

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

B E T W E E N:

**CANADIAN WESTERN BANK**

Applicant

- and -

**INDEX HOLDING GROUP INC., INDEX GROUP OF COMPANIES INC., INDEX  
INTERNATIONAL INC., INDEX FOODS INC., 2640179 ONTARIO INC.,  
11030434 CANADA LTD., 2700774 ONTARIO INC., 2700767 ONTARIO INC.,  
2683960 ONTARIO LTD., 11030418 CANADA INC., 2723710 ONTARIO INC.,  
2718366 ONTARIO INC., 2737332 ONTARIO INC., 2737334 ONTARIO INC.,  
2723714 ONTARIO INC., 2723716 ONTARIO INC., 2737338 ONTARIO INC.,  
2790760 ONTARIO INC., 2775290 ONTARIO INC., 2775296 ONTARIO INC.,  
421 WHARNCLIFFE LTD. AND 425 WHARNCLIFFE ROAD INC.**

Respondents

**IN THE MATTER OF AN APPLICATION UNDER SECTION 243(1) OF THE *BANKRUPTCY  
AND INSOLVENCY ACT*, R.S.C. 1985, c. B-3, AS AMENDED; AND SECTION 101 OF THE  
*COURTS OF JUSTICE ACT*, R.S.O. 1990, c. C.43, AS AMENDED**

**APPLICATION RECORD OF CANADIAN WESTERN BANK  
(RETURNABLE MAY 8, 2023)**

April 28, 2023

**Cassels Brock & Blackwell LLP**  
2100 Scotia Plaza  
40 King Street West  
Toronto, ON M5H 3C2

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Lawyers for the Applicant

TO: **SERVICE LIST**

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**SERVICE LIST  
(As of April 28, 2023)**

<b>TO:</b>	<p><b>CASSELS BROCK &amp; BLACKWELL LLP</b> 2100 Scotia Plaza 40 King Street West Toronto, ON M5H 3C2</p> <p><b>Jeremy Bornstein LSO #65425C</b> Tel: 416.869.5386 jbornstein@cassels.com</p> <p><b>Stephanie Fernandes LSO#85819M</b> Tel: 416.860.6481 sfernandes@cassels.com</p> <p><i>Lawyers for the Applicant</i></p>
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<b>AND TO:</b>	<p><b>CANADIAN WESTERN BANK</b> 300-2000 Argentina Road Plaza #1 Mississauga, ON L5N 1P7</p> <p><b>Tyson Hartwell</b> Email: Tyson.Hartwell@cwbank.com</p> <p><i>Applicant</i></p>
<b>AND TO:</b>	<p><b>MNP LTD.</b> 300-111 Richmond Street West Toronto, ON M5H 2G4</p> <p><b>Jerry Henechowicz</b> Tel: 416.515.3924 Email: jerry.henechowicz@mnp.ca</p> <p><b>Deborah Hornbostel</b> Tel: 416.515.3885 Email: deborah.hornbostel@mnp.ca</p> <p><i>Proposed Receiver</i></p>
<b>AND TO:</b>	<p><b>DICKINSON WRIGHT LLP</b> 199 Bay Street, Suite 2000 Commerce Court West, Toronto ON M5L 1G4</p> <p><b>John D. Leslie</b> Email: JLeslie@dickinson-wright.com</p> <p><b>Lisa S. Corne</b> Email: LCorne@dickinson-wright.com</p> <p><i>Counsel to Proposed Receiver</i></p>
<b>AND TO:</b>	<p><b>INDEX HOLDING GROUP INC. ET AL</b> 110 Herdwick Street Brampton, ON L6S 0A5</p> <p><b>Abdul Muqet</b> Tel: 647-771-0762 Email: muqet.rana@hotmail.com</p> <p><i>Respondents</i></p>
<b>AND TO:</b>	<p><b>1778130 ONTARIO INC.</b> 20 Moonlight Pl Brampton, ON L6P 0G8</p> <p><i>Mortgagee of 425 Wharncliffe Road Inc.</i></p>

<b>AND TO:</b>	<b>1000017398 ONTARIO INC.</b> 53 Celestine Drive Etobicoke, ON M9R 3N2  <b>Attention: Mohammad Khalid Raja</b>  <i>Secured Creditor of Index Foods Inc. and Index International Inc.</i>
<b>AND TO:</b>	<b>2851605 ONTARIO INC.</b> 101-101 Westmore Drive Etobicoke, ON M9V 3Y6  <b>Attention: Mohammad Shafique</b>  <i>Secured Creditor of 2700774 Ontario Inc.</i>
<b>AND TO:</b>	<b>2851606 ONTARIO INC.</b> 101-101 Westmore Drive Etobicoke, ON M9V 3Y6  <b>Attention: Mohammad Shafique</b>  <i>Secured Creditor of 2723710 Ontario Inc.</i>
<b>AND TO:</b>	<b>2851604 ONTARIO INC.</b> 101-101 Westmore Drive Etobicoke, ON M9V 3Y6  <b>Attention: Mohammad Shafique</b>  <i>Secured Creditor of Index Holdings Group Inc.</i>
<b>AND TO:</b>	<b>2752908 ONTARIO INC./MIDTOWN CAPITAL</b> 2300 Yonge Street Toronto, ON M4P 1E4  <b>Attention: Marissa Brown and Peter Tieu</b>  <i>Secured Creditor of 2700774 Ontario Inc.</i>
<b>AND TO:</b>	<b>TOYOTA CREDIT CANADA INC.</b> 80 Micro Court Markham, ON L3R 9Z5  <i>Secured Creditor of Index Group of Companies Inc.</i>

<b>AND TO:</b>	<b>THE BANK OF NOVA SCOTIA</b> 1 St. Clair Avenue East Toronto, ON M4T 1Z3  <b>Jeff Johnston</b> Email: jeff.johnston@scotiabank.com  <b>Ferdous Ahmed</b> Email: ferdous.ahmed@scotiabank.com  <i>Secured Creditor of Index Group of Companies Inc.</i>
<b>AND TO:</b>	<b>HYUNDAI CAPITAL LEASE INC.</b> 123 Front Street, Suite 1000 Toronto, ON M5J 2M3  <i>Secured Creditor of Index Group of Companies Inc.</i>
<b>AND TO:</b>	<b>GENESIS MOTOR FINANCE</b> 123 Front Street, Suite 1000 Toronto, ON M5J 2M3  <i>Secured Creditor of Index Group of Companies Inc.</i>
<b>AND TO:</b>	<b>DENCAN FRANCHISE SYSTEMS, LIMITED PARTNERSHIP</b> 310-1755 W. Broadway Vancouver, BC V6J 4S5  <b>Stephen Jackson</b> Email: sjackson@northland.ca  <b>Bobby Naicker</b> Tel: 604-730-6622 Email: BNaicker@Dennys.ca  AND  <b>DFO LLC</b> 203 East Main Street Spartangurg, South Carolina, United States 29319  <b>Attention: General Counsel</b>  <i>Franchisor</i>

<b>AND TO:</b>	<b>POPEYES LOUISIANA KITCHEN, INC.</b> 5707 Blue Lagoon Drive Miami, Florida, United States 33126  <b>Rob Manuel</b> Email: rob.manuel@popeyes.com  <b>Josh Brubacher</b> Tel: 905-339-5746 Email: jbrubacher@rbi.com  <i>Franchisor</i>
<b>AND TO:</b>	<b>ABDUL SHEIKH</b> Tel: 647.219.5303 Email: fpilot@renocon.ca  <i>Party to Assignment and Postponement of Claim in favour of the Applicant</i>
<b>AND TO:</b>	<b>SYED JAVED ALI</b> Email: javed@inspirationgroup.ca  <i>Party to Assignment and Postponement of Claim in favour of the Applicant</i>
<b>AND TO:</b>	<b>MANSOOR SHEIKH</b> Email: mansoor@restaurants4u.ca  <i>Party to Assignment and Postponement of Claim in favour of the Applicant</i>
<b>AND TO:</b>	<b>RAJANDEEP SINGH DHILLON</b> Email: rajandhillonrealtor@gmail.com  <i>Party to Assignment and Postponement of Claim in favour of the Applicant</i>
<b>AND TO:</b>	<b>2292696 ONTARIO INC.</b>  <b>Abdul Sheikh</b> Tel: 647.219.5303 Email: fpilot@renocon.ca  <b>Mansoor Shiekh</b> Email: mansoor@restaurants4u.ca  <i>Party to Assignment and Postponement of Claim in favour of the Applicant</i>

<b>AND TO:</b>	<b>DEPARTMENT OF JUSTICE (CANADA)</b> Ontario Regional Office, Tax Law Section 120 Adelaide Street West, Suite 400 Toronto, ON M5H 1T1  <b>Diane Winters</b> Tel: 647-256-7459 Email: diane.winters@justice.gc.ca
<b>AND TO:</b>	<b>INSOLVENCY UNIT ONTARIO MINISTRY OF FINANCE</b> 6 <sup>th</sup> Floor, 22 King Street West Oshawa, ON L1H 8H5  Email: Insolvency.Unit@ontario.ca  <b>Leslie Crawford</b> Tel: 905-433-5657 Email: leslie.crawford@ontario.ca  <b>Steven Groeneveld</b> Email: steven.groeneveld@ontario.ca
<b>AND TO:</b>	<b>CANADA REVENUE AGENCY</b> 1 Front Street West Toronto, ON M5J 2X6  <b>Pat Confalone</b> Tel: 416-954-6514 Email: pat.confalone@cra-arc.gc.ca  <b>Sandra Palma</b> Email: sandra.palma@cra-arc.gc.ca
<b>AND TO:</b>	<b>CORPORATION OF THE CITY OF LONDON</b> 3000 Dufferin Avenue London, ON N6A 5K6  <b>Barry Card</b> Tel: 519.661.2489 Ext. 4560 Email: bcard@london.ca

### **Email Service List**

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sandra.palma@cra-arc.gc.ca; bcard@london.ca



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# TAB 1



Court File No.

**ONTARIO  
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(COMMERCIAL LIST)**

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**NOTICE OF APPLICATION**

**TO THE RESPONDENT**

**A LEGAL PROCEEDING HAS BEEN COMMENCED** by Canadian Western Bank (the "**Applicant**"). The claim made by the Applicant appears on the following page.

**THIS APPLICATION** will come on for a hearing

- In writing
- In person
- By telephone conference
- By video conference

at the Court at 330 University Avenue, Toronto, Ontario via Zoom video conference, on May 8, 2023 at 11:00 a.m., before a judge presiding over the Commercial List.

For the video conference details to attend the application, please refer to the service email circulating the application record and advise if you intend to join the application by emailing [sfernandes@cassels.com](mailto:sfernandes@cassels.com).

-ii-

**IF YOU WISH TO OPPOSE THIS APPLICATION**, to receive notice of any step in the application or to be served with any documents in the application, you or an Ontario lawyer acting for you must forthwith prepare a notice of appearance in Form 38A prescribed by the *Rules of Civil Procedure*, serve it on the Applicant's lawyer or, where the Applicant does not have a lawyer, serve it on the Applicant, and file it, with proof of service, in this court office, and you or your lawyer must appear at the hearing.

**IF YOU WISH TO PRESENT AFFIDAVIT OR OTHER DOCUMENTARY EVIDENCE TO THE COURT OR TO EXAMINE OR CROSS-EXAMINE WITNESSES ON THE APPLICATION**, you or your lawyer must, in addition to serving your notice of appearance, serve a copy of the evidence on the Applicant's lawyer or, where the Applicant does not have a lawyer, serve it on the Applicant, and file it, with proof of service, in the court office where the application is to be heard as soon as possible, but at least four days before the hearing.

**IF YOU FAIL TO APPEAR AT THE HEARING, JUDGMENT MAY BE GIVEN IN YOUR ABSENCE AND WITHOUT FURTHER NOTICE TO YOU.** IF YOU WISH TO OPPOSE THIS APPLICATION BUT ARE UNABLE TO PAY LEGAL FEES, LEGAL AID MAY BE AVAILABLE TO YOU BY CONTACTING A LOCAL LEGAL AID OFFICE.

Date \_\_\_\_\_ Issued by \_\_\_\_\_  
Local Registrar

Address of court office: Superior Court of Justice  
330 University Avenue  
Toronto ON  
M5G 1R7

TO: **SERVICE LIST**

Court File No.

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(As of April 25, 2023)**

<b>TO:</b>	<p><b>CASSELS BROCK &amp; BLACKWELL LLP</b> 2100 Scotia Plaza 40 King Street West Toronto, ON M5H 3C2</p> <p><b>Jeremy Bornstein LSO #65425C</b> Tel: 416.869.5386 jbornstein@cassels.com</p> <p><b>Stephanie Fernandes LSO#85819M</b> Tel: 416.860.6481 sfernandes@cassels.com</p> <p><i>Lawyers for the Applicant</i></p>
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<b>AND TO:</b>	<p><b>DICKINSON WRIGHT LLP</b> 199 Bay Street, Suite 2000 Commerce Court West, Toronto ON M5L 1G4</p> <p><b>John D. Leslie</b> Email: JLeslie@dickinson-wright.com</p> <p><b>Lisa S. Corne</b> Email: LCorne@dickinson-wright.com</p> <p><i>Counsel to Proposed Receiver</i></p>
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<b>AND TO:</b>	<p><b>DENCAN FRANCHISE SYSTEMS, LIMITED PARTNERSHIP</b> 310-1755 W. Broadway Vancouver, BC V6J 4S5</p> <p><b>Stephen Jackson</b> Email: sjackson@northland.ca</p> <p><b>Bobby Naicker</b> Tel: 604-730-6622 Email: BNaicker@Dennys.ca</p> <p>AND</p> <p><b>DFO LLC</b> 203 East Main Street Spartangurg, South Carolina, United States 29319</p> <p><b>Attention: General Counsel</b></p> <p><i>Franchisor</i></p>

<b>AND TO:</b>	<b>POPEYES LOUISIANA KITCHEN, INC.</b> 5707 Blue Lagoon Drive Miami, Florida, United States 33126  <b>Rob Manuel</b> Email: rob.manuel@popeyes.com  <b>Josh Brubacher</b> Tel: 905-339-5746 Email: jbrubacher@rbi.com  <i>Franchisor</i>
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<b>AND TO:</b>	<b>INSOLVENCY UNIT ONTARIO MINISTRY OF FINANCE</b> 6 <sup>th</sup> Floor, 22 King Street West Oshawa, ON L1H 8H5  Email: Insolvency.Unit@ontario.ca  <b>Leslie Crawford</b> Tel: 905-433-5657 Email: leslie.crawford@ontario.ca  <b>Steven Groeneveld</b> Email: steven.groeneveld.ontario.ca
<b>AND TO:</b>	<b>CANADA REVENUE AGENCY</b> 1 Front Street West Toronto, ON M5J 2X6  <b>Pat Confalone</b> Tel: 416-954-6514 Email: pat.confalone@cra-arc.gc.ca  <b>Sandra Palma</b> Email: sandra.palma@cra-arc.gc.ca
<b>AND TO:</b>	<b>CORPORATION OF THE CITY OF LONDON</b> 3000 Dufferin Avenue London, ON N6A 5K6  <b>Barry Card</b> Tel: 519.661.2489 Ext. 4560 Email: bcard@london.ca

### Email Service List

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bcard@london.ca

## APPLICATION

1. The Applicant, Canadian Western Bank (“**CWB**”), as lender, makes an application for an order substantially in the form attached hereto as **Schedule “A”**, pursuant to section 243(1) of the *Bankruptcy and Insolvency Act*, RSC 1985, c. B-3, as amended (the “**BIA**”) and section 101 of the *Courts of Justice Act*, RSO 1990, c. C 43, as amended, among other things:

- (a) if necessary, abridging the time or service and filing of this notice of application and application record or, in the alternative, dispensing with same;
- (b) appointing MNP Ltd. (“**MNP**”) as receiver, without security, over all the assets, undertakings and property (collectively, the “**Property**”) of Index Holding Group Inc. (“**IHG**”), Index Group Of Companies Inc. (“**IGC**”), Index International Inc. (“**III**”), Index Foods Inc. (“**IFI**”), 2640179 Ontario Inc. (“**2640179**”), 11030434 Canada Ltd. (“**11030434**”), 2700774 Ontario Inc. (“**2707774**”), 2700767 Ontario Inc. (“**2700767**”), 2683960 Ontario Ltd. (“**2683960**”), 11030418 Canada Inc. (“**11030418**”), 2723710 Ontario Inc. (“**2723710**”), 2718366 Ontario Inc. (“**2718366**”), 2737332 Ontario Inc. (“**2737332**”), 2737334 Ontario Inc. (“**2737334**”), 2723714 Ontario Inc. (“**2723714**”), 2723716 Ontario Inc. (“**2723716**”), 2737338 Ontario Inc. (“**2737338**”, and together with IGC, III, IFI, 2640179, 11030434, 2700774 Ontario Inc., 2700767, 2683960, 11030418, 2723710, 2718366, 2737332, 2737334, 2723714, 2723716, the “**2020 ELSA Guarantors**”), 2790760 Ontario Inc. (“**2790760**”), 2775290 Ontario Inc. (“**2775290**”), 2775296 Ontario Inc. (“**2775296**”), 421 Wharnccliffe Ltd. (“**421 Wharnccliffe**” and together with 2790760, 2775290, 2775296, the “**2021 ELSA Guarantors**”, and the 2020 ELSA Guarantors together with the 2021 ELSA Guarantors, the “**Corporate Guarantors**”, the Corporate Guarantors together with IHG, the “**Index Group**”, and together with

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Muqet (as defined below), the “**Loan Parties**”) and 425 Wharncliffe Road Inc. (“**425 Wharncliffe**”, and together with the Loan Parties, the “**Forbearance Parties**”, and the Forbearance Parties excluding Muqet, the “**Respondents**”, and each a “**Respondent**”); and,

- (c) such further and other relief as may be requested by the Applicant and as this Honourable Court considers just.

2. The grounds for the application are:

**Background**

- (a) CWB is an Alberta-based national diversified financial services organization that provides specialty business banking services.
- (b) The Respondents are composed of (a) the Index Group, which is a restaurant group involved in the development and operations of Popeye’s Louisiana Chicken (“**Popeye’s**”) and Denny’s franchise restaurants and (b) two holding companies that own real property (as described in more detail below).
- (c) The Respondent, IHG, is a holding company and is the corporate parent of the Index Group and the borrower under the Facilities (as defined below). More specifically, IHG is the owner of all of the shares in the capital of each of the Corporate Guarantors with the exceptions of 2723710 and 2775290 (which are 50% owned by IHG and 50% owned by parties not related to the Forbearance Parties) and 2640179 (which is 50% owned by Muqet (as define below) and 50% owned by a party not related to the Forbearance Parties).

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- (d) Abdul Muqet (“**Muqet**”) is the principal and President of the Index Group and owns 100% of the shares in the capital of IHG. Muqet is also the sole director and officer of IHG and most of the other Respondents.
- (e) The Respondent, the Corporate Guarantors (other than 421 Wharnclyffe), are entities with the sole purpose of developing and/or owning and operating Popeye’s or Denny’s franchise restaurants.
- (f) The Respondent, 421 Wharnclyffe, is the registered owner of the real property municipally known as 421 Wharnclyffe Road South, London, Ontario and legally described as Part Lot 1 and Part Lot 29, Pts 1 & 2, 33R5487 S/T 837774 IF ANY, S/T 583284 IF ANY; LONDON/WESTMINSTER (“**421 Real Property**”).
- (g) The Respondent, 425 Wharnclyffe, is the registered owner of the real property municipally known as 425 Wharnclyffe South, London, Ontario, and legally described as PT LTS 1 & 2, PL 29, PART 2, 33R2551, S/T 929439, IF ANY, S/T 837774, IF ANY, S/T 583284, IF ANY; LONDON/WESTMINSTER (“**425 Real Property**”).
- (h) CWB established several loan facilities in favour of IHG to (a) finance the operations of IHG’s business including day-to-day operations and construction financing for certain franchise restaurants and (b) refinance a previously existing mortgage related to the 421 Real Property (collectively, the “**Facilities**”).
- (i) The Facilities include the following:
  - (i) On June 23, 2020, CWB and IHG entered into an equipment loan and security agreement (as amended, the “**2020 ELSA**”) pursuant to which

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CWB made available to IHG five committed non-revolving loan facilities in the aggregate maximum principal amount of approximately \$8,986,000;

- (ii) On November 16, 2021, CWB and IHG entered into a second equipment loan and security agreement (the “**2021 ELSA**”) pursuant to which CWB made available to IHG three loan facilities in the aggregate maximum principal amount of approximately \$3,000,000;
- (iii) On December 21, 2021, CWB and IHG entered into a third equipment loan and security agreement in respect of real estate (the “**2021 Real Estate ELSA**”) pursuant to which CWB made available to IHG a mortgage loan in the aggregate maximum principal amount of approximately \$1,075,000;  
and
- (iv) CWB also made available to IHG a revolving line of credit in the maximum amount of \$250,000 and a Visa credit card with a credit limit of \$175,000.
- (j) As security for the Facilities, CWB was granted, among other things, the following:
  - (i) *2020 ELSA Facility*: (i) a general security agreement by IHG and the 2020 ELSA Guarantors; and (ii) an unlimited guarantee and indemnity by IHG and the 2020 ELSA guarantors;
  - (ii) *2021 ELSA Facility*: (i) a general security agreement by IHG and the Corporate Guarantors; (ii) an unlimited guarantee and indemnity by IHG and the Corporate Guarantors; and



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- (iii) *2021 Real Estate ELSA Facility*: (i) a first-ranking mortgage against the 421 Real Property (the “**421 Mortgage**”).
  
- (k) In connection with the Forbearance Agreement (as defined below), 425 Wharnccliffe and Muqet also provided secured guarantees to CWB in respect of the obligations and indebtedness due and owing under the Facilities. The security provided by 425 Wharnccliffe includes, among other things, (i) a general security agreement and (ii) a third-ranking mortgage against the 425 Real Property (the “**425 Mortgage**”).
  
- (l) The security granted by the Respondents to CWB, as applicable, is cross-collateralized, cross-guaranteed and cross-defaulted in respect of the Respondents’ obligations and indebtedness to CWB.

***Defaults and Forbearance Agreement***

- (m) Events of defaults by the Respondents have occurred and are continuing in respect of the Facilities, including without limitation:
  - (i) IHG’s failure to make payments when due under the Facilities;
  
  - (ii) termination by the landlord of certain real property leases in connection with restaurants either operated by or planned for development by the Index Group; and
  
  - (iii) registration of subordinate liens in respect of IHG and certain Corporate Guarantors without CWB’s consent.

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- (n) After those defaults occurred, on January 18, 2023, CWB delivered demand letters and notices of intention to enforce security pursuant to the BIA to the Loan Parties.
- (o) CWB thereafter entered into a forbearance agreement with the Forbearance Parties on February 15, 2023 (the “**Forbearance Agreement**”) agreeing to forbear, subject to the terms thereof until June 30, 2023. In connection with the Forbearance Agreement, the Respondents executed a consent to receivership order in favour of CWB substantially in the form of order proposed in this Application (the “**Consent**”).
- (p) After the Forbearance Agreement was entered into, Certain Forbearance Termination Events (as defined in the Forbearance Agreement) occurred, including among others:
  - (i) a major fire at the Liberty Popeye’s resulting in a material adverse change in the business or operations of 2700774;
  - (ii) failure by IHG to pay CWB certain amounts when due in respect of the Facilities;
  - (iii) failure by the Forbearance Parties to fully cooperate with CWB and/or provide CWB with certain reporting required in respect of the Facilities;
  - (iv) registration of subordinate liens in respect of the 425 Real Property and 2700774 without CWB’s consent;

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- (v) delivery of requirements to pay by Canada Revenue Agency to CWB in respect of the failure by certain Corporate Guarantors to pay an aggregate of \$356,381.55 in taxes.
  
- (q) Accordingly, on April 12, 2023, CWB delivered a demand letter and notice of intention to enforce security pursuant to the BIA to 425 Wharnccliffe.

***Other Creditors and Stakeholders***

- (r) Searches conducted against the Respondents pursuant to the Personal Property Security Act (the “PPSA”) in Ontario disclose the following registrations:
  - (i) a first priority registration made against each of the Respondents in favour of CWB;
  - (ii) a registration against IHG in favour of 2851604 Ontario Inc.;
  - (iii) a registration against IGC in favour of (i) Toyota Credit Canada Inc., (ii) The Bank of Nova Scotia, (iii) Hyundai Capital Lease Inc. and Genesis Motor Finance;
  - (iv) a registration against III in favour of 1000017398 Ontario Inc.;
  - (v) a registration against IFI in favour of 1000017398 Ontario Inc.;
  - (vi) a registration against 2700774 in favour of 2851605 Ontario Inc., and 2752908 Ontario Ltd. / Midtown Capital; and
  - (vii) a registration against 2723710 in favour of 2851606 Ontario Inc.

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- (s) There are no other registrations under the Ontario PPSA in respect of any of the Respondents.
- (t) A search of title against the 421 Real Property discloses the following registrations:
  - (i) the 421 Mortgage in favour of CWB; and
  - (ii) a notice of general assignment of rents in favour of CWB.
- (u) There are no other mortgages or liens registered against title to the 421 Real Property. In addition to the forgoing, there is also a property standards order registered by The Corporation of the City of London and a notice registered by CWB relating to an amending agreement to amend a typographical error in the debenture attached as a schedule to the 421 Mortgage.
- (v) A search of title against the 425 Real Property discloses the following registrations:
  - (i) three mortgages registered in favour of 1778130 Ontario Inc.;
  - (ii) two notices of general assignments of rents in favour of 1778130 Ontario Inc.;
  - (iii) the 425 Mortgage in favour of CWB; and
  - (iv) a notice of general assignment of rents in favour of CWB.
- (w) There are no other mortgages or liens registered against title to the 425 Real Property.

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- (x) As of April 17, 2023, there are tax arrears owing on (i) the 421 Real Property in the amount of \$21,626.15 and (ii) the 425 Real Property in the amount of \$46,742.99.
- (y) Certain amounts are also owed by the Respondents in respect of (i) unpaid rent to certain of their landlords, (ii) taxes including unpaid Harmonized Sales Tax remittances to CRA, and (iii) Canadian Emergency Business Account Loans to the Government of Canada.
- (z) Several of the Respondents' creditors who are current or former shareholders of certain members of the Index Group granted assignments and postponements of claims in favour of CWB in connection with the 2020 ELSA and 2021 ELSA.
- (aa) The Index Group collectively has between 70 and 80 employees.

### ***Receivership***

- (bb) As of April 11, 2023, the amount owing in respect of the Facilities was \$8,141,405.08. CWB has lost confidence in the Respondents and their efforts to repay the Facilities. As a result, CWB is seeking to appoint MNP as receiver.
- (cc) In accordance with the terms of the Consent and the Forbearance Agreement, the Forbearance Parties have irrevocably consented to the appointment of a receiver over the Respondents and CWB may seek and is seeking to have the receivership order granted (which is substantially in the form of the Consent).
- (dd) Appointment of a receiver is within CWB's rights under the security granted by the Respondents.

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- (ee) It is in the best interests of all parties that a receiver be appointed to realize on the Property in a manner that is efficient, open and transparent. The proposed receiver, MNP, would be required to seek court approval for the sale of all or any of the Property on notice to all interested parties.
- (ff) It is just and convenient in the circumstances to appoint a receiver over the Property with the power to market and sell the Property for the benefit of CWB and any other creditors.
- (gg) MNP is qualified and is prepared to act as receiver if so appointed.
- (hh) Section 101 of the *Courts of Justice Act*, RSO, c. C.43, as amended.
- (ii) Section 243 of the *Bankruptcy and Insolvency Act*, RSC 1985, c. B-3, as amended.
- (jj) Rules 1.04, 1.05, 3.02, 16.08 and 38 of the *Rules of Civil Procedure*, RRO 1990, c. C.43.
- (kk) Such further and other grounds as counsel may advise and this Honourable Court may permit.

3. **THE FOLLOWING DOCUMENTARY EVIDENCE** will be used at the hearing of the application:

- (a) The affidavit of Tyson Hartwell sworn April 27, 2023;
- (b) The consent of MNP to act as receiver; and
- (c) Such other materials as counsel may advise and this Honourable Court may permit.

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April 25, 2023

**Cassels Brock & Blackwell LLP**

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Lawyers for the Applicant

**Schedule "A"**

**Form of Receivership Order**

Attached.



Court File No. CV-●-00CL

**ONTARIO  
SUPERIOR COURT OF JUSTICE  
COMMERCIAL LIST**

THE HONOURABLE ) ●, THE ●  
JUSTICE ● )  
DAY OF ●, 2023 )

**CANADIAN WESTERN BANK**

Applicant

- and -

**INDEX HOLDING GROUP INC., INDEX GROUP OF COMPANIES INC., INDEX  
INTERNATIONAL INC., INDEX FOODS INC., 2640179 ONTARIO INC., 11030434  
CANADA LTD., 2700774 ONTARIO INC., 2700767 ONTARIO INC., 2683960  
ONTARIO LTD., 11030418 CANADA INC., 2723710 ONTARIO INC., 2718366  
ONTARIO INC., 2737332 ONTARIO INC., 2737334 ONTARIO INC., 2723714  
ONTARIO INC., 2723716 ONTARIO INC., 2737338 ONTARIO INC., 2790760  
ONTARIO INC., 2775290 ONTARIO INC., 2775296 ONTARIO INC., 421  
WHARNCLIFFE LTD. AND 425 WHARNCLIFFE ROAD INC.**

Respondents

**IN THE MATTER OF AN APPLICATION UNDER SECTION 243(1) OF THE  
BANKRUPTCY AND INSOLVENCY ACT, RSC 1985, c. B-3, AS AMENDED; AND  
SECTION 101 OF THE COURTS OF JUSTICE ACT, RSO 1990, c. C.43, AS  
AMENDED**

**ORDER  
(Appointing Receiver)**

THIS APPLICATION made by the Applicant for an Order pursuant to section 243(1) of the *Bankruptcy and Insolvency Act*, RSC 1985, c. B-3, as amended (the "BIA") and section 101 of the *Courts of Justice Act*, RSO 1990, c. C.43, as amended (the "CJA") appointing MNP Ltd. ("MNP") as receiver (in such capacities, the "Receiver") without security, of: (a) all of the properties, assets and undertaking (collectively, the "Personal Property") of Index Holding Group Inc., Index Group of Companies Inc., Index

International Inc., Index Foods Inc., 2640179 Ontario Inc., 11030434 Canada Ltd., 2700774 Ontario Inc., 2700767 Ontario Inc., 2683960 Ontario Ltd., 11030418 Canada Inc., 2723710 Ontario Inc., 2718366 Ontario Inc., 2737332 Ontario Inc., 2737334 Ontario Inc., 2723714 Ontario Inc., 2723716 Ontario Inc., 2737338 Ontario Inc., 2790760 Ontario Inc., 2775290 Ontario Inc., 2775296 Ontario Inc., 421 Wharncliffe Ltd. and 425 Wharncliffe Road Inc. (collectively, the “Debtors”), or any one or more of them, and in all proceeds arising therefrom; and (b)(i) the real property municipally known as 421 Wharncliffe Road South, London, Ontario, and as legally described as PT LT 1, PL29, PTS 1&2, 33R5153 & PT2, 33R5487 S/T 837774 IF ANY, S/T 583284 IF ANY; LONDON/WESTMINSTER (the “421 Real Property”) and (ii) the real property municipally known as 425 Wharncliffe Road South, London, Ontario, and as legally described as PT LTS 1 & 2, PL 29, PART 2, 33R2551, S/T 929439, IF ANY, S/T 837774, IF ANY, S/T 583284, IF ANY; LONDON/WESTMINSTER (the “425 Real Property”, and together with the 421 Real Property, the “Real Property” and together with the Personal Property, the “Property”), was heard this day by judicial teleconference via Zoom at Toronto, Ontario.

ON READING the affidavit of Tyson Hartwell sworn April ●, 2023 and the Exhibits thereto and on hearing the submissions of counsel for the Applicant and such other parties listed on the Counsel Slip, no one appearing although duly served as appears from the affidavits of service of ● sworn ●, 2023 and on reading the consent of ● to act as the Receiver,

## **SERVICE**

1. THIS COURT ORDERS that the time for service of the Notice of Application and the Application is hereby abridged and validated so that this application is properly returnable today and hereby dispenses with further service thereof.

