Drive, Centennial, CO 80112 (Lot 1, 5th Filing, Cherry Creek Business Center)
5. 9304 – 39 Avenue NW, Edmonton, AB T6E 6L8
6. 315, 845 Broad Street, Regina, SK S4R 8G9
7. 130 Yorkland Boulevard, Toronto, ON M2J 1R5
8. VERNON, BC (P: 250.260.3300, F: 250.260.3520)

Additional Covenants Schedule**Additional Covenants of the Debtor further to Clause 4.1.15**

Comply with all terms, conditions and covenants set forth in any and all offer of credit letters executed by the Lender and the Debtor, as such letters may be amended, extended, renewed, altered, modified, substituted or replaced from time to time.

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This is Exhibit "M" referred to in the Affidavit of Jeff Allen sworn before me this 31st day of October, 2022.

A Commissioner for Oaths in and for Alberta

A handwritten signature in cursive script, appearing to be the initials 'AB', located in the bottom right corner of the page.

SUBORDINATION AND POSTPONEMENT AGREEMENT

THIS SUBORDINATION AND POSTPONEMENT AGREEMENT is dated June 1, 2018 and made between:

- (1) **CANADIAN IMPERIAL BANK OF COMMERCE**, (the "**Senior Party**");
- (2) **NILEX INC. and NILEX USA INC.** (each an "**Obligor**" and collectively, the "**Obligors**"); and
- (3) **PEF 2010 NILEX INVESTMENT LIMITED PARTNERSHIP** (the "**Subordinated Party**").

RECITALS:

- (A) The Senior Party has agreed to make certain credit facilities available to the Obligors upon the terms and conditions contained in a credit agreement among the Obligors, and the Senior Party, dated as of as of the date hereof (as the same may be amended, restated, supplemented, or otherwise modified from time to time, the "**Credit Agreement**").
- (B) The Obligors granted to the Senior Party security over certain of their property, assets and undertakings as security for the payment and performance of their respective obligations to the Senior Party under the Credit Agreement and all credit documents relating thereto.
- (C) The Obligors are or may become indebted or liable to the Subordinated Party pursuant to or in respect of the Subordinated Indebtedness.
- (D) The parties are entering into this Agreement to confirm the subordination and postponement of the Subordinated Indebtedness to the Senior Indebtedness and the Junior Security to the Senior Security.

NOW THEREFORE in consideration of the foregoing premises and other good and valuable consideration, the receipt and sufficiency of which are acknowledged, the parties agree as follows.

Article 1 – Definitions

1.1 Definitions

In this Agreement, unless the context otherwise requires, words and expressions have the following meanings:

"Agreement" means this subordination and postponement agreement, as it may be amended, revised, restated or replaced from time to time in accordance with its terms.

"Enforcement Action" means any one or more of the following actions: (a) enforcement of obligations owed to a Person by the exercise of any right or remedy under any document securing such obligations, or the exercise of any other right or remedy available to such Person at law or in equity or under any other agreement including any right of set-off or compensation, (b) enforcement of hypothecary rights, foreclosure upon, levy against, quit claim or acceptance of a debt in lieu of foreclosure

upon, or any other exercise of rights or remedies against, or in respect of, the Collateral pursuant to any security, by way of judicial action or otherwise, or (c) the initiation of any Insolvency Proceeding involving the Obligor.

"Insolvency Proceeding" means (a) any case, action or proceeding before any court or other Governmental Authority relating to bankruptcy, reorganization, insolvency, liquidation, receivership, dissolution, winding-up or relief of debtors, or (b) any general assignment for the benefit of creditors, composition, marshalling of assets for creditors or other similar arrangement in respect of its creditors generally or any substantial portion of its creditors; in each case covered by clauses (a) and (b) undertaken under the *Bankruptcy and Insolvency Act* (Canada), the *Companies' Creditors Arrangement Act* (Canada), the *Winding-up and Restructuring Act* (Canada), Title 11 of the *United States Code*, each as now or hereafter in effect or any successor thereto, as well as all other liquidation, conservatorship, bankruptcy, assignment for benefit of creditors, moratorium, rearrangement, receivership, insolvency, reorganization, or similar debtor relief laws of Canada or provincial law or of any applicable foreign law from time to time in effect affecting the rights of creditors generally.

"Junior Security" means any and all present and future security, security interests, hypothecs, mortgages, prior claims, liens or charges, now or hereafter held by or for the account of the Subordinated Party as security for the Subordinated Indebtedness, or any part thereof, including without limitation, any hypothecs now or hereafter published under the Civil Code of Quebec or security interests now or hereafter registered under the *Personal Property Security Act* (Alberta) (or any other applicable personal property security legislation in other provinces or territories of Canada or in any state in the United States of America).

"Senior Documents" shall have the meaning ascribed to the term "Loan Documents" in the Credit Agreement, and shall include the Credit Agreement, all security and guarantee documents related thereto and all other agreements, instruments, documents and certificates delivered by the Obligors to the Senior Party in connection with the Credit Agreement or the transactions contemplated thereby.

"Senior Indebtedness" means all Obligations (as defined in the Credit Agreement) of the Obligors.

"Senior Security" means any and all present and future security, security interests, hypothecs, mortgages, prior claims, liens or charges now or hereafter held by or for the account of the Senior Party or the Senior Party as security for the Senior Indebtedness, or any part thereof, including without limitation, any hypothecs now or hereafter published under the Civil Code of Quebec or security interests now or hereafter registered under the *Personal Property Security Act* (Ontario) (or any other applicable personal property security legislation in other provinces or territories of Canada or in any state in the United States of America).

"Subordinated Documents" means the Junior Security and all guarantee and security agreements and all other agreements, instruments, documents and certificates delivered to a Subordinated Party in connection therewith, including without limitations, the subordinated promissory notes made by the Obligor to the Subordinated Party dated

June 14, 2017 and April 30, 2013 (each as amended, restated, supplemented or otherwise modified from time to time).

“Subordinated Indebtedness” means any present and future Indebtedness owed by an Obligor to the Subordinated Party, whether alone or with another or others and whether as principal or surety, including, without limitation, under any Subordinated Documents.

1.2 Credit Agreement

Unless otherwise defined herein or the context otherwise requires, terms used in this Agreement, including its preamble and recitals, have the meanings provided in the Credit Agreement.

1.3 Gender and Number

Any reference in this Agreement to gender includes all genders, and words importing the singular include the plural and *vice versa*.

1.4 Headings, etc.

The division of this Agreement into articles and sections and the insertion of headings are for convenient reference only and are not to affect or be used in the construction or interpretation of this Agreement.

Article 2 – Consents and Subordination

2.1 Subordination of Indebtedness

- (a) The Subordinated Party hereby consents to the existence of the Senior Indebtedness and the Senior Security. The Senior Party hereby consents to the existence of the Subordinated Indebtedness and the Junior Security.
- (b) The Subordinated Indebtedness shall and at all times remain, inferior, junior and subordinate to the Senior Indebtedness in the manner and to the extent provided in this Agreement.
- (c) Except as permitted under the Credit Agreement, no payments shall be made by the Obligor to the Subordinated Party or received by the Subordinated Party from an Obligor on account of, or in respect of, the Subordinated Indebtedness (whether as principal, interest, fees or otherwise) until the Senior Indebtedness has been indefeasibly paid in full, all Commitments under the Senior Documents have terminated and the Credit Agreement has been terminated in writing or unless otherwise permitted in writing by the Senior Party.
- (d) All payments or distributions on account of, or in respect of, the Subordinated Indebtedness which are received by the Subordinated Party contrary to the provisions hereof shall be received in trust for the benefit of the Senior Party, shall be segregated from other funds and property held by the Subordinated Party and shall be promptly paid over to the Senior Party in the same form as received (with any necessary endorsement) to be applied (in the case of cash)

to, or held as collateral (in the case of non-cash or securities) for, the payment or prepayment of the Senior Indebtedness in accordance with the terms of the Credit Agreement.

2.2 Subordination of Security

If the Subordinated Party holds any Junior Security, such Junior Security shall for all purposes be, and at all times remain, inferior, junior and subordinate to the Senior Security and no amounts shall be payable or any action taken under the Junior Security except as permitted by this Agreement, the Credit Agreement or the other Senior Documents. Without limiting the generality of the foregoing, the foregoing priority shall prevail in all circumstances and irrespective of: (i) the priorities otherwise accorded to the Senior Security and the Junior Security by any applicable law; (ii) the time or order of the creation, granting, execution or delivery of the Senior Indebtedness, the Senior Documents or any other deed, document, instrument, act or notice; (iii) the time or order of the opposability of the hypothecs, or the attachment or perfection of the security interests, constituted by the Senior Security and the Junior Security; (iv) the time or order of registration, notification or publication of the Senior Security and the Junior Security or the publication of hypothecs or filing of financing statements or other instruments and documents with respect thereto; (v) the time of the making of advances and other credits under the Senior Indebtedness or of any Subordinated Indebtedness; or (vi) the giving of, or the failure to give, any notice to an Obligor or to any other Person or the time of giving of any such notice. Without limiting the foregoing, the Subordinated Party cedes priority and preference of rank of the Junior Security to the Senior Security and cede priority and preference of payment to the Senior Party in all respects to the extent necessary to give full effect to the foregoing.

2.3 No Acceleration; No Realization

Without limiting the foregoing postponement and subordination provisions, the Subordinated Party further acknowledges and agrees that it shall not, take or authorize to be taken any action by way of suit, foreclosure, sale, quit claim or acceptance of a deed in lieu of foreclosure or take any enforcement action whatsoever or otherwise take any steps, actions or proceedings against an Obligor or to commence realization against the assets or properties of an Obligor, including without limitation by issuing any demand, exercise any right of acceleration of any indebtedness or obligations, issuance of statutorily required notices (including to account debtors of an Obligor) or commencement of any proceedings whatsoever in respect of the Subordinated Indebtedness or the Junior Security until such time as the Senior Party has notified the Subordinated Party in writing that the Senior Indebtedness has been indefeasibly paid in full, all Revolving Loan commitments under the Senior Documents have terminated and the Credit Agreement has been terminated. Notwithstanding the foregoing, the Subordinated Party may file a proof of claim or similar instrument with respect to the Subordinated Indebtedness in any Insolvency Proceeding related to the Obligors or commence or initiate any action required to comply with statutory limitation periods (provided that such proceeding is then stayed).

2.4 Postponement and Trust

In the event of any Insolvency Proceedings in connection with or relating to the Obligor, the Senior Party shall be entitled to receive payment of the Senior Indebtedness in full before the Subordinated Party shall be entitled to receive any payment on account of the Subordinated Indebtedness. Except as provided in the Senior Documents and this Agreement, the Senior Party shall be entitled to receive, for application in payment of the Senior Indebtedness in accordance with the Credit Agreement, any payment or distribution of any kind or character, whether in cash, property or securities, which may be payable or deliverable to the Subordinated Party in respect of the Subordinated Indebtedness. All payments or distributions upon, or with respect to, the Subordinated Indebtedness which is received by the Subordinated Party contrary to these provisions shall be received in trust and as a mandatary for the benefit of the Senior Party, shall be segregated from other funds and property held by the Subordinated Party and shall be promptly paid over to the Senior Party in the same form as received (with any necessary endorsement) to be applied (in the case of cash) to, or held as collateral (in the case of non-cash property or securities) for, the payment or prepayment of the Senior Indebtedness in accordance with its terms.

2.5 Preservation of Senior Party's Rights

The Senior Party shall not be prejudiced in any way in the right to enforce this Agreement by any act or failure to act on the part of the Obligors or the Subordinated Party. The Senior Party may, at any time and from time to time, without any consent of, or notice to, the Subordinated Party and without impairing or releasing the obligations of the Subordinated Party under this Agreement (i) change the manner, place or terms of payment or change or extend the time of payment of or renew or alter, the Senior Indebtedness (including any change in the rate of interest), or amend in any manner any of the Senior Documents; (ii) sell, exchange, release, cancel, render opposable, not render opposable, perfect, not perfect, alter, renew or otherwise deal with any of the Senior Security; (iii) release any Person liable in any manner under, or in respect of, any of the Senior Documents; (iv) exercise or refrain from exercising any rights against an Obligor, any other guarantor of the Senior Indebtedness, or any other Person; or (v) apply any sums from time to time received to the Senior Indebtedness.

2.6 No Contest of Senior Security

The Subordinated Party will not: (i) assert in any action, suit or proceeding whatsoever in respect of the invalidity, unenforceability or ineffectiveness of this Agreement or any of the Senior Indebtedness or the Senior Documents; or (ii) participate in or co-operate with any other party to pursue any such action, suit or proceeding, it being understood and agreed that, regardless of the validity, effectiveness or enforceability of any Senior Documents, as between a Subordinated Party and the Senior Party, the Senior Party shall have first and prior rights of payment as contemplated in this Agreement.

Other than as permitted under the Credit Agreement, the Subordinated Party hereby agrees that it will not, without the prior written consent of the Senior Party, amend or modify all or any portion of the Subordinated Indebtedness or any other agreement, instrument or security granted by an Obligor in respect of the Subordinated

Indebtedness for any reason whatsoever. Prior to any transfer by a Subordinated Party of any rights or interest under the Subordinated Indebtedness or the Junior Security to another Person, the Subordinated Party agrees to obtain from the transferee such transferee's written agreement to the terms and provisions of this Agreement and to all obligations arising hereunder.

2.7 Compensation; Set-Off

The Subordinated Party hereby covenants and agrees that, during the term of this Agreement:

- (a) any amounts owing at any time by the Subordinated Party to an Obligor (whether before or after default, termination or insolvency of such Obligor) shall be due and payable without any rights of compensation, deduction, dispute, set-off (legal or equitable), defence, claim, counterclaim or proceeding whatsoever, including, without limitation, any claims or damages arising from any breach or termination of any Subordinated Indebtedness (collectively, the "Set-Off");
- (b) it waives any Set-Off which it may have or claim to have or may in the future claim to have; and
- (c) the agreement provided in (a) and (b) above may be pleaded by the Senior Party as a *fin de non-recevoir*, bar or an estoppel in the event the Subordinated Party claims or asserts any Set-Off, whether against an Obligor and/or the Senior Party in any proceedings.

2.8 Precedence

All agreements, documents and instruments evidencing the Subordinated Indebtedness and the Junior Security (if any) are subject to the terms of this Agreement notwithstanding anything to the contrary contained therein. In the event of any conflict between the terms hereof and the terms thereof, the terms of this Agreement shall govern and control, provided that if any conflict or inconsistency exists between this Agreement and the Credit Agreement, the terms of the Credit Agreement shall govern and prevail.