## **APPOINTMENT**

2. THIS COURT ORDERS that pursuant to section 243(1) of the BIA and section 101 of the CJA, MNP is hereby appointed Receiver, without security, of the Property of the Debtors.

## **RECEIVER'S POWERS**

3. THIS COURT ORDERS that the Receiver is hereby empowered and authorized, but not obligated, to act at once in respect of the Property and, without in any way limiting the generality of the foregoing, the Receiver is hereby expressly empowered and authorized to do any of the following where the Receiver considers it necessary or desirable:

- (a) to take possession of and exercise control over the Property and any and all proceeds, receipts and disbursements arising out of or from the Property, including without limitation the Debtors' bank accounts related to the Property wherever located;
- (b) to receive, preserve, and protect the Property, or any part or parts thereof, including, but not limited to, the changing of locks and security codes, the relocating of Property to safeguard it, the engaging of independent security personnel, the taking of physical inventories and the placement of such insurance coverage as may be necessary or desirable;
- (c) to manage, operate, and carry on the business of the Debtors, or any one or more of them, including the powers to enter into any agreements, incur any obligations in the ordinary course of business, cease to carry on all or any part of the business, or cease to perform or disclaim any contracts of the Debtors, or any one or more of them, in respect of the Property;

- (d) to engage consultants, appraisers, agents, real estate brokers, experts, auditors, accountants, managers, counsel and such other persons from time to time and on whatever basis, including on a temporary basis, to assist with the exercise of the Receiver's powers and duties, including without limitation those conferred by this Order;
- (e) to purchase or lease such machinery, equipment, inventories, supplies, premises or other assets to continue the business of the Debtors, or any one or more of them, with respect to the Property or any part or parts thereof;
- (f) to receive and collect all monies and accounts now owed or hereafter owing to the Debtors, or any one or more of them, with respect to the Property and to exercise all remedies of the Debtors, or any one or more of them, in collecting such monies, including, without limitation, to enforce any security held by the Debtors, or any one or more of them;
- (g) to settle, extend or compromise any indebtedness owing to the Debtors, or any one or more of them, with respect to the Property;
- (h) to execute, assign, issue and endorse documents of whatever nature in respect of any of the Property, whether in the Receiver's name or in the name and on behalf of the Debtors, or any one or more of them, for any purpose pursuant to this Order;
- (i) to initiate, prosecute and continue the prosecution of any and all proceedings and to defend all proceedings now pending or hereafter instituted with respect to the Debtors, or any one or more of them, the Property or the Receiver, and to settle or compromise any such proceedings. The authority hereby conveyed shall extend

to such appeals or applications for judicial review in respect of any order or judgment pronounced in any such proceeding;

- (j) to market any or all of the Property, including advertising and soliciting offers in respect of the Property or any part or parts thereof and negotiating such terms and conditions of sale as the Receiver in its discretion may deem appropriate;
- (k) to sell, convey, transfer, lease or assign the Property or any part or parts thereof out of the ordinary course of business,
  - (i) without the approval of this Court in respect of any transaction not exceeding \$100,000, provided that the aggregate consideration for all such transactions does not exceed \$500,000; and
  - (ii) with the approval of this Court in respect of any transaction in which the purchase price or the aggregate purchase price exceeds the applicable amount set out in the preceding clause;

and in each such case notice under subsection 63(4) of the Ontario *Personal Property Security Act*, or section 31 of the Ontario *Mortgages Act*, as the case may be, shall not be required.

- (l) to apply for any vesting order or other orders necessary to convey the Property or any part or parts thereof to a purchaser or purchasers thereof, free and clear of any liens or encumbrances affecting such Property;
- (m) to report to, meet with and discuss with such affected Persons (as defined below) as the Receiver deems appropriate on all matters relating to the Property and the receivership, and to share

information, subject to such terms as to confidentiality as the Receiver deems advisable;

- (n) to consult with the Applicant on all matters relating to the Property and the receivership, subject to such terms as to confidentiality as the Receiver deems advisable;
- (o) to register a copy of this Order and any other Orders in respect of the Property against title to any of the Property;
- (p) to apply for any permits, licences, approvals or permissions with respect to the Property as may be required by any governmental authority and any renewals thereof for and on behalf of and, if thought desirable by the Receiver, in the name of the Debtors, or any one or more of them;
- (q) to enter into agreements with any trustee in bankruptcy appointed in respect of the Debtors, or any one or more of them, including, without limiting the generality of the foregoing, the ability to enter into occupation agreements for any property owned or leased by the Debtors, or any one or more of them;
- (r) to exercise any shareholder, partnership, joint venture or other rights which the Debtors, or any one or more of them, may have; and
- (s) to take any steps reasonably incidental to the exercise of these powers or the performance of any statutory obligations.

and in each case where the Receiver takes any such actions or steps, it shall be exclusively authorized and empowered to do so, to the exclusion of all other Persons (as defined below), including the Debtors, or any one or more of them, and without interference from any other Person.

## **DUTY TO PROVIDE ACCESS AND CO-OPERATION TO THE RECEIVER**

4. THIS COURT ORDERS that (i) the Debtors, (ii) all of their current and former directors, officers, employees, agents, accountants, legal counsel, shareholders, and all other persons acting on their instructions or behalf, and (iii) all other individuals, firms, corporations, governmental bodies or agencies, or other entities having notice of this Order (all of the foregoing, collectively, being “Persons” and each being a “Person”) shall forthwith advise the Receiver of the existence of any Property in such Person’s possession or control, shall grant immediate and continued access to the Property to the Receiver, and shall deliver all such Property to the Receiver upon the Receiver’s request.

5. THIS COURT ORDERS that all Persons shall forthwith advise the Receiver of the existence of any books, documents, securities, contracts, orders, corporate and accounting records, and any other papers, records and information of any kind related to the business or affairs of the Debtors, or any one or more of them, and any computer programs, computer tapes, computer disks, or other data storage media containing any such information (the foregoing, collectively, the “Records”) in that Person’s possession or control, and shall provide to the Receiver or permit the Receiver to make, retain and take away copies thereof and grant to the Receiver unfettered access to and use of accounting, computer, software and physical facilities relating thereto, provided however that nothing in this paragraph 5 or in paragraph 6 of this Order shall require the delivery of Records, or the granting of access to Records, which may not be disclosed or provided to the Receiver due to the privilege attaching to solicitor-client communication or due to statutory provisions prohibiting such disclosure.

6. THIS COURT ORDERS that if any Records are stored or otherwise contained on a computer or other electronic system of information storage, whether by independent service provider or otherwise, all Persons in possession or control of such Records shall forthwith give unfettered access to the Receiver for the purpose of allowing the Receiver to recover and fully copy all of the information contained therein whether by way of printing the information onto paper or making copies of computer disks or such other manner of retrieving and copying the information as the Receiver in its discretion deems

expedient, and shall not alter, erase or destroy any Records without the prior written consent of the Receiver. Further, for the purposes of this paragraph, all Persons shall provide the Receiver with all such assistance in gaining immediate access to the information in the Records as the Receiver may in its discretion require including providing the Receiver with instructions on the use of any computer or other system and providing the Receiver with any and all access codes, account names and account numbers that may be required to gain access to the information.

7. THIS COURT ORDERS that the Receiver shall provide each of the relevant landlords with notice of the Receiver's intention to remove any fixtures from any leased premises at least seven (7) days prior to the date of the intended removal. The relevant landlord shall be entitled to have a representative present in the leased premises to observe such removal and, if the landlord disputes the Receiver's entitlement to remove any such fixture under the provisions of the lease, such fixture shall remain on the premises and shall be dealt with as agreed between any applicable secured creditors, such landlord and the Receiver, or by further Order of this Court upon application by the Receiver on at least two (2) days notice to such landlord and any such secured creditors.

8. THIS COURT ORDERS that all Persons, including without limitation, the Debtors and all entities affiliated (as such term is defined in the *Business Corporations Act* (Ontario)) with Index Holding Group Inc. (collectively, the "Index Group"), and each of them, shall be required to cooperate, and share information, with the Receiver, in connection with all books and records, contracts, agreements, permits, licenses and insurance policies and other documents in respect of the Debtors, or any one or more of them, and the Property. In addition to the foregoing, general cooperation and information sharing requirements, the Index Group, or any of them, shall be required to do the following: (a) in respect of any and all such contracts, agreements, permits, licenses and insurance policies and other documents: (1) maintain them in good standing and provide immediate notice and copies to the Receiver of any communications received from regulators, providers, lessors or franchisors in respect thereof; (2) provide immediate notice to the Receiver of any material change and/or



pending material change to the status quo in respect thereof; and (3) provide thirty (30) days' written notice to the Receiver of any renewal date, termination date, election date or similar date in respect thereof; and (b) assist, and cooperate with, the Receiver in obtaining any further permits and licenses that may be required in the Receiver's discretion, acting reasonably, in consultation with the Applicant.

### **NO PROCEEDINGS AGAINST THE RECEIVER**

9. THIS COURT ORDERS that no proceeding or enforcement process in any court or tribunal (each, a "Proceeding"), shall be commenced or continued against the Receiver except with the written consent of the Receiver or with leave of this Court.

### **NO PROCEEDINGS AGAINST THE DEBTORS OR THE PROPERTY**

10. THIS COURT ORDERS that no Proceeding against or in respect of the Debtors, or any one or more of them, or the Property shall be commenced or continued except with the written consent of the Receiver or with leave of this Court and any and all Proceedings currently under way against or in respect of the Debtors, or any one or more of them, or the Property are hereby stayed and suspended pending further Order of this Court.

### **NO EXERCISE OF RIGHTS OR REMEDIES**

11. THIS COURT ORDERS that all rights and remedies against the Debtors, or any one or more of them, the Receiver, or affecting the Property, including, without limitation, licenses and permits, are hereby stayed and suspended except with the written consent of the Receiver or leave of this Court, provided however that this stay and suspension does not apply in respect of any "eligible financial contract" as defined in the BIA, and further provided that nothing in this paragraph shall (i) empower the Receiver or the Debtors, or any one or more of them, to carry on any business which the Debtors, or any one or more of them, is not lawfully entitled to carry on, (ii) exempt the Receiver or the Debtors, or any one or more of them, from compliance with statutory or regulatory provisions relating to health, safety or the environment, (iii) prevent the

filing of any registration to preserve or perfect a security interest, or (iv) prevent the registration of a claim for lien.

### **NO INTERFERENCE WITH THE RECEIVER**

12. THIS COURT ORDERS that no Person shall discontinue, fail to honour, alter, interfere with, repudiate, terminate or cease to perform any right, renewal right, contract, agreement, licence or permit in favour of or held by the Debtors, or any one or more of them, in respect of the Property without written consent of the Receiver or leave of this Court.

### **CONTINUATION OF SERVICES**

13. THIS COURT ORDERS that all Persons, including, without limitation, the Index Group, having oral or written agreements with the Debtors, or any one or more of them, in connection with or relating to the Property or statutory or regulatory mandates for the supply of goods and/or services, including without limitation, all computer software, communication and other data services, centralized banking services, payroll services, insurance, transportation services, utility or other services to the Debtors, or any one or more of them, in connection with or relating to the Property are hereby restrained until further Order of this Court from discontinuing, altering, interfering with or terminating the supply of such goods or services as may be required by the Receiver, and that the Receiver shall be entitled to the continued use of the Debtors', or any one or more of their, current telephone numbers, facsimile numbers, internet addresses and domain names, provided in each case that the normal prices or charges for all such goods or services received after the date of this Order are paid by the Receiver in accordance with normal payment practices of the Debtors, or any one or more of their, or such other practices as may be agreed upon by the supplier or service provider and the Receiver, or as may be ordered by this Court.

### **RECEIVER TO HOLD FUNDS**

14. THIS COURT ORDERS that all funds, monies, cheques, instruments, and other forms of payments received or collected by the Receiver from and after the making of this Order from any source whatsoever, including without limitation the sale of all or any

of the Property and the collection of any accounts receivable in whole or in part in connection with or relating to the Property, whether in existence on the date of this Order or hereafter coming into existence, shall be deposited into one or more new accounts to be opened by the Receiver (the "Post Receivership Accounts") and the monies standing to the credit of such Post Receivership Accounts from time to time, net of any disbursements provided for herein, shall be held by the Receiver to be paid in accordance with the terms of this Order or any further Order of this Court.

## **EMPLOYEES**

15. THIS COURT ORDERS that all employees of the Debtors, or any one or more of them, shall remain the employees of such Debtor until such time as the Receiver, on behalf of the Debtors, or any one or more of them, may terminate the employment of such employees. The Receiver shall not be liable for any employee-related liabilities, including any successor employer liabilities as provided for in section 14.06(1.2) of the BIA, other than such amounts as the Receiver may specifically agree in writing to pay, or in respect of its obligations under sections 81.4(5) or 81.6(3) of the BIA or under the *Wage Earner Protection Program Act*.

## **PIPEDA**

16. THIS COURT ORDERS that, pursuant to clause 7(3)(c) of the Canada *Personal Information Protection and Electronic Documents Act*, the Receiver shall disclose personal information of identifiable individuals to prospective purchasers or bidders for the Property and to their advisors, but only to the extent desirable or required to negotiate and attempt to complete one or more sales of the Property (each, a "Sale"). Each prospective purchaser or bidder to whom such personal information is disclosed shall maintain and protect the privacy of such information and limit the use of such information to its evaluation of the Sale, and if it does not complete a Sale, shall return all such information to the Receiver, or in the alternative destroy all such information. The purchaser of any Property shall be entitled to continue to use the personal information provided to it, and related to the Property purchased, in a manner which is in all material respects identical to the prior use of such information by the Debtors, or

any one or more of them, and shall return all other personal information to the Receiver, or ensure that all other personal information is destroyed.

### **LIMITATION ON ENVIRONMENTAL LIABILITIES**

17. THIS COURT ORDERS that nothing herein contained shall require the Receiver to occupy or to take control, care, charge, possession or management (separately and/or collectively, "Possession") of any of the Property that might be environmentally contaminated, might be a pollutant or a contaminant, or might cause or contribute to a spill, discharge, release or deposit of a substance contrary to any federal, provincial or other law respecting the protection, conservation, enhancement, remediation or rehabilitation of the environment or relating to the disposal of waste or other contamination including, without limitation, the *Canadian Environmental Protection Act*, the Ontario *Environmental Protection Act*, the *Ontario Water Resources Act*, or the Ontario *Occupational Health and Safety Act* and regulations thereunder (the "Environmental Legislation"), provided however that nothing herein shall exempt the Receiver from any duty to report or make disclosure imposed by applicable Environmental Legislation. The Receiver shall not, as a result of this Order or anything done in pursuance of the Receiver's duties and powers under this Order, be deemed to be in Possession of any of the Property within the meaning of any Environmental Legislation, unless it is actually in possession.

### **LIMITATION ON THE RECEIVER'S LIABILITY**

18. THIS COURT ORDERS that the Receiver shall incur no liability or obligation as a result of its appointment or the carrying out the provisions of this Order, save and except for any gross negligence or wilful misconduct on its part, or in respect of its obligations under sections 81.4(5) or 81.6(3) of the BIA or under the *Wage Earner Protection Program Act*. Nothing in this Order shall derogate from the protections afforded the Receiver by section 14.06 of the BIA or by any other applicable legislation.

### **RECEIVER'S ACCOUNTS**

19. THIS COURT ORDERS that the Receiver and counsel to the Receiver shall be paid their reasonable fees and disbursements, in each case at their standard rates and

charges unless otherwise ordered by the Court on the passing of accounts, and that the Receiver and counsel to the Receiver shall be entitled to and are hereby granted a charge (the “Receiver’s Charge”) on the Property, as security for such fees and disbursements, both before and after the making of this Order in respect of these proceedings, and that the Receiver’s Charge shall form a first charge on the Property in priority to all security interests, trusts, liens, charges and encumbrances, statutory or otherwise, in favour of any Person, but subject to sections 14.06(7), 81.4(4), and 81.6(2) of the BIA.

20. THIS COURT ORDERS that the Receiver and its legal counsel shall pass their accounts from time to time, and for this purpose the accounts of the Receiver and its legal counsel are hereby referred to a judge of the Commercial List of the Ontario Superior Court of Justice.

21. THIS COURT ORDERS that prior to the passing of its accounts, the Receiver shall be at liberty from time to time to apply reasonable amounts, out of the monies in its hands, against its fees and disbursements, including legal fees and disbursements, incurred at the standard rates and charges of the Receiver or its counsel, and such amounts shall constitute advances against its remuneration and disbursements when and as approved by this Court.

#### **FUNDING OF THE RECEIVERSHIP**

22. THIS COURT ORDERS that the Receiver be at liberty and it is hereby empowered to borrow by way of a revolving credit or otherwise, such monies from time to time as it may consider necessary or desirable, provided that the outstanding principal amount does not exceed \$250,000 (or such greater amount as this Court may by further Order authorize) at any time, at such rate or rates of interest as it deems advisable for such period or periods of time as it may arrange, for the purpose of funding the exercise of the powers and duties conferred upon the Receiver by this Order, including interim expenditures. The whole of the Property shall be and is hereby charged by way of a fixed and specific charge (the “Receiver’s Borrowings Charge”) as security for the payment of the monies borrowed, together with interest and charges

thereon, in priority to all security interests, fees, trusts, liens, charges and encumbrances, statutory or otherwise, in favour of any Person, but subordinate in priority to the Receiver's Charge and the charges as set out in sections 14.06(7), 81.4(4), and 81.6(2) of the BIA.

23. THIS COURT ORDERS that neither the Receiver's Borrowings Charge nor any other security granted by the Receiver in connection with its borrowings under this Order shall be enforced without leave of this Court.

24. THIS COURT ORDERS that the Receiver is at liberty and authorized to issue certificates substantially in the form annexed as Schedule "A" hereto (the "Receiver's Certificates") for any amount borrowed by it pursuant to this Order.

25. THIS COURT ORDERS that the monies from time to time borrowed by the Receiver pursuant to this Order or any further order of this Court and any and all Receiver's Certificates evidencing the same or any part thereof shall rank on a *pari passu* basis, unless otherwise agreed to by the holders of any prior issued Receiver's Certificates.

#### **SERVICE AND NOTICE**

26. THIS COURT ORDERS that The Guide Concerning Commercial List E-Service (the "**Protocol**") is approved and adopted by reference herein and, in this proceeding, the service of documents made in accordance with the Protocol (which can be found on the Commercial List website at <https://www.ontariocourts.ca/scj/practice/practice-directions/toronto/eservice-commercial/>) shall be valid and effective service. Subject to Rule 17.05 this Order shall constitute an order for substituted service pursuant to Rule 16.04 of the Rules of Civil Procedure. Subject to Rule 3.01(d) of the Rules of Civil Procedure and paragraph 21 of the Protocol, service of documents in accordance with the Protocol will be effective on transmission. This Court further orders that a Case Website shall be established in accordance with the Protocol with the following URL [www.mnpdebt.ca/Index-Group-et-al](http://www.mnpdebt.ca/Index-Group-et-al).

27. THIS COURT ORDERS that if the service or distribution of documents in accordance with the Protocol is not practicable, the Receiver is at liberty to serve or distribute this Order, any other materials and orders in these proceedings, any notices or other correspondence, by forwarding true copies thereof by prepaid ordinary mail, courier, personal delivery or facsimile transmission to the Debtors', or any one or more of their, creditors or other interested parties at their respective addresses as last shown on the records of the Debtors, or any one or more of them, and that any such service or distribution by courier, personal delivery or facsimile transmission shall be deemed to be received on the next business day following the date of forwarding thereof, or if sent by ordinary mail, on the third business day after mailing.

#### **GENERAL**

28. THIS COURT ORDERS that the Receiver may from time to time apply to this Court for advice and directions in the discharge of its powers and duties hereunder.

29. THIS COURT ORDERS that nothing in this Order shall prevent the Receiver from acting as a trustee in bankruptcy of the Debtors, or any one or more of them. For greater certainty, the Property shall remain subject to the terms of this Order including without limitation paragraph 3 hereof and, subject to further Court Order, shall not vest in MNP as trustee in bankruptcy of the Debtors, or any one or more of them.

30. THIS COURT HEREBY REQUESTS the aid and recognition of any court, tribunal, regulatory or administrative body having jurisdiction in Canada or in the United States to give effect to this Order and to assist the Receiver and its agents in carrying out the terms of this Order. All courts, tribunals, regulatory and administrative bodies are hereby respectfully requested to make such orders and to provide such assistance to the Receiver, as an officer of this Court, as may be necessary or desirable to give effect to this Order or to assist the Receiver and its agents in carrying out the terms of this Order.

31. THIS COURT ORDERS that the Receiver be at liberty and is hereby authorized and empowered to apply to any court, tribunal, regulatory or administrative body, wherever located, for the recognition of this Order and for assistance in carrying out the

terms of this Order, and that the Receiver is authorized and empowered to act as a representative in respect of the within proceedings for the purpose of having these proceedings recognized in a jurisdiction outside Canada.

32. THIS COURT ORDERS that the Applicant shall have its costs of this Application, up to and including entry and service of this Order, provided for by the terms of the Applicant's security or, if not so provided by the Applicant's security, then on a substantial indemnity basis to be paid by the Receiver from the Debtors, or any one or more of their estates, with such priority and at such time as this Court may determine.

33. THIS COURT ORDERS that any interested party may apply to this Court to vary or amend this Order on not less than seven (7) days' notice to the Receiver and to any other party likely to be affected by the order sought or upon such other notice, if any, as this Court may order.

34. THIS COURT ORDERS that this Order is effective from today's date and it is not required to be entered.

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**SCHEDULE "A"**

**RECEIVER CERTIFICATE**

CERTIFICATE NO. \_\_\_\_\_

AMOUNT \$ \_\_\_\_\_

1. THIS IS TO CERTIFY that MNP Ltd., the receiver (the "Receiver") of (a) all of the properties, assets and undertaking (collectively, the "Personal Property") of Index Holding Group Inc., Index Group of Companies Inc., Index International Inc., Index Foods Inc., 2640179 Ontario Inc., 11030434 Canada Ltd., 2700774 Ontario Inc., 2700767 Ontario Inc., 2683960 Ontario Ltd., 11030418 Canada Inc., 2723710 Ontario Inc., 2718366 Ontario Inc., 2737332 Ontario Inc., 2737334 Ontario Inc., 2723714 Ontario Inc., 2723716 Ontario Inc., 2737338 Ontario Inc., 2790760 Ontario Inc., 2775290 Ontario Inc., 2775296 Ontario Inc., 421 Wharnccliffe Ltd. and 425 Wharnccliffe Road Inc. (collectively, the "Debtors"), or any one or more of them, and in all proceeds arising therefrom; and (b)(i) the real property municipally known as 421 Wharnccliffe Road South, London, Ontario, and as legally described as PT LT 1, PL29, PTS 1&2, 33R5153 & PT2, 33R5487 S/T 837774 IF ANY, S/T 583284 IF ANY; LONDON/WESTMINSTER (the "421 Real Property") and (ii) the real property municipally known as 425 Wharnccliffe Road South, London, Ontario, and as legally described as PT LTS 1 & 2, PL 29, PART 2, 33R2551, S/T 929439, IF ANY, S/T 837774, IF ANY, S/T 583284, IF ANY; LONDON/WESTMINSTER (the "425 Real Property", and together with the 421 Real Property, the "Real Property" and together with the Personal Property, the "Property") appointed by Order of the Ontario Superior Court of Justice (Commercial List) (the "Court") dated the \_\_\_ day of \_\_\_\_\_, 20\_\_ (the "Order") made in an application having Court file number CV-●, has received as such Receiver from the holder of this certificate (the "Lender") the principal sum of \$ \_\_\_\_\_, being part of the total principal sum of \$ \_\_\_\_\_ which the Receiver is authorized to borrow under and pursuant to the Order.

2. The principal sum evidenced by this certificate is payable on demand by the Lender with interest thereon calculated and compounded [daily][monthly not in advance on the \_\_\_\_\_ day of each month] after the date hereof at a notional rate per annum

equal to the rate of \_\_\_\_\_ per cent above the prime commercial lending rate of Bank of \_\_\_\_\_ from time to time.

3. Such principal sum with interest thereon is, by the terms of the Order, together with the principal sums and interest thereon of all other certificates issued by the Receiver pursuant to the Order or to any further order of the Court, a charge upon the whole of the Property, in priority to the security interests of any other person, but subject to the priority of the charges set out in the Order and in the *Bankruptcy and Insolvency Act*, and the right of the Receiver to indemnify itself out of such Property in respect of its remuneration and expenses.

4. All sums payable in respect of principal and interest under this certificate are payable at the main office of the Lender at Toronto, Ontario.

5. Until all liability in respect of this certificate has been terminated, no certificates creating charges ranking or purporting to rank in priority to this certificate shall be issued by the Receiver to any person other than the holder of this certificate without the prior written consent of the holder of this certificate.

6. The charge securing this certificate shall operate so as to permit the Receiver to deal with the Property as authorized by the Order and as authorized by any further or other order of the Court.

7. The Receiver does not undertake, and it is not under any personal liability, to pay any sum in respect of which it may issue certificates under the terms of the Order.

DATED the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_.

MNP Ltd., solely in its capacity  
as Receiver of the Property, and not in its  
personal capacity

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

Name:

Title:

CANADIAN WESTERN BANK

- and -

INDEX HOLDING GROUP INC., et al.

Applicant

Respondents

Court File No. CV-●-

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

PROCEEDING COMMENCED AT  
TORONTO

---

**ORDER  
(APPOINTING RECEIVER)**

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**Cassels Brock & Blackwell LLP**

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Lawyers for the Applicant

CANADIAN WESTERN BANK  
Applicant

- and -

INDEX HOLDING GROUP INC. et al.  
Respondents

Court File No.

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

PROCEEDING COMMENCED AT  
TORONTO

**NOTICE OF APPLICATION**

**Cassels Brock & Blackwell LLP**  
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Lawyers for the Applicant

# TAB 2

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

B E T W E E N:

**CANADIAN WESTERN BANK**

Applicant

- and -

**INDEX HOLDING GROUP INC., INDEX GROUP OF COMPANIES INC., INDEX  
INTERNATIONAL INC., INDEX FOODS INC., 2640179 ONTARIO INC.,  
11030434 CANADA LTD., 2700774 ONTARIO INC., 2700767 ONTARIO INC.,  
2683960 ONTARIO LTD., 11030418 CANADA INC., 2723710 ONTARIO INC.,  
2718366 ONTARIO INC., 2737332 ONTARIO INC., 2737334 ONTARIO INC.,  
2723714 ONTARIO INC., 2723716 ONTARIO INC., 2737338 ONTARIO INC.,  
2790760 ONTARIO INC., 2775290 ONTARIO INC., 2775296 ONTARIO INC.,  
421 WHARNCLIFFE LTD. AND 425 WHARNCLIFFE ROAD INC.**

Respondents

**AFFIDAVIT OF TYSON HARTWELL  
(sworn April 27, 2023)**

I, Tyson Hartwell, of the City of Calgary, in the Province of Alberta, MAKE OATH AND  
SAY:

1. I am an Assistant Vice President in the Special Asset Management Unit of Canadian  
Western Bank (“**CWB**”) and I have personal knowledge of the matters to which I hereinafter  
depose. Where I do not have personal knowledge of the matters set out herein, I have stated the  
source of my information and, in all such cases, believe it to be true.

## I. OVERVIEW

1. I swear this affidavit in support of an application brought by CWB to appoint MNP Ltd. (“**MNP**”) as receiver of all the assets, undertakings and property (collectively, the “**Property**”) of Index Holding Group Inc. (“**IHG**”), Index Group of Companies Inc. (“**IGC**”), Index International Inc. (“**III**”), Index Foods Inc. (“**IFI**”), 2640179 Ontario Inc. (“**2640179**”), 11030434 Canada Ltd. (“**11030434**”), 2700774 Ontario Inc. (“**2707774**”), 2700767 Ontario Inc. (“**2700767**”), 2683960 Ontario Ltd. (“**2683960**”), 11030418 Canada Inc. (“**11030418**”), 2723710 Ontario Inc. (“**2723710**”), 2718366 Ontario Inc. (“**2718366**”), 2737332 Ontario Inc. (“**2737332**”), 2737334 Ontario Inc. (“**2737334**”), 2723714 Ontario Inc. (“**2723714**”), 2723716 Ontario Inc. (“**2723716**”), 2737338 Ontario Inc. (“**2737338**”, and together with IGC, III, IFI, 2640179, 11030434, 2700774 Ontario Inc., 2700767, 2683960, 11030418, 2723710, 2718366, 2737332, 2737334, 2723714, 2723716, the “**2020 ELSA Guarantors**”), 2790760 Ontario Inc. (“**2790760**”), 2775290 Ontario Inc. (“**2775290**”), 2775296 Ontario Inc. (“**2775296**”), 421 Wharnccliffe Ltd. (“**421 Wharnccliffe**” and together with 2790760, 2775290, 2775296, the “**2021 ELSA Guarantors**”, and the 2020 ELSA Guarantors together with the 2021 ELSA Guarantors, the “**Corporate Guarantors**”, the Corporate Guarantors together with IHG, the “**Index Group**”, and together with Muqet (as defined below), the “**Loan Parties**”)) and 425 Wharnccliffe Road Inc. (“**425 Wharnccliffe**”, and together with the Loan Parties, the “**Forbearance Parties**”, and the Forbearance Parties excluding Muqet, the “**Respondents**”).

2. CWB is seeking to appoint MNP as receiver, because, among other things, the Respondents have and continue to fail to pay principal, interest and other amounts due and owing pursuant to the Facility Agreements (as defined below) with IHG as borrower and CWB as lender.

3. As of April 11, 2023, the amount owing in respect of the Facilities (as defined below) was \$8,141,405.08 (including legal fees and disbursements to March 31, 2023), plus interest and

expenses continuing to accrue from and after April 12, 2023, and legal fees and disbursements continuing to accrue from and after April 1, 2023 (the “**Indebtedness**”).

4. To secure payment of the Indebtedness, the Respondents granted security over the Property to CWB. The Property includes, among other things:

- (a) assets relating to the business of five Popeye’s Louisiana Kitchen (“**Popeye’s**”) and two Denny’s restaurant franchises located in southern Ontario,
- (b) assets relating to partially constructed franchise restaurants,
- (c) owned real property consisting of a one-storey commercial premises leased to a tenant located at 425 Wharncliffe Road South in London, Ontario, and
- (d) owned real property consisting of a vacant lot initially planned to develop a one-storey commercial building to be used as a franchise restaurant located at 421 Wharncliffe Road South in London, Ontario.

5. On January 18, 2023, CWB delivered demand letters and notices of intention to enforce security pursuant to the *Bankruptcy and Insolvency Act* (Canada) (the “**BIA**”) to each entity in the Index Group, as described in more detail below. At the Index Group’s request, CWB thereafter entered into a Forbearance Agreement (as defined below) with the Forbearance Parties whereby CWB agreed to forbear enforcing its rights and remedies under the Facility Agreements and the related security, subject to the terms of such Forbearance Agreement. In connection with the Forbearance Agreement, the Respondents, among other things, (i) acknowledged receipt of the demand letters and notices of intention to enforce security under the BIA and (ii) delivered a consent to receivership order in favour of CWB (the “**Consent**”), substantially in the form of order proposed in this Application, to be held by CWB until the termination of the forbearance period for any reason.



6. Pursuant to the terms of the Forbearance Agreement, the forbearance period was scheduled to expire on June 30, 2023, provided that the forbearance period would terminate earlier in the event of a forbearance termination event. The Respondents defaulted under the Forbearance Agreement, such that numerous forbearance termination events occurred, and the forbearance period terminated. In connection with the Forbearance Agreement, among other things, 425 Wharncliffe granted security in favour of CWB in respect of the Indebtedness, and on April 12, 2023, CWB delivered a demand letter and notice of intention to enforce security pursuant to the BIA to 425 Wharncliffe.

7. CWB has the right to the appointment of a receiver over the Property pursuant to the Consent and the terms of CWB's security.

8. As further described below, I understand that 1778130 Ontario Inc. has a first and second priority mortgage registered against the 425 Real Property (as defined below) securing the maximum principal amounts of \$720,000 and \$400,000, as applicable. I am also advised that there are several subordinate liens registered against certain of the Respondents.

9. I understand from Jeremy Bornstein of Cassels Brock & Blackwell LLP ("**Cassels**"), counsel to CWB, that 1778130 Ontario Inc. and the parties who have subordinate liens registered against the Property will be served with CWB's application to appoint MNP as receiver. I believe that it is in the best interests of CWB, the other secured creditors and the other stakeholders of the Respondents that a receiver be appointed to preserve the value of the Property and realize on the Property in a transparent manner with a view to maximizing recovery.

## **II. BACKGROUND**

### **A. Parties**

10. CWB is an Alberta-based national diversified financial services organization that provides specialty business banking services for small- and medium-sized businesses, as well as trust and wealth management services.

11. CWB established several loan facilities in favour of IHG to (a) finance the operations of IHG's business (as further described below) including day-to-day operations and construction financing for certain franchise restaurants and (b) refinance a previously existing mortgage related to the 421 Real Property (as defined below) (collectively, the "**Facilities**").

12. The Respondents are composed of

(a) the Index Group, which is a restaurant group involved in the development and operations of Popeye's and Denny's franchise restaurants, and

(b) two holding companies that own real property, as further described below.

13. IHG is a holding company and is the borrower under the Facility Agreements. I understand from the Respondents that IHG is also the corporate parent of the Index Group and owns all of the shares in the capital of each of the Corporate Guarantors with the following exceptions (a) in respect of 2723710 and 2775290, 50% of the shares in the capital of those Index Group entities are owned by individuals or entities that are not related to the Loan Parties and (b) in respect of 2640179, 50% of the shares in the capital of such Index Group entity is owned by Muqet (as defined below) and the remaining shares are owned by an individual that is not related to the Loan Parties.

14. Abdul Muqet ("**Muqet**") is the principal and President of the Index Group and has advised that he owns 100% of the shares in the capital of IHG. Muqet has also provided CWB a secured guarantee in respect of all of the Indebtedness, as described in more detail below.

15. The Respondents (other than 11030434 and 11030418) are all Ontario corporations. 11030434 and 11030418 are Canadian corporations. The registered office of each of the Respondents (other than 2640179) is located at 110 Herdwick Street, Brampton, Ontario, being Muqheet's personal residence. Muqheet is also the sole director and officer of IHG and most of the other Respondents.

16. The Corporate Guarantors (other than 421 Wharncliffe) are entities with the sole purpose of developing and/or owning and operating Popeye's or Denny's franchise restaurants (some of which are under construction, have been sold or are no longer operating).

17. 421 Wharncliffe (which is a Corporate Guarantor) is the registered owner of the real property municipally known as 421 Wharncliffe Road South, London, Ontario and legally described as Part Lot 1 and Part Lot 29, Pts 1 & 2, 33R5487 S/T 837774 IF ANY, S/T 583284 IF ANY; LONDON/WESTMINSTER ("**421 Real Property**").

18. 425 Wharncliffe (which is a Forbearance Party) is the registered owner of the real property municipally known as 425 Wharncliffe South, London, Ontario, and legally described as PT LTS 1 & 2, PL 29, PART 2, 33R2551, S/T 929439, IF ANY, S/T 837774, IF ANY, S/T 583284, IF ANY; LONDON/WESTMINSTER ("**425 Real Property**"). 425 Wharncliffe provided CWB a guarantee and security in respect of the Indebtedness as a condition to the effectiveness of the Forbearance Agreement.

## **B. Business Operations**

19. While the Respondents are composed of 22 entities, their active business operations consist of managing and operating five Popeye's (two of which I understand were recently temporarily or permanently closed because of a lack of staff or non-payment of rent on the basis of information Muqheet provided MNP and Cassels) and two Denny's restaurants and being the

landlord in respect of the 425 Real Property. The remaining 14 entities either (a) planned to develop Popeye's or Denny's restaurants and in all but one case construction has not commenced, (b) formerly owned Popeye's restaurants or assets in respect thereof which were sold or (c) in respect of 421 Wharnccliffe, own vacant land. A list of the Respondents and a summary of my understanding of the status of the operations of the Respondents based on information provided by Muqheet, MNP and Cassels is set out in the table attached hereto as **Exhibit "A"**.<sup>1</sup>

20. The reason CWB is also seeking the appointment of a receiver over the entities that sold their operating assets in connection with their respective restaurant businesses or that are otherwise not operating is because CWB has no visibility into the cash management system of the Respondents or whether certain Respondents may own other assets.

21. I understand from Jerry Henechowicz of MNP that he was advised by the Respondents that as of April 5, 2023:

- (a) The franchisor of the Popeye's restaurants terminated the Index Group's franchise agreements in March 2023 and provided the members of the Index Group with limited licenses to continue to operate the restaurants until August 31, 2023;
- (b) the Index Group employs approximately 70-80 employees in aggregate (who are being paid current), which includes (i) a manager that oversees the overall operations of the Index Group franchise restaurant locations and (ii) an individual manager for each restaurant, and

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<sup>1</sup> Capitalized terms in this affidavit referring to the names of restaurant locations have the meaning set out in Exhibit "A".

- (c) all head office staff of the Index Group have been terminated and Muqheet maintains payroll and disbursements himself and an external accountant handles tax matters and reporting.

22. I also understand that MNP was advised by the Respondents that a reason for the Index Group's financial difficulties, among others, is that the profitability of certain of the Index Group restaurants has decreased in the past year due to increased supplier costs without an equivalent corresponding increase in food and beverage sale prices to restaurant customers.

23. The 421 Real Property consists of a 0.45 acre parcel of land. Located on the premises is a 1,237 square foot vacant single-storey commercial building that was partially destroyed by a fire over two years ago. I understand that the Index Group initially intended to construct a new building on the premises for use as a franchise restaurant location, although those plans never materialized.

24. On August 10, 2022, a property standards order was issued by the City of London requiring certain repairs to the 421 Real Property and/or the building located on the premises. Due to inaction by 421 Wharnccliffe, on October 17, 2022, the Municipal Council of the Corporation of the City of London enacted a by-law approving the potential demolition by the municipality of the building located on the 421 Real Property and to return the premises to a graded and levelled condition at the owner's expense. As of April 18, 2023, the property has been returned to a vacant lot. An excerpt of the Municipal Council meeting minutes is attached hereto at **Exhibit "B"**.

25. The 425 Real Property consists of a 0.81 acre parcel of land with a 4,022 square foot single-storey commercial building located on the premises. I understand the building is rented out to a single commercial tenant, although CWB does not have the current rent-roll.

### **C. Indebtedness and Security**

Facility Agreements

*2020 ELSA*

26. On June 11, 2020, CWB issued a commitment letter to IHG (the “**First Commitment**”). A copy of the First Commitment is attached hereto as **Exhibit “C”**.

27. Subsequently, and in accordance with the First Commitment, on June 23, 2020, CWB and IHG entered into an equipment loan and security agreement, which was amended on October 21, 2020, April 6, 2021 and April 14, 2022 (collectively, the “**2020 ELSA**”). Pursuant to the terms of the 2020 ELSA, CWB made available to IHG five committed non-revolving loan facilities in the aggregate maximum principal amount of approximately \$8,986,000 as follows:

- (a) \$3,820,000 to be used (i) to replace financing that was being provided by another lender and (ii) to finance a share buyout of other shareholders in IFI or the partial paydown of a shareholder loan,
- (b) \$1,331,000 to be used as acquisition financing for the purchase of all the assets in connection with the business of Sheppard Popeye’s and Dufferin Popeye’s,
- (c) the lesser of \$1,910,000 or 85% of documented costs to be used for the new build costs of (i) the 110 Whitby Popeye’s and (ii) the Liberty Popeye’s and the lesser of the purchase price of up to \$636,666.66 or 71.1% of the documented purchase price for the Newcastle Popeyes, and
- (d) \$1,925,000 to be used for (i) the lesser of \$675,000 or 50% of the documented new build costs of (i) Woodbine Denny’s, (ii) the lesser of \$650,000 or 60% of the documented new build costs of Burlington Denny’s, and (iii) \$600,000 to be allocated as determined and approved by CWB.

A copy of the 2020 ELSA is attached hereto as **Exhibit “D”**.

28. The loans advanced by CWB to IHG pursuant to the term of the 2020 ELSA (collectively, the “**2020 ELSA Facility**”) were advanced in 11 tranches between June 26, 2020 and October 26, 2021 in the aggregate principal amount of \$7,129,758.82.

*2021 ELSA and 2021 Real Estate ELSA*

29. On November 1, 2021, CWB issued a second commitment letter to IHG (the “**Second Commitment**”). A copy of the Second Commitment is attached hereto as **Exhibit “E”**.

30. In accordance with the Second Commitment, CWB thereafter entered into (a) a second equipment loan and security agreement with IHG dated November 16, 2021 (the “**2021 ELSA**”) and (b) a third equipment loan and security agreement in respect of real estate dated December 21, 2021 (the “**2021 Real Estate ELSA**”). A copy of the 2021 ELSA and the 2021 Real Estate ELSA are attached hereto as **Exhibits “F”** and “**G**”.

31. Pursuant to the terms of the 2021 ELSA, CWB made three loan facilities available to IHG in the aggregate maximum principal amount of approximately \$3,000,000 as follows:

- (a) the lesser of \$1,050,000 or 75% of acceptable new build costs, as determined by CWB, in respect of Newmarket Denny’s,
- (b) the lesser of \$975,000 or 75% of acceptable new build costs, as determined by CWB, in respect of Brantford Denny’s,
- (c) the lesser of \$975,000 or 75% of acceptable new build costs, as determined by CWB, in respect of Rexdale Denny’s,

32. The loans advanced by CWB to IHG pursuant to the term of the 2021 ELSA (collectively, the “**2021 ELSA Facility**”) were advanced in seven tranches between December 1, 2021 and October 26, 2022 in the aggregate principal amount of \$2,797,500.

33. Pursuant to the terms of the 2021 Real Estate ELSA, CWB made a mortgage loan available to IHG in the aggregate maximum principal amount of approximately \$1,075,000 to be used as follows:

- (a) \$480,000 as replacement financing for the previously existing mortgage owed to another lender, and
- (b) the lesser of \$595,000 or 75% of the acceptable construction costs, as determined by CWB, to build a building on the 421 Real Property.

34. The loan advanced by CWB to IHG pursuant to the term of the 2021 Real Estate ELSA (the “**2021 Real Estate ELSA Facility**”) was advanced in one tranche on February 25, 2022 in the principal amount of \$480,000.

*Revolving Line of Credit and Business Visa*

35. On November 23, 2021, CWB issued a third commitment letter to IHG (the “**Third Commitment**”). A copy of the Third Commitment is attached hereto as **Exhibit “H”**.

36. After issuing the Third Commitment, and in accordance with its terms, CWB (a) entered into a revolving credit agreement with IHG dated November 24, 2021 (the “**Revolver Agreement**”) and (b) increased the credit available (from \$60,000 to \$175,000) in connection with IHG’s business Visa application dated July 16, 2020 (the “**Visa Agreement**”, together with the 2020 ELSA, 2021 ELSA, 2021 Real Estate ELSA and Revolver Agreement, the “**Facility**”).



**Agreements**"). A copy of the Revolver Agreement and the Visa Agreement are attached hereto as **Exhibits "I" and "J"**.

37. Pursuant to the terms of (a) the Revolver Agreement, CWB made a revolving line of credit available to IHG in the aggregate maximum principal amount of \$250,000 (the "**Revolving Facility**") and (b) the Visa Agreement, CWB made a Visa credit card available to IHG with a credit limit of \$175,000 (as provided in the Third Commitment) (the "**Credit Card Facility**", and together with the 2020 ELSA Facility, the 2021 ELSA Facility, the 2021 Real Estate ELSA Facility and the Revolving Facility, the "**Facilities**"). The amounts drawn on the Revolving Facility and the credit card balance exceeded the applicable maximum permitted amounts and were not timely paid down. Accordingly, on January 31, 2023, CWB closed the Revolving Facility and on February 14, 2023, CWB closed the Credit Card Facility.

#### Security

38. As security for the Facilities, CWB was granted, among other things, the following:
- (a) *2020 ELSA Facility*: (i) a general security agreement by IHG and the 2020 ELSA Guarantors (the "**2020 ELSA GSA**"); and (ii) an unlimited guarantee and indemnity by IHG and the 2020 ELSA guarantors (the "**2020 ELSA Guarantee**");
  - (b) *2021 ELSA Facility*: (i) a general security agreement by IHG and the Corporate Guarantors (the "**2021 ELSA GSA**"); (ii) an unlimited guarantee and indemnity by IHG and the Corporate Guarantors (the "**2021 ELSA Guarantee**"); and (iii) a cross collateralization acknowledgement and agreement by IHG and the Corporate Guarantors (the "**2021 ELSA Cross Collateralization Agreement**"); and
  - (c) *2021 Real Estate ELSA Facility*: (i) a first-ranking mortgage against the 421 Real Property (the "**421 Mortgage**"); (ii) a debenture (as amended), (the "**421**

**Debenture**"); (ii) a general assignment of rents and certain lease rights (the "**421 GAR**"); and (iii) a cross collateralization acknowledgement and agreement by IHG and the Corporate Guarantors (the "**2021 Real Estate ELSA Cross Collateralization Agreement**").

Attached hereto as **Exhibits "K"- "S"** (inclusive) is a copy of the 2020 ELSA GSA, 2020 ELSA Guarantee, 2021 ELSA GSA, 2021 ELSA Guarantee, 2021 ELSA Cross Collateralization Agreement, 421 Mortgage, 421 Debenture, 421 GAR and 2021 Real Estate ELSA Cross Collateralization Agreement.

39. The obligations and indebtedness due and owing by IHG to CWB under the Facilities are also guaranteed pursuant to the following security granted to CWB by (a) Muqet including, among other things, (i) a guarantee and indemnity (the "**Personal Guarantee**"), (ii) a general security agreement (the "**Personal GSA**"), (iii) a debenture (the "**Personal Debenture**"); (b) 425 Wharnclyffe including, among other things, (i) a guarantee and indemnity (the "**425 Guarantee**"), (ii) a general security agreement (the "**425 GSA**", together with the 2020 ELSA GSA and the 2021 ELSA GSA, the "**GSAs**"), (iii) a third-ranking mortgage against the 425 Real Property (the "**425 Mortgage**"), (iv) a debenture (the "**425 Debenture**") and (v) a general assignment of rents and certain lease rights (the "**425 GAR**"); and (c) by IHG, the Corporate Guarantors, 425 Wharnclyffe and Muqet, a cross collateralization acknowledgement and agreement (the "**Forbearance Cross Collateralization Agreement**"). Attached hereto as **Exhibits "T"- "BB"** (inclusive) is a copy of the Personal Guarantee, the Personal GSA, the Personal Debenture, the 425 Guarantee, the 425 GSA, the 425 Mortgage, the 425 Debenture, the 425 GAR and the Forbearance Cross Collateralization Agreement (collectively, the "**Forbearance Security**").

40. The Forbearance Security was granted to CWB by the Respondents in connection with the conditions to the effectiveness of the Forbearance Agreement.

41. The security granted by the Forbearance Parties to CWB, as applicable, is cross-collateralized, cross-guaranteed and cross-defaulted in respect of the obligations of the Forbearance Parties to CWB pursuant to the 2021 ELSA Cross Collateralization Agreement, the 2021 Real Estate ELSA Cross Collateralization Agreement and the Forbearance Cross Collateralization Agreement.

**D. Default and Demand**

42. Defaults under the Facility Agreements occurred and have continued, in certain cases beginning in August 2022 or earlier. These defaults include, among other things,

- (a) IHG's failure to make principal and interest payments when due,
- (b) IHG's failure to pay all amounts due and owing in respect of certain advances made by CWB under the Facilities within 6 months from the date of the initial advance in accordance with the terms of the applicable Facility Agreement,
- (c) termination by the landlord of certain real property leases in connection with restaurants either operated by or planned for development by the Index Group (including Uxbridge Popeye's and Newmarket Denny's),
- (d) failure by the Index Group to satisfy certain financial reporting covenants in accordance with the terms of the applicable Facility Agreements including failing to provide annual financial statements,
- (e) IHG exceeding the maximum borrowings permitted by CWB under the Revolver Agreement and the Visa Agreement,
- (f) registration of subordinate liens in respect of IHG and certain Corporate Guarantors without CWB's consent, as summarized in Exhibit "JJ" attached hereto,

- (g) registration on title to the 421 Real Property of a property standards order by the Corporation of the City of London, and
- (h) occurrence of a material adverse change relating to IHG and the Corporate Guarantors or the risk associated with the Facilities or the operations of IHG or the Corporate Guarantors.

43. On several occasions CWB requested that the Facilities be brought current and/or for certain financial reporting to be provided, but the Index Group failed or neglected to do so. Accordingly, on January 18, 2023, CWB delivered demand letters (the “**Index Demand Letters**”) and notices of intention to enforce security (“**Index NITEs**”) under section 244 of the BIA to each of the Respondents other than 425 Wharnccliffe (as described below, a demand letter and notice of intention enforce security was delivered to 425 Wharnccliffe on April 12, 2023). A copy of the Index Demand Letter and Index NITE delivered to IHG and a copy of the form of Index Demand Letters and Index NITEs delivered to the Corporate Guarantors are attached hereto without enclosures as **Exhibits “CC”** and “**DD**”. Copies of each Index Demand Letter and Index NITE delivered to each Corporate Guarantor are available upon request.

#### **E. Forbearance Agreement and 425 Wharnccliffe Demand**

44. After the demands were delivered, and also on January 18, 2023, the Index Group contacted CWB to request CWB’s cooperation to give the Index Group time to seek to arrange replacement financing and/or sell its franchise restaurant locations. To assist Index Group in those efforts, on February 15, 2023, CWB entered into a forbearance agreement with the Forbearance Parties (the “**Forbearance Agreement**”). Pursuant to the terms of the Forbearance Agreement, CWB agreed to forbear from commencing enforcement action until the earlier of June 30, 2023 or the occurrence of certain Forbearance Termination Events (as defined in the Forbearance Agreement). A copy of the Forbearance Agreement is attached hereto as **Exhibit “EE”**.

45. The terms of the Forbearance Agreement include, among other things:
- (a) the Loan Parties' confirmation of the continuing effectiveness and validity of the Loan and Security Documents (as defined in the Forbearance Agreement);
  - (b) the Loan Parties' acknowledgement that events of default had occurred and were continuing under any one of the Loan and Security Documents;
  - (c) a forbearance fee in the amount of \$50,000, which shall be fully earned by CWB upon execution of the Forbearance Agreement;
  - (d) full cooperation of the Forbearance Parties with CWB and its agents, including MNP as its financial advisor, with full access to the books, records, property, assets and personnel of any of the Forbearance Parties;
  - (e) weekly detailed written reports confirming all efforts to sell any one or more of the franchise restaurants operated by the Corporate Guarantors or the 421 Real Property and/or to obtain replacement financing, including without limitation copies of correspondence with and from potential purchasers and/or lenders and any and all letters of intent, term sheets, commitments or other forms of agreements or expressions of interest; and
  - (f) deliver a binding commitment letter or binding agreement of purchase and sale on or before June 30, 2023 with the net proceeds of such sale or replacement financing transaction(s) sufficient to satisfy the Indebtedness in full on the date of the closing of the transaction.
46. Following entering into the Forbearance Agreement, certain Forbearance Termination Events occurred, including without limitation:

- (a) a major fire at the Liberty Popeye's resulting in a material adverse change in the business or operations of 2723710 (Liberty Popeye's) and the resulting failure to maintain and preserve its property, assets and undertaking in good condition and repair, and operate in the ordinary course of business;
- (b) failure by IHG to pay CWB certain amounts when due under the Facility Agreements;
- (c) failure by the Forbearance Parties, or any or one or more of them, to fully cooperate with CWB and/or provide CWB with certain reporting required under the terms of the Forbearance Agreement (and the Facility Agreements);
- (d) failure by the Forbearance Parties, or any or one or more of them, to disclose the location and status of equipment, construction materials or other personal property financed by CWB in accordance with the terms of the Facility Agreements, which was allegedly purchased by the Index Group (or any one or more of them) and which the Index Group represented was to be used for the construction of certain franchise restaurant locations (but does not appear to be located at the sites in respect of which the equipment was designated);
- (e) failure by the Forbearance Parties, or any or one or more of them, to provide an update on the status of each of their real property leases;
- (f) registration of a fourth mortgage on title to the 425 Real Property on March 3, 2023;
- (g) registration of a lien against 2700774 (Oshawa Popeye's) on March 6, 2023;

- (h) delivery of a requirement to pay dated March 28, 2023 by Canada Revenue Agency (“**CRA**”) to CWB in respect of the failure by 2700774 (Oshawa Popeye’s) to pay \$270,234.38 in taxes;
- (i) delivery of a requirement to pay dated March 28, 2023 by CRA to CWB in respect of the failure by 421 Wharnccliffe to pay \$49,060.62 in taxes;
- (j) delivery of a requirement to pay dated April 3, 2023 by CRA to CWB in respect of the failure by 11030418 to pay \$37,086.55 in taxes;
- (k) delivery of a power of sale and notice of intention to enforce security under the BIA by First National Financial GP Corporation (the first mortgagee) to Muqet in respect of Muqet’s personal residence (which is also the registered office of all but one of the Respondents) on April 6, 2023; and
- (l) termination by the landlord of the real property lease in respect of 11030418 (110 Whitby Popeyes).

A copy of the requirements to pay in respect of 2700774, 421 Wharnccliffe and 11030418 are attached hereto as **Exhibits “FF”-“HH”** (inclusive). A copy of the lease termination notice in respect of 11030418 is attached hereto as **Exhibit “II”**.

47. I also understand from MNP that as of April 19, 2023 there is over \$1 million of CRA liabilities registered on the CRA accounts of the Respondents.

48. In accordance with the terms of the Forbearance Agreement, upon the occurrence of any Forbearance Termination Event, the Forbearance Period shall forthwith terminate at the option of CWB. Accordingly, on April 12, 2023, CWB delivered a demand letter (“**425 Demand**”) and notice

of intention to enforce security under section 244 of the BIA to 425 Wharnccliffe. A copy of the 425 Demand and 425 NITE are attached hereto as **Exhibit “JJ”**.

49. The 10-day notice period under the 425 NITE expired on April 23, 2023.

50. In addition to the Forbearance Termination Events that have occurred, CWB is also concerned about the Respondents managing the sale of their own assets.

51. For example, the Respondents recently closed sale transactions in respect of all the assets in connection with the Dufferin Popeye's and Sheppard Popeye's. The transactions took almost a year to close because, among other things, there were liens registered on the assets (by parties other than CWB) in respect of which the Respondents were unable to payout the indebtedness secured by the liens. In addition, at the Respondents' request, the purchaser paid to the Respondents, during the period between signing the asset purchase agreements and closing, approximately \$250,000 in deposits. Because those amounts were paid to the Respondents (and allegedly used for operating costs), CWB was limited in the amount of proceeds it recovered from the sales (notwithstanding that the Indebtedness at that time was approximately \$9,000,000).

52. I also understand from Cassels that Muqet advised Cassels that in the past few months certain Respondents have received other offers to purchase their assets and in certain cases those Respondents have entered into conditional purchase agreements in respect thereof. However, in each case the price offered was too low in the view of the Respondents and/or the conditions to closing were not satisfied and/or waived and the purchase agreements were terminated, or the transactions have otherwise not progressed to close.

53. With respect to recent agreements of purchase and sale entered into by the Respondents, those agreements have included nominal deposits (relative to the purchase price) and extensive



conditions to closing, leading CWB to question whether the transactions are bona fide. CWB is also concerned about whether the purchase prices agreed to by the Respondents reflect current market value. For example, in respect of the purchase agreement recently entered into by the Respondents relating to the Oshawa Popeye's, the purchase price does not reflect CWB's general experience with earnings multiples for the sale of restaurants (based on the earnings of the Oshawa Popeye's reflected in the latest financial statements CWB received in respect thereof from August 2022). In addition, it appears to CWB that the purchase price for the Oshawa Popeye's may be lower than market value since the potential purchaser is an employee of the vendor.

54. Aside from the Respondents advising Cassels that a request was made to the Popeye's franchisor in November 2022 and January 2023 for introductions to potential purchasers for the Respondents operating Popeye's restaurant locations, CWB has no visibility into what marketing efforts were undertaken by the Respondents to sell the Oshawa Popeye's or any of the Respondents' other assets. For example, the Respondents have not provided copies of MLS listings for the restaurant locations or their real property or any other marketing materials, nor have they provided particulars regarding their recent efforts to market their assets.

55. In light of the forgoing, CWB has lost confidence in the Respondents' ability to operate their business in a manner that protects CWB's collateral and maintains its value. CWB has limited visibility into the business operations of the Respondents and is concerned that the Respondents will not monetize their assets with a view to maximizing value for the benefit of CWB and the Respondents' other stakeholders.

#### **F. Other Secured Creditors**

56. Searches conducted pursuant to the Personal Property Security Act (the "PPSA") in Ontario against the Respondents with a currency date of April 11, 2023, disclose the following:

- (a) A first priority registration made against each of the Respondents in favour of CWB,
- (b) a registration against IHG in favour of 2851604 Ontario Inc.,
- (c) a registration against IGC in favour of (i) Toyota Credit Canada Inc., (ii) The Bank of Nova Scotia, (iii) Hyundai Capital Lease Inc. and Genesis Motor Finance,
- (d) a registration against III in favour of 1000017398 Ontario Inc.,
- (e) a registration against IFI in favour of 1000017398 Ontario Inc.,
- (f) a registration against 2700774 (Oshawa Popeye's) in favour of 2851605 Ontario Inc., and 2752908 Ontario Ltd. / Midtown Capital, and
- (g) a registration against 2723710 (Liberty Popeye's) in favour of 2851606 Ontario Inc.

57. The Ontario PPSA searches did not disclose registrations in favour of any other security party. The registrations against IGC in favour of (i) Toyota Credit Canada Inc., (ii) The Bank of Nova Scotia, and (iii) Hyundai Capital Lease Inc. appear to relate to motor vehicle and/or equipment financing. I do not have direct knowledge of any of the other security delivered by the Respondents in respect of the above noted PPSA registrations (other than the security delivered to CWB).

58. A summary of the Ontario PPSA search results against each of the Respondents is attached hereto as **Exhibit "KK"**.

59. A search of title against the 421 Real Property current to April 12, 2023 (the "**421 Title Search**") discloses the following registrations:

- (a) the 421 Mortgage in favour of CWB; and

- (b) the 421 GAR in favour of CWB,

I am advised by Cassels that there are no other mortgages or liens registered against title to the 421 Real Property shown in the 421 Title Search other than those listed above. In addition to the forgoing registrations, there is also a property standards order registered by The Corporation of the City of London and a notice registered by CWB relating to an amending agreement to amend a typographical error in the debenture attached as a schedule to the mortgage registered on title by CWB. A copy of the 421 Title Search is attached hereto as **Exhibit "LL"**.

60. A search of title against the 425 Real Property current to April 12, 2023 (the "**425 Title Search**") discloses the following registrations:

- (a) three mortgages registered in favour of 1778130 Ontario Inc. (two of which were registered earlier in time compared to the 425 Mortgage and one registered after);
- (b) two general assignments of rents and leases registered in favour of 1778130 Ontario Inc. (one registered earlier in time compared to the 425 GAR and one registered after);
- (c) the 425 Mortgage in favour of CWB; and
- (d) the 425 GAR in favour of CWB.

I am advised that there are no other mortgages or liens registered against title to the 425 Real Property shown in the 425 Title Search other than those listed above. A copy of the 425 Title Search is attached hereto as **Exhibit "MM"**.

61. Based on a review of municipal tax certificates, as of April 14, 2023 there are tax arrears owing related to (a) the 421 Real Property in the amount of \$21,626.15 and (b) the 425 Real

Property in the amount of \$46,742.99. A copy of the tax certificates is attached hereto as **Exhibit “NN”**.

#### **G. Other Creditors and Stakeholders**

62. I have not been provided recent financial statements of the Respondents; however, I understand that certain amounts are owed by the Respondents in respect of (a) unpaid rent to certain of their landlords, (b) taxes including unpaid Harmonized Sales Tax remittances to CRA and (c) Canadian Emergency Business Account Loans to the Government of Canada. In addition, several of the Respondents’ creditors granted assignments and postponements of claims in favour of CWB in connection with the 2020 ELSA and 2021 ELSA (the **“Postponement Creditors”**). I understand from the Respondents that the Postponement Creditors are current or former shareholders of certain members of the Index Group. A list of the assignment and postponement agreements is attached hereto as **Exhibit “OO”**. I am advised by Cassels that the Postponement Creditors will be served with CWB’s application to appoint MNP as receiver.

63. As described above, I understand from MNP that Muqet advised MNP that the Index Group has between 70-80 employees and that the Index Group is current in its payments to employees and related tax remittances. The Index Group has not, however, provided any supporting documents in respect thereof and I have no direct knowledge of the status of those payments.

64. I am advised by Jeremy Bornstein of Cassels that the Popeye’s and Denny’s franchisors are aware of the circumstances in respect of CWB seeking the appointment of a receiver over the Respondents and will be served the related application. I also understand from Cassels that the franchisors primarily want to ensure that their restaurants are effectively operated and that they can approve any potential replacement franchisees for the applicable Index Group restaurants.

### III. RECEIVERSHIP

65. As of April 11, 2023, the Indebtedness was \$8,141,405.08. CWB is concerned that it will suffer a shortfall in respect of the Indebtedness after monetization of the Respondents' assets.

66. Pursuant to the Consent, the Forbearance Parties have irrevocably consented to the appointment of a receiver over the Respondents. In accordance with the terms of the Forbearance Agreement, upon the occurrence of a Forbearance Termination Event, CWB is entitled to and is seeking to have the receivership order granted (which is substantially in the form of the Consent). As described above, numerous Forbearance Termination Events have occurred and are continuing and the Forbearance Period has terminated.

67. In accordance with the terms of the GSAs, CWB is entitled to seek the appointment of a court appointed receiver in the event the Forbearance Parties, or any one or more of them, as applicable, defaults in their obligations under the Loan and Security Documents. Specifically, section 25(q) of each of the GSAs provides that upon the occurrence of an event of default that is continuing, CWB may enforce its rights by, among other things:

“bringing proceedings in any court of competent jurisdiction for the appointment of a Receiver or Receivers or for the sale of the Collateral or any part thereof ...”

68. It is just and convenient in the circumstances to appoint a receiver over the Property with the power to market and sell the Property for the benefit of CWB and the other creditors.

69. CWB's intention is for the receiver to market and sell the Property in order for the receiver to realize on the value of the Property and for the operations of the Index Group to continue as a going-concern, including to preserve the jobs of substantially all of the Index Group employees.

70. I understand that MNP is qualified to act as receiver and is prepared to act as receiver if so appointed. MNP has significant experience acting as a court-officer in restructurings. A copy of MNP's consent to act as receiver is attached hereto as **Exhibit "PP"**.

71. MNP has been acting as financial advisor to CWB in respect of the Forbearance Agreement, and the Respondents have provided MNP access to certain of their financial and other records and their external accountant. In that regard, MNP is well positioned to begin to efficiently monetize the assets of the Respondents for the benefit of their stakeholders.

**IV. CONCLUSION**

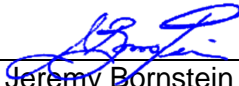
72. I swear this affidavit in support of the application brought by CWB to appoint MNP as receiver over the Property.

**SWORN BEFORE ME**

by videoconference on April 27, 2023 in accordance with O.Reg. 431/20: Administering Oath or Declaration Remotely. The deponent was located in the City of Calgary in the Province of Alberta and I was located in the City of Toronto in the Province of Ontario.