Article 3 Enforcement and Realization

3.1 Enforcement Event, etc.

- (a) In the event of a distribution, division or application, partial or complete, voluntary or involuntary, by operation of law or otherwise, of all or any part of the Collateral or the proceeds thereof to lenders in connection with an Enforcement Action, the Senior Party shall receive payment in full (including fees and interest accruing to the date of receipt of such payment at the applicable rate whether or not allowed as a claim in any such proceeding) of the Senior Indebtedness before the Subordinated Party is entitled to receive any direct or indirect payment or distribution on account of the Subordinated Indebtedness. The Senior Party shall receive directly, for application in payment of such Senior Indebtedness (to the extent necessary to pay all Senior Indebtedness in full after giving effect to any

payment or distribution to the Senior Party in respect of the Senior Indebtedness), any payment or distribution of any kind or character, whether in cash or other Collateral, which is payable or deliverable upon or with respect to the Subordinated Indebtedness; provided that the Subordinated Party may receive proceeds arising from any scheme of arrangement under a plan for which the Senior Party has voted favourably. Subject to Applicable Law, if any payment of Senior Indebtedness is declared to be a fraudulent preference or otherwise preferential, set aside or required to be paid to a trustee, receiver or other similar Person under any insolvency legislation or otherwise, then the Senior Indebtedness or part thereof originally intended to be satisfied shall be deemed to be reinstated and outstanding as if such payment had not occurred.

- (b) In order to enable the Senior Party to enforce its rights in any Enforcement Action, if the Subordinated Party fails to make and present on a timely basis a proof of claim against the Obligor on account of the Subordinated Indebtedness or other motion or pleading as may be expedient or proper to establish the Subordinated Party's entitlement to payment of any Subordinated Indebtedness, the Senior Party is hereby irrevocably authorized and empowered, in its sole discretion, to make and present, for and on behalf of the Subordinated Party, such proofs of claim or other motions or pleadings and demand, receive and collect any and all disbursements made thereon in whatever form the same may be paid or issued and apply the same on account of the Senior Indebtedness.

3.2 No Objection

The Subordinated Party shall not take, or cause or permit any other Person to take, any steps whatsoever whereby the priority or validity of the Senior Security or the rights of the Senior Party are delayed, defeated, impaired or diminished, it being understood that, regardless of the validity, effectiveness or enforceability of this Agreement or any of the Senior Documents, as between the Subordinated Party and the Senior Party, the Senior Party shall have first and prior right in connection with the Collateral and its realization. Without limiting the generality of the foregoing, the Subordinated Party shall not challenge, object to, compete with or impede in any manner any Enforcement Action or other action taken by or on behalf of the Senior Party in connection with the Senior Security or contest the price obtained for any Collateral.

3.3 Realization by Senior Party

- (a) If any Collateral subject to the Senior Security is sold by or for the benefit of the Senior Party, such Collateral shall be sold free of any rights held by the Subordinated Party under the Junior Security or otherwise (other than the right to receive any excess proceeds upon repayment in full of the Senior Indebtedness). Upon a Senior Party's request, the Subordinated Party shall grant a discharge of its rights under the Junior Security on such Collateral at the time of such sale.
- (b) Any receiver or receiver and manager or Persons with similar authority with respect to all or any part of the Collateral appointed by or on behalf of the Senior Party shall have exclusive custody and control of such Collateral and may dispose of same in accordance with the Senior Security. The Senior Party will

instruct any such Person to provide the Subordinated Party with all information reasonably requested by the Subordinated Party and otherwise to act in accordance with this Agreement.

- (c) No loss of, or in respect of, the Senior Security, the Collateral or, including the loss by operation of law of any right of any Senior Party against an Obligor or the destruction of any Senior Security or Collateral shall in any way impair or release the subordination and other benefits provided to the Senior Party under this Agreement unless such loss results from the gross negligence or wilful misconduct of any of the Senior Party.
- (d) The Subordinated Party agree that all payments received by the Senior Party shall be applied, in whole or in part, to the Senior Indebtedness in accordance with the Credit Agreement.

Article 4 – General Provisions

4.1 Notices, Etc.

All notices and other communications provided for hereunder shall be in writing and mailed, delivered or transmitted by facsimile or email to each party hereto at the addresses set out on the signature page hereof, or at such other address as may be communicated to the other parties hereto from time to time in accordance with the provisions hereof. All such notices, demands and requests that any party is required or elects to give to any other shall become effective (a) upon personal delivery thereof, including, but not limited to, delivery by overnight courier service, or (b) in the case of notice telecopier or email, when properly transmitted (or if after 4:00 p.m., on the next business day).

4.2 No Waiver

No failure on the part of the Senior Party to exercise, and no delay in exercising, any right under this Agreement shall operate as a waiver of such right; nor shall any single or partial exercise of any right preclude any other or further exercise of the right or the exercise of any other right.

4.3 No Merger, etc.

Neither the making of any judgment nor the exercise of any power of seizure or sale shall operate to extinguish the liability of an Obligor or the Subordinated Party under this Agreement nor shall the acceptance of any payment or alternate security constitute or create any novation and it is further agreed that the making of a judgment or judgments under any of the covenants contained in this Agreement shall not operate as a merger of such covenants.

4.4 Obligors Bound

By executing this Agreement, each Obligor acknowledges its existence and agrees to be bound by its terms. Nothing in this Agreement shall confer or be deemed to confer any right, benefit or advantage on an Obligor or any Affiliate of an Obligor. The consent of



theObligors or any Affiliate of an Obligor to any amendment to this Agreement shall not be required.

4.5 No Third Party Beneficiaries.

This Agreement is solely for the benefit of the Senior Party and the Subordinated Party. No other Person (including the Obligors or any Affiliate of an Obligor or any other creditor of any of them) shall be deemed to be a third party beneficiary of this Agreement.

4.6 Senior Loan Agreement

The Subordinated Party hereby acknowledges that it has received and taken cognizance of an executed copy of the Credit Agreement and is familiar with all the provisions thereof.

4.7 Further Assurances

Each of the parties shall execute all such further deeds, agreements, instruments, assignments and other documents and shall do all such further acts and things as the Senior Party, acting reasonably, may consider necessary or advisable from time to time to give full force and effect to this Agreement and the subordination and postponement provided for herein. The parties hereto authorize each other or their respective counsel to prepare, execute and file all applications and financing statements or financing change statements as may be required to give effect to the subordination and postponement provided herein, including, without limitation, to register or publish any subordination or postponement as required by law.

4.8 Successors and Assigns

This Agreement shall be binding upon the Obligors, the Senior Party and the Subordinated Party and their respective successors and assigns, and shall enure to the benefit of the Senior Party and the Subordinated Party and their respective successors and assigns.

4.9 Authority of Subordinated Party

The Subordinated Party acknowledges and confirms that it (by and through the general partner) is the sole Person which hold legal and beneficial interest in the Subordinated Indebtedness and that no other Person has any rights or interest therein.

4.10 Additional Rights and Remedies

The rights and remedies hereby created are in addition to and not in substitution for any other right, remedy or security held by the Senior Party. The exercise by the Senior Party of any of their rights and remedies shall not prevent them from exercising any other right or remedy conferred upon them by this Agreement or any other agreement, security or by law.

4.11 Severability

If any provision of this Agreement shall be deemed by any court of competent jurisdiction to be invalid or void, the remaining provisions shall remain in full force and effect.

4.12 Attornment

Each of parties hereto irrevocably and unconditionally attorn to the non-exclusive jurisdiction of the courts of the Province of Alberta.

4.13 Governing Law

This Agreement shall be governed by and interpreted and enforced in accordance with the laws of the Province of Alberta and the federal laws of Canada applicable therein.

4.14 Counterparts and Electronic Delivery

This Agreement may be executed in any number of separate counterparts and all such signed counterparts constitute one and the same agreement. Delivery by facsimile or other electronic means of an originally executed signature page to this Agreement by a party is as effective as personal delivery of such signature page.

4.15 Language

The parties hereto confirm that it is their wish that this Agreement and any other document executed in connection with the transactions contemplated herein be drawn up in the English language only and that all other documents contemplated thereunder or relating thereto, including notices, may also be drawn up in the English language only. *Les parties aux présentes confirment que c'est leur volonté que cette convention et les autres documents y reliés soient rédigés en langue anglaise seulement et que tous les documents, y compris tous avis, envisagés par cette convention et les autres documents peuvent être rédigés en la langue anglaise seulement.*

[Signature pages follow]

IN WITNESS WHEREOF the parties have executed and delivered this Agreement.

**PEF 2010 NILEX INVESTMENT LIMITED
PARTNERSHIP, by its general partner, FCPI
NILEX GP INC., as Subordinated Party**

Per: 

Name: Graham Flinn

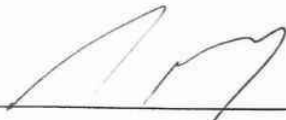
Title:

Per: 

Name: PAUL ROWE

Title:

**CANADIAN IMPERIAL BANK OF
COMMERCE, as Senior Party**

Per: _____ 

Name:

Title:

Geoff Golding
Authorized Signatory

Per: _____ 

Name:

Title:


Anthony Tsuen
Authorized Signatory


AB

Each of the undersigned hereby acknowledges that it has actual knowledge of the terms and conditions of this Agreement, that the terms and conditions of this Agreement are for the sole benefit of the Senior Party and that nothing in this Agreement shall be construed as conferring any rights upon it or any third party. Each of the undersigned irrevocably consents to the Subordinated Party and the Senior Party exchanging information they have from time to time concerning it and its undertaking, property and assets and the Senior Indebtedness and the Subordinated Indebtedness.


EXECUTED this ___ day of _____, 2018.

NILEX INC., as Obligor

Per: 
Name: Jeff Allen
Title: Director, Finance

Per: 
Name: Glenn Keroux
Title: President & CEO

NILEX USA INC., as Obligor

Per: 
Name: Jeff Allen
Title: Director, Finance

Per: 
Name: Glenn Keroux
Title: President & CEO

LB

- 29 -

This is Exhibit "N" referred to in the Affidavit of Jeff Allen sworn before me this 31st day of October, 2022.

A Commissioner for Oaths in and for Alberta

A handwritten signature consisting of the letters 'L' and 'B' in a cursive, stylized font.



September 15, 2022

Sent By Facsimile (1 (780) 463-1773)

Nilex Inc. & Nilex USA Inc.
6810 8th Street
Edmonton, AB T6P 0C5

Attention: Director, Finance

Norton Rose Fulbright Canada LLP
222 Bay Street, Suite 3000, P.O. Box 53
Toronto, Ontario M5K 1E7 Canada

F: +1 416.216.3930
nortonrosefulbright.com

Evan Cobb
+1 416.216.1929
Evan.Cobb@nortonrosefulbright.com

Our reference
1001018108

Dear Sirs/Mesdames:

Re: Credit Agreement dated June 1, 2018 between Nilex Inc. and Nilex USA Inc. as borrowers (together, the “Borrowers”), the guarantors party thereto from time to time, and Canadian Imperial Bank of Commerce as lender (the “Lender”) (as amended, restated, supplemented or otherwise modified from time to time, the “Credit Agreement”)

We are counsel to the Lender under the Credit Agreement and write to you in connection with the Borrowers' indebtedness thereunder.

We refer to the above-noted Credit Agreement pursuant to which the Lender has made certain credit facilities available to the Borrowers. Capitalized terms used in this letter without definition have the meanings given to them in the Credit Agreement.

Notice is hereby given that various Events of Default under the Credit Agreement have occurred, including without limitation:

1. under Sections 7.1 (d), 7.1(k) and 7.1(l), resulting from (i) an unopposed judgment issued by the Court of Queen's Bench of Alberta on March 21, 2022 against Nilex Inc. in favour of Hugh Watt, (ii) a consent judgment issued by the Court of Queen's Bench of Alberta on June 2, 2022 against Nilex Inc. in favour of Ian Wilson, and (iii) a Garnishee Summons filed at the Court of Queen's Bench of Alberta by Hugh Watt against Nilex Inc. and delivered to the Lender; and
2. under Section 7.1(d) resulting from the failure of the Borrowers and their Subsidiaries, on a consolidated basis in accordance with GAAP, to have EBITDA for the cumulative current fiscal year-to-date period ended July 31, 2022 of not less than \$(800,000).

As a consequence, the Lender hereby declares all of the Loans, together with accrued interest, fees and other obligations under the Credit Agreement and other Loan Documents to be immediately due and payable, without further demand or notice of any kind.

CAN_DMS: \147819626\2

Norton Rose Fulbright Canada LLP is a limited liability partnership established in Canada.

Norton Rose Fulbright Canada LLP, Norton Rose Fulbright LLP, Norton Rose Fulbright Australia, Norton Rose Fulbright South Africa Inc and Norton Rose Fulbright US LLP are separate legal entities and all of them are members of Norton Rose Fulbright Verein, a Swiss verein. Norton Rose Fulbright Verein helps coordinate the activities of the members but does not itself provide legal services to clients. Details of each entity, with certain regulatory information, are at nortonrosefulbright.com.

September 15, 2022



As of September 15, 2022, the amount outstanding and owing the Lender under the Credit Agreement, inclusive of accrued interest was Cdn \$16,348,464.34, calculated as set out on **Schedule A** hereto (the "**Outstanding Indebtedness**"), plus interest and expenses that shall continue to accrue thereon.

Pursuant to the Credit Agreement and on behalf of the Lender, we hereby demand that the Borrowers remit payment to the Lender of the Outstanding Indebtedness, together with interest thereon, which interest shall accrue from the date hereof until the date the Outstanding Indebtedness has been repaid in full.

All reasonable legal fees and all other costs and expenses which may be incurred by the Lender in enforcement of the Loan Documents up to and including the date of repayment in full of the Outstanding Indebtedness shall also be added to the Outstanding Indebtedness.

If payment of the Outstanding Indebtedness (including any accrued and unpaid interest thereon) is not received by the Lender immediately, the Lender expressly reserves the right to take all steps or legal proceedings it considers necessary or appropriate to enforce and recover the payment thereof. These steps may include exercising all rights and remedies granted to the Lender pursuant to the Security Documents, including the right to appoint a receiver and manager.

Enclosed with this demand is a Notice of Intention to Enforce Security (the "**Notice**") issued in respect of the Borrowers pursuant to subsection 244(1) of the *Bankruptcy and Insolvency Act* (Canada). The Lender expressly reserves its right to proceed with the enforcement of its security at any time prior to the date specified in the Notice if it becomes aware of any circumstances which might affect its position.

If you consent to the Lender taking earlier enforcement, please return the consent to earlier enforcement (a copy of which is enclosed with the Notice), executed by a duly authorized representative each of the Borrowers.

We advise you that no failure on the part of the Lender to exercise and no delay in exercising and no course of dealing with respect to any right, power or privilege under any Loan Document shall operate as a waiver thereof, nor shall any single or partial exercise of any right, power or privilege thereunder preclude any other or further exercise thereof or the exercise of any other right, power or privilege. The Lender reserves all of its rights against the Borrowers under the Credit Agreement, the other Loan Documents (including the Security Documents) and at law.

Yours truly,

A handwritten signature in cursive script, appearing to read 'Evan Cobb'.

Evan Cobb

Copies to: Michael O'Brien, *Blake, Cassels & Graydon LLP*

Handwritten initials 'LB' in a stylized cursive font.