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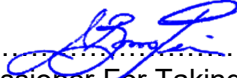
  
Jeremy Bornstein  
LSO#: 65425C

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Tyson Hartwell

*Commissioner for Taking Affidavits  
(or as may be)*

This is **Exhibit "A"** referred to in the affidavit of Tyson Hartwell, sworn before me by videoconference on April 27, 2023 in accordance with O.Reg. 431/20: Administering Oath or Declaration Remotely. The deponent was located in the City of Calgary in the Province of Alberta and I was located in the City of Toronto in the Province of Ontario.



.....  
A Commissioner For Taking Affidavits

Jeremy Bornstein  
LSO#: 65425C

### Summary of Status of Respondents' Operations

Respondent Entity	Abbreviation	Borrower / Guarantor	Business <sup>1</sup>	Leased / Owned Real Property Address <sup>2</sup>	Status
Index Holding Group Inc.	IHG	Borrower	Holding company that owns each entity in the Index Group	2686 Slough Street, Mississauga, Ontario	IHG manages the business of the Index Group through a manager that oversees the operations of the restaurants and an external accountant. Muqheet is the directing mind of the Index Group and manages all franchising, leasing, construction, banking and cash management matters and strategy for the Index Group.
<b><i>Popeye's</i></b>					
Index Foods Inc.	IFI	Guarantor	IFI Whitby Popeye's	965 Dundas St W, Whitby, Ontario	Operating.
Index International Inc.	III	Guarantor	III Whitby Popeye's	1525 Dundas St, Whitby, Ontario	Operating.
2700774 Ontario Inc.	2700774	Guarantor	Oshawa Popeye's	22 Stevenson Rd, Oshawa, Ontario	Operating.
11030418 Canada Inc.	11030418	Guarantor	110 Whitby Popeye's	72 Baldwin St N, Whitby, Ontario	Closed because rent has not been paid current. The landlord changed the locks and posted a lease termination notice at the location dated April 10, 2023.

<sup>1</sup> The names listed in this column are used as defined terms in body of the Affidavit.

<sup>2</sup> All real property is leased other than the 421 Real Property and the 425 Real Property.



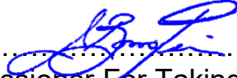
<b>Respondent Entity</b>	<b>Abbreviation</b>	<b>Borrower / Guarantor</b>	<b>Business<sup>1</sup></b>	<b>Leased / Owned Real Property Address<sup>2</sup></b>	<b>Status</b>
2700767 Ontario Inc.	2700767	Guarantor	Nappanee Popeye's	9 Jim Kimmett Blvd, Nappanee, Ontario	Closed because of insufficient staff and because rent has not been paid current. The lease has been terminated. Discussions on-going with the landlord to reopen the restaurant once sufficient staff is in place.
2723710 Ontario Inc.	2723710	Guarantor	None Formerly Liberty Popeye's	None Formerly located 165 E Liberty Street, Toronto, Ontario	Formerly operated a Popeye's restaurant. A fire occurred at the location around early March 2023 which destroyed CWB's collateral at the site. An insurance claim has been filed and the insurance company is investigating the claim. CWB is named as a loss payee on the insurance policy.
2683960 Ontario Ltd.	2683960	Guarantor	None Formerly Uxbridge Popeye's	None Formerly located N/A2 Douglas Rd, Uxbridge, Ontario	Formerly operated a Popeye's restaurant. On October 7, 2022, the landlord terminated the lease for non-payment of rent. 2683960 failed to remove its assets from the premises. On February 28, 2023, 2683960 sold all of its assets located on the premises to the landlord for \$35,000 plus applicable taxes. The entire amount was paid by the landlord to CWB.
2737332 Ontario Inc.	2737332	Guarantor	None	None	Formerly operated a Popeye's restaurant.

<b>Respondent Entity</b>	<b>Abbreviation</b>	<b>Borrower / Guarantor</b>	<b>Business<sup>1</sup></b>	<b>Leased / Owned Real Property Address<sup>2</sup></b>	<b>Status</b>
			Formerly Dufferin Popeye's	Formerly located at 900 Dufferin Street, Toronto, Ontario	The assets in connection with the business were sold on February 28, 2023.
2737334 Ontario Inc.	2737334	Guarantor	None  Formerly Sheppard Popeye's	None  Formerly located at 674-676 Sheppard Ave W, Toronto, Ontario	Formerly operated a Popeye's restaurant.  The assets in connection with the business were sold on February 28, 2023.
2723714 Ontario Inc.	2723714	Guarantor	None  Formerly Newcastle Popeye's	None  Formerly located at 3005 ON-115 Newcastle, Ontario	Formerly operated a Popeye's restaurant. The assets in connection with the business were sold around April 2021.
2718366 Ontario Inc.	2718366	Guarantor	None  Formerly 181 Dundas Popeye's	None  181 Dundas, London, Ontario	Formerly operated a Popeye's restaurant. The assets in connection with the business were sold around October 2020.
2737338 Ontario Inc.	2737338	Guarantor	None	None	Planned to develop a restaurant at a site to be determined.
Index Group of Companies Inc.		Guarantor	None  Formerly Clarke Road Popeye's	None  Formerly located at 395 Clarke Rd, London, Ontario	Formerly operated a Popeye's restaurant. The assets in connection with the business were sold around October 2020.

Respondent Entity	Abbreviation	Borrower / Guarantor	Business <sup>1</sup>	Leased / Owned Real Property Address <sup>2</sup>	Status
2640179 Ontario Inc.	2640179	Guarantor	None  Formerly Sandhurst Popeye's	None  Formerly located at 1571 Sandhurst Circle, Toronto, Ontario	Formerly operated a Popeye's restaurant. The assets in connection with the business were sold on or about April 20, 2022.
<b>Denny's</b>					
11030434 Canada Inc.	11030434	Guarantor	Burlington Denny's	1200 Brant Street, Burlington, Ontario	Operating.
2775290 Ontario Inc.	2775290	Guarantor	Brantford Denny's	195 Henry St. Brantford, Ontario	Operating.
2723716 Ontario Inc.	2723716	Guarantor	None  Formerly planned location for Woodbine Denny's	8502 Woodbine Avenue, Markham, Ontario	Construction site initially planned for a Denny's restaurant. Zoning prohibits locating a restaurant at the site. No construction activity is taking place. The lease has been or will be terminated.
2790760 Ontario Ltd.	2790760	Guarantor	None  Planned location for Newmarket Denny's	17725 Yonge Street, Newmarket, Ontario	Site planned for a Denny's restaurant (" <b>Newmarket Denny's</b> "). The Index Group has invested approximately \$1 million in construction costs for the site but does not have funding to complete construction. Index Group expects an additional \$300,000 and 8-10 weeks of work would be required to complete the site.

<b>Respondent Entity</b>	<b>Abbreviation</b>	<b>Borrower / Guarantor</b>	<b>Business<sup>1</sup></b>	<b>Leased / Owned Real Property Address<sup>2</sup></b>	<b>Status</b>
2775296 Ontario Inc.	2775296	Guarantor	None  Planned location for Rexdale Denny's	445 Rexdale Blvd, Etobicoke, Ontario	Site is planned for a Denny's restaurant. Landlord improvements are underway.
<b><i>Real Property Owners</i></b>					
421 Wharncliffe Ltd.	421 Wharncliffe	Guarantor	None	421 Wharncliffe Road South, London, Ontario	A City of London by-law was enacted approving demolition by the municipality of the partially destroyed building located on the 421 Real Property and to return the premises to a graded and levelled condition at the owner's expense. As of April 18, 2023, the property has been returned to a vacant lot.
425 Wharncliffe Road Inc.	425 Wharncliffe	Guarantor	Landlord to a single commercial tenant	425 Wharncliffe Road South, London, Ontario	Lease is active and tenant is paying rent.

This is **Exhibit "B"** referred to in the affidavit of Tyson Hartwell, sworn before me by videoconference on April 27, 2023 in accordance with O.Reg. 431/20: Administering Oath or Declaration Remotely. The deponent was located in the City of Calgary in the Province of Alberta and I was located in the City of Toronto in the Province of Ontario.



.....  
A Commissioner For Taking Affidavits

Jeremy Bornstein  
LSO#: 65425C

Bill No. 364  
2022

By-law No.

A by-law to approve the potential demolition of abandoned buildings with municipal addresses of 421 Wharncliffe Road South, 254 Hamilton Road, and 7234 Littlewood Drive under the Property Standards provisions of the *Building Code Act*.

WHEREAS subsection 5(3) of the *Municipal Act, 2001* provides that a municipal power shall be exercised by by-law;

AND WHEREAS section 15.1(3) of the *Building Code Act* provides that the council of a municipality may pass a by-law to require property that does not conform with the standards to be repaired and maintained to conform with the standards or the site to be cleared of all buildings, structures, debris or refuse and left in graded and levelled condition;

AND WHEREAS Council has passed Property Standards By-law CP-16 that requires owners of property that does not conform to the standards of the by-law to repair and maintain the property to conform with the standards of the by-law or to clear it of all buildings, structures, debris or refuse and left in a graded and levelled condition;

AND WHEREAS section 15.2(2) of the *Building Code Act* provides that an officer who finds that a property does not conform with the standards prescribed in the Property Standards By-law may make an order giving reasonable particulars of the repairs to be made or stating that the site is to be cleared of all buildings, structures, debris or refuse and left in a graded and levelled condition;

AND WHEREAS section 15.4 of the *Building Code Act* provides that, if an order of an officer under section 15.2(2) is not complied with in accordance with the order as deemed confirmed or as confirmed or modified by the committee or a judge, the municipality may cause the property to be repaired or demolished accordingly;

AND WHEREAS section 15.4(3) of the *Building Code Act* provides that a municipal corporation or a person acting on its behalf is not liable to compensate the owner, occupant or any other person by reason of anything done by or on behalf of the municipality in the reasonable exercise of its powers under subsection (1);

AND WHEREAS section 15.4(4) of the *Building Code Act* provides that the municipality shall have a lien on the land for the amount spent on the repair or demolition under subsection (1) and the amount shall have priority lien status as described in section 1 of the *Municipal Act, 2001*;

AND WHEREAS Council passed By-law A.-6554-211 to adopt a Policy whereby, in the event a confirmed Property Standards Order is not complied with, the City's Manager of By-law Enforcement shall not cause the property to be demolished unless he or she has reported to Council setting out the reasons for the proposed demolition and Council has passed a by-law approving of the proposed demolition;

AND WHEREAS a property standards order has not been complied with in accordance with the order as deemed confirmed or as confirmed or modified by the committee or a judge;

AND WHEREAS the City's Chief Municipal Law Enforcement Officer has reported to Council setting out the reasons for the proposed demolition;

AND WHEREAS Municipal Council wishes to cause the property to be demolished;

NOW THEREFORE the Municipal Council of The Corporation of the City of London enacts as follows:

1. The potential demolition of the abandoned buildings in the City of London (listed below) is approved and the properties may be cleared of all identified buildings, structures, debris, and refuse and left in a graded and levelled condition in accordance with the *City of London Property Standards By-law* and the *Ontario Building Code Act*. The municipal addresses of the properties are:

- 421 Wharncliffe Road South
- 254 Hamilton Road
- 7234 Littlewood Drive

2. This by-law shall come into force and effect on the day it is passed.


PASSED in Open Council on October 17, 2022

Ed Holder  
Mayor

Michael Schulthess  
City Clerk

First reading – October 17, 2022  
Second reading - October 17, 2022  
Third Reading - October 17, 2022

This is **Exhibit "C"** referred to in the affidavit of Tyson Hartwell, sworn before me by videoconference on April 27, 2023 in accordance with O.Reg. 431/20: Administering Oath or Declaration Remotely. The deponent was located in the City of Calgary in the Province of Alberta and I was located in the City of Toronto in the Province of Ontario.



.....  
A Commissioner For Taking Affidavits

Jeremy Bornstein  
LSO#: 65425C



June 11, 2020

Abdul Muqet  
110 Herdwick Street  
Brampton, Ontario  
L6R 0N7

**Re: Financing Proposal for Popeyes Ontario Locations**

We are pleased to advise you that the Proposal dated May 22, 2020 has been credit approved. All terms and conditions of the proposal are as stated, with the following exceptions, and remain subject to documentation satisfactory to you and Canadian Western Bank ("CWB").

**BORROWER:** Index Holding Group Inc. (the "Borrower")

**SECURED CORPORATE GUARANTORS:**

1. Index Group of Companies Inc. / 395 Clarke Road, London
2. Index International Inc. / 1525 Dundas St, Whitby
3. Index Foods Inc. / 965 Dundas St W, Whitby
4. 2640179 Ontario Inc. / 1571 Sandhurst Circle, Toronto
5. 11030434 Canada Ltd. / 323 Caradoc St S., Strathroy
6. 2707774 Ontario Inc. / 22 Stevenson Rd, Oshawa
7. 2700767 Ontario Inc. / Jim Kimmett Blvd, Napanee
8. 2683960 Ontario Ltd. / 2 Douglas Rd, Uxbridge
9. 11030418 Canada Inc. / 72 Baldwin St N, Whitby (Brooklin, new build opening 2020)
10. 2723710 Ontario Inc. / 165 E Liberty Street, Toronto (Liberty, new build opening 2020)
11. 2718366 Ontario Inc. / 181 Dundas St., London (Dundas new build opening 2020)
12. 2737332 Ontario Inc. / 900 Dufferin Street, Toronto, (Dufferin APA 2020)
13. 2737334 Ontario Inc. / 674-676 Sheppard Ave W, Toronto (Sheppard APA 2020)
14. 2723714 Ontario Inc. – TBD Site (placeholder co for future dev't)
15. 2723716 Ontario Inc. – TBD Site (placeholder co for future dev't)
16. 2737338 Ontario Inc. – TBD Site (placeholder co for future dev't)

**UNSECURED GUARANTORS:**

1. Abdul Muqet

**LOAN AMOUNT:** Up to \$9,050,000 or as follows:

1. A **Term Loan** of \$3,820,000.00 allocated as follows:
  - a) \$3,200,000 or 100% refinance amounts for of all bank debt, lines of credit under the Borrower and the Secured Corporate Guarantors; with any excess paid to Borrower as equity-out.
  - b) Approximately \$600,000 or 100% of the documented share buyback price for partners in 2640179 Ontario Inc. and Index Foods Inc., whichever is less;
  - c) A Financed Loan fee to CWB for \$20,000.
2. An **Acquisition Loan #1** of \$750,000 towards the documented Asset Purchase of Popeyes Sheppard (Vendor 1925770 Ontario), inclusive of a Finance Loan fee to CWB for \$7,000.
3. An **Acquisition Loan #2** of \$645,000 towards the documented Asset Purchase of Popeyes Dufferin (Vendor Al-Raaziq) inclusive of a Financed Loan fee to CWB for \$6,450.
4. **Project Term Loan** of \$1,910,000 or up to 85% of the new build costs, whichever is less, for the 3 sites identified under Secured Corporate Guarantors #9, 10, 11;

- a) funding to follow 50%/50% method
  - b) project budget to be received prior to first advance to confirm total acceptable build costs for each location
  - c) all draws are to be termed out into a single term reducing loan at final draw of the last build
5. **Development Line of Credit** (the "DLOC"): \$1,925,000 or up to 85% of costs for additional new or acquired Popeyes Locations, under Secured Corporate Guarantors #14, 15, 16 with sites TBD; which remain subject to CWB review and approval.

Each of the Term Loan, Acquisition Loan #1, Acquisition Loan #2, Project Term Loan, and DLOC, may from time to time be individually referred to as a "Loan" and are collectively called the "Loans".

**TERM/AMORTIZATION:**

1. Facilities 1, 2 & 3 - (60) Sixty month term, (96) Ninety-Six month amortization
2. Facilities 4 & 5 – co-terminus with Term Loan Facility (120), One hundred twenty month amortization

**SPECIAL CONDITIONS:** All funding is subject to CWB's satisfactory receipt of the following:

**PREFUNDING CONDITIONS**

1. **Insurance** Certificate showing Canadian Western Bank named as first loss payee and additional insured for the any existing operating location, including each of the 2 locations being acquired. During construction of any site under the Project Term Loan or DLOC, evidence of Builder's Risk coverage is to be provided; prior to the final draw permanent insurance will be required to CWB's requirements upon opening.
2. Executed **Lease Agreements**, extensions or assignments for 8 existing locations plus 2 locations being acquired (or written confirmation from the Landlord of transfer approval, with final assignment post-close). For funding of new builds and future sites under the Project Term Loan or DLOC, an Offer to Lease is acceptable for first funding, with final Lease Agreement upon opening.
3. Executed **Franchise Agreements** for 8 existing locations; 2 acquisitions and any site as funded under the Project Term Loan or DLOC. Written confirmation from Franchisor indicating approval for entity is acceptable if final Franchise Agreement may not be available.
4. **Franchisor Confirmation of Good Standing** in writing to be provided with respect to the 8 existing locations.
5. Assignment and Postponement of Creditors Claim (CWB form 1116) signed by the 18 parties as named below.
6. Receipt of Final accountant prepared FYE 2018 & 2019 statements for 2640179 Ontario Inc. (*draft on file*)
7. **Term Loan Facility #1** – funding will be to Borrower's counsel with an Escrow Agreement containing undertaking to payout and obtain discharges on all debt with RBC, BMO & Loop. CWB to receive and review all payout statements to ensure satisfactory.
8. **Term Loan Facility #1 – Shareholder Buyout** – funding will include proceeds for shareholder buyout on 2 sites; CWB to obtain a signed share purchase/share redemption agreement for each to be reviewed by in-house counsel and confirmed satisfactory;
  - Subject to approval, CWB will fund in escrow to Borrower's counsel for them to attend to closing;
  - Counsel to confirm post-close ownership is 100% on subject locations (2640179 Ontario Inc. and Index Foods Inc.); and provide evidence via updated shareholder registry.
9. **Acquisition Loans 1 & 2:** subject to CWB receipt of Executed Asset Purchase Agreements with applicable extensions for: (i) Popeyes Duffern (note Index Holding Group Inc. is named as purchase but to be amended to 2737332 Ontario Inc. on closing); (ii) Popeyes Sheppard (Index Holding Group Inc. is purchaser but will be amended to 2737334 Ontario Inc. on closing).
10. **Acquisition Loans 1 & 2:** CWB external Legal Counsel review of each APA agreements ahead of close for each transaction, with terms and provisions to our satisfaction as determined by Counsel.
11. **Acquisition Loans 1 & 2:** Borrower's counsel to act as Escrow Agent for APA purchases, with Escrow Agreement confirming funds released only upon satisfaction of prefunding conditions and at CWB's written approval. Conditions will include receipt of a payout statement from Vendors' lenders and confirmation to discharge on receipt of funds.
12. CWB's receipt or a Shareholder Registry for Borrower and other entities as may be required.
13. Any/all PPSA liens that rank ahead of CWB required to be discharged/waived unless CWB otherwise permits.
14. Borrower to provide confirmation that 2718366 Ontario is not tied to security – no GSA, no Guarantee- on its lending for the Real Property for same location under 2718359 Ontario/TD bank financing.

All monthly payments are to be made via pre-authorized payment (PAP)

All current or future loans between CWB and the Borrower(s), or any affiliated companies are to be cross-defaulted, cross-guaranteed and cross-collateralized.

**LOAN CLOSING DATE:** On or before July 31, 2020 for the Term Loan.

**SECURITY:** As outlined in the Proposal Letter.

**ASSIGNMENT AND POSTPONMENT OF CREDITOR CLAIM** Parties as follows:

1. Index Group of Companies Inc. (dba Popeye's Clarke Road, London)
2. Index International Inc. (dba Popeye's 1525 Dundas, Whitby)
3. Index Foods Inc. (dba Popeye's 965 Dundas, Whitby)
4. 2640179 Ontario Inc. (dba Popeye's Sandhurst, Toronto)
5. 11030434 Canada Ltd. (dba Popeye's Strathroy)
6. 2700774 Ontario Inc. (dba Popeye's Oshawa)
7. 2700767 Ontario Inc. (dba Popeye's Napanee)
8. 2683960 Ontario Ltd. (dba Popeye's Uxbridge)
9. 11030418 Canada Inc. (dba Popeye's Brooklin, Whitby)
10. 2723710 Ontario Inc. (dba Popeye's Liberty Street, Toronto)
11. 2718366 Ontario Inc. (dba Popeye's Dundas, London)
12. 2737332 Ontario Inc. (dba Popeye's Dufferin, Toronto)
13. 2737334 Ontario Inc. (dba Popeye's Sheppard, Toronto)
14. 2723714 Ontario Inc. (dba TBD New)
15. 2723716 Ontario Inc. (dba TBD New)
16. 2737338 Ontario Inc. (dba TBD New)
17. Abdul Sheikh (to be a 50% partner in one location, post close)
18. Abdul Muqet

**COMMITMENT EXPIRATION:** This commitment letter shall expire within 30 days of the date of this letter, if not accepted by Borrower prior thereto.

**INTEREST RATE & INSTALMENTS:**

**Term Loan, Acquisition Loan #1 & Acquisition Loan #2:** Fixed Rate, estimated at 5.50% per annum, calculated monthly, not in advance. Rate to be confirmed by CWB on the Loan Closing Date.

**DLOC + Project Term Loan:** Variable Rate: Prime + 2.50% per annum, calculated daily, not in advance. For reference purposes only, as June 2020, the Interest Rate would be 4.95%

**LOAN INSTALMENTS:** Loan instalments would consist of consecutive and equal payments of blended principal and interest. The amount of the Loan Instalments would be determined by Lender on the date of the disbursement based on the Interest Rate and would remain firm for the Loan Term. Loan installments would be payable in Canadian dollars, monthly in arrears, using electronic funds transfer, and subject to applicable taxes.

In order to preserve CWB's net economic return, CWB in its sole discretion may adjust the pricing at any time prior to any advance under the Loans to reflect: (a) changes in the pricing assumptions; (b) Change in CWB's funding index rate; (c) Tax law changes applicable to the Borrower; (d) General market conditions.

**PREPAYMENT:** as outlined in the Proposal Letter

**LOAN FEE:** as outlined in the Proposal Letter (with Project Term Loan at 1% of the loan as funded)

**COVENANTS AND FINANCIAL REPORTING:**



During the Term, within **120** days of the Borrower's fiscal year-end, the Covenant Parties are required to submit to CWB complete **Notice to Reader Consolidated/Combined** year-end financial statements for the Covenant Parties, as well as individual Notice to Reader year-end financial statements.

In addition, within **45** days of the Borrower's quarter-end, the Covenant Parties are required to submit to CWB internal Trailing-Twelve month financial statements.

Personal Guarantors are required to submit updated Personal Net Worth statements every 2 years (bi-annually).

**COVENANT PARTIES:** The Borrower and the Secured Corporate Guarantors (if location is open)

**COVENANTS:** Covenants are measured for the Covenant Parties based on the most recent financial results. Exact covenants to be determined during the underwriting process, however for indication typical covenants would include the following:

**(1) Fixed Charge Coverage Ratio, Pre-Compensation (FCCR-Pre):** As measured for the Covenant Parties on the last day of the Borrower's reporting period, the Covenant Parties must have a Pre-Compensation Consolidated FCCR equal to or greater than **1.30:1.0**.

*"Pre-Compensation Consolidated FCCR"* means, with respect to the 12-month period of time immediately preceding the date of determination, the ratio, calculated for the Covenant Parties for such time period, each as determined in accordance with GAAP, of: (i) the sum of net income, interest expense, income taxes, depreciation, amortization, and operating lease expenses (rent expense), and officers' salaries expensed on the income statement, plus or minus other non-cash adjustments or non-recurring items (as allowed by Lender); to (ii) the sum of operating lease expenses (rent expense, not including common area maintenance or property taxes), principal payments on long term debt, the current portion of all capital leases, and interest expense (excluding non-cash interest expense and amortization of non-cash financing expenses).

**(2) Fixed Charge Coverage Ratio, Post-Compensation (FCCR-Post):** As measured for the Covenant Parties on the last day of the Borrower's reporting period, the Covenant Parties must have a Post-Compensation Consolidated FCCR equal to or greater than **1.10:1.0**.

*"Post-Compensation Consolidated FCCR"* means, with respect to the 12-month period of time immediately preceding the date of determination, the ratio, calculated for the Covenant Parties for such time period, each as determined in accordance with GAAP, of: (i) the sum of net income, interest expense, income taxes, depreciation, amortization, and operating lease expenses (rent expense, not including common area maintenance or property taxes), plus or minus other non-cash adjustments or non-recurring items (as allowed by Lender), minus increases in officer or shareholder loan receivables and minus dividends or distributions not otherwise expensed on the applicable income statement(s); to (ii) the sum of operating lease expenses (rent expense, not including common area maintenance or property taxes), principal payments on long term debt, the current portion of all capital leases, and interest expense (excluding non-cash interest expense and amortization of non-cash financing expenses).

**(3) Funded Debt to EBITDA (Senior Leverage):** As measured for the Covenant Parties on the last day of the Borrower's reporting period, Consolidated Funded Debt to Consolidated EBITDA shall be equal to or less than **3.75:1.0**.

*"Consolidated Funded Debt"* is defined as the outstanding principal balance of all indebtedness of the Covenant Parties, including capital leases and the outstanding balances of any revolving lines of credit, as at the last day of the fiscal period being measured. *"Consolidated EBITDA"* is defined as the aggregate sum, for the 12-month period of time immediately preceding the last day of the fiscal period being measured, for the Covenant Parties, of all net income, interest expense, income taxes, depreciation, and amortization, but less non-recurring miscellaneous income and plus non-recurring miscellaneous expenses (as allowed by Lender), each as determined in accordance with GAAP.

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**DEVELOPMENT LINE OF CREDIT ("DLOC") AVAILABILITY AND REQUIREMENTS:**

**DLOC Amount:** Up to \$1,925,000 or a maximum of 85% of invoiced and acceptable costs.

**Term:** Co-terminus with the Term Loan Facility

**Draw Availability:** From and after the Loan Closing Date, the Borrower may request draws against the DLOC from time to time (each a "Draw").

Each draw is subject to CWB approval, determined by an incurrence test based on financial results on a trailing-twelve month basis of the Covenant Parties, before and after the requested Draw for the **full amount of the project**. The incurrence test for draw will be 25bps less than the Funded Debt to EBITDA covenant. Borrower is to provide a cost budget and P&L projection for any new build, acquisition, or renovation amounts for CWB's review and approval, along with an Offer to Lease, Legal name and shareholder structure for the proposed operating company.

- The **incurrence test** for draw will be **25bps less** than the Funded Debt to EBITDA covenant
- Borrower is to provide a cost budget and P&L projection for any new build, acquisition, or renovation amounts for CWB's review and approval, along with an Offer to Lease, Legal name and shareholder structure for the proposed operating company.
- Any newly created entities or locations that are funded under the DLOC are to be fully secured via Guarantee and first priority GSA.
- Borrower to provide fully executed Lease and Franchise agreements for any new Location, along with acceptable insurance when location opens; Contractor's insurance is required during construction.
- Draw requests shall be for a minimum amount of \$250,000 unless otherwise approved by Lender, and conditional upon satisfaction of the conditions precedent contained in the Commitment Letter (if approved) and the Security.
- The Borrower will be permitted to draw down on the Line a maximum of once every month unless otherwise agreed to by CWB.
- Borrower to provide invoice support for the requested Draw amount, with proof of payment of same to be provided.
- No draw shall exceed the then outstanding available balance under the DLOC.
- Conversion: The Draws will accumulate until the earlier of: i. The completion of the applicable new build or renovation project; or ii. The day that is six (6) months from the first Draw occurs, or the date of the most recent Conversion, as the case may be; at which time the principal balance of accumulated Draws will be converted (each a "Conversion") into an amortizing loan (each a "Loan").
- Interim Rate prior to Conversion: The Borrower shall pay CWB interest on such disbursed amounts from the date of the Draw to the date of Conversion to an amortizing Loan. Such interest will be computed daily and payable monthly at the daily equivalent **Prime +2.50bps**. On the Conversion Date, CWB shall disburse the remainder of the Loan Amount, if applicable; to the Borrower and the selected Fixed or Floating Rate shall apply to the Loan thereafter.
- All Draws on the Development Line are to be cross-defaulted, cross-guaranteed and cross-collateralized with all outstanding CWB debt;
- The existence of this Development Line will not limit Borrower's ability to seek additional financing from CWB.
- Development Line availability is subject to no Material Changes to the Borrower.
- Unused portion of the Development Line is suspended upon any form of default.
- The DLOC will be available for a period of Twenty-Four (24) months from the date of a Commitment Letter (if approved), and continuance of the DLOC will be reviewed by the Lender on an annual basis, subject to the Lender's sole discretion.

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**EVENTS of DEFAULT:** Events of Default will include, but will not be limited to: (a) failure to make timely payment of any amount owing to CWB; (b) failure to maintain in full force the required insurance coverage (c) default under any Covenants, including failure to provide Financial Reporting as due at the required time (d) misrepresentation; (e) bankruptcy, insolvency, cessation of business, or appointment of trustee, receiver or similar official; (f) seizure of the equipment or other assets; (g) default on other material debt obligations; (h) the expiration, revocation or other termination of the Franchise Agreement(s) or the sale or other transfer of the security without the CWB's prior written consent; (i) the expiration, revocation or other termination of the Lease agreement(s) between the Borrower and its landlord(s), as applicable (j) change of ownership or control, amalgamation or dissolution; (k) material adverse change; (l) any of the above events occurring in respect of any Guarantors, persons controlling the Borrower, or affiliate of the Borrower.

**EQUIPMENT SUBSTANTIATION:** CWB will require copies of invoices for the Equipment. It is understood that such information will be provided by The Borrower or its suppliers. To reimburse The Borrower for invoices already paid, CWB will also require both a bank statement and copy of the cleared cheques.

**INSURANCE:** The Borrower will be responsible for maintaining in force property, liability and business interruption insurance with insurers and in amounts and coverage's satisfactory to CWB. Deductibles on any insurance must be less than CDN \$10,000. CWB will be identified on the Borrower's insurance policies as "First Loss Payee" for property and business interruption coverage and "Additional Insured" for liability coverage.

**MATERIAL CHANGES:** The obligation of CWB to close the transactions contemplated in this Commitment will be subject to satisfaction of the conditions precedent set forth in this Commitment issued in connection with the Proposal, or deemed appropriate by CWB and the following: CWB has determined that:

- a. No Material Adverse Effect (as hereinafter defined) has occurred since issuance of the proposal;
- b. All representations and warranties in the loan documentation are true and correct as of the closing;
- c. There are no facts or circumstances existing and not previously disclosed in writing to CWB with respect to the Borrower or any guarantor, the proposed collateral, the seller, if any, of such collateral, any other person representing or otherwise acting on behalf of The Borrower or any Guarantor, or the transaction that, in CWB judgment, are inconsistent in a material and adverse manner with any such information disclosed to CWB prior to issuance of the proposal that, if known at the time of issuance of the proposal, will have caused CWB not to issue the proposal;

"Material Adverse Effect" means any fact, event or circumstance that, alone or when taken with other events or conditions occurring or existing concurrently with such event or condition:

1. Has or could reasonably be expected to have a material adverse effect on the business, assets, operations, condition (financial or otherwise), or prospects of The Borrower or any Guarantor;
2. Materially impairs or could reasonably be expected to materially impair the ability of The Borrower or any Guarantor to pay and perform its obligations under the loan documentation to which it is a party;
3. Materially impairs or could reasonably be expected to materially impair the validity or enforceability of any loan documentation or the rights and remedies of CWB under any loan documentation; or
4. Has or is reasonably expected to have any material adverse effect on the proposed collateral, the existence or priority of CWB liens in the proposed collateral, the general availability and cost of credit to CWB or the market conditions with respect to the Property or Canada in general.

**You may indicate your acceptance of this Commitment by executing this letter and returning it to my attention. If you have any questions regarding this matter, please feel free to contact me.**

Sincerely,



Trish Halliwell  
Account Manager - Restaurants, CWB Franchise Finance  
Phone: T. 289-998-0276 / C. 647-465-7752

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The above terms and conditions are hereby agreed to and accepted this 12 day of June, 2020.

**INDEX HOLDING GROUP INC.**

By: Randall [Signature]

Title: President

This is **Exhibit “D”** referred to in the affidavit of Tyson Hartwell, sworn before me by videoconference on April 27, 2023 in accordance with O.Reg. 431/20: Administering Oath or Declaration Remotely. The deponent was located in the City of Calgary in the Province of Alberta and I was located in the City of Toronto in the Province of Ontario.