SCHEDULE A

The Lenders records indicate that, as at September 15, 2022, the Borrowers were indebted under the Credit Agreement as follows:

	CAD\$
<u>Principal Loan Balance</u>	16,307,482.80
<u>Interest outstanding</u>	
Interest and fees paid to:	August 31, 2022
Days to Calculate interest	15
Interest to September 15, 2022	39,191.41
Unused Line Fee	590.13
Monthly Collateral Management Fee	1,200.00
Total balances owing	16,348,464.34



FORM 86
Notice of Intention to Enforce a Security
 (Rule 124)

TO: Nilex Inc. and Nilex USA Inc. (together, the "**Borrowers**"), each an insolvent person;

Take notice that:

1. Canadian Imperial Bank of Commerce (the "**Secured Creditor**"), a secured creditor, intends to enforce its security on the Borrowers' property described below:

All of each Borrower's present and after acquired real and personal property now owned or hereafter acquired by or on behalf of such Borrower, subject to any exclusions set out in the Security Agreements (as defined below).

2. The security that is to be enforced is in the form of, *inter alia*, the agreements referred to in Schedule "A" (the "**Security Agreements**").
3. The total amount of indebtedness secured by the above described security as at September 15, 2022 was the sum of CDN \$16,348,464.34, plus additional interest, costs, fees and expenses.
4. The Secured Creditor will not have the right to enforce the security until after the expiry of the 10-day period after this notice is sent unless the Borrowers consent to an earlier enforcement.

DATED at Toronto, Ontario this 15th day of September, 2022.

**CANADIAN IMPERIAL BANK OF
 COMMERCE**, by its counsel, Norton Rose
 Fulbright Canada LLP

Per:



Name: Evan Cobb

Title: Partner



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Schedule "A"

1. Credit Agreement dated as of June 1, 2018 between Nilex Inc. and Nilex USA Inc. (together, the "**Borrowers**"), as borrowers, the guarantors from time to time party thereto, Canadian Imperial Bank of Commerce (the "**Lender**"), as lender, as amended pursuant to a First Amendment dated March 7, 2019, a Second Amendment dated January 17, 2020, a Third Amendment dated May 29, 2020, a Fourth Amendment dated December 24, 2020, a Fifth Amendment dated August 16, 2021, and a Sixth Amendment dated March 7, 2022 (and as may be further amended restated, supplemented or otherwise modified from time to time);
2. Guarantee dated as of June 1, 2018 between the Borrowers and the Lender;
3. General Security Agreement dated as of June 1, 2018 between the Borrowers and the Lender;
4. Intellectual Property Security Agreement dated as of June 1, 2018 between the Borrowers and the Lender;
5. Section 427 *Bank Act* security consisting of (i) a Notice of Intention to Give Security under Section 427 of the *Bank Act* dated May 24, 2018; (ii) an application for credit and promise to give bills of lading, warehouse receipts or security dated June 1, 2018, (iii) an agreement as to powers dated June 1, 2018, and (iv) a special security in respect of specified property or classes of property dated June 1, 2018, in each case, given by Nilex Inc. to the Lender;
6. Deposit Account Control Agreement dated June 1, 2018 between CIBC Bank USA, Nilex USA Inc. and the Lender.
7. Blocked Accounts Agreement dated June 27, 2018 between Nilex Inc., Canadian Imperial Bank of Commerce, as account bank, and the Lender; and
8. Security Agreement dated as of June 1, 2018 between the Borrowers and the Lender governed by the laws of New York.

CONSENT

TO: Canadian Imperial Bank of Commerce (the "**Secured Creditor**")
FROM: Nilex Inc. and Nilex USA Inc., each an insolvent person (the "**Insolvent Persons**")

Each of the Insolvent Persons acknowledges receipt of a Notice of Intention to Enforce Security dated September ____, 2022 delivered by the Secured Creditor.

For consideration received, the receipt and sufficiency of which are hereby acknowledged, each Insolvent Person hereby consents to the immediate enforcement by the Secured Creditor of the security held by the Secured Creditor from such Insolvent Person, and for the same consideration waives any further notice from the Secured Creditor with respect to the enforcement of its security and the exercise of the other remedies of the Secured Creditor against such Insolvent Person.

DATED this ____ day of _____, 2022

NILEX INC.

Per: _____
Name:
Title:

Per: _____
Name:
Title:
I/We have the authority to bind the corporation

NILEX USA INC.

Per: _____
Name:
Title:

Per: _____
Name:
Title:
I/We have the authority to bind the corporation

- 30 -

This is Exhibit "O" referred to in the Affidavit of Jeff Allen sworn before me this 31st day of October, 2022.

A Commissioner for Oaths in and for Alberta

LB

FORBEARANCE AGREEMENT

THIS AGREEMENT is dated as of October 17, 2022.

AMONG:

NILEX INC. and NILEX USA INC. (each a "**Borrower**" and, collectively, the "**Borrowers**")

- and -

THE GUARANTORS FROM TIME TO TIME PARTY HERETO

- and -

CANADIAN IMPERIAL BANK OF COMMERCE
(the "**Lender**")

CONTEXT:

- A. The Lender has provided certain financing arrangements under a Credit Agreement dated as of June 1, 2022 among the Lender, the Borrowers, and the guarantors from time to time party thereto (as amended, restated or replaced, from time to time to the date hereof, the "**Existing Credit Agreement**").
- B. As of the date of this Agreement, the Borrowers are in default under the Existing Credit Agreement and the other Loan Documents, which default constitutes one or more events of default thereunder as stipulated in the letter from the Lender to the Borrowers dated September 15, 2022 (the "**Demand Letter**").
- C. Nilex Inc. ("**Nilex Canada**") is considering filing a Notice of Intention to Make a Proposal (the "**NOI**") under Division I of Part III of the *Bankruptcy and Insolvency Act* (Canada) (the "**BIA**") and in connection therewith anticipates applying to the Court of King's Bench of Alberta (the "**Court**") for an order (as amended, restated, supplemented or otherwise modified from time to time, the "**Preliminary Order**") under the BIA in the proceedings commenced in connection with the NOI (the "**NOI Proceedings**"), and Nilex Canada has requested the ongoing support of the Lender during the NOI Proceedings. The primary purpose of the NOI Proceedings is to complete a sale process for the assets and business of Nilex Canada and Nilex USA Inc. and to effect a sale transaction identified through that process or, in the alternative, a liquidation of the assets, property and undertaking of the Borrowers and, in each case, the orderly distribution of the proceeds thereof, as more fully described herein (the "**Sale Process**").
- D. The Borrowers have concluded that the Lender is the most cost effective and timely source of working capital funds that is available and appropriate in the circumstances for Nilex Canada in the NOI Proceedings.
- E. The Borrowers have requested that the Lender continue to make available to the Borrowers certain credit facilities to meet their working capital requirements during the NOI Proceedings and to forbear from exercising the Lender's rights as a result of the Existing Defaults and the commencement and existence of the NOI Proceedings, and that the Lender extend credit and make advances (collectively, the "**Loans**") to the Borrowers despite those Existing Defaults in order to support the ongoing working capital needs of Nilex Canada and to permit it to give effect to the Sale Process.

- 2 -

- F. The Lender is willing to forbear from exercising its rights and remedies and to provide certain Loans to the Borrowers during the Forbearance Period on the terms and conditions set out in this Agreement.

THEREFORE, the Parties agree as follows:

ARTICLE 1 INTERPRETATION

1.1 Credit Agreement Definitions

Each capitalized term used and not otherwise defined in this Agreement will have the meaning assigned to it in the Existing Credit Agreement.

1.2 Other Definitions

In this Agreement the following terms have the following meanings:

- (a) "**Accrued Statutory Claims**" is defined in Section 2.3(k).
- (b) "**Additional Default**" means: (i) a Credit Party's default or failure to comply with any of the terms, conditions or covenants under this Agreement, or (ii) a Default by a Credit Party under the Credit Agreement or any other Loan Document prior to or on or after the date of this Agreement (other than an Existing Default).
- (c) "**Agreement**" means this agreement, including all Schedules, as it may be modified, amended, revised, restated, replaced, supplemented or otherwise changed from time to time and at any time hereafter, in writing, by the Parties.
- (d) "**Anticipated Defaults**" means any Events of Default arising or caused solely as a result of (i) the commencement or continuation of the NOI Proceedings or any acknowledgement of insolvency made in connection therewith, and (ii) the Sale Process.
- (e) "**Approved Cash Flow**" means the approved cash flow forecast of the Borrowers as attached as Schedule 2 hereto, which forecast shall also include the forecasted inventory, forecasted Borrowings and forecasted Borrowing Base for each week.
- (f) "**BIA**" is defined under "Context", above.
- (g) "**Blocked Accounts Order**" is defined in Section 4.1(h).
- (h) "**Court**" is defined under "Context", above.
- (i) "**Claims**" and "**Claim**" are defined in Section 8.3(a).
- (j) "**Communication**" means any notice, demand, request, consent, approval or other communication, which is required or permitted by this Agreement to be given or made by a Party.
- (k) "**Conditions Precedent**" is defined in Section 7.1.
- (l) "**Consultant**" is defined in Section 2.3(g).
- (m) "**Credit Agreement**" means the Existing Credit Agreement as modified and amended by this Agreement and as may be further modified, amended, revised, restated, replaced, supplemented or otherwise changed from time to time and at any time hereafter, in writing, by the Parties.

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- (n) "**Credit Facilities**" is defined in Section 2.3(b).
- (o) "**Demand Letter**" is defined under "Context" above.
- (p) "**Existing Credit Agreement**" is defined under "Context" above.
- (q) "**Existing Defaults**" means the Defaults or Events of Default under the Existing Credit Agreement set out in the Demand Letter and as specified in Schedule 4 attached hereto, and the Anticipated Defaults.
- (r) "**Existing Indebtedness**" means the outstanding Obligations existing as at the date hereof as more particularly described in Schedule 1.
- (s) "**Existing Security**" is defined in Section 2.4.
- (t) "**Expiry Date**" is defined in Section 5.3.
- (u) "**Forbearance Fee**" is defined in Section 3.3(a).
- (v) "**Forbearance Period**" is defined in Section 3.1(a).
- (w) "**Lender Priority Charge**" is defined in Section 4.1(j)(ii).
- (x) "**Loan Documents**" has the meaning given thereto in the Credit Agreement and includes, without limitation, this Agreement.
- (y) "**Loans**" is defined under "Context" above.
- (z) "**NOI**" is defined under "Context" above.
- (aa) "**NOI Date**" means the date of filing of the NOI by Nilex Canada;
- (bb) "**NOI Proceedings**" is defined under "Context" above.
- (cc) "**Parties**" means, collectively, the Credit Parties and the Lender; and "**Party**" means any one of them.
- (dd) "**Post-Filing Advances**" is defined in Section 4.1(f).
- (ee) "**Pre-Filing Payments Order**" is defined in Section 4.1(f).
- (ff) "**Preliminary Order**" is defined in the "Context" above.
- (gg) "**Purchase Agreement**" is defined in Section 4.1(i)(iii).
- (hh) "**Releasees**" and "**Releasee**" are defined in Section 8.3(a).
- (ii) "**Sale Process**" is defined under "Context" above.
- (jj) "**Terminating Event**" is defined in Section 6.5.
- (kk) "**Total Availability From Eligible Inventory**" means at any time the amount determined in accordance with subparagraph (ii) of the definition of "Borrowing Base" in the Existing Credit Agreement.

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- (ll) **"Transaction Approval Order"** is defined in Section 4.1(i)(v).
- (mm) **"Trustee"** is defined in Section 2.3(h).

1.3 Entire Agreement

This Agreement, together with the Existing Credit Agreement and the other Loan Documents and the other agreements and documents to be delivered under this Agreement, constitute the entire agreement between the Parties pertaining to the subject matter of this Agreement and supersedes all prior agreements, understandings, negotiations and discussions, whether oral or written, of the Parties, and there are no representations, warranties or other agreements between the Parties in connection with the subject matter of this Agreement except as specifically set out in this Agreement, the Existing Credit Agreement, the other Loan Documents or the other agreements and documents delivered under this Agreement.

1.4 Business Day

Whenever any payment to be made or action to be taken under this Agreement is required to be made or taken on a day other than a Business Day, the payment is to be made or action taken on the next Business Day following.

1.5 Certain Rules of Interpretation

- (a) In this Agreement, words signifying the singular number include the plural and vice versa, and words signifying gender include all genders. Every use of the word "including" in this Agreement is to be construed as meaning "including, without limitation".
- (b) The division of this Agreement into Articles and Sections and the insertion of headings are for convenience of reference only and do not affect the construction or interpretation of this Agreement.
- (c) References in this Agreement to an Article, Section, Schedule or Exhibit are to be construed as references to an Article, Section, Schedule or Exhibit of or to this Agreement unless the context requires otherwise.
- (d) Unless otherwise specified in this Agreement, time periods within which or following which any payment is to be made or act is to be done will be calculated by excluding the day on which the period commences and including the day on which the period ends. If the last day of a time period is not a Business Day, the time period will end on the next Business Day.
- (e) Unless otherwise specified, any reference in this Agreement to any (a) statute includes all regulations made under that statute, and is to be construed as a reference to that statute as amended, supplemented or replaced from time to time, and (b) to any agreement means such agreement as amended, supplemented, restated, or replaced subject to compliance with any restrictions thereon in the Loan Documents.
- (f) Unless otherwise specified, the word "dollar" and the "\$" sign refer to Canadian currency, and all amounts to be advanced, paid, tendered or calculated under this Agreement are to be advanced, paid, tendered or calculated in Canadian currency.

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1.6 Schedules and Exhibits

The following is a list of the Schedules and Exhibits attached hereto:

Schedule	Subject Matter
Schedule 1	Existing Indebtedness
Schedule 2	Approved Cash Flow
Schedule 3	Existing Security
Schedule 4	Existing Defaults

ARTICLE 2 ACKNOWLEDGMENT

2.1 Acknowledgement of Obligations

Each Credit Party confirms, acknowledges and agrees that the Existing Indebtedness as of the date of this Agreement is as set out in Schedule 1 attached hereto.

2.2 Continuing Effect of Amendments

The Parties hereto each acknowledge, confirm and agree that the Existing Credit Agreement remains in full force and effect as at the date hereof, except as specifically amended by this Agreement. The Existing Credit Agreement shall henceforth be read and construed in conjunction with this Agreement.

2.3 Other Confirmations and Acknowledgements

Each Credit Party confirms, acknowledges and agrees that:

- (a) each of the recitals in the "Context" is true and correct;
- (b) it has received the Demand Letter and, subject to Section 3.1 of this Agreement, all of the Existing Indebtedness is now payable and that the Lender has the presently exercisable right to receive immediate payment from the Credit Parties of the outstanding Obligations and to immediately terminate the credit facilities provided under the Existing Credit Agreement (the "**Credit Facilities**");
- (c) the Existing Defaults (other than the Anticipated Defaults) have occurred and are continuing and, as of the date of this Agreement, no Default or Event of Default, other than the Existing Defaults (other than the Anticipated Defaults), exists under the Existing Credit Agreement or any other Loan Document;
- (d) the Lender has not waived the Existing Defaults and nothing contained in this Agreement or the transactions contemplated by this Agreement will be deemed to constitute any such waiver;
- (e) interest and fees continue to accrue on the Existing Indebtedness under the Existing Credit Agreement and the other Loan Documents in accordance with the Existing Credit Agreement and the other Loan Documents and at the rates applicable to the Existing Indebtedness;
- (f) each Credit Party consents to the immediate enforcement of all or any part of the rights and remedies accorded to the Lender under the Existing Credit Agreement and the other Loan



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Documents and Applicable Law in any manner determined by the Lender (including, without limitation, the immediate appointment of a receiver, interim receiver or receiver and manager) upon the expiry of the Forbearance Period;

- (g) KSV Advisory Inc. (the "**Consultant**") has been retained by the Borrowers and is the financial consultant to the Borrowers in respect of, *inter alia*, this Agreement, the Credit Agreement, the other Loan Documents and the outstanding Obligations and the Lender is entitled to appoint any other consultants, in addition to the Consultant, as the Lender may require at the cost of the Credit Parties;
- (h) KSV Restructuring Inc. (the "**Trustee**") is the proposed trustee in the NOI Proceedings and has consented to act in such capacity;
- (i) PricewaterhouseCoopers Inc. has been engaged as financial advisor to the Lender in respect of, *inter alia*, this Agreement, the Credit Agreement, the other Loan Documents and the outstanding Obligations.
- (j) each Credit Party will grant all access and provide, on reasonable notice during regular business hours, all information and documentation to, and will otherwise cooperate fully with the Lender, and pay all reasonable fees and disbursements of each consultant appointed by the Lender as the Lender may require, and pay, in accordance with the Approved Cash Flow, all reasonable fees and disbursements of the Trustee and the Trustee's counsel. The Borrowers will also cause the Consultant to grant full access and provide all information and documentation to, and to otherwise co-operate fully with, the Lender. All such information and documentation provided to the Lender shall be subject to Section 9.12 of the Credit Agreement;
- (k) except for obligations in respect of accrued unpaid sales taxes not to exceed \$325,000 and accruing employee related obligations to employees, including wages and vacation pay, not yet due not to exceed \$650,000 (collectively, the "**Accrued Statutory Claims**"), as at the NOI Date, the Borrowers have paid or caused to be paid and satisfied when due all amounts in respect of income taxes, provincial sales taxes, GST, HST, employee payroll remittances, and other obligations which have or may constitute a Priority Payable;
- (l) the Lender has and will continue to have valid, enforceable and perfected first ranking Liens, subject to Permitted Liens, over and in respect of the Collateral as continuing and collateral security for the Obligations and all other amounts owing from time to time under this Agreement, the Credit Agreement and the other Loan Documents, subject to: (i) any Accrued Statutory Claims which have or may have priority over such Liens; and (ii) any court-ordered charge(s) approved by the Lender and granted by the Court in the NOI Proceedings, which may have priority over such Liens;
- (m) the Existing Credit Agreement, the other Loan Documents to which each Credit Party is party and this Agreement are in full force and effect and constitute legal, valid and binding obligations of each Credit Party, enforceable against each such Credit Party in accordance with their respective terms;
- (n) the Credit Parties do not have any valid claim for set-off, counter-claim, damages or other defence on any basis whatsoever against the Lender and if there are any such claims, then each Credit Party hereby expressly waives and releases them to the fullest extent permitted under Applicable Law;
- (o) the Lender is and will be entitled to the rights, remedies and benefits provided for in this Agreement, the Credit Agreement and the other Loan Documents subject to Applicable Law;
- (p) the Approved Cash Flow existing as at the date hereof covers the period from October 3, 2022 to December 31, 2022; and

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- (q) this Agreement constitutes a Loan Document for all purposes of the Existing Credit Agreement and the other Loan Documents.

2.4 Security

The Credit Parties acknowledge and agree that the Security Documents delivered to, and Liens granted therein to, the Lender as listed in Schedule 3 attached hereto (collectively, the "**Existing Security**") shall stand as security for the payment and performance of each and every one of the Credit Parties' obligations and indebtedness to the Lender.

ARTICLE 3 FORBEARANCE IN RESPECT OF CERTAIN EVENTS OF DEFAULT

3.1 Forbearance

- (a) In reliance upon the acknowledgments, confirmations, representations, warranties and covenants of the Credit Parties contained in this Agreement, and subject to the terms and conditions of this Agreement and any documents or instruments executed in connection with this Agreement, the Lender agrees to forbear from exercising its rights and remedies under the Existing Credit Agreement and the other Loan Documents and/or Applicable Law in respect of or arising out of or relating to the Existing Defaults, subject to the conditions, amendments and modifications contained in this Agreement, during the period (the "**Forbearance Period**") commencing on the date of this Agreement and ending on the earlier of:
- (i) the Expiry Date; and
 - (ii) the occurrence or existence of any Terminating Event.
- (b) On the last day of the Forbearance Period, the agreement of the Lender to forbear will automatically and without further action terminate and be of no further force or effect, it being expressly agreed that the effect of that termination will be to permit the the Lender to immediately exercise all or any part of their rights and remedies under this Agreement, the Credit Agreement, the other Loan Documents and Applicable Law (whether against all or any combination of the Credit Parties), including without limitation:
- (i) to immediately terminate each of the Credit facilities and cease to make any further Loans, upon which no further credit will be available thereunder;
 - (ii) to demand immediate payment of all of the Obligations and enforce all of the Lender's rights and remedies under this Agreement, the Credit Agreement, the other Loan Documents and Applicable Law, in each case without any further notice, passage of time or forbearance of any kind; and
 - (iii) to appoint a receiver, interim receiver or receiver and manager of any of the Credit Parties pursuant to this Agreement, the Credit Agreement, the other Loan Documents or Applicable Law (or apply to a court of competent jurisdiction to do so).

3.2 No Other Waivers; Reservation of Rights

The Lender has not waived, and is not by this Agreement or the implementation of this Agreement waiving, any Existing Default or any Additional Default (whether the same or similar to the Existing Defaults or otherwise), and the Lender has not agreed to forbear with respect to any of its rights or remedies concerning any Additional Default (whether the same or similar to the Existing Defaults or otherwise) which may have occurred or be continuing as of the date of this Agreement or which may occur or be continuing after the date of this Agreement. The Lender has not waived any of such rights or remedies, and nothing in this

Agreement, and no delay on their part in exercising any such rights or remedies, should be construed as a waiver of those rights or remedies.

3.3 Fees and Interest

- (a) In consideration of the agreements set out in this Agreement, the Borrowers agree to pay to the Lender, an amendment and forbearance fee in the amount of \$50,000 which shall be fully earned as at the date of this Agreement and is to be paid immediately upon the execution and delivery of this Agreement (the "**Forbearance Fee**").
- (b) The Forbearance Fee is in addition to all other fees (including legal fees), interest, costs, expenses and other amounts payable in connection with this Agreement, the Credit Agreement and the other Loan Documents (including fees contemplated in the Existing Credit Agreement to the extent that payment has not been received by the Lender as at the date hereof) and may be charged by the Lender to any account of the Borrowers maintained by the Lender. The Forbearance Fee will be fully earned by the Lender despite any failure by any Credit Party to comply with any other term of this Agreement.

ARTICLE 4 OBLIGATIONS OF THE CREDIT PARTIES DURING FORBEARANCE PERIOD

4.1 Covenants of the Credit Parties

During the Forbearance Period, each Credit Party covenants and agrees as follows:

- (a) **Loan Document Obligations:** each Credit Party will strictly adhere to all the terms, conditions and covenants of this Agreement, the Credit Agreement and the other Loan Documents including, without limitation, terms requiring prompt payment to the Lender of principal and interest amounts when due, except to the extent that those terms, conditions and covenants are otherwise specifically amended by this Agreement, or modified and agreed to in writing by the parties to such agreement and acknowledged and approved in writing by the Lender;
- (b) **Asset Sales and Payments:** notwithstanding anything to the contrary contained in this Agreement, the Credit Agreement or any other Loan Document:
 - (i) the Credit Parties will not transfer, lease, sell or otherwise dispose of all or any part of their property, assets or undertaking (excluding dispositions of inventory in the ordinary course of business) other than the transfer, lease, sale or other disposition of property, assets or undertaking not exceeding \$50,000 for any single transaction or \$100,000 in the aggregate; provided, however, that the foregoing shall not apply with respect to any sales or dispositions of property, assets or undertaking effected by the Borrowers in accordance with the terms of the Sale Process as consented to and approved by the Lender in writing, which includes e-mail communication from the Lender's legal or financial advisors;
 - (ii) notwithstanding Section 6.6 and 6.15 of the Credit Agreement, each Credit Party agrees that no Restricted Payment or Capital Expenditure shall be paid, in each case without the prior written consent of the Lender given on or after the date hereof;
 - (iii) unless otherwise agreed to by the Lender in writing on or after the date hereof, the Credit Parties shall not pay any key employee any bonus, incentive or retention payments, whether such payment was an obligation arising from a contract executed prior to the commencement of the NOI Proceedings or otherwise; and

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- (iv) notwithstanding Section 6.8 of the Credit Agreement, no Credit Party shall make any payment in respect of principal or interest on, or on account of, Indebtedness, other than Indebtedness owing to the Lender.
- (c) **Information Sharing:** The Credit Parties will forthwith provide to the Lender:
- (i) a copy of any notice that it is required to give to any Person (including, without limitation, any landlord) pursuant to the NOI Proceedings at the same time any such notice is required to be given to such Person;
 - (ii) a copy of all reports and information respecting the business, financial condition or prospects of the Credit Parties (including, without limitation, all unredacted reports and information provided to the Credit Parties by the Consultant as the Lender may, from time to time, reasonably request), which reports and information shall be subject to Section 9.12 of the Credit Agreement;
 - (iii) not less than two (2) Business Days' prior to filing (unless circumstances do not permit such notice, in which case, such notice as may be reasonably practicable in the circumstances), copies of draft court documents, including any proposal, in respect of any application, motion or other contemplated actions or steps made or taken by or in respect of a Credit Party in the NOI Proceedings or other similar or ancillary proceedings in any other jurisdiction (excluding drafts of any report of the Trustee), and not less than one (1) Business Day prior to filing or when received by a Credit Party (if not received earlier), copies of any draft Trustee report to be filed in connection with the NOI Proceedings; subject in all cases to confidentiality restrictions (provided, however, the Lender is permitted to share and provide copies of all such information and materials to the Lender's counsel, consultants and advisors who have been advised of and agree to be subject to the same confidentiality restrictions), and all draft orders and any proposal in the NOI Proceedings must be filed in a form which is confirmed by the Lender to be satisfactory to the Lender;
 - (iv) the following reporting information certified by the respective Chief Financial Officer (unless otherwise specified) of the applicable Credit Party and in form and substance satisfactory to the Lender:
 - a. the reporting information required under the Credit Agreement (and, in particular, Section 5.1 thereof), including, without limitation, effective immediately, (a) the financial information pursuant to Section 5.1(b) of the Credit Agreement on a consolidated and consolidating basis, and (ii) a separate Borrowing Base Report for each of the Borrowers (it being also acknowledged and agreed by the Credit Parties that the Weekly Reporting Trigger Period has commenced and is continuing) with a manual adjustment to the balance of Accounts arising from progress billing to reflect, (i) the collections of progress billing Accounts that have occurred, and (ii) the accrual of unbilled progress billing, both since the last business day of the preceding calendar month;
 - b. promptly after a Credit Party learns of the receipt or occurrence thereof, a certificate of such Credit Party, signed by a senior officer of such Credit Party specifying:
 - (i) notice of the institution of or any material adverse development in any action, suit or proceeding or any governmental investigation or any arbitration before any court or arbitrator or any Governmental Authority or official against such Credit Party which would reasonably be expected to have a Material Adverse Effect;



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- (ii) any official notice of any violation, possible violation, non-compliance or possible non-compliance, or claim made by any Governmental Authority or licensor pertaining to all or any part of the properties or Intellectual Property Rights of such Credit Party which would reasonably be expected to have a Material Adverse Effect;
 - (iii) except for the Existing Defaults, any event which constitutes a Default or Event of Default, together with a detailed statement specifying the nature thereof and the steps being taken to cure such Default or Event of Default;
 - (iv) the receipt of any notice from, or the taking of any other action by, the holder of any promissory note, debenture or other evidence of Indebtedness of such Credit Party with respect to an actual or alleged default, together with a detailed statement specifying the notice given or other action taken by such holder and the nature of the claimed default and what action such Credit Party is taking or proposes to take with respect thereto; and
 - (v) any other event, development or condition which may reasonably be expected to have a Material Adverse Effect;
- (v) promptly:
- a. after receipt by a Credit Party, a copy of any notice received by such Credit Party in which any creditor, landlord, licensor or other third party delivers a notice of defect, default, demand, acceleration or enforcement in respect of any obligation of such Credit Party,
 - b. any written restructuring, liquidation or sale proposal that is received by a Credit Party, the Trustee, the Consultant or their respective advisors, which written proposals shall be subject to Section 9.12 of the Credit Agreement;
- (vi) on a biweekly basis, and also promptly following each of the milestone dates set out in Section 4.1(i), a written report of the Consultant or the Trustee, as applicable, on the status of the Sale Process, followed by a conference call with the Consultant (or the Trustee, as applicable) and the Credit Parties to respond to any inquiries regarding the Sale Process from the Lender; and
- (vii) promptly, all other reports and information required to be provided under this Agreement, the Credit Agreement or any other Loan Document or as may be otherwise reasonably required by the Lender from time to time.
- (d) **Security:** The Credit Parties will from time to time execute and deliver additional Guarantees and such supplements, amendments or additions as may be requested by the Lender to any of the existing Liens held by the Lender (together with supporting resolutions, certificates and other documentation as may be reasonably required) in order to better effect the intent of this Agreement, the Credit Agreement and the other Loan Documents.
- (e) **No Non-arm's Length Payments:** Without derogation to any negative covenants contained in the Credit Agreement, no Credit Party shall make any payments of interest, principal, bonuses, management fees, incentives, payments or salary or other distributions of cash or assets to any Person with which it does not deal with at arm's length except for payments of salaries in the ordinary course of business and consistent with historical salary payments (excluding bonuses).