.....  
A Commissioner For Taking Affidavits

Jeremy Bornstein  
LSO#: 65425C



**CANADIAN WESTERN BANK**  
2000 Argentia Rd., PLAZA 1, Ste. 300  
Mississauga, Ontario L5N 2R7

**EQUIPMENT LOAN AND  
SECURITY AGREEMENT**

**CLIENT: INDEX HOLDING GROUP INC.**

**ADDRESS:** 110 Herdwick Street  
Brampton, Ontario L6R 0N7

**CONTACT: Abdul Muqet**  
Tel.: 647-771-0762

**COLLATERAL**

All present and after-acquired personal property (as such term is defined in accordance with the applicable personal property laws in the jurisdiction where the personal property is located) of the Client used in the operations of its business, and the proceeds therefrom, all as more specifically described in this Agreement and the security agreement given by the Client to the Lender as contemplated by this Agreement.

**FACILITY #1 - INITIAL TERM LOAN**

Initial Term Loan to be used to refinance existing debt by Client and Corporate Guarantors, a shareholder buyout, partial shareholder loan paydown and financed fees.

FINANCED AMOUNT	FINANCING RATE	INSTALMENTS
Amount Advanced: \$ 3,800,000.00 CAD	Fixed Rate	Instalments: See Schedule A
Insurance Premium: +		Instalment date: See Schedule A
Financing fees: 20,000.00 +		Frequency: monthly
<b>Financed Amount: \$ 3,820,000.00 = CAD</b>		Number of Instalments: See Schedule A
		First Instalment date: See Schedule A
		Original Term: 60 months

**FACILITY #2 – ACQUISITION TERM LOAN - Sheppard**

Term Loan towards Asset Purchase #1 of Popeyes Sheppard

FINANCED AMOUNT	FINANCING RATE	INSTALMENTS
Amount Advanced: \$ 679,000.00 CAD	Fixed Rate	Instalments: See Schedule A
Insurance Premium: +		Instalment date: See Schedule A
Financing fees: 7,000.00 +		Frequency: monthly
<b>Financed Amount: \$ 686,000.00 = CAD</b>		Number of Instalments: See Schedule A
		First Instalment date: See Schedule A
		Original Term: Co-terminus to Original Term

**FACILITY #3 – ACQUISITION TERM LOAN - Dufferin**

Term Loan towards Asset Purchase #2 of Popeyes Dufferin

FINANCED AMOUNT	FINANCING RATE	INSTALMENTS
Amount Advanced: \$ 638,550.00 CAD	Fixed Rate	Instalments: See Schedule A
Insurance Premium: +		Instalment date: See Schedule A
Financing fees: 6,450.00 +		Frequency: monthly
<b>Financed Amount: \$ 645,000.00 = CAD</b>		Number of Instalments: See Schedule A
		First Instalment date: See Schedule A
		Original Term: Co-terminus to Original Term

*Am*





**FACILITY #4 – PROJECT TERM LOAN**

Project term loan to be used towards 85% of the costs for 3 new build sites in 2020

FINANCED AMOUNT	FINANCING RATE	INSTALMENTS
Amount Advanced: \$1,910,000.00 CAD	Variable Rate:	Instalments: See Schedule A
Insurance Premium: +	Prime Rate plus 2.50% per annum	Instalment date: See Schedule A
Financing fees: +		Frequency: monthly
		Number of Instalments: See Schedule A
<b>Financed Amount: \$1,910,000.00 = CAD</b>		First Instalment date: See Schedule A
		Original Term: See Schedule A

**FACILITY #5 – DEVELOPMENT LINE OF CREDIT**

Development Line of Credit to be used towards 85% of the costs for 3 "to be determined" new build sites in 2021

FINANCED AMOUNT	FINANCING RATE	INSTALMENTS
Amount Advanced: \$1,925,000.00 CAD	Variable Rate:	Instalments: See Schedule A
Insurance Premium: +	Prime Rate plus 2.50% per annum	Instalment date: See Schedule A
Financing fees: +		Frequency: monthly
		Number of Instalments: See Schedule A
<b>Financed Amount: \$1,925,000.00 = CAD</b>		First Instalment date: See Schedule A
		Original Term: See Schedule A

**ADDITIONAL PROVISIONS**

Each of the following Schedules form an integral part of this Agreement:

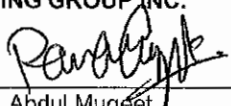
- Schedule "A" – Provisions
- Schedule "B" – Request for Advance
- Schedule "C" – Acknowledgement of Receipt of Financed Amount
- Schedule "D" – Conditions Precedent
- Schedule "E" – Terms and Conditions

In consideration of the Facility #1 Initial Term Loan, Facility #2 Acquisition Term Loan, Facility #3 Acquisition Term Loan, Facility #4 Project Term Loan and Facility #5 Development Line of Credit (collectively, the "Loan") made or to be made by Lender to Client in the amounts specified under the headings "Financed Amount" above, the receipt of which Client hereby acknowledges, Client acknowledges itself indebted and promises to repay to Lender the Obligations. Client also acknowledges that it has agreed to grant to Lender a security interest in the Collateral to secure repayment of the Obligations on the terms and conditions set forth above, on all applicable schedules and other attachments hereto, all of which terms and conditions form part of this Agreement.

IN WITNESS WHEREOF, the parties hereto have executed this Equipment Loan and Security Agreement at Brampton, Ontario this June 23, 2020.

**INDEX HOLDING GROUP INC.**

("Client")

By:   
 Name: Abdul Muqees  
 Title: Director

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

**CANADIAN WESTERN BANK**

("Lender")

By:   
 Name: Wendy Black  
 Title: Sr. Documentation Specialist

By:   
 Name: Trish Halliwell  
 Title: Senior Manager, Restaurants

SIGNATURE OF AUTHORIZED OFFICERS

SIGNATURE OF AUTHORIZED OFFICERS

## SCHEDULE A PROVISIONS

This SCHEDULE A is an integral part of the EQUIPMENT LOAN AND SECURITY AGREEMENT executed at Brampton, Ontario this 23 day of June, 2020.

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The following provisions are in addition to, and shall be deemed to form part of, the terms and conditions of this Agreement. Capitalised terms not defined herein shall have the meanings set forth in the terms and conditions schedule attached as Schedule "E" to this Agreement.

**"Advance"** means any advance in respect to the Financed Amount made by Lender to Client hereunder.

**"Closing Date"** means each of the respective advance dates for Facility #1, Facility #2 and Facility #3.

**"Corporate Guarantor"** means Index Group Of Companies Inc., Index International Inc., Index Foods Inc., 2640179 Ontario Inc., 11030434 Canada Ltd., 2700774 Ontario Inc., 2700767 Ontario Inc., 2683960 Ontario Ltd., 11030418 Canada Inc., 2723710 Ontario Inc., 2718366 Ontario Inc., 2737332 Ontario Inc., 2737334 Ontario Inc., 2723714 Ontario Inc., 2723716 Ontario Inc. and 2737338 Ontario Inc. and any New Entity.

**"Covenant Parties"** means, collectively, the Client, Corporate Guarantors and any New Entity as determined by Lender from time to time.

**"Effective Date"** means the date on which the conditions precedent set out in Schedule "D" of this Agreement have been satisfied and an Advance is made by the Lender under Facility #1 – Initial Term Loan.

### FACILITY #1

**"Initial Term Loan"** means the **Facility #1** portion of the Loan that is a committed, non-revolving loan facility, in the maximum principal amount that is **\$3,820,000.00** as follows:

- (a) \$3,200,000.00 or 100% towards the refinance of all bank debt, lines of credit under the Client and any Secured Corporate Guarantors with any excess paid to Client as equity out for renovations/upgrades at two (2) locations;
- (b) \$600,000.00 or 100% of the documented share buyout price for partners in Index Foods Inc. and partial shareholder loan paydown for 2640179 Ontario Inc. whichever is less;
- (c) \$20,000.00 financed CWB loan fee

as more particularly set forth in the section entitled **"Advances Under the Facility #1 - Initial Term Loan"** below.

**"Initial Term Loan Instalments"** has the meaning set forth in the section entitled **"Advances under the Facility #1- Initial Term Loan"** below.

**"Original Term"** has the meaning set forth in the section entitled **"Facility #1 - Initial Term Loan Financing Rate and Instalments"** below.

### FACILITY #2 and FACILITY #3

**"Facility #2 – Acquisition Term Loan"** means the Loan that is a committed, non-revolving loan facility, in the maximum principal amount of **\$686,000.00** CAD to be used to towards:

- (a) the documented Asset Purchase of Popeyes Louisiana Kitchen located at 674-676 Sheppard Ave. W., Toronto, Ontario and
- (b) \$7,000.00 financed CWB Loan fee

as more particularly set forth in the section entitled **"Advances Under the Facility #2 – Acquisition Term Loan & Facility #3 – Acquisition Term Loan"** below.

**"Facility #3 - Acquisition Term Loan"** means the Loan that is a committed, non-revolving loan facility, in the maximum principal amount of **\$645,000.00** CAD to be used towards:

- (a) the documented Asset Purchase of Popeyes Louisiana Kitchen located at 900 Dufferin St., Toronto, Ontario and
- (b) \$6,450.00 financed CWB Loan fee

as more particularly set forth in the section entitled "**Advances Under the Facility #2 – Acquisition Term Loan & Facility #3 – Acquisition Term Loan**" below.

"**Facility #2 and #3 Term**" has the meaning set forth in the section entitled "**Facility #2 – Acquisition Term Loan & Facility #3 – Acquisition Term Loan Financing Rate and Instalments**" below.

"**Facility #2 and Facility #3 Term Loan Installments**" has the meaning set forth in the section entitled "**Advances under the Facility #2 – Acquisition Term Loan and Facility #3 Acquisition Term Loan**" below.

#### **FACILITY #4**

"**Facility #4 – Project Term Loan**" means the Loan that is a committed, non-revolving loan facility, in the maximum principal amount of **\$1,910,000.00** CAD or up to 85% of the new build costs, whichever is less, for i) Popeyes Louisiana Kitchen located at 72 Baldwin St. N. Whitby, ON., ii) Popeyes Louisiana Kitchen located 165 E.Liberty Street, Toronto, ON., and iii) Popeyes Louisiana Kitchen located at 181 Dundas St., London, ON., as more particularly set forth in the section entitled "**Advances Under the Facility #5 - Project Term Loan**" below.

"**Facility #4 Term**" has the meaning set forth in the section entitled "**Facility #4 – Project Term Loan Financing Rate and Instalments**" below.

"**Facility #4 Term Loan Installments**" has the meaning set forth in the section entitled "**Advances under the Facility #4 - Project Term Loan**" below.

#### **FACILITY #5**

"**Development Line of Credit**" or "**DLOC**" means the portion of the **Facility #5** Financed Amount that is a committed, non-revolving loan facility, in the maximum principal amount of Cdn \$1,925,000.00 or 85% of documented costs for 3 new build sites to be determined and approved by Lender, whichever is less.

"**DLOC Advance**" means any Advance made under the DLOC.

"**DLOC Advance Accrued Interest**" has the meaning set forth in the section entitled "Advances Under the Development Line of Credit" below.

"**DLOC Advance Financing Rate**" has the meaning set forth in the section entitled "Advances Under the Development Line of Credit" below.

"**DLOC Advance Instalment(s)**" has the meaning set forth in the section entitled "Advances Under the Development Line of Credit" below.

"**DLOC Term-Out Date**" has the meaning set forth in the section entitled "Advances Under the Development Line of Credit" below.

"**DLOC Term-Out Loan**" has the meaning set forth in the section entitled "Advances Under the Development Line of Credit" below.

"**Financed Amount**" provided in Section 1.1(n) of Schedule "E" to this Agreement is hereby replaced by: "Financed Amount" means the total amount advanced under all Loans or the total unpaid outstanding balance, as the context requires.

"**New Entities**" means any new legal entity to be formed which will be an Affiliate of Client (each new entity a "New Entity" and collectively referred to as "New Entities").

"**Original Term**" has the meaning set forth in the section entitled "**Facility #1 - Initial Term Loan Financing Rate and Instalments**" below.

“Personal Guarantor” means Abdul Muqeet.

“Sites” means any present or future location subject to a financing by the Lender and any location where Covenant Parties operates its business including, but not limiting the following Sites (each location a “Site” and collectively referred to as “Sites”):

Popeyes Louisiana Kitchen owned by and located:

OWNERSHIP	COLLATERAL SITES
Index Group of Companies Inc.	395 Clarke Rd., London, ON
Index International Inc.	4-1525 Dundas St. E., Whitby, ON
Index Foods Inc.	965 Dundas St. W. Whitby, ON
2640179 Ontario Inc.	1571 Sandhurst Circle, #106D, Toronto, ON
11030434 Canada Ltd.	323-275 Caradoc St. S., Strathroy, ON
2700774 Ontario Inc.	22 Stevenson Rd. S., Oshawa, ON
2700767 Ontario Inc.	9 Jim Kimmett Blvd., Napanee, ON
2683960 Ontario Ltd.	2 Douglas Rd., Uxbridge, ON
11030418 Canada Inc.	72 Baldwin St. N., Whitby, ON
2723710 Ontario Inc.	165 E. Liberty Street, Toronto, ON
2718366 Ontario Inc.	181 Dundas St., London, ON
2737332 Ontario Inc.	900 Dufferin St., Toronto, ON
2737334 Ontario Inc.	674-676 Sheppard Ave. W., Toronto, ON
2723714 Ontario Inc.	New Build #1 – To be determined
2723716 Ontario Inc.	New Build #2 – To be determined
2737338 Ontario Inc.	New Build #3 – To be determined

In the event Client requires the Facility #1 - Initial Term Loan, Facility #2 –Acquisition Term Loan or Facility #3 – Acquisition Term Loan (or any combination of them) to be advanced simultaneously, such requested Advance may be combined, provided that the sum of the total Advance or Advances made to the Client does not exceed the total of \$5,151,000.00 CAD and funds must be used for the purposes defined under each such Loan.

#### **PREPAYMENT FOR ALL FACILITIES:**

**Full:** Commencing 36 months after the Closing Date, upon 30-day prior notice to Lender, the Client will have the right to prepay all, but not less than all, of the outstanding balance of the Loan at any time during the remainder of the Loan Term provided the Client also pays all accrued interest and costs outstanding hereunder at the time of prepayment and liquidated damages determined as follows:

- The liquidated damages shall be three (3) months' interest calculated on the unpaid principal balance at the rate provided herein plus, if Loan is fixed, a prepayment charge equal to CWB's Unwinding Costs.

*“Unwinding Costs” means the costs the Bank incurs when a fixed rate loan is paid out early. The unwinding costs are based on an interest rate differential between the loan rate and the bid side yield for Government of Canada securities with the maturity as the loan, for the remaining term of the loan at the time of repayment.*

#### **PARTIAL PREPAYMENT - FACILITY #4 - PROJECT TERM LOAN and FACILITY #5 – DEVELOPMENT LINE OF CREDIT ONLY:**

**Partial:** Notwithstanding the terms of Section 2.2 of Schedule “E” to this Agreement, commencing 24 months after the Closing Date, upon 30-day prior notice to Lender, the Client will have the right to prepay up to 10% of the balance outstanding without Liquidated Damages.

#### **CLIENT'S GENERAL REPRESENTATIONS, WARRANTIES AND COVENANTS**

Section 27 of Schedule “E” to this Agreement is amended by replacing the last two sentences with the following:

“Client agrees to furnish Lender a copy of its annual accountant prepared notice to reader consolidated/combined financial statements for the Covenant Parties, as well as individual notice to reader year-end financial statements promptly upon availability and in any event within 120 days of each fiscal year-end. Client also agrees to furnish its internal Trailing-Twelve month quarterly financial statements for the Covenant Parties promptly upon availability and in any event within 45 days of each financial quarter-end

For greater certainty, the beginning of Section 27 of Schedule "E" to this Agreement remains unchanged.

#### **PERSONAL NET WORTH STATEMENTS – PERSONAL GUARANTORS**

Client hereby undertakes to obtain and furnish to Lender, on a bi-annually basis, a net worth statement from the Personal Guarantor within 120 days of the Client's fiscal year-end.

#### **UNDERTAKING: RIGHT TO TERMINATE MANAGEMENT AGREEMENT**

Client hereby (i) confirms that no management agreement is in place with respect of any of the Sites and (ii) undertakes to obtain Lender's consent prior to entering into any management agreement in respect of any Sites, which consent may be conditional upon obtaining a subordination and undertaking agreement from the manager. It is also agreed that should Lender consent, in its sole discretion, to such management agreement, the manager shall be approved by Lender.

#### **NEGATIVE PLEDGE ON THE FRANCHISE AGREEMENT**

Client hereby undertakes and agrees that it shall not assign any Franchise Agreement nor grant, create or cause to be created, any lien, including hypothecs, in or on any Franchise Agreement or agree or consent to any of the foregoing.

#### **LOAN FEES**

- a) Client shall pay to Lender a non-refundable Loan Fee of \$20,000.00, which is included in the Facility #1 - Initial Term Loan Financed Amount;
- b) Client shall pay to Lender a non-refundable Loan Fee of \$7,000.00, which is included in the Facility #2- Acquisition Term Loan Financed Amount;
- c) Client shall pay to Lender a non-refundable Loan Fee of \$6,450.00, which is included in the Facility #3- Acquisition Term Loan Financed Amount;
- d) Client shall pay to Lender a non-refundable Loan Fee of 1% of the total Advances made by Lender to Client under Facility #4 – Project Term Loan and Facility #5 - DLOC (collectively the "Loan Fees"), whether funded or not. For the purposes of paying the Loan Fee, Client agrees that Lender may, at its discretion, (i) deduct the Loan Fee (or any portion thereof) from the funds to be advanced to Client, and/or (ii) if Client provided a good faith deposit to Lender, Lender may retain the whole or portion of such good faith deposit in full or partial satisfaction thereof.

#### **ESCROW DISBURSEMENT**

The Financed Amount under Facility #1, Facility #2 and Facility #3 shall be disbursed in escrow at least ONE (1) business day prior to the closing date of any/each of Facility #1, Facility #2 or Facility #3 or date agreed upon by Client and Lender (the "Closing Date"). Client hereby acknowledges and agrees that said disbursement shall constitute the Effective Date and respective Closing Date.

#### **ADVANCES UNDER THE FACILITY #1 - INITIAL TERM LOAN**

##### **a. General**

Subject to the terms and conditions of this Agreement, the Lender agrees to make the Initial Term Loan available, on a non-revolving basis, to the Client which shall be disbursed on the Effective Date. After the Effective Date, any undrawn portion of the Initial Term Loan shall no longer be available.

The Initial Term Loan shall be made available on the Effective Date up to the principal amount of \$3,820,000.00 CDN as follows:

- (a) \$3,200,000.00 or 100% towards the refinance of all bank debt, lines of credit under the Client and any Secured Corporate Guarantors with any excess paid to Client as equity out for renovations/upgrades at two (2) locations;
- (b) \$600,000.00 or 100% of the documented share buyout price for partners in Index Foods Inc. and partial shareholder loan paydown for 2640179 Ontario Inc. whichever is less. For clarity, maximum of \$225,000.00 towards share buyout and maximum \$375,000.00 towards partial shareholder loan paydown.
- (c) \$20,000.00 financed CWB loan fee

The Client agrees that the Advance made under the Initial Term Loan shall become cross-collateralized, cross-defaulted and cross-guaranteed with all existing and future indebtedness, including other Advances and other loan agreements with the Client or any of the Corporate Guarantors.

The Initial Term Loan is a non-revolving credit facility and any repayments in whole or in part of the Initial Term Loan may not be re-borrowed or utilized again hereunder and shall not entitle the Client to obtain further Advances in respect of such amounts repaid.

**b. Manner of Borrowing the Initial Term Loan**

A request for an Advance under the Initial Term Loan shall be deemed to constitute a representation and warranty by the Client that, no Default or event that, with the lapse of time or the giving of notice or both, would constitute a Default, has occurred or is continuing.

**c. Initial Term Loan Financing Rate and Instalments**

The Initial Term Loan Advance shall bear interest at the Initial Term Loan Financing Rate, as defined below, from the Effective Date until the end of the Original Term. The Initial Term Loan Financing Rate **shall be determined on the Advance date ("Initial Term Loan Financing Rate")**. The Initial Term Loan shall be sixty (60) months from the Effective Date (the "**Original Term**"). The instalments in respect of Initial Term Loan Advance ("**Initial Loan Instalments**") shall consist of monthly consecutive and equal payments of blended principal and interest based on a ninety six (96) month amortization, with one final balloon payment at the end of the Original Term.

The Initial Term Loan Instalments shall be payable in CAD dollars, monthly in arrears, using pre-authorized payment electronic funds transfer, and subject to applicable taxes.

**d. Acknowledgment of Receipt and Confirmation of Indebtedness**

The Client hereby acknowledges and agrees that the Lender's books and records in any form relating to the Initial Term Loan and this Agreement, including as they may relate to any and all Obligations from time to time, shall constitute prima facie, conclusive evidence of all such Obligations.

**e. Security**

The Collateral and all other security and guarantee agreements granted to the Lender in relation to this Agreement is given as a general and continuing security for the payment and performance of the Obligations, including without limitation the Initial Term Loan Advance.

**ADVANCES UNDER FACILITY #2 – ACQUISITION TERM LOAN and FACILITY #3 – ACQUISITION TERM LOAN**

**a. General**

Subject to the terms and conditions of this Agreement, the Lender agrees to make the Facility #2 and Facility #3 loans available, on a non-revolving basis, to the Client. Any undrawn portion of the Facility #2 and Facility #3 Term Loans shall no longer be available.

The Client agrees that the Advances made under the Facility #2 and Facility #3 Loans shall become cross-collateralized, cross-defaulted and cross-guaranteed with all existing and future indebtedness, including other Advances and other loan agreements with the Client or any of the Guarantors or other Covenant Parties.

The Facility #2 and Facility #3 Loans are a non-revolving credit facility and any repayments in whole or in part in respect of the Facility #2 and Facility #3 may not be re-borrowed or utilized again hereunder and shall not entitle the Client to obtain further Advances in respect of such amounts repaid.

**b. Manner of Borrowing the Facility #2 – Acquisition Term Loan and Facility #3 – Acquisition Term Loan**

A request for an Advance under the Facility #2 and Facility #3 Loans shall be deemed to constitute a representation and warranty by the Client that, no Default or event that, with the lapse of time or the giving of notice or both, would constitute a Default, has occurred or is continuing.

**c. Facility #2 – Acquisition Term Loan and Facility #3 – Acquisition Term Loan Financing Rate and Instalments**

The Facility #2 and Facility #3 Loan Advance shall bear interest at the Facility #2 and Facility #3 Loan Advance Financing Rate, as defined below, from each respective Closing Date until the end of the Original Term. The Facility #2 and Facility #3 Loan Financing Rate **shall be determined on the Advance date (the "Facility #2 and Facility #3 Loan Financing Rate")**.

The term for the Facility #2 and Facility #3 Loans shall be co-terminus to the Original Term. The instalments in respect of Facility #2 and Facility #3 Term Loan Advance ("**Facility #2 and Facility #3 Loan Instalments**") shall consist of monthly consecutive and equal payments of blended principal and interest based on a ninety six (96) month amortization, with one final balloon payment at the end of each Original Term.

The Facility #2 and Facility #3 Loan Instalments shall be payable in CAD, monthly in arrears, using pre-authorized payment electronic funds transfer, and subject to applicable taxes.

**d. Acknowledgment of Receipt and Confirmation of Indebtedness**

The Client hereby acknowledges and agrees that the Lender's books and records in any form relating to the Facility #2 and Facility #2 Loans and this Agreement, including as they may relate to any and all Obligations from time to time, shall constitute prima facie, conclusive evidence of all such Obligations.

**e. Security**

The Collateral and all other security and guarantee agreements granted to the Lender in relation to this Agreement is given as a general and continuing security for the payment and performance of the Obligations, including without limitation the Advance in respect to Facility #2 and Facility #3 Loans.

**FINANCING RATE (FIXED) – FACILITY #1, FACILITY #2 and FACILITY #3**

Subject to availability of funds, Lender shall exercise its best efforts to obtain funds on a fixed rate basis acceptable to Client and Lender.

*For information purposes, as of June 16, 2020, Lender's fixed rate structure, based on the term of this Agreement is 5.50% p.a. however, it is subject to fluctuation up to and including the date of any Advance.*

**FACILITY #4 – PROJECT TERM LOAN**

**INTERIM LOANS**

The following sub-sections (a) to (f) will apply.

**a. General**

Subject to the terms and conditions contained in this Agreement, Lender may agree, in its sole discretion to make an interim loan or interim loans to Client which loan amounts will be disbursed as partial advances of the total amount to be advanced under Facility #4 upon request by Client and shall form part of the Obligations secured hereunder (**interim loan and interim loans to be collectively called, the "Interim Loan"**). The Interim Loan shall be available until the earliest of (i) disbursement by Lender of the total amount to be advanced under Facility #4 (ii) the date that is six (6) months from the first Advance Date under Facility #4, or (iii) such other date mutually agreed upon by Client and Lender (such earliest date hereafter referred to as "**Facility #4 Closing Date**"). Without in any way derogating from the un-committed nature of the Interim Loan, Lender shall have no obligation whatsoever to make an Interim Loan: (a) which is less than \$100,000; (b) which is within thirty (30) days of any previous Interim Loan having been made; (c) if a Default or event that, with the lapse of time or the giving of notice or both, would constitute a Default, has occurred or is continuing; or (d) if any condition precedent to funding is not satisfied or ceases to be satisfied, in Lender's sole judgment.

**b. Manner of Borrowing of the Interim Loans**

Client shall give Lender at least ten (10) business days' notice by sending a request for advance of loan proceeds in the form attached hereto as Schedule B (**the "Request"**). If required by Lender, the Request shall be accompanied by a copy of the invoices for Equipment to be paid from the proceeds of the Interim Loan. Each Request shall be deemed to constitute a representation and warranty by Client that as at the date of the Request, no Default or event that, with the lapse of time or the giving of notice or both, would constitute a Default, has occurred or is continuing. Subject to the conditions stated in this Agreement and when required by Lender, upon receipt from Client of proof acceptable to Lender that such invoices were paid by Client, Lender will disburse the amounts set out in the Request to Client.

**c. Interim Loan Financing Rate and Instalments**

Notwithstanding the Financing Rate, each Interim Loan shall bear interest at the Interim Loan Financing Rate, as defined below, from each Advance Date to the Facility #4 Closing Date. The Interim Loan Financing Rate shall be equal to the **Prime Rate plus 2.50%** per annum ("Interim Loan Financing Rate").

From the Advance Date of each Interim Loan to the Facility #4 Closing Date, each Interim Loan Instalment, as defined below, shall consist of interest only payments payable monthly in arrears starting on the month following the disbursement of the Interim Loan ("Interim Loan Instalment(s)"). Unless otherwise agreed by the parties, the Interim Loan Instalments are due each month on the same calendar day, which will be the same calendar day: (i) as the day that the Loan Instalment was disbursed or (ii) the day of the first Advance under first Interim Loan. The Interim Loan Instalment shall be payable to Lender by electronic fund transfer. The Interim Loan Instalments shall be consecutive payments of interest only. The amount of the Interim Loan Instalments for each Interim Loan shall be determined by Lender on the date of disbursement of each Interim Loan based on the Interim Loan Financing Rate, subject to an adjustment calculated at the Facility #4 Closing Date commencing from the first Instalment date, to reflect monthly fluctuations in the Prime Rate.

For the purposes of the Interim Loans, the following terms are amended as follows:

- (a) the term "Instalments" provided in Section 1.1 (t) of Schedule "E" of this Agreement shall include the Interim Loan Instalments;
- (b) the term "Financing Rate" provided in Section 1.1 (o) of Schedule "E" of this Agreement shall include the Interim Loan Financing Rate.

**d. Payment of Interim Loan - Principal and Interest**

At the Facility #4 Closing Date, the amount of all outstanding Interim Loan principal balances shall be deemed to form part of the Obligations. The terms applicable to the Facility #4 Financed Amount shall apply to the Interim Loan as if they were advanced to Client as part of the Facility #4 Financed Amount. The total amount of all Advances made under each Interim Loan shall bear interest from the Facility #4 Closing Date at the Financing Rate.

If any, the outstanding accrued interest resulting from the Interim Loan ("Interim Loan Accrued Interest") shall be due and payable on the Facility #4 Closing Date. Client authorizes Lender to debit the Interim Loan Accrued Interest from its banking account on the Facility #4 Closing Date. Client acknowledges that the Interim Loan Accrued Interest forms part of the Obligations.

For clarification, the amount of each Interim Loan shall not in any way increase the amount that Lender has agreed to make available to Client as part of the Facility #4 Financed Amount.

Client shall pay on demand any amount outstanding in excess of the amount that Lender has agreed to make available to Client under this Agreement, including without limitation the Interim Loan Accrued Interest, fees and expenses. Nothing herein shall be construed to require Lender to advance any funds to or on behalf of Client at any time, including on the Facility #4 Closing Date, if a Default or event that, with the lapse of time or the giving of notice or both, would constitute a Default, has occurred or is continuing.

**e) Acknowledgment of Receipt and Confirmation of Indebtedness**

The receipt of the total amount that Lender has agreed to make available to Client under the Facility #4 Financed Amount and, as Lender "may see fit, of each Advance shall be evidenced and acknowledged by Client in writing, in the form attached hereto as Schedule C. Client hereby acknowledges and agrees that notwithstanding the foregoing, Lender's books and records in any form relating to this Agreement, including as they may relate to any and all Obligations thereunder from time to time, shall constitute prima facie, conclusive evidence of all such Obligations.

**f) Security**

The Collateral and all other security and guarantee agreements granted to Lender in relation to this Agreement is given as a general and continuing security for the payment and performance of the Obligations, including without limitation the Facility #4 Interim advances.

**FACILITY #4 - TERM, INSTALMENTS AND FINANCED AMOUNT AMORTIZATION**

Facility #4 Project Term Loan shall be repaid in Instalments consisting of monthly consecutive and equal payments of blended principal and interest based on an amortization period specified as follows:

(i) Instalments shall be co-terminus with the Facility #1 - Initial Term Loan based on a one-hundred-and-twenty (120) month amortization, with one final balloon payment at the end of the Original Term;



All Instalments shall be payable in CAD, monthly in arrears, using pre-authorized payment electronic funds transfer, and subject to applicable taxes.

## **FACILITY #5 – DEVELOPMENT LINE OF CREDIT**

### **ADVANCES UNDER THE DEVELOPMENT LINE OF CREDIT**

The following sub-sections (a) to (f) will apply to the Development Line of Credit only

#### **a. General**

Subject to the terms and conditions contained in this Agreement, Lender agrees to make the Development Line of Credit available, on a non-revolving basis, to Client and to be disbursed on or prior to the earlier of: (i) the end of the 24 month period beginning on the date on the face hereof or (ii) the date on which Lender advises Client in writing that it is not satisfied with the results of the most recent annual review relating to Client and that Lender will no longer make available any further Advances under the Development Line of Credit (the "**DLOC Availability Period**"). After the DLOC Availability Period, any undrawn portion of the Development Line of Credit shall no longer be available.

The Development Line of Credit shall be made available by way of multiple Advances. Each Advance shall be in a minimum amount of \$250,000.00 and funded to a maximum of 85% of acceptable costs. Any such Advance that Lender agrees to make shall be subject to the terms and conditions of this Agreement and shall be subject to Lender's consent in its sole discretion. Each DLOC Advance shall be termed out (each a "**DLOC Term-Out Loan**") on or prior to the earlier of: (a) completion of the applicable new build, expansion, acquisition and renovation project or (ii) the date that is 6 months from the immediately preceding DLOC Advance (or 6 months from the first DLOC Advance in the case of the first DLOC Advance) (each a "**DLOC Term-Out Date**')

Client agrees that all Advances made under the Development Line of Credit shall become cross-collateralized, cross-defaulted and cross-guaranteed with all existing and future indebtedness, including other Advances and other loan agreements with Client or any of the Guarantors. In addition, any new Site or New Entity acquired using any Advance made under the Development Line of Credit shall be included in the security package granted by Client to Lender and shall be secured by a guarantee and first-priority general security agreement, in a form acceptable to Lender.

Client acknowledges and agrees that the continuing availability of, and Lender's obligation to make, any Advance are subject to **quarterly** reviews conducted by Lender, the results of which must be satisfactory to Lender in its sole discretion. Any DLOC Advance shall be subject to an incurrence test of 25 basis points within the Funded Debt to EBITDA covenant (as defined below). Furthermore, Lender may impose any condition precedent to an Advance under the Development Line of Credit as it deems necessary, in its sole discretion.

Without limitation to the foregoing, if, at any time, Client fails to meet the financial covenants (as defined below), Lender shall have no obligation to make any further Advances pursuant to the Development Line of Credit, which shall be deemed to be suspended, unless otherwise agreed to by Lender in writing.

The Development Line of Credit is a non-revolving credit facility and any repayments in whole or in part of the Development Line of Credit may not be re-borrowed or utilized again hereunder and shall not entitle Client to obtain further Advances in respect of such amounts repaid.

#### **b. Manner of Borrowing the DLOC Advances**

Client shall give Lender at least ten (10) business days' notice by sending a request for advance of DLOC proceeds in the form attached hereto as Schedule B (the "**Request**"). Each Request shall be deemed to constitute a representation and warranty by Client that as at the date of the Request, no Default or event that, with the lapse of time or the giving of notice or both, would constitute a Default, has occurred or is continuing. This Request shall be accompanied by a copy of the invoices for Equipment to be paid from the proceeds of the DLOC Advance. Subject to the conditions stated in this Agreement, and when required by Lender, upon receipt from Client of proof acceptable to Lender that such invoices were paid by Client, Lender will disburse the amounts set out in the Request to Client.

#### **c. DLOC Advances Financing Rate and Instalments prior to the Term-Out Date**

Each DLOC Advance shall bear interest at the DLOC Advance Financing Rate, as defined below, from each DLOC Advance Date to its Term-Out Date. The DLOC Advance Financing Rate shall be equal to the **Prime Rate plus 2.50% per annum**, computed daily ("**DLOC Advance Financing Rate**").

From the Advance Date of each DLOC Advance to its DLOC Term-Out Date, each DLOC Advance Instalment, as defined below, shall consist of interest only payments payable monthly in arrears starting on the month following the disbursement of the DLOC Advance ("DLOC Advance Instalment(s)"). Unless otherwise agreed by the parties, the DLOC Advance Instalments are due each month on the same calendar day, which will be the same calendar day as the day that the DLOC Advance was disbursed. The DLOC Advance Instalment shall be payable to Lender by pre-authorized debit electronic fund transfer.

The amount of the DLOC Advance Instalments for each DLOC Advance shall be determined by Lender on the date of disbursement of each DLOC Advance based on the DLOC Advance Financing Rate, subject to an adjustment calculated at the DLOC Term-Out Date commencing from the first Instalment date, to reflect fluctuations in the Prime Rate.

For the purposes of the DLOC Advance(s), the following terms are amended as follows:

- (a) the term "Instalments" provided in Section 1.1 (t) of Schedule "E" of this Agreement shall include the DLOC Advance Instalments;
- (b) the term "Financing Rate" provided in Section 1.1 (o) of Schedule "E" of this Agreement shall include the DLOC Advance Financing Rate.

**d. Payment of DLOC Advance(s) - Principal and Interest as of the DLOC Term-Out Date**

At each DLOC Term-Out Date, the amount of all then outstanding DLOC Advance principal balances shall be deemed to become one amortizing DLOC Term-Out Loan and be part of, without novation, the Development Line of Credit. The terms applicable to the Development Line of Credit shall apply to the DLOC Advances as if they were advanced to Client as part of the Development Line of Credit.

If any, the outstanding accrued interest resulting from a DLOC Advance ("DLOC Advance Accrued Interest") shall be due and payable on its DLOC Term-Out Date. Client authorizes Lender to debit the DLOC Advance Accrued Interest from its banking account on the DLOC Term-Out Date. Client acknowledges that the DLOC Advance Accrued Interest forms part of the Obligations as defined hereunder. For clarification, the amount of each DLOC Advance shall not in any way increase the amount that Lender has agreed to make available to Client under the DLOC.

Client shall pay on demand any amount outstanding in excess of the amount that Lender has agreed to make available to Client under the Development Line of Credit, including without limitation the DLOC Advance Accrued Interest, fees and expenses. Nothing herein shall be construed to require Lender to advance any funds to or on behalf of Client at any time, including on the DLOC Term-Out Date, if a Default or event that, with the lapse of time or the giving of notice or both, would constitute a Default, has occurred or is continuing.

**e. Acknowledgment of Receipt and Confirmation of Indebtedness**

The receipt of the total amount that Lender has agreed to make available to Client under the Development Line of Credit and, as Lender may see fit, of each DLOC Advance shall be evidenced and acknowledged by Client in writing, in the form attached hereto as Schedule C. Client hereby acknowledges and agrees that notwithstanding the foregoing, Lender's books and records in any form relating to this Agreement, including as they may relate to any and all Obligations thereunder from time to time, shall constitute prima facie, conclusive evidence of all such Obligations.

**f. Security**

The Collateral and all other security and guarantee agreements granted to Lender in relation to this Agreement is given as a general and continuing security for the payment and performance of the Obligations, including without limitation the DLOC Advances and the DLOC Term-Out Loans.

**FACILITY #5 – DLOC TERM, INSTALMENTS AND FINANCED AMOUNT AMORTIZATION**

The term for each DLOC Term-Out Loan shall be co-terminus to the Original Term of the Facility #1 – Initial Term Loan. The instalments in respect of each DLOC Term-Out Loan ("DLOC Term-Out Loan Instalments") shall consist of monthly consecutive and equal payments of blended principal and interest and one final balloon payment based on a one hundred twenty (120) month amortization.

All Instalments shall be payable in CAD, monthly in arrears, using pre-authorized payment electronic funds transfer, and subject to applicable taxes.

## CROSS DEFAULT

In addition to the Defaults provided in Section 19 of Schedule "E" of this Agreement, (i) a Default under this Agreement shall be deemed to constitute a default under all other present and future agreements entered into between a corporation affiliated to Client (or any Guarantor or Covenant Party) and Lender or any Affiliate, nominee or agent of Lender ("Affiliate Agreement"), and (ii) a Default under any Affiliate Agreement shall be deemed to constitute a default under this Agreement.

## CROSS-COLLATERIZATION

The security granted in connection with this Agreement is given also to secure the payment and performance of any and all debts, obligations and liabilities of any kind or description whatsoever (whether due or to become due) of Client or any affiliates of Client (or any Guarantor or Covenant Party) to Lender under this Agreement and any other agreements with lender or any Affiliate of Lender. This security shall be deemed to be a continuing security which will not be released or discharged in whole or in part until satisfaction in full of all such debts, obligations and liabilities.

The Instalments for each Facility shall be determined by Lender on each Advance Date.

## LOAN FINANCIAL COVENANTS

On a quarterly basis (quarterly reporting required beginning September 2020), Lender shall monitor the following financial covenants on the combined results of the Covenant Parties:

- During the Term, within **120** days of the Borrower's fiscal year-end, the Covenant Parties are required to submit to CWB complete **Notice to Reader Consolidated/Combined** year-end financial statements for the Covenant Parties, as well as individual Notice to Reader year-end financial statements.
- In addition, within **45** days of the Borrower's quarter-end, the Covenant Parties are required to submit to CWB internal Trailing-Twelve month financial statements.
- Personal Guarantors are required to submit updated Personal Net Worth statements every 2 years (bi-annually).

**COVENANTS:** Covenants are measured for the Covenant Parties based on the most recent financial results. Covenant testing begins with December 2020 review of Trailing Twelve Month Financial Year End.

**(1) Fixed Charge Coverage Ratio, Pre-Compensation (FCCR-Pre):** As measured for the Covenant Parties on the last day of the Client's reporting period, the Covenant Parties must have a Pre-Compensation Consolidated FCCR equal to or greater than **1.30:1.0**.

**"Pre-Compensation Consolidated FCCR"** means, with respect to the 12-month period of time immediately preceding the date of determination, the ratio, calculated for the Covenant Parties for such time period, each as determined in accordance with GAAP, of: (i) the sum of net income, interest expense, income taxes, depreciation, amortization, and operating lease expenses (rent expense), and officers' salaries expensed on the income statement, plus or minus other non-cash adjustments or non-recurring items (as allowed by Lender); to (ii) the sum of operating lease expenses (rent expense, not including common area maintenance or property taxes), principal payments on long term debt, the current portion of all capital leases, and interest expense (excluding non-cash interest expense and amortization of non-cash financing expenses).

**(2) Fixed Charge Coverage Ratio, Post-Compensation (FCCR-Post):** As measured for the Covenant Parties on the last day of the Client's reporting period, the Covenant Parties must have a Post-Compensation Consolidated FCCR equal to or greater than **1.10:1.0**.

**"Post-Compensation Consolidated FCCR"** means, with respect to the 12-month period of time immediately preceding the date of determination, the ratio, calculated for the Covenant Parties for such time period, each as determined in accordance with GAAP, of: (i) the sum of net income, interest expense, income taxes, depreciation, amortization, and operating lease expenses (rent expense, not including common area maintenance or property taxes), plus or minus other non-cash adjustments or non-recurring items (as allowed by Lender), minus increases in officer or shareholder loan receivables and minus dividends or distributions not otherwise expensed on the applicable income statement(s); to (ii) the sum of operating lease expenses (rent expense, not including common area maintenance or property taxes), principal payments on long term debt, the current portion of all capital leases, and interest expense (excluding non-cash interest expense and amortization of non-cash financing expenses).

(3) **Funded Debt to EBITDA (Senior Leverage):** As measured for the Covenant Parties on the last day of the Client's reporting period, Consolidated Funded Debt to Consolidated EBITDA shall be equal to or less than **3.75:1.0**.

"**Consolidated Funded Debt**" is defined as the outstanding principal balance of all indebtedness of the Covenant Parties, including capital leases and the outstanding balances of any revolving lines of credit, as at the last day of the fiscal period being measured. "**Consolidated EBITDA**" is defined as the aggregate sum, for the 12-month period of time immediately preceding the last day of the fiscal period being measured, for the Covenant Parties, of all net income, interest expense, income taxes, depreciation, and amortization, but less non-recurring miscellaneous income and plus non-recurring miscellaneous expenses (as allowed by Lender), each as determined in accordance with GAAP.

#### **ENTIRE AGREEMENT**

This Agreement, including the Schedules hereto and all related security documents, constitutes the entire agreement between Lender and Client with respect to the subject matter contained herein and supersedes all prior negotiations, undertakings, representations and understandings, whether written or oral, including any proposal letter.



**SCHEDULE B  
FORM OF ADVANCE REQUEST**

This SCHEDULE B is an integral part of the EQUIPMENT LOAN AND SECURITY AGREEMENT executed at Brampton, Ontario this 23 day of June, 2020.

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**TO:** CANADIAN WESTERN BANK ("Lender")  
**FROM:** INDEX HOLDING GROUP INC. ("Client")  
**RE:** EQUIPMENT LOAN AND SECURITY AGREEMENT dated **June** \_\_\_\_, **2020** between the Client and the Lender (as amended, modified, supplemented, restated, replaced or otherwise modified from time to time, the "**Loan Agreement**")

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This Advance Request is delivered to you pursuant to Schedule A of the Loan Agreement. All defined terms set forth in this Advance Request shall have the respective meanings set forth in the Loan Agreement.

1. Client hereby requests an Advance under the Loan Agreement as follows:
  - (a) Date of Advance: \_\_\_\_\_
  - (b) Amount of Advance: \_\_\_\_\_
2. Client confirms that as at the date of this Advance Request:
  - (a) no Default or event that, with the lapse of time or the giving of notice or both, would constitute a Default has occurred and is continuing or will have occurred and be continuing on the applicable Advance Date, or will result from the Advance requested in this Advance Request;
  - (b) the representations and warranties contained in the Loan Agreement and the other documents, instruments and agreements given in connection therewith are true and correct in every respect with the same effect as if such representations and warranties had been made on and as of the date of this Advance Request (provided that if any such representation or warranty expressly speaks only as of a specific date, such representation or warranty is true and correct only as of such date); and
  - (c) the aggregate principal amount of all Advances under the Loan Agreement made by Lender as at the date of this Advance Request plus the principal amount of the Advance requested in this Advance Request is not greater than Cdn \$8,986,000.00.
3. Client confirms that there are no Liens in respect of the applicable existing Sites for which the proceeds of the Advance will be used.
4. All of the condition precedents to the Advance requested in this Advance Request, as specified in Schedule "D" of the Loan Agreement, have been satisfied including, but not limited to, those reports and documents described therein which are either attached as an Annex hereto or have been delivered separately to Lender.

DATED this \_\_\_\_ day of \_\_\_\_\_, 2020.

**INDEX HOLDING GROUP INC.**

Per: \_\_\_\_\_  
Name:  
Title:



**SCHEDULE C  
ACKNOWLEDGEMENT OF RECEIPT OF FINANCED AMOUNT**

This SCHEDULE C is an integral part of the EQUIPMENT LOAN AND SECURITY AGREEMENT executed at Brampton, Ontario, this 23 day of June, 2020.

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**ACKNOWLEDGEMENT OF RECEIPT OF FINANCED AMOUNT**

**TO:** CANADIAN WESTERN BANK ("Lender")  
**FROM:** INDEX HOLDING GROUP INC. ("Client")  
**RE:** EQUIPMENT LOAN AND SECURITY AGREEMENT dated as of \_\_\_\_\_, 2020 between Client and Lender (as amended, modified, supplemented, restated, replaced or otherwise modified from time to time, the "Loan Agreement")

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Client acknowledges receipt of an amount of \$ \_\_\_\_\_ (the "Financed Amount") as stated and in accordance with the Loan Agreement and acknowledged itself indebted and promises to repay the Lender the Financed Amount, together with interest and all other amounts owing in accordance with the terms and conditions of the Loan Agreement.

DATED this \_\_\_ day of \_\_\_\_\_, 2020.

Per: \_\_\_\_\_  
Name:  
Title:

Per: \_\_\_\_\_  
Name:  
Title:



**SCHEDULE D  
CONDITIONS PRECEDENT**

**This SCHEDULE D is an integral part of the EQUIPMENT LOAN AND EQUIPMENT AGREEMENT executed at Brampton, Ontario this 23, day of June, 2020.**

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Prior to the Advance, each of the following conditions precedent shall have been satisfied, at Client's sole cost and expense, all as determined by Lender in its sole discretion. Lender shall not be obliged to make any Advance hereunder unless it has received, in each case in form and substance satisfactory to it, each of the following conditions (or evidence thereof, as the case may be).

All conditions precedent to the obligation of the Lender to make the Advance are stipulated solely for the benefit of the Lender and may be waived by the Lender, in whole or in part, at any time and in its sole discretion.

- (a) Executed copy of the Equipment Loan and Security Agreement and all ancillary documents thereto (including certificates, resolutions, articles of incorporation, and opinions);
- (b) Executed general security agreement ("GSA") creating a first priority lien on all present and after acquired personal property including any and all intellectual property, equipment used at or in connection with the Sites, as well as all improvements, additions, replacements and substitutions of the Equipment, and all proceeds thereof (including insurance proceeds), from Client and the Corporate Guarantors (and any control agreement with third party bank as required to perfect cash collateral security)
- (c) Executed joint and several (solidarily for the Province of Quebec) guarantee and indemnity agreements from all Corporate Guarantors together with subordination of claims of each such party;
- (d) Executed guarantee and indemnity agreements from all Personal Guarantors together with subordination of claims from each such Personal Guarantor;
- (e) Executed Assignment and Postponement of Creditor's Claims agreements from Personal Guarantor, Abdul Muqet, each Corporate Guarantor, Abdul Sheikh and Syed Javed Ali;
- (f) Receipt by Lender of fully executed, complete copies of the Franchise Agreements and all renewals, extensions, assignments and amendments, if applicable, with respect to each Site including Franchisor consent approval for 2 asset purchase acquisitions and 6 new build Sites;
- (g) Receipt by Lender of fully executed, complete copies of the Lease Agreements and all renewals, extensions, assignments and amendments, if applicable, with respect to each existing Site, any and all new build sites, and acquisition sites, including Landlord consent approval for 2 asset purchase acquisitions
- (h) Receipt by Lender of evidence that all insurance required by the present agreement has been obtained and is in full force and effect with respect to each Site and determined acceptable by Lender at Lenders sole discretion;
- (i) Receipt by Lender of evidence that contractors builders risk and liability coverage required by the present agreement has been obtained and is in full force and effect with respect to each Site during construction and determined acceptable by Lender at Lenders sole discretion;
- (j) Franchisor confirmation of Good Standing in writing to be provided with respect to 8 existing sites;
- (k) Receipt of final accountant prepared FYE 2018 & 2019 statements for 2640179 Ontario Inc.;
- (l) Lender approval of Shareholder registry for Client;
- (m) All debt between Client and Corporate Guarantors to be jointly and severally (solidarily for the Province of Quebec) cross-collateralized, cross-defaulted and cross-guaranteed;
- (n) Confirmation that 2718366 Ontario Inc. is not cross-collateralized or tied to any security via GSA or Guarantee on its Dundas Real Estate Property financing either by TD Bank or from any private equity financing for the same location under 2718359 Ontario Inc. as acceptable to CWB;
- (o) Any/all PPSA liens that rank ahead of Lender are required to be discharged unless otherwise permitted to remain at sole discretion of Lender;
- (p) All fees required to be paid by Client;
- (q) No Default has occurred;

- (r) No Material Adverse Effect shall have occurred and be continuing on and as of the Advance Date, nor shall a requested Advance result in the occurrence of a Material Adverse Effect;
- (s) Any other document reasonably required by the Lender (or its solicitors).

**FACILITY #1 – INITIAL TERM LOAN CONDITIONS:**

In addition to the conditions mentioned above, each of the following conditions precedent (the "Initial Term Loan Advance Conditions") shall have been satisfied, at Client's sole cost and expense, all as determined by Lender in its sole discretion, unless Lender, in its sole discretion, waives any such Initial Term Loan Advance Condition:

- (a) Lender to review of all payout statements with respect to the refinance of all existing debt to ensure satisfactory;
- (b) Escrow Agreement and Undertaking, as required by Lender, to be executed by Client and/or Client's counsel (provided approved by Lender) to complete the full disbursement of funds under Facility #1 – Initial Term Loan and to obtain PPSA discharges against Client and Secured Corporate Guarantors as required by Lender;
- (c) Confirmation to discharge PPSA registrations to be received by existing secured parties including Royal Bank of Canada, Bank of Montreal, Loop and any other institution debt owing by Client and Secured Corporate Guarantors to ensure Lender has first priority ranking;
- (d) Undertaking to be executed by Borrower's counsel ensuring PPSA discharges by existing secured parties including Royal Bank of Canada, Bank of Montreal, Loop and any other institution debt owing by Client and Secured Corporate Guarantors will be completed;
- (e) Receipt of executed Share Purchase redemption agreement with respect to the shareholder buyout of Index Foods Inc. to be provided and reviewed by Lender's Counsel to confirm satisfactory;
- (f) Receipt of details (owing amounts and owing by) with regards to the partial paydown of shareholder loans owing to 2640179 Ontario Inc.;
- (g) Undertaking to be executed by Clients counsel to confirm post-close ownership is 100% on subject location of Index Foods Inc. and provide updated shareholder registries evidencing such;
- (h) Undertaking to be executed by Clients counsel to confirm partial shareholder paydowns completed and to provide evidence of such;
- (i) Any other document reasonably required by the Lender (or its solicitors).

**FACILITY #2 – ACQUISITION TERM LOAN and FACILITY #3 – ACQUISITION TERM LOAN CONDITIONS:**

In addition to the conditions mentioned above, each of the following conditions precedent (the "Facility #2 and Facility #3 Advance Conditions") shall have been satisfied, at Client's sole cost and expense, all as determined by Lender in its sole discretion, unless Lender, in its sole discretion, waives any such Facility #2 and Facility #3 Loan Advance Condition:

- (a) Executed Asset Purchase Agreement with all applicable extensions and amendments naming purchaser as 2737332 Ontario Inc. for Popeyes Dufferin site acquisition to be provided ahead of closing for review by Lender's external Counsel (*at Client's sole cost and expense*);
- (b) Executed Asset Purchase Agreement with all applicable extensions and amendments naming Purchaser as 2737334 Ontario Inc. for Popeyes Sheppard site acquisition to be provided ahead of closing for review by Lender's external Counsel (*at Client's sole cost and expense*);
- (c) Client's counsel to act as Escrow Agent for both acquisition purchases executing Escrow Agreement(s) confirming funds released upon satisfaction of prefunding conditions, purchase conditions and Lenders written approval. Conditions will include receipt of payout statements from each Vendor's solicitor and written confirmation of discharges of any secured party registrations;



- (d) Any other document reasonably required by the Lender (or its solicitors).

#### **FACILITY #4 – PROJECT TERM LOAN CONDITIONS:**

In addition to the conditions mentioned above, each of the following conditions precedent (the "**Facility #4 Advance Conditions**") shall have been satisfied, at Client's sole cost and expense, all as determined by Lender in its sole discretion, unless Lender, in its sole discretion, waives any such Facility #4 Advance Condition:

- (a) Funding to follow 50/50% funding matrix for each of the 3 new build sites as follows: 50% advanced up-front based on 85% of each site budget of acceptable costs, with satisfactory invoices and proof of payment required prior to the next 50% advance for each respective site;
- (b) Budget to be received prior to first advance on each site to confirm total acceptable build costs;
- (c) For clarity, all advances are to be termed out into a single term reducing loan at final draw of the last new build site (anticipated for December 2020)
- (d) Any other document reasonably required by the Lender (or its solicitors).

#### **DEVELOPMENT LOAN ADVANCE CONDITIONS**

In addition to the conditions mentioned above, each of the following conditions precedent (the "**DLOC Advance Conditions**") shall have been satisfied, at Client's sole cost and expense, all as determined by Lender in its sole discretion, unless Lender, in its sole discretion, waives any such DLOC Advance Condition:

- (a) The representations and warranties of Client set forth in the Advance Request are and will be true, correct and complete, both before and after funding any DLOC Advance;
- (b) Each draw is subject to Lender approval, determined by an incurrence test based on financial results on a trailing-twelve month basis of the Covenant Parties, before and after the requested Draw for the **full amount of the project**. The incurrence test for draw will be 25bps less than the Funded Debt to EBITDA;
- (c) Client is to provide a cost budget and P&L projection for any new build, acquisition, or renovation amounts for CWB's review and approval, along with an Offer to Lease, legal name and shareholder structure for the proposed operating company, if not already provided at time of documenting this agreement;
- (d) Any New Entity or locations that are funded under the DLOC are to be fully secured via Guarantee and first priority GSA;
- (e) Client shall have delivered to Lender and Lender shall have approved a development project budget of all costs to be incurred in connection with each new construction Site and Client shall have paid such portion of total development project costs that are not being financed by Lender;
- (f) Prior to the first DLOC Advance for a particular new construction Site, Client shall have delivered to Lender and Lender shall have approved a fully executed, complete copy of the Lease Agreement for such new construction Site;
- (g) If a site that is proposed to be included in a development project is owned a New Entity and such site will not be the subject of an acquisition, Lender shall have received and approved (i) evidence that the New Entity is an Affiliate of Client and is in good standing under the laws of its jurisdiction of formation and in the jurisdiction where such site is located and that the person(s) executing documents on behalf of the New Entity are duly authorized to do so; and (ii) such additional loan documents, executed by the New Entity is a Corporate Guarantor, jointly and severally, whereupon such site will be deemed to be a Site as well as a new construction Site;
- (h) Client shall have delivered to Lender such security agreements and other documents as Lender may require from the person(s) owning each new construction Site and from any other person having any interest in each construction Site and/or the business to be conducted there, each in form and substance acceptable to Lender, granting to Lender a first priority lien on each such new

construction Site and all related personal property, and all such documents and related financing statements shall have been properly filed or recorded in the appropriate governmental office;

- (i) Receipt by Lender of evidence that all insurance required by the present agreement has been obtained and is in full force and effect with respect to each Site and determined acceptable by Lender at Lenders sole discretion;
- (j) Receipt by Lender of evidence that contractors builders risk and liability coverage required by the present agreement has been obtained and is in full force and effect with respect to each Site during construction and determined acceptable by Lender at Lenders sole discretion;
- (k) Receipt by Lender of invoices for items to be covered from the previous DLOC Advance along with proof of payment prior to the next Advance and after each Advance thereafter; and
- (l) The DLOC will be available for a period of Twenty-four (24 months from the date of the ELSA and continuance of the DLOC will be reviewed by the Lender on an annual basis, subject to the Lender's sole discretion;
- (m) DLOC availability is subject to no Material Changes to the Client;
- (n) Any other document or condition reasonably required by the Lender (or its solicitors).

## SCHEDULE E TERMS AND CONDITIONS

### 1. Interpretation

#### 1.1 For the purpose of this Agreement:

- (a) "Accrued Liability" at any time means the amount equal to the sum of the Financed Amount, any Liquidated Damages and all other amounts then payable hereunder, including without limitation, any Overdue Payment and accrued interest.
- (b) "Advance Date" means the business day on which the Advance is made by Lender to Client hereunder.
- (c) "Affiliate" means in respect of a person, a person or persons that, directly or indirectly through one or more intermediaries, control, are controlled by, or are under common control with, such person.
- (d) "Agreement" means this Loan Agreement and any applicable schedules hereto, unless the context otherwise requires, and "hereof", "herein", "hereby", "hereunder" and similar expressions refer to this Agreement.
- (e) "business day" means a day when the office of Lender at the address stated on the face hereof is open for business dealings, but excludes Saturday, Sunday and any other day which is a statutory holiday in the province of Lender.
- (f) "Claims" has the meaning assigned in Section 22.
- (g) "Client" means the client of Lender stated on the face hereof and, in respect of any obligations regarding the Equipment, the Sites or other similar obligations, including all of the related obligations, covenants, undertakings, representations and warranties set out in Sections 4, 5, 6, 9, 14, 15, 17, 18, 19, 25, 26, and 27 the Covenant Parties (as defined in Schedule A).
- (h) "Collateral" has the meaning assigned in Section 5.1.
- (i) "control" means the power to direct or cause the direction of the management and policies of a person whether through the ownership of voting securities or otherwise.
- (j) "Conversion Rate" means the rate, expressed in Canadian dollars (CAD) for the purchase of one US dollar (USD), determined by adding 0.0100 CAD/USD to the highest rate which appears on the Bloomberg CAD GIT Page between 7 AM and 5 PM (EST).
- (k) "Default" means any of those events or circumstances specified in Section 19.
- (l) "Equipment" means all present and after-acquired personal property of a person.
- (m) "Equities" means existing or future rights of counterclaim, defence, set-off, compensation, abatement or offset, legal or equitable.
- (n) "Financed Amount" means the amount stated as such on the face hereof owing by Client to Lender or the unpaid outstanding balance thereof, as the context requires.
- (o) "Financing Rate" means the rate per annum stated as such on the face hereof, or in Schedule A, as the context requires.
- (p) "Franchise Agreement" means any franchise, license or area development agreement granted with regard to the Sites.
- (q) "Franchise Parties" means any party that entered into or will enter into a Franchise Agreement.
- (r) "GAAP" means generally accepted accounting principles in effect from time to time in Canada or IFRS applicable to the relevant person, applied in a consistent manner from period to period.
- (s) "Guarantor" means, collectively, the Corporate Guarantors and the Personal Guarantors, as applicable.
- (t) "Instalments" means the periodic repayment instalments of the Financed Amount, together with interest calculated at the Financing Rate as provided on the face hereof, such instalments stated on the face hereof.
- (u) "Lease Agreement" means any lease, sub-lease or storage agreement with regard to the Sites.
- (v) "Lease Parties" means any party that entered into or will enter into a Lease Agreement.
- (w) "Lender" means Lender stated on the face hereof.
- (x) "Lien" means any lien, privilege, mortgage, pledge, hypothec, charge, security interest, attachment, assignment, seizure, sequestration, distress, levy or other encumbrance of any nature or kind whatsoever.
- (y) "Liquidated Damages" means liquidated damages determined in accordance with Section 2.2.
- (z) "Loss of Equipment" means:
  - (i) a total or constructive total loss of Equipment, or damage thereto, or theft thereof which, in the reasonable opinion of Lender, renders it impossible or impractical to use the Equipment for its intended purpose; or
  - (ii) expropriation or confiscation of Equipment by any authority absolutely or for more than 180 days.
- (aa) "Material Adverse Effect" means, when used with reference to any event or circumstance or any person, an event, fact or circumstance that, either alone or when taken together with any other event, fact, or circumstance, has or could reasonably be expected to have a material adverse effect on: (i) the business, assets, operations, prospects, property, or condition (financial or otherwise), of Client, any Covenant Party or Guarantor, any of the Sites, the Collateral or any portion thereof; (ii) the ability of Client or any Guarantor to perform and discharge its respective obligations under this Agreement or any of the related documents; (iii) the validity or enforceability of any of such documents, including this Agreement or any of Lender's security, or Lender's ability to enforce any of its rights or remedies under any of such documents; or (iv) the existence or priority of any of the liens in favour of Lender including any liens affecting any of the Sites or such Equipment.
- (bb) "Obligation" means any obligation of Client to pay any amount owing hereunder or under any documents, instruments or security delivered in connection herewith, including the Financed Amount, Overdue Payments and all other amounts owing hereunder, or to perform any other obligation of Client hereunder or under any documents, instruments or security delivered in connection herewith.
- (cc) "Overdue Payment" means any amount owing by Client hereunder and any sum disbursed by Lender pursuant to Section 21 which is not paid when due hereunder, or any portion thereof.
- (dd) "Paydown Amount" has the meaning assigned in Section 13.2.
- (ee) "person" includes any natural person, corporation, firm, partnership, trust, sole proprietorship or governmental agency, authority or other entity, however constituted or designated.
- (ff) "Prime Rate" means the variable reference rate of interest per year declared by Lender from time to time to be its "Prime Rate" for Canadian dollar loans made by Lender in Canada, such rate to be adjusted automatically, without notice, as of the opening of business on the effective date of any change in such rate by Lender by public announcement or otherwise.
- (gg) "Supplier" means any manufacturer, supplier, vendor or dealer or any other person from whom Client has acquired any of the Equipment.
- (hh) "Taxes" means any and all taxes, imposts, levies, fees, duties and charges imposed by any taxing authority on Lender, Client, the Equipment, its purchase, sale, ownership, security interest thereon, delivery, possession, operation or use including, without limitation, sales, excise, use, health services, property, goods and services, business transfer and value added taxes (including any penalties or interest based on late or non-payment), but excluding taxes imposed on or measured by Lender's overall net income.
  - (ii) "TTM" means on a trailing twelve month basis.
- (jj) "Unwinding Costs" means the costs Lender incurs when a fixed rate loan is paid out early. The unwinding costs are based on an

interest rate differential between the loan rate and the bid side yield for Government of Canada securities with the same maturity as for the loan, for the remaining term of the loan at the time of repayment.

(kk) "Warranties" means any and all warranties, guarantees, representations, service contracts, contracts to stock spare parts and similar agreements, oral or written, express, implied or statutory, relating to the Equipment.

- 1.2 In this Agreement, unless the context otherwise requires, the singular includes the plural and vice-versa and words importing gender include each gender.
- 1.3 All references herein to statutes include the statute as it may be amended, restated or replaced with legislation of comparable effect. Unless otherwise specified, all references to Sections and Schedules are to Sections of, and Schedules to this Agreement. The words "hereto", "herein", "hereof", "hereunder" and similar expressions refer to this Agreement and not to any particular Section or other provision of this Agreement. When used in the context of a general statement followed by a reference to one or more specific items or matters, the term "including" shall mean "including, without limitation", and the term "includes" shall mean "includes, without limitation". Any reference herein to the exercise of discretion by Lender (including phrases such as "in its discretion", "in the discretion of", "in the opinion of", "to the satisfaction of" and similar phrases) shall mean that such discretion is absolute and unfettered and shall not imply any obligation to act reasonably, unless otherwise expressly stated herein.
- 1.4 Other than payments, which shall be made on the date each payment is due, acts to be performed hereunder on non-business days shall be performed on the following business day.