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- (f) **Pre-Filing Borrowings:** The Borrowers shall seek and obtain, as part of the Preliminary Order, an order of the Court, in form and substance satisfactory to the Lender, authorizing the Borrowers to pay, in accordance with the Credit Agreement, as amended hereby, any and all amounts owing by the Borrowers to the Lender from time to time, whether such obligations arose prior to or after the NOI Date, provided that no advances of funds made by the Lender to the Borrowers under the Credit Agreement (as amended) made on or after the granting of the Preliminary Order (the "**Post-Filing Advances**") shall be used to pay the Borrowers' pre-filing outstanding Borrowings under the Credit Agreement (as amended) (the "**Pre-filing Payments Order**"). The Lender shall be entitled to apply any receipts and deposits made to the Borrowers' bank accounts, other than the Post-Filing Advances, against the Obligations arising prior to the NOI Date or following the NOI Date in the Lender's discretion.
- (g) **Cash Flow Reporting:** The Borrowers agree that they will: (i) by 12:00 p.m. (Edmonton time) on the fourth Business Day of each week during the Forbearance Period, provide the Lender with an updated Borrowing Base calculation and a variance report that shows the actual cash receipts and actual cash disbursements against the Approved Cash Flow on both a trailing weekly period basis and cumulative basis over the entirety of the Approved Cash Flow period to date, as well as an explanation of the variances from the Approved Cash Flow; and (ii) deliver to the Lender promptly such additional information as the Lender may from time to time reasonably request respecting any such Approved Cash Flow.
- (h) **Blocked Accounts:** Each Credit Party agrees as follows:
- (i) that it will enforce, collect and receive at its expense all amounts owing on its Accounts in the ordinary course of its business and any proceeds it so receives shall be subject to the terms of the Credit Agreement and this Section 4.1(h);
 - (ii) that, on the NOI Date and at all times thereafter: (a) each of the Credit Parties' deposit accounts that receive proceeds of property subject to a Lien in favour of the Lender or otherwise are and shall be Blocked Accounts subject to duly executed and delivered Blocked Account Agreements and complying in all respects with the terms set forth in the Credit Agreement, (b) each of the Credit Parties shall have delivered to the Lender evidence satisfactory to the Lender that blocked account and cash management systems with all such Persons complying in all respects with the terms set forth in the Credit Agreement have been established and are currently being maintained in the manner set forth in the Credit Agreement, and (c) it shall have delivered to the Lender copies of duly executed tri-party blocked account and other control agreements satisfactory to the Lender, acting reasonably, with all such other Persons as required by the Lender in its sole discretion; and
 - (iii) that it will seek and obtain, as part of the Preliminary Order, an order of the Court, in form and substance satisfactory to the Lender, authorizing and directing the Borrowers to enter into the above described Blocked Accounts arrangements (the "**Blocked Accounts Order**").

The Parties hereto hereby acknowledge, confirm and agree that the continuing implementation of the cash management arrangements is a contractual right provided to the Lender hereunder and under the Credit Agreement in order for the Lender to manage and monitor its collateral position and not a proceeding for enforcement or recovery of a claim, or pursuant to, or an enforcement of, any security or remedies whatsoever, that the cash management arrangements contemplated herein are critical to the structure of the lending arrangements contemplated herein, that the Lender is relying on this acknowledgement, confirmation and agreement with respect to such cash management arrangements in making accommodations of credit available to the Borrowers and in particular that any accommodations of credit are being provided by the Lender to the Borrowers strictly on the basis of a borrowing base calculation to fully support and collateralize any such accommodations of credit hereunder.

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- (i) **Sale Process Milestones:** The Credit Parties agree to continue the Sale Process and agree as follows, subject to any subsequent amendment with the consent of the Lender:
- (i) on or before October 24, 2022, Nilex Canada shall provide a report to the Lender setting out its anticipated approach and timeline for implementation of a transaction identified in the Sale Process, on terms and with deadlines acceptable to the Lender in its sole discretion, and will update the Lender, in a timely manner, on any change to such approach and timelines, which must be acceptable to the Lender in its sole discretion;
 - (ii) the Credit Parties shall have selected prospective purchasers who will be invited to submit definitive binding offers, and so advised such prospective purchasers by no later than October 24, 2022;
 - (iii) the Credit Parties shall have selected a successful binding offer, in the form of a mark-up to a template asset purchase agreement (the "**Purchase Agreement**") to be posted in the data room, which must offer cash consideration sufficient to repay all obligations owing to the Lender in full on closing and be in form and substance acceptable to the Lender (the "**Successful Bid**"), on or before November 8, 2022;
 - (iv) the Credit Parties shall have entered into the Purchase Agreement by no later than November 15, 2022;
 - (v) On or before November 25, 2022, Nilex Canada shall obtain an order approving a transaction entered into pursuant the Purchase Agreement, in form and substance satisfactory to the Lender (the "**Transaction Approval Order**");
 - (vi) On or before November 30, 2022, the Borrowers shall complete the transaction entered into pursuant to the Purchase Agreement and the Transaction Approval Order and shall have received the cash consideration payable thereunder to be forthwith distributed to the Lender up to the full amount of obligations owing to the Lender by the Credit Parties;
 - (vii) the Credit Parties shall ensure that the Lender is promptly provided with copies of all marketing materials, any letters of interest or definitive agreements provided, any other communications in respect of the foregoing and any details of the foregoing reasonably requested by the Lender, all of which shall be subject to Section 9.12 of the Credit Agreement;
 - (viii) If Nilex Canada determines to commence NOI Proceedings, then within fourteen days following the filing of such NOI by Nilex Canada, Nilex Canada shall obtain the Preliminary Order; and
 - (ix) all other terms of the above described Sale Process, and any amendments to the Sale Process, must be acceptable to the Lender.
- (j) **Preliminary Order:** the Preliminary Order shall be in form and substance satisfactory to the Lender and shall, *inter alia*:
- (i) provide that the Lender shall at all times be treated as an "unaffected creditor" in the NOI Proceedings and in any proposal filed pursuant thereto and/or in any other insolvency, restructuring, reorganization and/or arrangement proceeding with respect to the Credit Parties thereafter including, without limitations, proceedings under the *Companies' Creditors Arrangement Act* (Canada) or the *Bankruptcy and Insolvency Act* (Canada) and any stay of proceedings ordered by the Court in the NOI Proceedings shall not apply to the Lender, provided the Lender shall give not less than five (5) Business Days' prior written notice to the Credit Parties and the Trustee of its intention to cease making advances under



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this Agreement and the Credit Agreement, and during such notice period the Lender shall continue to fund only the payment of employee wages, Priority Payables and, provided there is sufficient availability, such expenditures as are contemplated in the then current Approved Cash Flows and reasonably requested by the Borrowers and as agreed to by the Lender acting in its sole and unfettered discretion;

- (ii) provide that the aggregate of any and all advances of funds by the Lender to the Borrowers under the Credit Agreement (as amended by this Agreement) made on or after NOI Date and all interest and other fees and costs accruing after the NOI Date shall be secured by a Court ordered security and charge in favour of the Lender (the "**Lender Priority Charge**") which security and charge shall rank in priority to every other claim, Lien and security interest against the Borrowers' property, assets and undertaking, other than the Administration Charge (as defined in the Preliminary Order), and any charge expressly consented to by the Lender and granted by the Court in the NOI Proceedings, without any need or requirement for any further steps for attachment, perfection, opposability against third parties, registration, publication or other notice thereof required to be taken by the Lender;
 - (iii) include the Pre-filing Payments Order; and
 - (iv) include the Blocked Accounts Order.
- (k) **Post-Filing Rent Payments:** the Credit Parties must maintain as current all payments accruing from and after the NOI Date under any lease or any mortgage of any premises out of which any Credit Party operates, or contracts for storage or bailment, and will otherwise not permit any default or event of default under any such lease, mortgage or contract for storage or bailment after the NOI Date, or forthwith obtain a waiver in writing from the relevant landlord, storer or bailee; provided, however, that the foregoing shall not apply with respect to any assignments, disclaimers or resiliations of contracts effected by a Credit Party as required by a Purchase Agreement entered into in the Sale Process and the Credit Parties hereby agree to give the Lender concurrent notice thereof, or to payments for goods or services provided or received by a Credit Party before the NOI Date or to any other payment obligations the enforcement of which is stayed by the NOI Proceedings;
- (l) **Further Assurances:** Each Credit Party will provide any further or additional documents, whether provided for in this Agreement, the Credit Agreement, any other Loan Documents or otherwise, that the Lender may require to ensure that the Lender has and continues to have full and complete Guarantees from each Credit Party and a first ranking Lien, subject to Permitted Liens and any court-ordered charge(s) approved by the Lender and granted by the Court in the NOI Proceedings which may have priority over such Lender's Liens, against such assets, properties and undertaking of the Credit Parties as the Lender requires (including all amendments or supplements to any of this Agreement, the Credit Agreement or any other Loan Document (including all Security Documents) and all additional or supplemental debentures, hypothecs, mortgages, charges, assignments, pledges and/or other security deemed necessary or desirable by the Lender).

4.2 Covenants in the Credit Agreement and the other Loan Documents

Except as expressly modified in this Agreement by specific reference, all of the covenants in this Agreement are in addition to and not in substitution for the covenants of the Credit Parties in the Credit Agreement and the other Loan Documents.

**ARTICLE 5
AMENDMENTS TO LENDING ARRANGEMENTS**

5.1 Amendments to Existing Credit Agreement

- (a) From and after the date hereof, the Lender's Revolving Loans shall not exceed the lesser of: (i) the Borrowing Base at that time; and (ii) in the case of any particular week, the Maximum Revolving LOC Balance, as set out in Schedule 2.
- (b) Except to the extent otherwise set forth in this Agreement, the Credit Facilities shall continue in accordance with their terms and conditions as set forth in the Existing Credit Agreement.

5.2 Purpose

- (a) The proceeds of Borrowings by the Borrowers shall, subject to the provisions of this Agreement, be used for funding in the ordinary course their operations and restructuring during the NOI Proceedings, their out-of-pocket costs incurred in connection with the NOI Proceedings (including all reasonable fees and expenses of its counsel, the Consultant, the Trustee and the Trustee's counsel and the Lender's counsel and advisors), and for such other purposes as may be agreed to by the Lender in writing; all in accordance with the Approved Cash Flow.

5.3 Expiry Date

- (a) All amounts owing by the Credit Parties under the Credit Agreement and all amounts owing to the Lender in connection with this Agreement, the Credit Agreement and all other Loan Documents shall be paid by the Credit Parties to the Lender in full on the Expiry Date. The "**Expiry Date**" shall be the date which is the earliest of:
 - (i) two (2) days following the receipt by the Lender of written notice by any of the Borrowers of termination of any or all of the Credit Facilities;
 - (ii) the date of issuance of a demand by the Lender for repayment of any or all of the Obligations upon the occurrence of a Default or an Event of Default (other than an Existing Default);
 - (iii) the implementation date of any proposal under the NOI Proceedings;
 - (iv) the date on which the stay imposed under the NOI Proceedings is lifted, in whole or in part, is terminated or lapses without extension, unless the Lender consents thereto;
 - (v) November 30, 2022 or such later date as may be agreed to by the Lender; and
 - (vi) the occurrence or existence of any Terminating Event.

**ARTICLE 6
REPRESENTATIONS, WARRANTIES AND TERMINATING EVENTS**

Each of the Credit Parties represents, warrants and covenants with and to the Lender as follows:

6.1 Representations in Loan Documents

Except for any representation and warranty set out in any of the Loan Documents relating to the non-existence of an Existing Default, or stated to be made as at a particular date, each of the representations and warranties made by or on behalf of the Credit Parties to the Lender in the Existing Credit Agreement or any of the other Loan Documents was true and correct when made, and in all material respects is, true

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and correct on the date of this Agreement, with the same full force and effect as if each of those representations and warranties had been made by the applicable Credit Parties on the date of, and within, this Agreement.

6.2 Full Effect of Documents

This Agreement, the Existing Credit Agreement and the other Loan Documents are in full force and effect, except as modified by this Agreement.

6.3 No Conflict

The execution and delivery and performance of this Agreement by each Credit Party will not violate any requirement of Applicable Law or any Material Contract of each Credit Party, and will not result in, or require, the creation or imposition of any Lien on any of its properties or revenues except as expressly contemplated herein.

6.4 Lender May Pursue Rights and Remedies

Nothing in this Agreement will prejudice the Lender's rights to pursue any of their rights or remedies including, without limitation, enforcing their rights under any of this Agreement, the Existing Credit Agreement or any of the other Loan Documents or under Applicable Law following the expiry or termination of the Forbearance Period.

6.5 Terminating Events

Other than as provided in this Agreement or as may otherwise be consented to in writing by the Lender, the occurrence of any of the following events (other than any such event that constitutes an Existing Default) will constitute a "**Terminating Event**" under this Agreement (and, for purposes of greater certainty, a Default or an Event of Default under the Credit Agreement and the other Loan Documents):

- (a) if any Additional Default occurs, that is not waived by the Lender;
- (b) if, calculated on a cumulative basis commencing with the week ended October 7, 2022, in any week during the Forbearance Period the actual Cumulative Net Cash Flow calculated in accordance with Schedule 2 hereto is less than the Minimum Cumulative Net Cash Flow amount as shown in Schedule 2 hereto;
- (c) if, commencing the week ended October 14, 2022, the value of Total Availability From Eligible Inventory at any time exceeds the Maximum Total Availability From Eligible Inventory as shown for each week in Schedule 2 hereto.
- (d) except for any court-ordered charge(s) granted by the Court in the NOI Proceedings that rank in priority to the Liens of the Lender, with the consent of the Lender, or as may otherwise be expressly consented to by the Lender, if any court of competent jurisdiction, including, without limitation the Court, makes any order declaring that all or part of any Credit Party's property is subject to a Lien, security or charge in favour of any party other than the Lender and such court ordered charge purports to rank in any manner whatsoever in priority to any claim of the Lender under its Liens in the Security Documents or the Lender Priority Charge;
- (e) if, on or after the date of this Agreement:
 - (i) the NOI Proceedings are terminated without the prior or concurrent consent of the Lender or any order of the Court is sought by a Credit Party or granted by the Court that could reasonably be expected to materially adversely affect the interests of the Lender; or



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- (ii) the Trustee reports to the Court that there has been a material adverse change in respect of any of the Credit Parties and/or the NOI Proceedings;
- (f) if any Credit Party makes any payment prohibited by the Preliminary Order;
- (g) if any representation, warranty or other statement made or deemed to be made by any Credit Party in this Agreement, the Credit Agreement or any of the other Loan Documents or in any of the documents or instruments to be delivered to the Lender as contemplated by this Agreement is untrue in any material respect (unless stated to be made as at a particular date and subject to applicable cure periods, if any);
- (h) if any Credit Party shall fail to observe or perform any covenant, condition or agreement contained in this Agreement, including (without limitation) a failure to comply with any milestone date in the Sale Process set out in Section 4.1(i);
- (i) if there occurs, except as part of the Sale Process the effect of which is reflected in the Approved Cash Flow and summarized in detailed notes thereto, any: (a) closure of all or any material part of any of the business or operations of any of the Credit Parties or any suspension of all or a material part of the business or operations of any of the Credit Parties and/or (b) disposition or sale of all or any material part of the business or operations of any of the Credit Parties, or any Credit Party enters into any agreement to do so;
- (j) if any action, claim or proceeding is formally commenced, filed or lodged against any of the Credit Parties after the entry of the Preliminary Order, which is not stayed, and the same gives rise to, or could reasonably be expected to give rise to, indebtedness, liabilities or obligations of \$500,000 or more and such action, claim or proceeding continues undismissed or unstayed for a period of 10 calendar days after the institution thereof;
- (k) if any creditor or encumbrancer of any Credit Party takes possession of any of the Credit Parties' property or assets, or if distress or execution or any similar process is levied or enforced against such property or assets, excluding, for certainty, those garnishment actions described in the Existing Events of Default provided that no creditor or encumbrancer takes possession of any of the Credit Parties' property or assets pursuant to those garnishment actions;
- (l) if any of the Credit Parties contests or denies in any manner the legality, validity, binding nature or enforceability of this Agreement, the Existing Credit Agreement or any of the other Loan Documents or any liabilities and obligations to the Lender under or relating to this Agreement, the Existing Credit Agreement or any of the other Loan Documents;
- (m) if the Lender determines that a Material Adverse Change in the financial or business condition, or prospects of, any Credit Party has occurred or that a Material Adverse Change in the value of the Collateral relative to the Obligations has occurred; or
- (n) if any step is taken or event occurs that would materially prejudice or jeopardize Lender's priority rights under this Agreement, the Credit Agreement or the other Loan Documents or the Collateral secured by the Loan Documents.

Upon the occurrence of a Terminating Event, the Forbearance Period will automatically terminate without requirement for any notice to any Credit Party or any other action whatsoever by the Lender, subject to Applicable Law (including, if applicable, the Preliminary Order).

**ARTICLE 7
CONDITIONS PRECEDENT TO THIS AGREEMENT**

7.1 Conditions Precedent

- (a) The forbearance and other accommodations granted by the Lender hereunder shall only be granted by the Lender if the following conditions precedent (the "**Conditions Precedent**") have been complied with in a manner satisfactory to the Lender on or before 5:00 p.m. (Edmonton Time) on October 17, 2022, or such other time or date as specified below:
- (i) the Lender has received a duly authorized, executed and delivered PDF copy of this Agreement executed by each of the Credit Parties;
 - (ii) the payment of: (i) the Forbearance Fee owing to the Lender payable under Section 3.3, and (ii) all fees, disbursements and taxes owing to Lender's legal counsel at such time pursuant to a delivered invoice; it being acknowledged and agreed by the Credit Parties that, in satisfying this condition precedent, each such amount shall be automatically debited by the Lender from the operating accounts of the Borrowers without any further consent or agreement of the Credit Parties being required in respect thereof;
 - (iii) the Lender shall have received the Approved Cash Flow, which must be satisfactory to the Lender; and
 - (iv) all other documentation reasonably required by the Lender and its counsel in connection with this Agreement (including, without limitation, such further assurances, resolutions, opinions and additional confirmations or other agreements relating to the Lender's Liens), all duly authorized, executed and delivered in form and substance satisfactory to the Lender in its sole discretion.

The Conditions Precedent are for the sole benefit of the Lender and may be waived only by the Lender in writing. If the Conditions Precedent are not complied with to the satisfaction of the Lender as provided for above, and the Lender will not waive satisfaction thereof at its sole discretion, then the forbearance and other accommodations granted by the Lender hereunder shall be terminated.

**ARTICLE 8
GENERAL**

8.1 Effect of this Agreement

Except as modified by this Agreement, no other changes or modifications to the Existing Credit Agreement or the other Loan Documents are intended or implied, and in all other respects the Existing Credit Agreement and the other Loan Documents are specifically acknowledged, ratified and confirmed by the Credit Parties. To the extent of conflict between the terms of this Agreement, the Existing Credit Agreement and the other Loan Documents, the terms of this Agreement will govern.

8.2 Costs and Expenses

The Credit Parties hereby absolutely and unconditionally jointly and severally agree to pay to and fully indemnify the Lender, on demand by the Lender at any time and as often as may be required, whether or not all or any of the transactions contemplated by this Agreement are consummated, all fees and disbursements of the Lender, all counsel to the Lender, any financial advisor retained by the Lender, all other consultants to and agents of the Lender and all other expenses incurred by the Lender in connection with this Agreement, the Credit Agreement and the other Loan Documents including without limitation:

(a) legal expenses in connection with the preparation, negotiation and interpretation of this Agreement, the other agreements or documents contemplated by this Agreement, the Credit Agreement and the other Loan

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Documents and the administration of this Agreement, the Credit Agreement and the other Loan Documents generally; (b) all documented expenses of advisors and consultants to and agents of the Lender (including legal expenses on a full indemnity basis) incurred in connection with the protection and enforcement of this Agreement, the Credit Agreement or any of the other Loan Documents or in connection with any proceeding in respect of bankruptcy, insolvency, winding up, receivership, dissolution, reorganization, liquidation, moratorium, arrangement or assignment for the benefit of creditors involving any Credit Party; in each of the foregoing events whether under the laws of Canada, Alberta or other applicable jurisdiction, or any local or foreign bankruptcy, insolvency, reorganization, receivership or similar law. Each Credit Party specifically authorizes the Lender to debit from any of its accounts with the Lender the amount of any such existing and future fees and disbursements, and other expenses and the Lender agrees to use commercially reasonable efforts to notify such Credit Party of such anticipated debit and the amount thereof at least two (2) Business Days in advance.

8.3 Release

- (a) In consideration of this Agreement and for other good and valuable consideration, each Credit Party, on their own behalf and on behalf of their respective successors, assigns, and other legal representatives, absolutely, unconditionally and irrevocably releases the Lender, and their present and former affiliates, subsidiaries, divisions, predecessors, directors, officers, legal counsel, consultants, employees, agents and other representatives, and their successors and assigns (all of which are 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 (individually, a "Claim" and collectively, "Claims") known or unknown, both at law or in equity, that such Credit Party or any of their respective successors, assigns, or other legal representatives may now or later have or claim against any of the Releasees by reason of any circumstance, action, cause or thing which arises at any time on or prior to the date of this Agreement, including for or on account of, or in relation to, or in any way in connection with this Agreement, the Credit Agreement or any of the other Loan Documents or any transactions under or related to, this Agreement, the Credit Agreement or any of the other Loan Documents, excepting Claims arising from gross negligence or wilful misconduct;
- (b) each Credit Party understands, acknowledges and agrees that the release set out in Section 8.3(a) may be pleaded as a full and complete defence and may be used as a basis for an injunction against any action, suit or other proceeding which may be instituted, prosecuted or attempted in breach of the provisions of that release; and
- (c) each Credit Party agrees that no fact, event, circumstance, evidence or transaction which could now be asserted or which may later be discovered will affect in any manner the final, absolute and unconditional nature of the release set out in Section 8.3(a).

8.4 Survival of Representations and Warranties

All representations and warranties made in this Agreement or any other document delivered in connection with this Agreement will survive the execution and delivery of this Agreement and the other documents and no investigation by the Lender or any closing will affect the representations and warranties or the right of the Lender to rely upon them.

8.5 Governing Law

This Agreement is governed by, and is to be construed and interpreted in accordance with, the laws of the Province of Alberta and the federal laws of Canada effective therein.

8.6 Reviewed by Legal Counsel

Each Credit Party represents and warrants to the Lender that it:

- (a) understands fully the terms of this Agreement and the consequences of the execution and delivery of this Agreement;
- (b) has been afforded an opportunity to have this Agreement reviewed by, and to discuss this Agreement and any documents executed in connection herewith with, such lawyers and other persons as such Credit Party may wish; and
- (c) has entered into this Agreement and executed and delivered all documents in connection herewith of its own free will and accord and without threat, duress or other coercion of any kind by any Person.

The Parties hereto acknowledge and agree that neither this Agreement nor the other documents or instruments executed pursuant hereto will be construed more favourably in favour of one than the other based upon which Party drafted the same, it being acknowledged that all Parties hereto contributed substantially to the negotiation and preparation of this Agreement and the other documents and instruments executed pursuant hereto or in connection herewith.

8.7 Submission to Jurisdiction

Without prejudice to the ability of any Party to enforce this Agreement in any other proper jurisdiction, each of the Parties irrevocably submits and attorns to the non-exclusive jurisdiction of the courts of Alberta to determine all issues, whether at law or in equity arising from this Agreement. To the extent permitted by Applicable Law, each of the Parties irrevocably waives any objection (including any claim of inconvenient forum) to the venue of any legal proceeding arising out of or relating to this Agreement in the courts of that province, or that the subject matter of this Agreement may not be enforced in those courts, and irrevocably agrees not to seek, and hereby waives any right to, judicial review by any court which may be called upon to enforce the judgment of the courts referred to in this Section 8.7, of the substantive merits of any such suit, action or proceeding. To the extent a Party has or hereafter may acquire any immunity from the jurisdiction of any court or from any legal process (whether through service or notice, attachment prior to judgment, attachment in aid of execution, execution or otherwise) with respect to itself or its property, that Party irrevocably waives that immunity in respect of its obligations under this Agreement.

8.8 Mutual Waiver of Jury Trial

Because disputes arising in connection with complex financial transactions are most quickly and economically resolved by an experienced and expert person and the Parties wish applicable provincial and federal laws to apply (rather than arbitration rules), the Parties desire that their disputes be resolved by a judge applying those Applicable Laws. Therefore, to achieve the best combination of the benefits of the judicial system, the Parties waive all rights to trial by jury in any action, suit, or proceeding brought to resolve any dispute, whether arising in contract, tort, or otherwise between the Lender and any Credit Party, arising out of, connected with, or related or incidental to, the relationship established between them in connection with this Agreement, the Credit Agreement or any of the other Loan Documents or the transactions related to this Agreement, the Credit Agreement or any of the other Loan Documents.

8.9 Time of Essence

Time is of the essence in all respects of this Agreement.

8.10 Unaffected Creditor Status of the Lender

The Lender shall at all times be treated as an "unaffected creditor" in the NOI Proceedings and in any proposal filed pursuant thereto and/or in any other insolvency, restructuring, reorganization and/or arrangement proceeding with respect to any Credit Party thereafter including, without limitation, proceedings under the *Bankruptcy and Insolvency Act* (Canada). The Credit Parties acknowledge that the Lender has relied on this covenant in entering into this Agreement.

8.11 Notices

Any Communication or notice must be in writing and delivered in accordance with the Credit Agreement.

8.12 Further Assurances

Each Credit Party will, at its own cost, execute and deliver all further agreements and documents and provide all further assurances as may be reasonably required by the Lender to give effect to this Agreement and, without limiting the generality of the foregoing, will do or cause to be done all acts and things, execute and deliver or cause to be executed and delivered all agreements and documents and provide such assurances, undertakings and information as may be required from time to time by all regulatory or governmental bodies or stock exchanges having jurisdiction over the affairs of a Party or as may be required from time to time under applicable securities legislation.

8.13 Confirmation of Documents and Terms

Each of the Credit Parties hereby agrees to the terms of this Agreement and confirms to and agrees with the Lender that its liabilities and obligations, and the Liens created under or pursuant to all Security Documents, Loan Documents and other documents and instruments executed in connection with the Credit Facilities and accommodations provided for or contemplated in the Credit Agreement continue in full force and effect in accordance with their respective terms and that all Security Documents and other Loan Documents executed by it secure and shall continue to secure the Obligations.

8.14 No Merger or Novation

All Security Documents, other Loan Documents and other documents and instruments provided to the Lender or otherwise entered into by the Credit Parties prior to the date hereof in connection with the Credit Facilities and accommodations provided for or contemplated in the Existing Credit Agreement, there being no novation or merger of the Existing Credit Agreement (as amended pursuant to this Agreement), any of the Lender's Liens under the Security Documents or any of the other Loan Documents, and all Obligations continue under the Existing Credit Agreement (as amended by this Agreement) and the other Loan Documents.

8.15 Amendment and Waiver

No supplement, modification, amendment, waiver, discharge or termination of this Agreement is binding unless it is executed in writing by the Party to be bound. No waiver of, failure to exercise or delay in exercising, any provision of this Agreement constitutes a waiver of any other provision (whether or not similar) nor does such waiver constitute a continuing waiver unless otherwise expressly provided.

8.16 Assignment and Enurement

No Credit Party will be entitled to assign this Agreement or any right or obligation under this Agreement without the prior consent of the Lender. The Lender may assign this Agreement and any of their rights and obligations under this Agreement without the consent of or notice to any Credit Party. This Agreement enures to the benefit of and is binding upon the Parties and their respective successors and permitted assigns.

8.17 Severability

Each provision of this Agreement is distinct and severable. If any provision of this Agreement, in whole or in part, is or becomes illegal, invalid or unenforceable in any jurisdiction by a court of competent jurisdiction, the illegality, invalidity or unenforceability of that provision will not affect:

- (a) the legality, validity or enforceability of the remaining provisions of this Agreement; or
- (b) the legality, validity or enforceability of that provision in any other jurisdiction.

8.18 Counterparts

This Agreement may be executed and delivered by the Parties in one or more counterparts, each of which when so executed and delivered will be an original and such counterparts will together constitute one and the same instrument.

8.19 Electronic Signatures

Delivery of this Agreement by facsimile or other electronic transmission (including through "pdf" format via email) constitutes valid and effective delivery.

8.20 Paramountcy

In the event of any conflict or inconsistency between the provisions of this Agreement and the provisions of the Existing Credit Agreement or any other Loan Document, the provisions of this Agreement shall prevail.

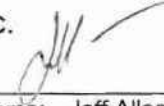
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Each of the Parties has executed and delivered this Agreement effective as of the 17th day of October, 2022.

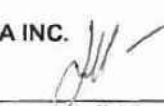
NILEX INC.

Per


Name: Jeff Allen
Title: VP Finance

NILEX USA INC.