## 2. Instalments

- 2.1 Client hereby acknowledges that it has borrowed from Lender and is thereby, or has otherwise become, indebted to and agrees to repay to Lender, at the address of Lender stated on the face hereof or such other place notified by Lender to Client, the Financed Amount, together with interest thereon, by paying the Instalments stated on the face hereof or in Schedule A hereto. Unless otherwise stated, Instalments are due on the dates stated on the face hereof in each month, or other period (or the last day of the month, if there is no corresponding date), in arrears, throughout the term hereof. On the final Instalment date, Client shall pay Lender the outstanding balance of the Financed Amount, all accrued and unpaid interest thereon (including any adjustments to reflect changes in any applicable rates of interest) and all other amounts payable hereunder.
  - 2.2 Client may not at any time prepay in whole or in part the unpaid outstanding balance of the Financed Amount, except as follows: Commencing 36 months after the Closing Date, upon 30-day prior notice to Lender, Client will have the right to prepay all, but not less than all, of the outstanding balance of the Loan at any time during the remainder of the term of this Agreement provided Client also pays all accrued interest and costs outstanding hereunder at the time of prepayment and liquidated damages determined as follows:
    - (a) The Liquidated Damages shall be three (3) months' interest calculated on the unpaid principal balance at the rate provided herein plus, if Loan is fixed, a prepayment charge equal to Lender's Unwinding Costs.
  - 2.3 Any portion of the Financed Amount prepaid shall be applied to the remaining Instalments in inverse order of maturity. No part of the Liquidated Damages shall be applied in reduction of said remaining Instalments. If a Default or a Loss of Equipment occurs, the Liquidated Damages shall also be payable by Client and shall be calculated by reference to the outstanding balance of the Financed Amount at the time of such Default or Loss of Equipment, as applicable.
- ## 3. Interest
- 3.1 The Financed Amount shall bear interest at the Financing Rate from the date hereof until the Financed Amount is unconditionally paid in full to Lender, and shall be payable in arrears on each Instalment date.
  - 3.2 In addition to interest payable under Section 3.1, each Overdue Payment shall bear interest from the date due until unconditionally paid in full to Lender at the rate of 18% per annum, and shall be payable on demand by Lender.
  - 3.3 Interest payable hereunder shall accrue and be calculated daily upon the daily outstanding balance of the Financed Amount or an

Overdue Payment, as applicable, on the basis of the actual number of days elapsed in a year of 365 days or 366 days, as the case may be. All interest payments to be made under this Agreement in respect of the outstanding balance of the Financed Amount or any Overdue Payment, as applicable, shall be paid both before and after maturity and before and after Default and/or judgment, if any, until full and unconditional payment of the outstanding balance of the Financed Amount or such Overdue Payment is made. The yearly rate of interest to which each rate of interest expressed herein is equivalent is the product of: (a) such rate, multiplied by (b) the actual number of days in the calendar year in which the same is to be ascertained divided by 365 or 366, as the case may be. Notwithstanding anything herein or in any other agreement with Lender to the contrary, in no event shall the combination of interest, costs, and fees payable herein exceed that rate which is one percent (1%) less than the effective annual rate of interest which is prohibited under Section 347 of the *Criminal Code* (Canada), as amended from time to time (the "Maximum Amount") and if any payment, collection or demand pursuant to this Agreement or any other agreement with Lender exceed the Maximum Amount then such payment, collection or demand will be deemed to have been made by mutual mistake of Client or Guarantors (as the case may be) and Lender and the amount of such payment or collection will, at the option of Lender, either be refunded to Client, or be applied to the Obligations (whether or not due and payable) as determined by Lender, and not to the payment of interest.

- 3.4 If the Financing Rate is a variable rate based on Prime Rate, a change in Prime Rate automatically changes the rate of interest payable hereunder to the same extent and in the same manner effective with the frequency stated on the face hereof or in Schedule A. Lender shall not be obliged to notify Client of any such change, any such right to notice being hereby irrevocably waived by Client.
- 3.5 In order to preserve Lender's net economic return, Lender in its sole discretion may adjust the pricing at any time prior to any Advance to reflect: (1) changes in the pricing assumptions of this Agreement; (2) a change in Lender's funding index rate; (3) tax law changes applicable to Client or Lender; and (4) general market conditions.

## 4. Title, Ownership

Title to, ownership of, and all property in the Collateral shall remain with Client, but subject always to the security interests and other provisions hereof, and at Client's sole risk, until full payment in cash of all amounts repayable hereunder; prior to such payment, Client's rights therein are to quiet enjoyment and use on the terms and conditions of this Agreement so long as a Default has not occurred.

## 5. Security Interest and Warranties as to the Collateral

- 5.1 As general and continuing security for the payment and performance of the Obligations, Client hereby grants to Lender and Lender hereby takes a security interest in: (a) the Equipment, (b) all present and after-acquired intellectual property and other intangibles relating to the Equipment; (c) all present and after-acquired contracts, written or oral, for the sale, exchange, lease, license, rental or other disposition of any kind whatsoever of the foregoing; (d) all insurance claims and proceeds resulting therefrom with respect to any loss or damage to any of the foregoing; and (e) all proceeds of the foregoing in the form of chattel paper, documents of title, goods, instruments, intangibles, money, fixtures or investment property, (collectively, the "Collateral"), and as further general and continuing security for the payment and performance of the Obligations Client hereby mortgages, transfers, pledges, charges and assigns the Collateral to Lender. The general and continuing security provided for in this Section 5.1 is in addition to and not as substitution for any other security provided by Client to Lender from time to time.
- 5.2 Client represents and warrants to Lender that Client has, and shall continue to have at all times until while the Obligations remain outstanding, good and marketable title to the Collateral, free and clear of all Liens except for Liens granted in favour of or taken by Lender hereunder or pursuant to any other agreement between Client and Lender or any nominee or agent of Lender. Client agrees to comply with all Warranties accruing to Client pertaining to the Equipment; however, any failure by any receiver to comply with any Warranty shall not affect Client's Obligations to Lender.

## 6. Personal Property and Waivers

- 6.1 The Equipment shall at all times be and remain moveable personal property. Notwithstanding any purpose for which the Equipment

- may be used or that it may become affixed or attached to land or any structure thereon, the Equipment shall remain subject to all rights of Lender hereunder as if it were not so affixed or attached.
- 6.2 Client agrees to obtain a waiver, if required by and in a form satisfactory to Lender, from any landlord, mortgagee, hypothecary creditor or other encumbrancer of the premises where Collateral is situated (and prior to any Equipment becoming affixed if it is to be affixed).
- 7. Postponement**  
All shareholder, Affiliate and related entity debt shall be subordinated and postponed to Lender's debt.
- 8. Cost Overruns**  
All cost overruns shall be borne by the Client. Any cost overruns in excess of 10% of the loan amount must be approved in writing by Lender.
- 9. Maintenance, Use, Operation, Alterations, Upgrades, etc.**  
9.1 Client shall at its own expense:  
(a) maintain Equipment in good operating condition, repair and appearance, ordinary wear and tear only excepted;  
(b) comply with all recommendations or requirements of Suppliers so as to preserve all Warranties; and  
(c) at Lender's request, enter into a maintenance agreement for Equipment for the full term of this Agreement with a Supplier or a competent service and maintenance agent satisfactory to Lender.
- 9.2 Client shall not, without Lender's prior written consent, make any alterations, additions, accessions or attachments to any Collateral. Such consent will only be granted if such changes:  
(a) do not materially decrease the value of Collateral or limit, interfere with or frustrate its intended use;  
(b) do not prejudice or adversely affect any Warranties; and  
(c) are free from, and do not subject any Collateral to, any Lien.
- 9.3 All replacement parts and components, alterations, additions, accessions and attachments to Collateral shall automatically become subject to the security interests created hereby as soon as they are acquired by or on behalf of Client.
- 9.4 Client shall affix and keep affixed to Collateral any labels supplied by Lender identifying its security interests in Collateral.
- 10. Inspection**  
Any representative of Lender shall have the right to inspect the Collateral or any part thereof at all reasonable times upon notice to Client.
- 11. Franchise Agreement**  
11.1 Client represents and warrants to Lender that the copies of each Franchise Agreement together with all amendments, modifications and supplements thereto, provided to Lender or executed by the Franchise Parties is a true and complete copy, subject to no amendment and that Franchise Parties are in good standing thereunder.
- 11.2 The expiration, revocation or other termination of a Franchise Agreement or the assignment or other transfer of a Franchise Parties' rights under a Franchise Agreement, without Lender's prior written consent, shall, constitute a Default hereunder, and Lender may invoke any remedies permitted under this Agreement. The consent to any such sale or transfer shall be in Lender's sole discretion, and shall be subject to the execution by the purchaser or transferee, prior to such sale or transfer, of a written assumption agreement containing such terms as Lender may require. In addition, any such consent shall be conditioned upon payment by Client to Lender of (i) a fee equal to one percent (1%) of the then unpaid outstanding balance of the Financed Amount and (ii) all out-of-pocket costs and expenses incurred by Lender in connection with such consent, including, without limitation, legal fees.
- 12. Rented Facilities**  
Client represents and warrants to Lender that the Lease Agreements for all sites together with all amendments, modifications and supplements thereto, provided to Lender are true and complete, subject to no amendments and that Client is in good standing thereunder.
- 13. Early Lease Expiry**  
13.1 Client covenants and agrees that, in the event the term of any Lease Agreement expires before the expiration of the term of this Agreement, it shall or shall force the Lease Parties to cause the term of such Lease Agreement to be renewed or otherwise extended to a date that occurs on or after the expiration of the term of this Agreement. Failure to do so shall constitute a Default and Lender shall be entitled to exercise any and all rights and remedies it may have under this Agreement or at law.
- 13.2 Notwithstanding the foregoing, Lender may, at its sole option, require Client pay to Lender an amount to be determined by Lender at that time (the "Paydown Amount"). Failure to pay the Paydown Amount as required by Lender shall constitute a Default and Lender shall be entitled to exercise any and all rights and remedies it may have under this Agreement or at law. The Paydown Amount shall be deemed a payment of principal, shall be applied in the inverse order of maturity, and shall otherwise be applied in accordance with the terms of this Agreement.
- 14. Insurance**  
14.1 Client shall at its own expense place and maintain with insurers acceptable to Lender:  
(a) comprehensive all risks insurance on the Equipment for the greater of the Financed Amount or the full replacement value of the Equipment. Such insurance shall include: (i) a loss payable clause in favour of Lender and (ii) a waiver of subrogation clause in favour of Lender;  
(b) general public liability and property damage insurance with limits of liability at least equal to \$1,000,000 or such greater amount as Lender may require. Such insurance shall extend to all liabilities of Client under this Agreement arising out of its use or possession of Collateral and to any potential vicarious liability of Lender as holder of security interests in Collateral created hereby; and  
(c) business interruption coverage at least equal to the gross revenues for the last 12 months or such greater amount as Lender may require.
- 14.2 All such of insurance policies shall be in place at the effective date of this Agreement and shall contain endorsements providing that: (a) 30 days' written notice shall be given to Lender before the policy lapses or is materially altered or cancelled; (b) the insurance shall be primary and not contributory; (c) Lender's interests therein shall not be invalidated or otherwise adversely affected by any act or omission, deliberate, negligent or otherwise, of Client or its agents, servants or employees (the so-called "standard mortgage clause"); (d) Lender shall not be responsible for payment of any premiums; and (e) Lender may elect to have all proceeds of loss payable only to itself.
- 14.3 Client shall supply Lender with certified copies of all insurance policies, endorsements or other evidence of the required coverage satisfactory to Lender within 30 days of the effective date of this Agreement and on request.
- 14.4 In the event of damage to any item of Equipment amounting to Loss of Equipment, Lender shall be entitled to receive immediate payment of the amount equal to the Accrued Liability with respect to such item of Equipment. Lender may retain any monies received from the insurance proceeds in an amount equal thereto, Client remaining liable for any deficiency.
- 15. Taxes, etc.**  
Client shall have the sole responsibility for and shall duly and punctually pay all Taxes and all licence and similar fees payable at any time upon, or in respect of, Collateral, this Agreement and any payments or transactions contemplated hereunder.
- 16. Additional Debt**  
No additional debt (other than the loan(s) described herein) or guarantee of any kind shall be incurred by Client or any Covenant Parties without the prior written consent of Lender.
- 17. Liens**  
Client shall keep the Collateral free of all Liens, other than any Liens granted to, or taken by, Lender.
- 18. Laws and Regulations**  
Client is and shall continue to be in compliance with all laws and regulations relating to use, operation or possession of Collateral or the security interests therein in favour of Lender, and those relating to the prevention of money laundering and terrorism.
- 19. Default**  
It shall be a Default under this Agreement if:  
(a) Client fails to pay any Instalment within 10 days after its due date;  
(b) any representation or warranty of Client made herein or in any instrument or document delivered to Lender in connection herewith is false or materially incorrect or misleading;  
(c) any insurance coverage required to be obtained and maintained by Client under this Agreement shall lapse, expire or be cancelled;

- (d) Client defaults in any other Obligation, or defaults in any obligation under any other agreement with Lender or any Affiliate, nominee or agent of Lender, and such default continues for 10 days after notice thereof by Lender or such Affiliate, nominee or agent, as applicable, to Client;
- (e) any act of bankruptcy takes place respecting Client, or any proceeding, petition or notice, voluntary or involuntary, is commenced, made, given or filed, as the case may be, by Client or any other person, under any present or future statute or law relating to bankruptcy, insolvency or relief from or compromise or arrangement with creditors of Client;
- (f) Client ceases or threatens to cease to carry on business or makes or proposes to make any sale of the whole or any substantial portion of its assets in bulk, or otherwise out of the normal course of business;
- (g) any execution, sequestration, expropriation or similar process is brought or threatened, by way of notice or otherwise, against, or a distress or analogous process is levied upon the whole or any part of the property of Client or Collateral;
- (h) any trustee, receiver, interim receiver, administrator, manager, receiver and manager or similar official is appointed with respect to all or any part of the property, assets or undertaking of Client (including the Collateral), whether pursuant to any private instrument or agreement or by order of any court;
- (i) if ownership of or control and direction over the assets or undertaking of Client or the majority of its voting shares changes, by amalgamation, merger, sale, transfer of shares or otherwise, except pursuant to death of the shareholder, or Client passes any resolution concerning any matter referred to in paragraph (e) or with respect to, or any proceedings, voluntary or involuntary, are commenced under, any present or future law relating to amalgamation, liquidation, winding-up or dissolution;
- (j) an event occurs which, in the opinion of Lender, could reasonably be expected to have a material adverse effect on the condition (financial or otherwise), business, operations, assets, liabilities or prospects of Client, Client's ability to perform any Obligation, or any obligation under any other agreement with Lender or any Affiliate, nominee or agent of Lender, or on the rights and remedies of Lender thereunder, and continues for 10 days after notice thereof by Lender or such Affiliate, nominee or agent, as applicable, to Client;
- (k) Client fails to maintain any financial covenant under this Agreement;
- (l) the expiration, revocation or other termination of the Franchise Agreement or the assignment or other transfer of Franchise Parties' rights under the Franchise Agreement, without Lender's prior written consent;
- (m) Franchise Parties default under any Franchise Agreement and such default is not cured within any curative period provided for under such Franchise Agreement;
- (n) the expiration, revocation or other termination of any Lease Agreement between the Lease Parties and its landlord or the assignment or other transfer of the Lease Parties' rights under such Lease Agreement, without Lender's prior written consent;
- (o) Client defaults under any Lease Agreement between the Lease Parties and its landlord for the rented facilities where any Equipment of any Covenant Party is located and such default is not cured within the curative period, if any, granted to the Lease Parties under such Lease Agreement;
- (p) any Affiliate of Client defaults in any obligation under any other agreement with Lender or any Affiliate of Lender and such default continues for 10 days after notice thereof by Lender or such Affiliate, as applicable, to Affiliate of Client;
- (q) the Covenant Parties create, grant or permit to exist any hypothec on the Sites or their present and future movable, corporeal and incorporeal property, other than hypothecs granted in favor of Lender. For greater certainty, no subordinate hypothecs shall be permitted without the prior written consent of Lender; or
- (r) any event or circumstance described in any paragraph (b) through (r) inclusive occurs with respect to any Covenant Parties, guarantor or surety of Client respecting this Agreement or any person who controls Client or any Affiliate of Client.

A Default under this Agreement shall be deemed a default under all other present and future agreements entered into between Client and Lender or any Affiliate, nominee or agent of Lender.

## 20. **Lender's Remedies on Default**

Upon Default, Lender shall be entitled to do one or more of the following:

- (a) declare this Agreement to be in default (with or without terminating this Agreement) whereupon all Obligations shall be immediately due, payable and enforceable without any notice or demand whatsoever;
- (b) declare any or all of the Obligations to be immediately due and payable, or be subject to immediate performance, as the case may be, without presentment, protest or notice of dishonour, all of which are expressly waived;
- (c) take possession of any Collateral, without demand, notice or legal proceeding and enter on any premises of Client or any other person for such purpose;
- (d) sell, lease or otherwise dispose of any Collateral by public or private transaction for such consideration payable immediately and/or deferred and on such terms and conditions as Lender in its discretion determines;
- (e) whether or not this Agreement may have been or be deemed to have been terminated, demand, sue for and recover the amount equal to the Accrued Liability, less, if applicable, the net proceeds to Lender derived from the sale, lease or other disposition of the Collateral, after deducting all amounts payable by Client pursuant to Section 23 hereof; and
- (f) exercise any other rights or remedies and/or take any proceedings available to Lender hereunder, at law or in equity.

In lieu of selling, leasing or otherwise disposing of Collateral, Lender may retain Collateral and cause Collateral to be valued by a qualified appraiser selected by it and such value shall be substituted for and deducted as net proceeds to Lender under subparagraph (e) of this Section. Proceeds of sale, lease or disposal need be deducted only when received, unless Lender elects to take the present value of payments to be received, discounted at the Financing Rate then in effect, compounded monthly.

## 21. **Lender's Rights to Remedy Defaults**

If Client fails to perform or comply with any obligation hereunder, Lender may, but has no obligation to, perform same in the name of Client or Lender and make all necessary disbursements in connection therewith, which shall be reimbursed by Client immediately on demand. Lender is hereby appointed Client's lawful attorney to take any such action in Client's name.

## 22. **Client's General Indemnities**

Client shall indemnify and save harmless Lender from and against all existing or future losses, costs, charges, expenses, liabilities, claims, demands, penalties, damages, suits, actions and causes of action of every nature and kind whatsoever, including strict liability in tort or in delict (collectively, "Claims") sustained or suffered by Lender, or for which Lender may become liable, resulting from or arising out of:

- (a) Lender's lawful exercise or performance of its rights or obligations under this Agreement;
- (b) the holding by Lender of a security interest in the Collateral;
- (c) any Default;
- (d) any personal injury or property damage or other commercial loss arising out of the sale or delivery to, installation, ownership, use, operation, maintenance, condition, return, removal and re-delivery of Collateral; or
- (e) any use or operation of Collateral which infringes any patent or other industrial or intellectual property right, unless caused by the gross negligence or willful misconduct of Lender, its employees, servants or agents.

## 23. **Fees and Expenses**

Client shall pay to Lender on demand Lender's prevailing fees and all costs, expenses and disbursements (including, without limitation, legal fees on a solicitor and his own client basis) that Lender incurs, pays or becomes liable for in connection with the preparation, negotiation and registration of this Agreement (or any agreement, instrument or document contemplated hereby) and any other agreement evidencing or relating to the Obligations, the perfection or preservation of any Liens granted to or taken by Lender, processing of payments, rendering statements to Client, the failure of Client to pay or perform any of the Obligations, the enforcement by any means of any of the Obligations or any provision of this Agreement, the exercise of any rights, powers or remedies under this Agreement or any other agreement evidencing or relating to the Obligations (including all such costs, expenses and disbursements in connection with recovering or taking possession of the Collateral, removing or taking custody of, the storing, preserving, processing, repair, reconditioning or dismantling of Collateral, preparing Collateral for lease, sale or other disposition and leasing, selling or otherwise

- disposing of Collateral) and any professional advice sought in connection with any of the foregoing.
- 24. Pre-Authorized Payments**  
Client shall execute and deliver to Lender from time to time upon request pre-authorized payment orders in such form as Lender may reasonably request. Lender is hereby authorized to deliver such orders to the financial institution named therein. Client hereby appoints Lender its lawful attorney to take all action contemplated by such payment orders to receive payment of any amount due under this Agreement. Lender may decline any other form of payment. All monthly payments under this Agreement by the Client are to be made via such pre-authorized payment.
- 25. Location of Collateral; Client's Name**  
25.1 Except as otherwise expressly permitted hereunder, Client shall not part with possession of any Collateral nor remove any of same from any province such Collateral is located as of the date of this Agreement.  
25.2 Client covenants that it shall not change its name or chief executive office or move the Collateral from the locations stated herein, or otherwise disclosed to Lender in writing, without first providing at least 30 days prior written notice to Lender.
- 26. Assignment and Leasing**  
Client shall not assign any rights hereunder and Client shall not sell or attempt to sell any Collateral nor lease or rent or attempt to lease or rent any Collateral, in any case without the prior written consent of Lender, and such consent may be withheld by Lender in its sole and unfettered discretion. No action aforesaid by Client shall relieve Client of any of its Obligations.
- 27. Client's General Representations, Warranties and Covenants**  
Client represents and warrants to and covenants with Lender that: (a) Client has been duly incorporated, amalgamated, merged or continued, as the case may be (or if Client is not a corporation, has been duly formed, created or established as a partnership, limited partnership, trust or other applicable entity) and validly exists under and is governed by the laws of its jurisdiction of formation, amalgamation, merger, continuance, establishment or creation, as the case may be, with the power and authority to own its assets and property, carry on its business as currently conducted, and to enter into this Agreement; (b) this Agreement and all other agreements, documents and instruments delivered in connection with this Agreement or the transactions contemplated hereby have been duly authorized, executed and delivered by all necessary action on the part of Client and constitute legal and valid agreements binding upon Client enforceable in accordance with their respective terms; (c) all information as defined in Section 48 provided by Client to Lender is accurate; and (d) all payments to Lender are and will be derived from legal sources. Client agrees to furnish to Lender a copy of its most recent annual financial statements, audited if applicable, promptly upon availability and in any event, within 90 days of each financial year-end. Upon request by Lender, Client agrees also to furnish its quarterly financial statements promptly upon availability and, in any event, within 60 days of each financial quarter-end.
- 28. Statutory Waivers and Acknowledgement**  
28.1 To the extent permitted by law, Client waives its right to receive a copy of any financing statement or financing change statement registered by Lender and of any related verification statement.  
28.2 Client waives, to the fullest extent permitted by law, the application of the provisions of (a) *The Limitation of Civil Rights Act* (Saskatchewan); and (b) *The Distress Act* (Manitoba). Client agrees that the provisions of this Agreement are commercially reasonable.
- 29. No Set-Off – Exclusion And Assignment Of Warranties**  
29.1 Client irrevocably and unconditionally waives all equities against any instalment and other amount due to Lender hereunder and agrees to pay each such instalment and other amount without regard to any equities. Neither defects in, damage to, nor loss or destruction of Collateral shall terminate this Agreement or reduce any Obligations, except as otherwise expressly provided herein.  
29.2 Client represents and warrants to and covenants with Lender that Collateral is and will be used for commercial, industrial or business purposes only and not for personal, family, household or farming purposes;  
29.3 (a) Lender shall not be bound by or be deemed to have made or be liable for any representation, warranty or promise made by Supplier or otherwise; (b) Lender shall not be liable for any failure of Equipment including any latent defect or alleged fundamental breach of this Agreement; (c) neither Lender nor any of its employees, servants or agents has made and does not now make any representation or warranty whatsoever, express or implied, with respect to Equipment or any intellectual or industrial property rights therein including, without limitation, the design, specifications, condition, quality, merchantability or fitness for Client's purposes and (d) Lender shall have no liability for any direct, indirect, punitive, exemplary, special or consequential damages or loss of profits, actual or anticipated, or for any damages based on strict or absolute tort or delictual liability or Lender's or Supplier's negligence. Nothing herein shall deprive Client of its rights against Supplier or any person other than Lender. Client shall make any claims with respect to Equipment directly against Supplier.
- 29.4 If Equipment is seized or sold by Lender, all warranties of Supplier and rights to all software, other intellectual and industrial property licenses accompanying goods shall be deemed assigned by Client to Lender.
- 30. Notices**  
Any notice, demand, consent or other communication required or permitted hereunder ("Notice") shall be in writing and may be delivered, or sent by prepaid registered mail, or by telex, telecopier or other means which produces a permanent written record (a "transmission"). Mailed Notice shall be deemed to have been given two business days after mailing provided there is no general disruption or stoppage of postal services then in effect, in which case delivery shall be made by one of the other methods permitted herein; delivered Notice shall be effective upon delivery during business hours to an apparently responsible adult, and transmissions shall be deemed to have been received at the opening of the business day immediately following transmission. Addresses for Notice shall be those addresses stated on the face hereof and may be changed in accordance with the foregoing.
- 31. Remedies Cumulative**  
All rights and remedies of Lender hereunder are cumulative and not exclusive or alternative and may be exercised by Lender separately or together, in any order, sequence or combination.
- 32. Forbearance, Indulgence and Waivers**  
Forbearance or indulgence by Lender in any instance shall not constitute a general waiver of the obligation under this Agreement to which the same applies. Any waiver by Lender of its rights must be in writing and shall not extend to any other obligation or right.
- 33. Allocations**  
Client hereby irrevocably and unconditionally waives any present or future right to allocate any payment made to Lender to any specific Obligation due under this Agreement or under any other agreement with Lender or any Affiliate, nominee or agent of Lender. Lender may allocate and apply any payment received to any obligation due hereunder or under any other agreement with Lender or Affiliate, nominee or agent of Lender and may reverse, reallocate and re-apply any such payment as many times and in such manners as Lender from time to time sees fit. Payments received shall be allocated upon receipt of legal tender or cleared funds. Lender is hereby irrevocably authorized to combine and set off amounts payable by it to Client with amounts owing to it from Client (in each case whether matured or not and whether absolute or contingent) under the same or different agreements.
- 34. Time**  
Time is and shall remain of the essence of this Agreement.
- 35. Entire Agreement**  
There are no representations, warranties, covenants, agreements or acknowledgements by Lender affecting the Financed Amount, the Obligations, the Accrued Liability, this Agreement or the Collateral, other than as expressed in this Agreement or expressed in the other documents, instruments or security delivered in connection herewith. No amendment, restatement, supplement or other modification to this Agreement will be valid or binding unless set forth in writing and duly executed by each of the parties hereto.
- 36. Severability**  
Any term, condition or provision of this Agreement which is deemed to be void, prohibited or unenforceable in any jurisdiction shall, as to such jurisdiction, be severed herefrom and ineffective to the extent of such invalidity, prohibition or unenforceability, without in any way invalidating the balance hereof.
- 37. No Merger in Judgment**  
The taking of any judgment by Lender under this Agreement shall not operate as a merger or novation of any term or condition hereof or of any Obligation.
- 38. Further Assurances and Power of Attorney**  
38.1 Client and Lender each shall do, execute and perform all such acts, deeds, documents and things as may be reasonably required to enable Lender to have the full benefit of all rights and remedies

intended to be reserved or created hereby and to better assure, register and perfect the Liens granted or taken in relation to the Collateral or any part of the Collateral. Lender is hereby appointed Client's lawful attorney to complete and/or correct any information on the face hereof or in any Schedule hereto.

- 38.2 Each power of attorney granted in this Agreement is granted with full power of substitution, is irrevocable, is coupled with an interest, shall survive termination of this Agreement and may be exercised during any subsequent legal incapacity of Client or Lender.

**39. Currency**

Unless otherwise stated in this Agreement, all sums of money payable hereunder shall be paid in Canadian dollars. If any amount payable pursuant to this Agreement needs to be converted from US dollars to Canadian dollars, including for purposes of determining the amount of the Financed Amount or any Instalment, such conversion shall be made by Lender on the relevant date at the Conversion Rate and Lender will notify Client of the Canadian dollar amount so converted.

**40. Survival**

Notwithstanding any other Section, any accrued Obligations, the Obligations of Client under Sections 14.4, 15, 21, 22, 23, 28, and 33 and all rights of Lender hereunder, whether accrued or not, shall survive the termination or expiration of this Agreement and the payment of the Accrued Liability and all other amounts payable hereunder.

**41. Section Headings**

Section headings in this Agreement are for convenience of reference only and do not affect the interpretation or construction hereof.

**42. Assignment**

- 42.1 Client shall not assign this Agreement or any Obligations or rights hereunder without the prior written consent of Lender, and such consent may be withheld by Lender in its sole and unfettered discretion. No action aforesaid by Client shall relieve Client of any of its Obligations.

- 42.2 Lender may assign or transfer in whole or in part its rights under this Agreement or the Collateral, and/or grant a security interest, mortgage, transfer, charge or assignment in its rights hereunder or in the Collateral and any assignee, transferee or beneficiary of such security interest, mortgage, transfer, charge or assignment ("Assignee") shall be unrestricted in the exercise of such rights. Client shall recognize any such assignment, transfer or grant and shall not assert against any Assignee any Claims or Equities which it may have against Lender respecting this Agreement or the Collateral and waives all Claims and Equities against Assignee's rights to enforce this Agreement based on Lender's alleged failure to perform same or any Supplier's breach of Warranties.

**43. Benefit of the Agreement**

This Agreement shall enure to the benefit of and be binding upon Lender and Client, and each of their respective heirs, executors, administrators, personal representatives, successors and permitted assigns and lessees, including without limitation any successor or assign arising as a result of an amalgamation or other corporate or business reorganization.

**44. Choice of Law**

This Agreement shall be governed, construed, performed and enforced in accordance with the laws of the Province where the address of Client is located as stated on the face of this Agreement.

**45. Language**

The parties hereto have expressly required that this Agreement and all documents, agreements and notices related thereto be drafted in the English language. Les parties aux présentes ont expressément exigé que le présent contrat et tous les autres documents, conventions ou avis qui y sont afférents soient rédigés en langue anglaise.

**46. Joint and Several Liability**

If more than one person executes this Agreement as Client their obligations hereunder shall be joint and several and, where the context so admits, each reference in this Agreement to "Client" shall include reference to any one or more or all such persons and the acts or omissions of and such persons shall bind all of them.

**47. Receipt of Agreement**

Client acknowledges receipt of an executed copy of this Agreement.

**48. Information**

Client hereby consents and authorizes Lender and its Affiliates, agents, nominees, contractors and representatives, at any time, (a) to collect, verify, use, communicate with and disclose to third parties (including credit reporting agencies, financial institutions, creditors, vendors and other persons) any credit, financial and other

information, including personal information (as applicable) and information related to the credit rating, financial capacity and payment history, with respect to Client ("Information"), as Lender deems necessary to process, complete, service and enforce the transactions hereby contemplated and any other existing or potential transactions, or as required or otherwise permitted by law; (b) to respond to inquiries from, and exchange any Information with, third parties concerning Client's credit rating, financial capacity and payment history; (c) to provide Information to persons to whom Lender considers assigning, granting a participation or otherwise disposing of rights or obligations under the transactions hereby contemplated; and (d) to provide to any person copies of this Agreement. This consent is in addition to and does not replace any consent previously given.

**49. Fund off Fax**

This Agreement may be executed in several counterparts and such counterparts together shall constitute one and the same instrument and shall be effective as of the formal date hereof. Each of Client and Lender agrees that if the original of this Agreement and/or related certificates, authorizations or other documents (collectively, the "Closing Documents") is not received by Lender, then Lender, in its sole discretion, may decide to treat and rely on the executed version of any such Closing Document that has been transmitted to Lender by facsimile transmission ("fax") or by the use of other electronic means such as email (any such other electronic transmission being herein referred to as "pdf") as the signed original of such Closing Document. Without limiting the generality of the foregoing, each of Client and Lender further agrees that any Closing Document signed and transmitted by fax or pdf shall be treated for all purposes as an original document, the signature of any party on such Closing Document shall be considered as an original signature and the Closing Document transmitted by fax or pdf shall have the same effect as a counterpart thereof containing original signatures. No party shall raise as a defense to the enforcement of any Closing Document that a facsimile, email or other electronic transmission was used to transmit any signature of a party to such Closing Document.