Per


Name: Jeff Allen
Title: VP Finance



**CANADIAN IMPERIAL BANK OF COMMERCE, as
Lender**

Per 

Name: **Anthony Tsuen**
Title: **Authorized Signatory**

Per 

Name: **Mauricio Echeverri**
Title: **Authorized Signatory**



SCHEDULE 1
EXISTING INDEBTEDNESS UNDER THE CREDIT AGREEMENT – AS AT OCTOBER 17, 2022

SEE ATTACHED

LB

Nilex Inc
Payout statement to CIBC Asset Based Lending

Total Revolver Commitment is Cad 20,000,000
 BDC BCAP Facility is Cad\$ 2,500,000
 Payout date is October 17 2022

	CAD\$	US\$
1 <u>Principal Loan Balance: Revolving Loan</u>	15,253,748.54	(346,004.40)
2 <u>Principal Loan Balance: BCAP Loan</u>	2,500,000.02	0
3 <u>Interest and fees outstanding</u>		
Interest charged on Revolving Loan	Prime + 0.25%	Base + 0.25%
Interest charged on BCAP Loan	Prime + 2.50%	
Current Prime Base	5.45%	6.75%
Interest and fees paid to:	30-Sep	30-Sep
Days to Calculate interest	17	17
Interest - Revolving Loan	38,455.99	-
Interest - BCAP Loan	9,256.85	
Unused Line fee	642.10	-
Wire Fee	12.00	
Monthly Collateral Management fee	1,200.00	-
Legal, Appriaisal & other fees outstanding	43,177.57	-
Total Interest and Fees	92,744.51	-
Total Principal, Interest and Fees	17,846,493.07	(346,004.40)
Total amounts due to CIBC	17,846,493.07	(346,004.40)

Calculation of Unused Line Fee

Credit Limit	20,000,000.00
UL Rate	0.250%
Days	17
Days Basis	365
Average Monthly Loan Balance	14,485,487.93
Unused line	5,514,512.07
ULF	642.10

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**SCHEDULE 2
APPROVED CASH FLOW**

SEE ATTACHED

LB

Accounts receivable collections	1	909	774	1,395	1,453	1,661	1,054	1,261	1,253	1,327	1,054
Disbursements											
<i>Operating Disbursements</i>											
Vendor payments	2	(1,359)	(884)	(844)	(384)	(865)	(865)	(865)	(865)	(395)	(395)
Payroll		(377)	(161)	(275)	(161)	(275)	(161)	(275)	(161)	(250)	(41)
Rent		(218)	-	-	-	(181)	-	-	-	(181)	-
Insurance		(10)	(20)	-	(30)	(65)	-	(20)	-	(65)	-
Other		(126)	(94)	(20)	-	(601)	(14)	(90)	-	(451)	(14)
		(2,090)	(1,159)	(1,139)	(575)	(1,987)	(1,039)	(1,250)	(1,025)	(1,342)	(450)
<i>Other Disbursements</i>											
Interest and fees - CIBC Revolving Line of Credit		(69)	(19)	(19)	(19)	(20)	(20)	(20)	(20)	(16)	(16)
Interest - CIBC Term Debt		-	-	-	(15)	-	-	-	(15)	-	-
Principal repayments - CIBC Term Debt		-	-	-	-	-	-	-	-	(83)	-
Restructuring costs	3	-	(100)	-	(225)	-	-	(175)	-	-	-
Total Disbursements		(2,160)	(1,278)	(1,158)	(834)	(2,007)	(1,060)	(1,445)	(1,061)	(1,442)	(466)
Net Cash Flow		(1,251)	(504)	236	619	(347)	(6)	(185)	193	(115)	588
Cumulative net cash flow		(1,251)	(1,755)	(1,519)	(901)	(1,248)	(1,254)	(1,439)	(1,246)	(1,361)	(773)
Cumulative allowable variance (15%)		188	263	299	392	444	445	472	501	518	606
Minimum Cumulative Net Cash Flow		(1,439)	(2,019)	(1,818)	(1,292)	(1,691)	(1,699)	(1,911)	(1,748)	(1,879)	(1,380)
Ending Revolving LOC balance, per KSV's October 9th cash flow		14,514	15,018	14,782	14,163	14,510	14,516	14,700	14,507	14,621	14,033
Cumulative allowable variance (15%)		188	263	299	392	444	445	472	501	518	606
Maximum Revolving LOC Balance		14,702	15,281	15,081	14,555	14,954	14,961	15,172	15,008	15,139	14,639

Notes

1. Accounts receivable collections assume average payment terms of 76 days over the course of the Projection, adjusted slightly in November.
2. Vendor payment terms are assumed to be paid on 80 days in October 2022, and COD for November and December 2022.
3. Represents estimated professional fees of the Company's legal counsel, the Proposal Trustee and its legal counsel and CIBC's legal counsel

Accounts receivable balance		14,257	15,007	15,157	15,282	14,782	14,882	14,782	14,682	13,962
Less ineligible accounts receivable	1	(581)	(612)	(618)	(623)	(602)	(606)	(602)	(598)	(569)
Eligible accounts receivable		13,676	14,395	14,539	14,659	14,180	14,276	14,180	14,084	13,393
Advance rate		85%	85%	85%	85%	85%	85%	85%	85%	85%
Net eligible accounts receivable collateral - Nilex Canada		11,625	12,236	12,359	12,460	12,053	12,135	12,053	11,971	11,384
Accounts Receivable - Nilex USA										
Accounts receivable balance		830	857	864	837	877	925	965	1,012	965
Less ineligible accounts receivable	1	(33)	(34)	(35)	(33)	(35)	(37)	(39)	(40)	(39)
Eligible accounts receivable		797	823	829	804	842	888	926	972	926
Advance rate		85%	85%	85%	85%	85%	85%	85%	85%	85%
Net eligible accounts receivable collateral - Nilex USA		677	700	705	683	716	755	788	826	788
Inventory - Nilex Canada										
Inventory balance		11,019	10,946	10,834	10,261	10,243	10,226	10,208	10,190	10,173
Less ineligible inventory	3	(328)	(326)	(322)	(305)	(305)	(304)	(304)	(303)	(303)
Eligible inventory		10,691	10,621	10,511	9,956	9,938	9,922	9,904	9,887	9,870
Advance rate	2	53%	53%	53%	53%	48%	48%	48%	48%	48%
Net eligible inventory collateral - Nilex Canada		5,707	5,670	5,611	5,314	4,756	4,748	4,740	4,732	4,723
Inventory - Nilex USA										
Inventory balance		1,697	1,679	1,662	1,644	1,630	1,616	1,602	1,588	1,577
Less ineligible inventory	3	(23)	(23)	(23)	(22)	(22)	(22)	(22)	(22)	(22)
Eligible inventory		1,674	1,656	1,639	1,622	1,608	1,594	1,580	1,566	1,555
Advance rate	2	44%	44%	44%	44%	38%	38%	38%	38%	38%
Net eligible inventory collateral - Nilex USA		735	728	720	713	611	606	600	595	591
Total net eligible inventory - Canada and USA		6,442	6,398	6,331	6,027	5,367	5,354	5,340	5,327	5,314
Total net eligible collateral		18,745	19,333	19,395	19,170	18,136	18,242	18,180	18,124	17,486
Less: availability block and reserves	4	(1,720)	(1,720)	(1,720)	(1,720)	(1,670)	(1,670)	(1,670)	(1,670)	(1,670)
Total eligible collateral		17,025	17,613	17,675	17,450	16,466	16,572	16,510	16,454	15,816
Revolver balance		(14,514)	(15,018)	(14,782)	(14,163)	(14,510)	(14,516)	(14,700)	(14,507)	(14,621)
Net availability (shortfall)		2,511	2,595	2,893	3,287	1,956	2,056	1,810	1,947	1,195
Maximum Total Availability From Eligible Inventory		7,086	7,038	6,964	6,630	5,904	5,889	5,874	5,860	5,845

Notes

1. Ineligible accounts receivables are projected to be 4% of total receivables for Nilex Canada (as per the August 31, 2022 borrowing base certificate) and 4% for Nilex USA (based on management's estimates).
2. Advance rates from November through December 2022 have been adjusted downward in accordance with the prior year and the terms of the credit facility.
3. Ineligible inventory includes work in process, a reserve for slow-moving inventory and inventory with outside processors. Ineligible inventories are projected to be 3% for Nilex Canada and 1% for Nilex USA based on the August 31, 2022 borrowing base certificate.
4. Includes reserves for priority payroll obligations, sales taxes, rent and a \$1.12 million availability block, based on the most recent borrowing base certificate. The availability block is remains consistent throughout the projection period.

**SCHEDULE 3
EXISTING SECURITY**

1. Canadian law governed General Security Agreement, dated as of June 1, 2018 among Nilex Inc. and Nilex USA Inc., as Debtors, and Canadian Imperial Bank of Commerce, as Lender.
2. US law governed Security Agreement made and entered into as of June 1, 2018 among Nilex Inc. and Nilex USA Inc., as Debtors, and Canadian Imperial Bank of Commerce, as Lender.
3. Guarantee Agreement entered into as of June 1, 2018 by and among each of Nilex Inc. and Nilex USA Inc, as guarantors, in favour of Canadian Imperial Bank of Commerce, as Lender.
4. Intellectual Property Security Agreement dated as of June 1, 2018 by Nilex Inc. and Nilex USA Inc. in favour of Canadian Imperial Bank of Commerce, as Lender.
5. Deposit Account Control Agreement (Pledged Account with Activation), dated as of June 27, 2018, among CIBC Bank USA, Nilex USA Inc. and Canadian Imperial Bank of Commerce, as Lender.
6. Blocked Accounts Agreement dated June 27, 2018 between Nilex Inc. and Canadian Imperial Bank of Commerce, as account bank and as Lender.
7. Intellectual Property Security Agreement dated as of March 7, 2019 by Nilex Inc. in favour of Canadian Imperial Bank of Commerce, as Lender.
8. Application for Credit and Promise to Give Bills of Lading, Warehouse Receipts or Security under Section 427 of the Bank Act (Canada), dated June 1, 2018 from Nilex Inc. to Canadian Imperial Bank of Commerce.
9. Agreement As To Powers of Canadian Imperial Bank of Commerce In Relation To Security Under Section 427 of the Bank Act (Canada), dated June 1, 2018, from Nilex Inc. to Canadian Imperial Bank of Commerce.
10. Special Security In Respect of Specified Property or Classes of Property described in Section 427 of the Bank Act (Canada) dated June 1, 2018 from Nilex Inc. to Canadian Imperial Bank of Commerce.

AB

**SCHEDULE 4
EXISTING DEFAULTS**

1. Under Sections 7.1 (d), 7.1(k) and 7.1(l) of the Credit Agreement, resulting from (i) an unopposed judgment issued by the Court of Queen's Bench of Alberta on March 21, 2022 against Nilex Inc. in favour of Hugh Watt, (ii) a consent judgment issued by the Court of Queen's Bench of Alberta on June 2, 2022 against Nilex Inc. in favour of Ian Wilson, and (iii) a Garnishee Summons filed at the Court of Queen's Bench of Alberta by Hugh Watt against Nilex Inc. and delivered to the Lender; and
2. Under Section 7.1(d) of the Credit Agreement resulting from the failure of the Borrowers and their Subsidiaries, on a consolidated basis in accordance with GAAP, to have EBITDA for the cumulative current fiscal year-to-date period ended July 31, 2022 of not less than \$(800,000).

LB

- 31 -

This is Exhibit "P" referred to in the Affidavit of Jeff Allen sworn before me this 31st day of October, 2022.

A Commissioner for Oaths in and for Alberta

LB



August 11, 2022

Delivered via QB Filing

Law Courts
1A Sir Winston Churchill Square
Edmonton, AB T5J 0R2
Phone: 780-422-2422
Fax: 780-643-0954

Attention: Q.B. Accounting

Dear Sir/Madam:

Norton Rose Fulbright Canada LLP
400 3rd Avenue SW, Suite 3700
Calgary, Alberta T2P 4H2 Canada

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nortonrosefulbright.com

Meghan Parker
+1 403.267.8211
meghan.parker@nortonrosefulbright.com

Assistant
+1 403.267.9580
joanna.vanham@nortonrosefulbright.com

Your reference
1903-07838

Our reference
1001018108

Hugh Watt ("Creditor") v. Nilex Inc. ("Debtor") – Priority of Canadian Imperial Bank of Commerce, (Q.B. Court File No. 1903-07838)

Our offices act as counsel to the Canadian Imperial Bank of Commerce (CIBC), the senior secured lender to the Debtor. CIBC received a Garnishee Summons, which was filed on July 21, 2022, and served its Garnishee Response on August 8, 2022.

It has come to CIBC's attention that the Creditor has served Garnishee Summons on the following additional parties:

- Canadian Natural Resources Limited;
- Cenovus Energy Inc.;
- North American Enterprises Ltd.;
- Fraser Crossing Constructors General Partnership;
- Surerus Murphy Joint Venture.

Please be advised that CIBC has a priority secured claim in respect of the Debtor that far exceeds the amount set out in the Garnishee Summons. The security held by CIBC includes a priority security interest over amounts owing to the Debtor, including any amounts owing by the above parties to the Debtor. As such, any funds that may be received by the Court on behalf of the above-noted parties and/or any other Garnishee of the Debtor are subject to the priority security interest of CIBC and should properly be distributed to CIBC.

Should you have any questions or concerns, please do not hesitate to contact me.

CAN_DMS: \1472568061

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Q.B. Accounting

 NORTON ROSE FULBRIGHT

Yours truly,

Norton Rose Fulbright Canada LLP

Per:



Meghan L. Parker
Associate

MP/jv
Enclosure



- 32 -

This is Exhibit "Q" referred to in the Affidavit of Jeff Allen sworn before me this 31st day of October, 2022.

A Commissioner for Oaths in and for Alberta

AB

The Court of Queen's Bench of Alberta

Accounting Section
Judicial Centre of Edmonton
Law Courts, South Tower
1A Sir Winston Churchill Square
Edmonton, Alberta T5J 0R2
Telephone: 780-422-2422 Fax: 780-643-0954

September 30, 2022

NILEX INC.
6810-8 STREET NW
EDMONTON, AB T6P 0C5

Dear Sir/Madam:

Subject: NILEX INC.
6810-8 STREET NW EDMONTON, AB

Our File No: Q 1903 07838
Your File No:

GARNISHEE PAYMENT RECEIVED ON SEP 12,2022

Enclosed is my proposed distribution amongst the enforcement creditors of the above named debtor, of monies received.

The amounts owing, as listed on this proposed distribution, refer to the amounts owing registered at the Personal Property Registry.

Objection to this distribution must be filed with this office in writing within 15 days from this date in accordance with section 101(1)B of the Civil Enforcement Act.

Yours truly,

Clerk of the Court

Enclosure

LB

Proposed Distribution

September 30, 2022

Page 01

Our File No: Q 1903 07838NILEX INC.
6810-8 STREET NW
EDMONTON, AB T6P 0C5

CLERKS DISTRIBUTION FEE

File No:

Cred:

AMT OWING

10.00

DIVIDEND

10.00

\$2000 RULE

File No: 22071219384

Cred: WATT, HUGH

Debt: NILEX INC.

AMT OWING

2000.00

DIVIDEND

2000.00

PRO-RATA

File No: 22060620459

Cred: WILSON, IAN

Debt: NILEX INC.

AMT OWING

639467.26

DIVIDEND

112892.35

File No: 22071219384

Cred: WATT, HUGH

Debt: NILEX INC.

475708.49

83982.18

Ratio: 196874.53 / 1115175.75 = 0.17654126

0.00

Total Dividends**198884.53**

* * * End Of Proposed Distribution * * *

AB

- 33 -

This is Exhibit "R" referred to in the Affidavit of Jeff Allen sworn before me this 31st day of October, 2022.

A Commissioner for Oaths in and for Alberta

LB

The Court of Queen's Bench of Alberta

Accounting Section
Judicial Centre of Edmonton
Law Courts, South Tower
1A Sir Winston Churchill Square
Edmonton, Alberta T5J 0R2
Telephone: 780-422-2422 Fax: 780-643-0954

October 07, 2022

NILEX INC.
6810-8 STREET NW
EDMONTON, AB T6P 0C5

Dear Sir/Madam:

Subject: NILEX INC.
6810-8 STREET NW EDMONTON, AB

Our File No: Q 1903 07838
Your File No:

GARNISHEE PAYMENT RECEIVED SEPTEMBER 19, 2022

Enclosed is my proposed distribution amongst the enforcement creditors of the above named debtor, of monies received.

The amounts owing, as listed on this proposed distribution, refer to the amounts owing registered at the Personal Property Registry.

Objection to this distribution must be filed with this office in writing within 15 days from this date in accordance with section 101(1)B of the Civil Enforcement Act.

Yours truly,

Clerk of the Court

Enclosure

LB

Proposed Distribution

October 07, 2022

Page 01

Our File No: Q 1903 07838NILEX INC.
6810-8 STREET NW
EDMONTON, AB T6P 0C5**CLERKS DISTRIBUTION FEE**

File No:

Cred:

AMT OWING

10.00

DIVIDEND

10.00

\$2000 RULE

File No: 22071219384

Cred: WATT, HUGH

Debt: NILEX INC.

AMT OWING

2000.00

DIVIDEND

2000.00

PRO-RATA

File No: 22060620459

Cred: WILSON, IAN

Debt: NILEX INC.

AMT OWING

526574.91

DIVIDEND

39608.52

File No: 22071219384

Cred: WATT, HUGH

Debt: NILEX INC.

389726.31

29314.88

Ratio: 68923.40 / 916301.22 = 0.07521915

0.00

Total Dividends**70933.40**

* * * End Of Proposed Distribution * * *

AB

- 34 -

This is Exhibit "S" referred to in the Affidavit of Jeff Allen sworn before me this 31st day of October, 2022.

A Commissioner for Oaths in and for Alberta

The Court of Queen's Bench of Alberta

Accounting Section
Judicial Centre of Edmonton
Law Courts, South Tower
1A Sir Winston Churchill Square
Edmonton, Alberta T5J 0R2
Telephone: 780-422-2422 Fax: 780-643-0954

October 21, 2022

NILEX INC.
6810-8 STREET NW
EDMONTON, AB T6P 0C5

Dear Sir/Madam:

Subject: NILEX INC.
6810-8 STREET NW EDMONTON, AB

Our File No: Q 1903 07838
Your File No:

GARNISHEE PAYMENT RECEIVED SEPTEMBER 30, 2022.

Enclosed is my proposed distribution amongst the enforcement creditors of the above named debtor, of monies received.

The amounts owing, as listed on this proposed distribution, refer to the amounts owing registered at the Personal Property Registry.

Objection to this distribution must be filed with this office in writing within 15 days from this date in accordance with section 101(1)B of the Civil Enforcement Act.

Yours truly,

Clerk of the Court

Enclosure

AB

Proposed Distribution

October 21, 2022

Page 01

Our File No: Q 1903 07838

NILEX INC.
 6810-8 STREET NW
 EDMONTON, AB T6P 0C5

CLERKS DISTRIBUTION FEE

File No:

Cred:

AMT OWING

10.00

DIVIDEND

10.00

PRO-RATA

File No: 22060620459

Cred: WILSON, IAN

Debt: NILEX INC.

AMT OWING

486966.39

DIVIDEND

31699.28

File No: 22071219384

Cred: WATT, HUGH

Debt: NILEX INC.

360411.43

23461.14

Ratio: 55160.42 / 847377.82 = 0.06509543

0.00

Total Dividends**55170.42**

* * * End Of Proposed Distribution * * *

JCAN23 - IN306321
 IN306331

- 35 -

This is Exhibit "T" referred to in the Affidavit of Jeff Allen sworn before me this 31st day of October, 2022.

A Commissioner for Oaths in and for Alberta

LB



October 13, 2022

Delivered via eFiling

Law Courts
1A Sir Winston Churchill Square
Edmonton, AB T5J 0R2
Phone: 780-422-2422
Fax: 780-643-0954

Attention: Q.B. Accounting

Dear Sir/Madam:

Norton Rose Fulbright Canada LLP
45 O'Connor Street, Suite 1500
Ottawa, Ontario K1P 1A4 Canada

F: +1 613.230.5459
nortonrosefulbright.com

Meghan Parker
+1 613.780.1530
meghan.parker@nortonrosefulbright.com

Assistant
+1 613.780.8620
sarah.goyette@nortonrosefulbright.com

Your reference
1903-07838

Our reference
1001018108

Hugh Watt ("Creditor") v. Nilex Inc. ("Debtor") – Priority of Canadian Imperial Bank of Commerce, (Q.B. Court File No. 1903-07838)

This will confirm that our offices act as counsel to the Canadian Imperial Bank of Commerce (**CIBC**), the senior secured lender to the Debtor. CIBC received a Garnishee Summons, which was filed on July 21, 2022, and served its Garnishee Response on August 8, 2022.

It has come to CIBC's attention that a large sum of money has been paid into Court in accordance with the Garnishee Summons. As previously indicated in its Garnishee Response of August 8, 2022, and further correspondence to the Court of August 11, 2022, CIBC has a priority secured claim in respect of the Debtor that far exceeds the amount set out in the Garnishee Summons. The security held by CIBC includes a priority security interest over amounts owing to the Debtor, including any amounts owing by the above parties to the Debtor, and all proceeds thereof including the proceeds paid into Court.

CIBC therefore objects to the clerk's Proposed Distribution List, dated September 30, 2022 in accordance with s. 101(1)(b) of the *Civil Enforcement Act*. Any funds received by the Court on behalf of the above-noted parties and/or any other Garnishee of the Debtor are subject to the priority security interest of CIBC and should properly be distributed to CIBC.

CIBC's Application pursuant to s. 101(1)(d) of the *Civil Enforcement Act* will follow in due course.

Yours truly,

Norton Rose Fulbright Canada LLP
Per:

Meghan L. Parker
Associate

MP/kh

CAN_DMS: \148260218\1

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This is Exhibit "U" referred to in the Affidavit of Jeff Allen sworn before me this 31st day of October, 2022.

A Commissioner for Oaths in and for Alberta

LB



October 18, 2022

Delivered via eFiling

Law Courts
1A Sir Winston Churchill Square
Edmonton, AB T5J 0R2
Phone: 780-422-2422
Fax: 780-643-0954

Attention: Q.B. Accounting

Dear Sir/Madam:

Norton Rose Fulbright Canada LLP
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Assistant
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sarah.goyette@nortonrosefulbright.com

Your reference
1903-07838

Our reference
1001018108

Hugh Watt ("Creditor") v. Nilex Inc. ("Debtor") – Priority of Canadian Imperial Bank of Commerce, (Q.B. Court File No. 1903-07838)

Further to our correspondence, dated October 13, 2022, this will again confirm that our offices act as counsel to the Canadian Imperial Bank of Commerce (**CIBC**), the senior secured lender to the Debtor. CIBC received the Garnishee Summons, which was filed on July 21, 2022 and served its Garnishee Response on August 8, 2022.

It has come to CIBC's attention that a further sum of money has been paid into Court in accordance with the Garnishee Summons. **CIBC therefore objects to the clerk's Proposed Distribution List, dated October 7, 2022 in accordance with s. 101(1)(b) of the Civil Enforcement Act.** For the reasons indicated in our letter of October 12, 2022, CIBC takes the position that any funds received by the Court on behalf of the above-noted parties and/or any other Garnishee of the Debtor are subject to the priority security interest of CIBC and should properly be distributed to CIBC.

CIBC's Application pursuant to s. 101(1)(d) of the *Civil Enforcement Act* will follow in due course.

Yours truly,

Norton Rose Fulbright Canada LLP
Per:

Meghan L. Parker
Associate

MP/kh

CAN_DMS: \148323866\1

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- 37 -

This is Exhibit "V" referred to in the Affidavit of Jeff Allen sworn before me this 31st day of October, 2022.

A Commissioner for Oaths in and for Alberta

LB

Form 27
[Rules 6.3 and
10.52(1)]

COURT FILE NUMBER 1903-07838
COURT COURT OF KING'S BENCH OF ALBERTA
JUDICIAL CENTRE EDMONTON
PLAINTIFF HUGH WATT
DEFENDANTS PEF 2010 NILEX INVESTMENT LIMITED
PARTNERSHIP and NILEX INC.
DOCUMENT **APPLICATION BY CIBC, GARNISHEE**



E104366
50-

ADDRESS FOR SERVICE AND CONTACT INFORMATION OF PARTY FILING THIS DOCUMENT
Norton Rose Fulbright Canada LLP
400 3rd Avenue SW, Suite 3700
Calgary, Alberta T2P 4H2 CANADA
Meghan Parker
megan.parker@nortonrosefulbright.com
Tel: +1 613.780.1530
Fax: +1 613.230.5459

Lawyers for Canadian Imperial Bank of Commerce, Garnishee
File no.: 1001018108

NOTICE TO RESPONDENT(S): Hugh Watt

This application is made against you. You are a respondent. You have the right to state your side of this matter before the Court.

To do so, you must be in Court when the application is heard as shown below:

Date: **November 18, 2022**
Time: **10:00 a.m.** IN PERSON
Where: **Edmonton Court of King's Bench**
Before Whom: **Presiding Applications Judge** AJ2

Go to the end of this document to see what else you can do and when you must do it.

Remedy claimed or sought:

1. An Order that the Security Interest of Canadian Imperial Bank of Commerce ("**CIBC**") takes priority over the Writs of Enforcement which have been registered at the Alberta Personal Property Registry (the "**PPR**") against the Defendant, Nilex Inc.

2. An Order that all funds paid into Court in accordance with the Garnishee Summons, filed July 21, 2022 against Nilex Inc. are to be paid out in order of priority, beginning with the Security Interest of CIBC.

Grounds for making this application:

3. Canadian Imperial Bank of Commerce ("**CIBC**") is the holder of valid Security properly registered at the Personal Property Registry of Alberta against the Defendant, Nilex Inc.
4. CIBC's Security includes, among other things, a General Security Agreement, dated June 1, 2018, with Nilex Inc. and Nilex USA Inc., as Debtors, and CIBC, as Lender.
5. In addition, CIBC is party to a Subordination and Postponement Agreement, dated June 1, 2018, as made between CIBC, as Senior Party, Nilex Inc. and Nilex USA Inc., as Obligors, and PEF 2010 Nilex Investment Limited Partnership, as Subordinated Party, whereby the parties agreed that any and all existing and future security interests registered under the *Personal Property Security Act* (Alberta) shall be subordinate to the Security of CIBC.
6. CIBC was served with a Garnishee Summons, filed in this action on July 21, 2022 which listed Nilex Inc. as the debtor. CIBC filed its Certificate of Service on the Debtor and Reply to Garnishee Summons on August 9, 2022.
7. CIBC subsequently filed a letter on August 12, 2022 advising of its priority interest over any funds paid into Court in accordance with this Garnishee Summons, pursuant to s. 35(6) of the *Personal Property Security Act*.
8. On September 30, 2022 the Clerk of the Court prepared a Proposed Distribution List (the "**September 30 List**") relating to funds paid into Court pursuant to the Garnishee Summons. According to the September 30 List, all funds paid into Court will be distributed to Hugh Watt and Ian Wilson, both unsecured writ holders (the "**Writ Holders**"). CIBC was not included in the September 30 List.
9. On October 7, 2022 the Clerk of the Court prepared another Proposed Distribution List (the "**October 7 List**") relating to additional funds paid into Court pursuant to the Garnishee Summons. According to the October 7 List, all funds paid into Court will be distributed to the Writ Holders. CIBC was not included in the October 7 List.
10. Pursuant to s. 101(1)(b) of the *Civil Enforcement Act* (the "**CEA**"), CIBC filed its Notice of Objection to the September 30 List with the accounting department of the Court of King's Bench and advised of its position that it holds priority over the Writ Holders to the funds paid into Court.
11. Pursuant to s. 101(1)(b) of the *CEA*, CIBC filed its Notice of Objection to the October 7 List with the accounting department of the Court of King's Bench and once again advised of its position that it holds priority over the Writ Holders to the funds paid into Court.
12. Such further and other reasons as counsel may advise and as this Honourable Court may allow.

Material or evidence to be relied on:

13. Affidavit of Katie Hayes, to be filed.

Applicable rules:

14. Rule 6.3 of the *Alberta Rules of Court*.

Applicable Acts and regulations:

15. *Civil Enforcement Act*, RSA 2000, c C-15.

16. *Civil Enforcement Regulation*, Alta Reg 276/1995.

17. *Personal Property Security Act*, RSA 2000, c P-7.

18. *Personal Property Security Regulation*, Alta Reg 95/2001.

Any irregularity complained of or objection relied on:

19. None.

How the application is proposed to be heard or considered:

20. Before the presiding Applications Judge.

WARNING

If you do not come to Court either in person or by your lawyer, the Court may give the applicant(s) what they want in your absence. You will be bound by any order that the Court makes. If you want to take part in this application, you or your lawyer must attend in Court on the date and at the time shown at the beginning of the form. If you intend to give evidence in response to the application, you must reply by filing an affidavit or other evidence with the Court and serving a copy of that affidavit or other evidence on the applicant(s) a reasonable time before the application is to be heard or considered.

Schedule "A"

COURT FILE NUMBER 1903-07838
 COURT COURT OF KING'S BENCH OF ALBERTA
 JUDICIAL CENTRE EDMONTON
 PLAINTIFF HUGH WATT
 DEFENDANTS PEF 2010 NILEX INVESTMENT LIMITED
 PARTNERSHIP and NILEX INC.
 DOCUMENT **ORDER**

Clerk's stamp

ADDRESS FOR SERVICE AND CONTACT INFORMATION OF PARTY FILING THIS DOCUMENT
 Norton Rose Fulbright Canada LLP
 400 3rd Avenue SW, Suite 3700
 Calgary, Alberta T2P 4H2 CANADA
 Meghan Parker
 meghan.parker@nortonrosefulbright.com
 Tel: +1 613.780.1530
 Fax: +1 613.230.5459

Lawyers for Canadian Imperial Bank of Commerce, Garnishee
 File no.: 1001018108

DATE ON WHICH ORDER WAS PRONOUNCED: November 18, 2022.

NAME OF APPLICATIONS JUDGE WHO MADE THIS ORDER:

LOCATION OF HEARING: Edmonton, Alberta.

UPON THE APPLICATION of the Applicant/Garnishee, Canadian Imperial Bank of Commerce ("**CIBC**") in relation to the amounts held in Court (the "**Funds**"); AND UPON having heard representations of counsel for the Applicant and counsel for the Respondent; AND UPON proof of service of the within Application upon the Respondent; AND UPON having read the Affidavit of Katie Hayes, filed;

IT IS HEREBY ORDERED THAT:

Funds in Court

1. CIBC has priority over the funds which were paid into Court pursuant to the Garnishee Summons, filed July 21, 2022.
2. The Clerk of the Court shall release and distribute the funds in full to CIBC.

Future Funds

3. In the event that additional funds are paid into Court pursuant to the Garnishee Summons, filed July 21, 2022, CIBC shall have priority over such funds and they shall be distributed in full to CIBC until such time that the secured indebtedness owing to CIBC has been paid in full.
4. Costs of this application.

Applications Judge of the Court of Queen's
Bench of Alberta