**Amendment to ELSA**

(the "Agreement")

DATED: October 21, 2020

BETWEEN:

CANADIAN WESTERN BANK (the "Lender")

-and-

INDEX HOLDING GROUP INC.

(the "Client")

-and-

INDEX GROUP OF COMPANIES INC.

INDEX INTERNATIONAL INC.

INDEX FOODS INC.

2640179 ONTARIO INC.

11030434 CANADA LTD.

2700774 ONTARIO INC.

2700767 ONTARIO INC.

2683960 ONTARIO LTD.

11030418 CANADA INC.

2723710 ONTARIO INC.

2718366 ONTARIO INC.

2737332 ONTARIO INC.

2737334 ONTARIO INC.

2723714 ONTARIO INC.

2723716 ONTARIO INC. and

2737338 ONTARIO INC.

(collectively, the "Corporate Guarantors")

-and-

ABDUL MUQEET

(the "Personal Guarantor")

WHEREAS:

- A. Lender and the Client are parties to an Equipment Loan and Security Agreement dated as of **June 23, 2020** (as amended, restated, supplemented or otherwise modified from time to time, the "**ELSA**"; unless otherwise defined herein, capitalized terms used herein that are not otherwise defined herein shall have the respective meanings ascribed thereto in the ELSA;
- B. Pursuant to the Guarantee and Indemnity Agreements dated **June 23, 2020**, the Corporate Guarantors and Personal Guarantor agreed to be liable with the Client for all of the Client's obligations under the ELSA, including, without limiting the foregoing, the Financed Amount;
- C. The Lender, the Client, the Corporate Guarantors, and Personal Guarantor have agreed to amend the ELSA and requested that the Lender amend the ELSA subject to the terms set forth herein.

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**NOW, THEREFORE**, in consideration of \$10.00 and other good and valuable consideration (the receipt and sufficiency of which is hereby acknowledged), the parties hereto acknowledge, covenant and agree with each other as follows:

1. **Sites:**

a) **The following sites have been removed as collateral:**

- i) Popeye's – 395 Clarke Rd., London, ON
- ii) Popeye's – 323 Caradoc St. S., Strathroy, ON
- iii) Popeye's – 181 Dundas St., London, ON

b) **The following sites have been added as collateral:**

- i) Popeye's Newmarket: 3005 ON- 115, Newcastle, ON
- ii) Denny's Woodbine – 8502 Woodbine Ave., Markham, ON
- iii) Denny's Burlington – 1200 Brant St., Burlington, ON

For clarity, the Site list on page 3 of the ELSA has been replaced with the following:

**Popeye's Louisiana Kitchen - owned by and located:**

<b>OWNERSHIP</b>	<b>COLLATERAL SITES</b>
Index International Inc.	4-1525 Dundas St. E., Whitby, ON
Index Foods Inc.	965 Dundas St. W. Whitby, ON
2640179 Ontario Inc.	1571 Sandhurst Circle, #106D, Toronto, ON
2700774 Ontario Inc.	22 Stevenson Rd. S., Oshawa, ON
2700767 Ontario Inc.	9 Jim Kimmitt Blvd., Napanee, ON
2683960 Ontario Ltd.	2 Douglas Rd., Uxbridge, ON
11030418 Canada Inc.	72 Baldwin St. N., Whitby (Brooklin), ON
2723710 Ontario Inc.	165 E. Liberty Street, Toronto, ON
2737332 Ontario Inc.	900 Dufferin St., Toronto, ON
2737334 Ontario Inc.	674-676 Sheppard Ave. W., Toronto, ON
2737338 Ontario Inc., 2718366 Ontario Inc. or Index Group of Companies Inc. (site ownership to be determined)	TBD #1
2737338 Ontario Inc., 2718366 Ontario Inc. or Index Group of Companies Inc. (site ownership to be determined)	TBD #2
2723714 Ontario Inc. dba Popeye's Newmarket	3005 ON- 115, Newcastle, ON

**Denny's - owned by and located:**

2723716 Ontario Inc. dba DENNY'S Woodbine	8502 Woodbine Ave., Markham, ON
11030434 Canada Ltd. dba DENNY's Burlington	1200 Brant St., Burlington, ON

2. **FACILITY 4 on page 2 of the ELSA has been deleted and replaced with the following:**

**"Facility #4 – Project Term Loan"** means the Loan that is a committed, non-revolving loan facility, in the maximum principal amount of **\$1,910,000.00** CAD or up to 85% of the new build costs, whichever is less, for i) Popeyes Louisiana Kitchen located at 72 Baldwin St. N. Whitby (Brooklin), ON., ii) Popeyes Louisiana Kitchen located 165 E. Liberty Street, Toronto, ON., and the purchase price to a maximum of \$636,666.66 or approximately 71.1% of the documented purchases price, whichever is less, for Popeyes Louisiana Kitchen located at 3005 ON-115, Newcastle, ON, as more particularly set forth in the section entitled **"Facility #4 - Project Term Loan - INTERIM LOANS"** below."

**"Facility #4 Term"** has the meaning set forth in the section entitled **"Facility #4 – Project Term Loan Financing Rate and Instalments"** below."

**"Facility #4 Term Loan Installments"** has the meaning set forth in the section entitled **"Facility #4 - Project Term Loan"** below."

3. **FACILITY #5 on page 2 of the ELSA has been amended as follows:**

**"Development Line of Credit" or "DLOC"** means the portion of the **Facility #5** Financed Amount that is a non-revolving loan facility, in the maximum principal amount of Cdn \$1,925,000.00 to be used as follows: a) the lesser of

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\$675,000.00 or 50% of the new build documented costs for Denny's Woodbine, 8502 Woodbine Ave., Markham, ON and b) the lesser of \$650,000.00 or 60% of the new build documented costs for Denny's Burlington, 1200 Brant St., Burlington, ON and c) \$600,000.00 uncommitted amount to be allotted as determined and approved by lender.

For clarity, the remainder of the section is unchanged.

4. **CONDITIONS PRECEDENT:** The following conditions have been ADDED to the section entitled "**Conditions Precedent**" on Schedule D of the ELSA:

(t) **PAYDOWN:** Upon the closing of the sale transactions to 395 Clarke Inc., 323 Caradoc Inc. and 181 Dundas Inc. (collectively, the "Purchaser"), an executed Direction to Pay signed by each of the Purchaser and Vendor will include \$318,333.00 towards paying out CWB Draw 1 progress advance loan for 72 Baldwin St. N. Whitby (Brooklin), ON in the name of Index Holding Group Inc.

**FACILITY #4 – Project Term Loan Conditions:** The following conditions have been ADDED to the section entitled "**FACILITY #4 – Project Term Loan Conditions**" on Schedule D of the ELSA:

(e) Receipt of and Lender review of Purchase and Sale Agreement for Popeye's Newmarket, 3005 ON-115, Newcastle, ON, with terms and provisions to Lenders satisfaction;

(f) Client's counsel to act as Escrow Agent for acquisition purchase executing an Escrow Agreement confirming funds released upon satisfaction of prefunding conditions, purchase conditions and Lenders written approval. It is noted that Vendor has PPSA charges from RBC on "Accounts/other" for an unrelated location and a car lease, therefore no specific charge on equipment at Popeye's Newmarket is present and no Bank debt outstanding. Client's counsel to advise/opine on whether they will seek any action on these registrations for closing in the best interest of the Client/Lender;

(g) Receipt of satisfactory Franchise Agreement, with Assignment to Client confirmed in writing by Franchisor (final Franchise Agreement or Assignment to Client to be provided within 30 days post funding via executed Undertaking if required);

(h) Receipt of satisfactory Lease Agreement, with Assignment to Client confirmed in writing by Landlord (final Assignment of Lease to Client to be provided within 30 days post funding via executed Undertaking if required);

(i) Receipt by Lender of evidence that all insurance required by the present agreement has been obtained and is in full force and effect with respect to each Site and determined acceptable by Lender at Lenders sole discretion;

**DEVELOPMENT LOAN ADVANCE CONDITIONS:** The following conditions have been ADDED to the section entitled "**Development Loan Advance Conditions**" on Schedule D of the ELSA:

(o) Funding to follow 50/40/10% funding matrix for each of the 2 new build sites as follows: a) Denny's Woodbine: 50% advanced up-front based on 50% of the site budget of acceptable costs, with satisfactory invoices and proof of payment required prior to the next respective 40% advance and final 10% advance b) Denny's Burlington: 50% advanced up-front based on 60% of the site budget of acceptable costs, with satisfactory invoices and proof of payment required prior to the next respective 40% advance and final 10% advance.

5. The Client, the Corporate Guarantors and the Personal Guarantor represent and warrant to the Lender that, as of the date of this Agreement:

- a. this Agreement has been duly authorized, executed and delivered by the Client and the Corporate Guarantors and the Personal Guarantor;
- b. the ELSA, as amended by this Agreement, constitutes a legal, valid and binding obligation of the Client, the Corporate Guarantors and the Personal Guarantor, enforceable in accordance with its terms, subject to applicable bankruptcy, insolvency, reorganization, moratorium or other laws affecting creditor's rights generally and subject to general principles of equity;
- c. each of the representations and warranties of the Client, the Corporate Guarantors and the Personal Guarantor set forth in the ELSA and in the Documents is true and correct on and as of the date of this Agreement as if made on the date hereof (except such representations and warranties that are stated to be

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true and correct as of a particular date, which shall be true and correct as of such specific date);

- d. the Client, the Corporate Guarantors and the Personal Guarantor are in compliance with the covenants in the ELSA and the Documents;
  - e. no Default or Event of Default exists or would result from the transactions contemplated by this Agreement; and
  - f. no material governmental or regulatory approval or consent is required in connection with this Agreement.
6. Each of the Client, the Corporate Guarantors and the Personal Guarantor hereby: (i) ratifies and reaffirms all of its payment and performance obligations, contingent or otherwise, under the ELSA and each of the Documents to which it is party; and (ii) to the extent each of the Client and the Corporate Guarantors granted liens on or security interests in any of its property pursuant to the ELSA or any Document as security for or otherwise guaranteed the Client's obligations under or with respect to the ELSA or the Documents, ratifies and reaffirms such guarantee and grant of security interest and liens and confirms and agrees that such security interests and liens hereafter secure all of the obligations of the Client as amended hereby. Each of the Client, the Corporate Guarantors and the Personal Guarantor hereby consents to this Agreement and acknowledges that the ELSA and each of the Documents remain in full force and effect and are hereby ratified and reaffirmed.
7. The provisions of this Agreement shall be binding upon and enure to the benefit of the parties hereto and their respective successors and assigns, heirs and estate trustees, provided that none of the Client or the Corporate Guarantors may assign or transfer any of its rights or obligations under this Agreement without the prior written consent of the Lender.
8. This Agreement does not create novation of the obligations of the Client the Corporate Guarantors or the Personal Guarantor under the ELSA or any of the Documents.
9. This Agreement shall in all respects be governed by and construed in accordance with the laws of the Province of Ontario and the laws of Canada applicable therein.
10. Except as amended hereby, the ELSA and the Documents remain unmodified and in full force and effect. All reference in the Documents to the ELSA shall be deemed to be references to the ELSA as modified hereby. This Agreement shall constitute a Document.

*(Intentionally left blank - Signature page follows)*

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

**INDEX HOLDING GROUP INC.**

By: *Abdul Muqet*  
Name: Abdul Muqet  
Title: Director

**CANADIAN WESTERN BANK**

By: *Wendy Black* B-C240  
Name:  
Title:

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

**INDEX GROUP OF COMPANIES INC.**

By: *Abdul Muqet*  
Name: Abdul Muqet  
Title: Director

**INDEX INTERNATIONAL INC.**

By: *Abdul Muqet*  
Name: Abdul Muqet  
Title: Director

**INDEX FOODS INC.**

By: *Abdul Muqet*  
Name: Abdul Muqet  
Title: Director

**2640179 ONTARIO INC.**

By: *Abdul Muqet*  
Name: Abdul Muqet  
Title: Director

**11030434 CANADA LTD.**

By: *Abdul Muqet*  
Name: Abdul Muqet  
Title: Director

**2700774 ONTARIO INC.**

By: *Abdul Muqet*  
Name: Abdul Muqet  
Title: Director

**2700767 ONTARIO INC.**

By: *Abdul Muqet*  
Name: Abdul Muqet  
Title: Director

**2683960 ONTARIO LTD.**

By: *Abdul Muqet*  
Name: Abdul Muqet  
Title: Director

**11030434 CANADA INC.**

By: *Abdul Muqet*  
Name: Abdul Muqet  
Title: Director

**2723710 ONTARIO INC.**

By: *Abdul Muqet*  
Name: Abdul Muqet  
Title: Director

2718366 ONTARIO INC.

By: Abdul Muqheet  
Name: Abdul Muqheet  
Title: Director

2737332 ONTARIO INC.

By: Abdul Muqheet  
Name: Abdul Muqheet  
Title: Director

2737334 ONTARIO INC.

By: Abdul Muqheet  
Name: Abdul Muqheet  
Title: Director

2723714 ONTARIO INC.

By: Abdul Muqheet  
Name: Abdul Muqheet  
Title: Director

2723716 ONTARIO INC.

By: Abdul Muqheet  
Name: Abdul Muqheet  
Title: Director

2737338 ONTARIO INC.

By: Abdul Muqheet  
Name: Abdul Muqheet  
Title: Director

SIGNED, SEALED AND DELIVERED  
In the presence of

Abdul Muqheet

Witness

Irshad Khalid

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Abdul Muqheet

ABDUL MUQEET

the 1990s, the number of people in the UK who are aged 65 and over has increased from 10.5 million to 13.5 million (1990-2000) (Office for National Statistics 2002).

There is a growing awareness of the need to address the needs of older people in the workplace. The UK Government has introduced a number of measures to support older workers, including the introduction of the Age Equality Directive (2006) and the Age Equality Act (2006). The Age Equality Act (2006) is a landmark piece of legislation that aims to eliminate age discrimination in the workplace. It covers all aspects of employment, including recruitment, promotion, pay, and dismissal. The Act also introduces a new concept of 'indirect age discrimination', which occurs when a policy or practice that appears to be neutral in its effect, but in fact disadvantages older workers.

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**Second Amendment to ELSA**

(the "Agreement")

DATED: April 6, 2021

BETWEEN:

CANADIAN WESTERN BANK (the "Lender")

-and-

INDEX HOLDING GROUP INC.

(the "Client")

-and-

INDEX GROUP OF COMPANIES INC.

INDEX INTERNATIONAL INC.

INDEX FOODS INC.

2640179 ONTARIO INC.

11030434 CANADA LTD.

2700774 ONTARIO INC.

2700767 ONTARIO INC.

2683960 ONTARIO LTD.

11030418 CANADA INC.

2723710 ONTARIO INC.

2718366 ONTARIO INC.

2737332 ONTARIO INC.

2737334 ONTARIO INC.

2723714 ONTARIO INC.

2723716 ONTARIO INC. and

2737338 ONTARIO INC.

(collectively, the "Corporate Guarantors")

-and-

ABDUL MUQEET

(the "Personal Guarantor")

WHEREAS:

- A. Lender and the Client are parties to an Equipment Loan and Security Agreement dated as of **June 23, 2020 and Amendment to ELSA dated October 21, 2020** (as amended, restated, supplemented or otherwise modified from time to time, the "**ELSA**"; unless otherwise defined herein, capitalized terms used herein that are not otherwise defined herein shall have the respective meanings ascribed thereto in the ELSA;
- B. Pursuant to the Guarantee and Indemnity Agreements dated **June 23, 2020**, the Corporate Guarantors and Personal Guarantor agreed to be liable with the Client for all of the Client's obligations under the ELSA, including, without limiting the foregoing, the Financed Amount;
- C. The Lender, the Client, the Corporate Guarantors, and Personal Guarantor have agreed to amend the ELSA and requested that the Lender amend the ELSA subject to the terms set forth herein.



**NOW, THEREFORE**, in consideration of \$10.00 and other good and valuable consideration (the receipt and sufficiency of which is hereby acknowledged), the parties hereto acknowledge, covenant and agree with each other as follows:

1. **SITES:**

a) **The following site has been removed as collateral:**

- i) Popeye's Newmarket: 3005 ON- 115, Newcastle, ON

For clarity, 2723714 Ontario Inc. will remain as a secured Corporate Guarantor.

2. **PAYDOWN:** Prior to any further advances, Client is required to provide a paydown in the amount of \$185,000.00. This paydown will be taken by deducting \$185,000.00 from the Facility 4 final draw availability for the 165 E. Liberty St., Toronto site thereby reducing the amount advanced to Client for this site. Additionally, for clarity, the loan fee of 1% will include this amount as if advanced.

3. The Client, the Corporate Guarantors and the Personal Guarantor represent and warrant to the Lender that, as of the date of this Agreement:

- a. this Agreement has been duly authorized, executed and delivered by the Client and the Corporate Guarantors and the Personal Guarantor;
  - b. the ELSA, as amended by this Agreement, constitutes a legal, valid and binding obligation of the Client, the Corporate Guarantors and the Personal Guarantor, enforceable in accordance with its terms, subject to applicable bankruptcy, insolvency, reorganization, moratorium or other laws affecting creditor's rights generally and subject to general principles of equity;
  - c. each of the representations and warranties of the Client, the Corporate Guarantors and the Personal Guarantor set forth in the ELSA and in the Documents is true and correct on and as of the date of this Agreement as if made on the date hereof (except such representations and warranties that are stated to be true and correct as of a particular date, which shall be true and correct as of such specific date);
  - d. the Client, the Corporate Guarantors and the Personal Guarantor are in compliance with the covenants in the ELSA and the Documents;
  - e. no Default or Event of Default exists or would result from the transactions contemplated by this Agreement; and
  - f. no material governmental or regulatory approval or consent is required in connection with this Agreement.
2. Each of the Client, the Corporate Guarantors and the Personal Guarantor hereby: (i) ratifies and reaffirms all of its payment and performance obligations, contingent or otherwise, under the ELSA and each of the Documents to which it is party; and (ii) to the extent each of the Client and the Corporate Guarantors granted liens on or security interests in any of its property pursuant to the ELSA or any Document as security for or otherwise guaranteed the Client's obligations under or with respect to the ELSA or the Documents, ratifies and reaffirms such guarantee and grant of security interest and liens and confirms and agrees that such security interests and liens hereafter secure all of the obligations of the Client as amended hereby. Each of the Client, the Corporate Guarantors and the Personal Guarantor hereby consents to this Agreement and acknowledges that the ELSA and each of the Documents remain in full force and effect and are hereby ratified and reaffirmed.
3. The provisions of this Agreement shall be binding upon and enure to the benefit of the parties hereto and their respective successors and assigns, heirs and estate trustees, provided that none of the Client or the Corporate Guarantors may assign or transfer any of its rights or obligations under this Agreement without the prior written consent of the Lender.
4. This Agreement does not create novation of the obligations of the Client the Corporate Guarantors or the Personal Guarantor under the ELSA or any of the Documents.
5. This Agreement shall in all respects be governed by and construed in accordance with the laws of the Province of Ontario and the laws of Canada applicable therein.
6. Except as amended hereby, the ELSA and the Documents remain unmodified and in full force and effect. All reference in the Documents to the ELSA shall be deemed to be references to the ELSA as modified hereby. This Agreement shall constitute a Document.

*(Intentionally left blank - Signature page follows)*



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

**INDEX HOLDING GROUP INC.**

By: Paul Muqet  
Name: Abdul Muqet  
Title: Director

**CANADIAN WESTERN BANK**

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

**INDEX GROUP OF COMPANIES INC.**

By: Paul Muqet  
Name: Abdul Muqet  
Title: Director

**INDEX INTERNATIONAL INC.**

By: Paul Muqet  
Name: Abdul Muqet  
Title: Director

**INDEX FOODS INC.**

By: Paul Muqet  
Name: Abdul Muqet  
Title: Director

**2640179 ONTARIO INC.**

By: Paul Muqet  
Name: Abdul Muqet  
Title: Director

**11030434 CANADA LTD.**

By: Paul Muqet  
Name: Abdul Muqet  
Title: Director

**2700774 ONTARIO INC.**

By: Paul Muqet  
Name: Abdul Muqet  
Title: Director

**2700767 ONTARIO INC.**

By: Paul Muqet  
Name: Abdul Muqet  
Title: Director

**2683960 ONTARIO LTD.**

By: Paul Muqet  
Name: Abdul Muqet  
Title: Director

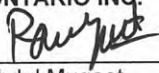
**11030418 CANADA INC.**

By: Paul Muqet  
Name: Abdul Muqet  
Title: Director

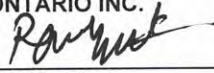
**2723710 ONTARIO INC.**

By: Paul Muqet  
Name: Abdul Muqet  
Title: Director

2718366 ONTARIO INC.

By:   
Name: Abdul Muqheet  
Title: Director

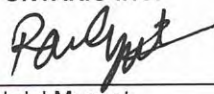
2737332 ONTARIO INC.

By:   
Name: Abdul Muqheet  
Title: Director

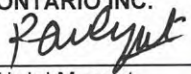
2737334 ONTARIO INC.

By:   
Name: Abdul Muqheet  
Title: Director

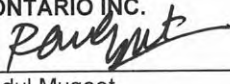
2723714 ONTARIO INC.

By:   
Name: Abdul Muqheet  
Title: Director

2723716 ONTARIO INC.

By:   
Name: Abdul Muqheet  
Title: Director

2737338 ONTARIO INC.

By:   
Name: Abdul Muqheet  
Title: Director

SIGNED, SEALED AND DELIVERED  
In the presence of

Witness



IRSHAD KHALID



ABDUL MUQEET



Third Amendment to ELSA

(the "Agreement")

DATED: April 14, 2022

BETWEEN:

CANADIAN WESTERN BANK (the "Lender")

-and-

INDEX HOLDING GROUP INC.

(the "Client")

-and-

INDEX GROUP OF COMPANIES INC.

INDEX INTERNATIONAL INC.

INDEX FOODS INC.

2640179 ONTARIO INC.

11030434 CANADA LTD.

2700774 ONTARIO INC.

2700767 ONTARIO INC.

2683960 ONTARIO LTD.

11030418 CANADA INC.

2723710 ONTARIO INC.

2718366 ONTARIO INC.

2737332 ONTARIO INC.

2737334 ONTARIO INC.

2723714 ONTARIO INC.

2723716 ONTARIO INC. and

2737338 ONTARIO INC.

(collectively, the "Corporate Guarantors")

-and-

ABDUL MUQEET

(the "Personal Guarantor")

WHEREAS:

- A. Lender and the Client are parties to an Equipment Loan and Security Agreement dated as of **June 23, 2020**, **Amendment to ELSA dated October 21, 2020** and **Second Amendment to ELSA dated April 6, 2021** (as amended, restated, supplemented or otherwise modified from time to time, the "ELSA"; unless otherwise defined herein, capitalized terms used herein that are not otherwise defined herein shall have the respective meanings ascribed thereto in the ELSA;
- B. Pursuant to the Guarantee and Indemnity Agreements dated **June 23, 2020**, the Corporate Guarantors and Personal Guarantor agreed to be liable with the Client for all of the Client's obligations under the ELSA, including, without limiting the foregoing, the Financed Amount;
- C. Pursuant to a purchase agreement and amendments dated October 1, 2021, between 1000011167 Ontario Ltd.(the

"Purchaser") and 2640179 Ontario Inc. (the "Vendor") for the sale of Popeyes Louisiana Kitchen located at 1571 Sandhurst Circle, Toronto, Ontario, tentatively schedule to close on April 20, 2022 or thereafter, as mutually agreed upon by the Purchaser and Vendor (the "**Closing**") the Lender, the Client, the Corporate Guarantors, and Personal Guarantor have agreed to amend the ELSA and requested that the Lender amend the ELSA subject to the terms set forth herein.

**NOW, THEREFORE**, in consideration of \$10.00 and other good and valuable consideration (the receipt and sufficiency of which is hereby acknowledged), the parties hereto acknowledge, covenant and agree with each other as follows:

1. **SITES:**

- a) Upon Closing, the following site will be removed as collateral:
  - i) Popeyes – 1571 Sandhurst Circle, #106D, Toronto, ON

For clarity, 2640179 Ontario Inc. will remain as a secured Corporate Guarantor.

2. **PAYDOWN:** Upon Closing, Client is required to payout progress advance draw #1 for Denny's Woodbine site loan #101013402718 in the amount of \$337,500.00.

3. The Client, the Corporate Guarantors and the Personal Guarantor represent and warrant to the Lender that, as of the date of this Agreement:

- a. this Agreement has been duly authorized, executed and delivered by the Client and the Corporate Guarantors and the Personal Guarantor;
- b. the ELSA, as amended by this Agreement, constitutes a legal, valid and binding obligation of the Client, the Corporate Guarantors and the Personal Guarantor, enforceable in accordance with its terms, subject to applicable bankruptcy, insolvency, reorganization, moratorium or other laws affecting creditor's rights generally and subject to general principles of equity;
- c. each of the representations and warranties of the Client, the Corporate Guarantors and the Personal Guarantor set forth in the ELSA and in the Documents is true and correct on and as of the date of this Agreement as if made on the date hereof (except such representations and warranties that are stated to be true and correct as of a particular date, which shall be true and correct as of such specific date);
- d. the Client, the Corporate Guarantors and the Personal Guarantor are in compliance with the covenants in the ELSA and the Documents;
- e. no Default or Event of Default exists or would result from the transactions contemplated by this Agreement; and
- f. no material governmental or regulatory approval or consent is required in connection with this Agreement.

2. Each of the Client, the Corporate Guarantors and the Personal Guarantor hereby: (i) ratifies and reaffirms all of its payment and performance obligations, contingent or otherwise, under the ELSA and each of the Documents to which it is party; and (ii) to the extent each of the Client and the Corporate Guarantors granted liens on or security interests in any of its property pursuant to the ELSA or any Document as security for or otherwise guaranteed the Client's obligations under or with respect to the ELSA or the Documents, ratifies and reaffirms such guarantee and grant of security interest and liens and confirms and agrees that such security interests and liens hereafter secure all of the obligations of the Client as amended hereby. Each of the Client, the Corporate Guarantors and the Personal Guarantor hereby consents to this Agreement and acknowledges that the ELSA and each of the Documents remain in full force and effect and are hereby ratified and reaffirmed.

3. The provisions of this Agreement shall be binding upon and enure to the benefit of the parties hereto and their respective successors and assigns, heirs and estate trustees, provided that none of the Client or the Corporate Guarantors may assign or transfer any of its rights or obligations under this Agreement without the prior written consent of the Lender.

4. This Agreement does not create novation of the obligations of the Client the Corporate Guarantors or the Personal Guarantor under the ELSA or any of the Documents.

5. This Agreement shall in all respects be governed by and construed in accordance with the laws of the Province of Ontario and the laws of Canada applicable therein.

6. Except as amended hereby, the ELSA and the Documents remain unmodified and in full force and effect. All reference in the Documents to the ELSA shall be deemed to be references to the ELSA as modified hereby. This Agreement shall constitute a Document.

*(Intentionally left blank - Signature page follows)*



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

**INDEX HOLDING GROUP INC.**

By: *Abdul Muqheet*  
Name: Abdul Muqheet  
Title: Director

**CANADIAN WESTERN BANK**

By: *Wendy Black* B-C240  
Name: Wendy Black  
Title: Senior Doc Specialist  
By: *Trish Halliwell* HB219  
Name: Trish Halliwell  
Title: Senior Manager Restaurants

**INDEX GROUP OF COMPANIES INC.**

By: *Abdul Muqheet*  
Name: Abdul Muqheet  
Title: Director

**INDEX INTERNATIONAL INC.**

By: *Abdul Muqheet*  
Name: Abdul Muqheet  
Title: Director

**INDEX FOODS INC.**

By: *Abdul Muqheet*  
Name: Abdul Muqheet  
Title: Director

**2849179 ONTARIO INC.**

By: *Abdul Muqheet*  
Name: Abdul Muqheet  
Title: Director

**11903872 CANADA LTD.**

By: *Abdul Muqheet*  
Name: Abdul Muqheet  
Title: Director

**2700774 ONTARIO INC.**

By: *Abdul Muqheet*  
Name: Abdul Muqheet  
Title: Director

**2700787 ONTARIO INC.**

By: *Abdul Muqheet*  
Name: Abdul Muqheet  
Title: Director

**2883960 ONTARIO LTD.**

By: *Abdul Muqheet*  
Name: Abdul Muqheet  
Title: Director

**2723710 ONTARIO INC.**

By: *Abdul Muqheet*  
Name: Abdul Muqheet  
Title: Director

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By: *Abdul Muqheet*  
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Name: Abdul Muqheet  
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2723716 ONTARIO INC.

By: Abdul Muqheet  
Name: Abdul Muqheet  
Title: Director

2737338 ONTARIO INC.

By: Abdul Muqheet  
Name: Abdul Muqheet  
Title: Director

SIGNED, SEALED AND DELIVERED  
In the presence of

Waqar Azeem  
Witness  
Waqar Azeem

)  
)  
)  
)  
)

Abdul Muqheet  
ABDUL MUQEET

This is **Exhibit “E”** referred to in the affidavit of Tyson Hartwell, sworn before me by videoconference on April 27, 2023 in accordance with O.Reg. 431/20: Administering Oath or Declaration Remotely. The deponent was located in the City of Calgary in the Province of Alberta and I was located in the City of Toronto in the Province of Ontario.



.....  
A Commissioner For Taking Affidavits

Jeremy Bornstein  
LSO#: 65425C

November 1, 2021

Abdul Muqet  
110 Herdwick Street  
Brampton, Ontario  
L6R 0N7

**Re: Financing Proposal for Denny's and Popeyes Restaurants, along with Real Property in London Ontario**

We are pleased to advise you that the Proposal dated September 22, 2021 has been credit approved. All terms and conditions of the proposal are as stated, with the following exceptions, and remain subject to documentation satisfactory to you and Canadian Western Bank ("CWB").

**BORROWER:** Index Holding Group Inc. (the "Borrower")

**GUARANTORS:**

**UNSECURED GUARANTOR:** Abdul Muqet

**SECURED CORPORATE GUARANTORS:**

1. Index International Inc. / Popeyes at 1525 Dundas St, Whitby
2. Index Foods Inc. / Popeyes at 965 Dundas St W, Whitby
3. 2640179 Ontario Inc. / Popeyes at 1571 Sandhurst Circle, Toronto
4. 11030434 Canada Ltd. / Denny's at 1200 Brant Street, Burlington
5. 2707774 Ontario Inc. / Popeyes at 22 Stevenson Rd, Oshawa
6. 2700767 Ontario Inc. / Popeyes at Jim Kimmett Blvd, Napanee
7. 2683960 Ontario Ltd. / Popeyes at 2 Douglas Rd, Uxbridge
8. 11030418 Canada Inc. / Popeyes at 72 Baldwin St N, Whitby "Brooklin"
9. 2723710 Ontario Inc. / Popeyes at 165 E Liberty Street, Toronto
10. 2737332 Ontario Inc. / Popeyes at 900 Dufferin Street, Toronto
11. 2718366 Ontario Inc. / Popeyes at 674-676 Sheppard Ave W, Toronto
12. 2723716 Ontario Inc. / Denny's at 8502 Woodbine Avenue, Markham
13. **2790760 Ontario Inc. / Denny's at Newmarket (NEW)**
14. **2775290 Ontario Inc. / Denny's at Brantford (NEW)**
15. **2775296 Ontario Inc. / Denny's at Rexdale (NEW)**
16. **421 Wharnclyffe Ltd. / Real Estate at 421 Wharnclyffe Road, London Ontario (NEW)**
17. 2737338 Ontario Inc. / TBD Site (CWB held-placeholder for future dev't)
18. 2723714 Ontario Inc. / TBD Site (CWB held-placeholder for future dev't)
19. 2718366 Ontario Inc. / TBD Site (CWB held-Sold Assets-future dev't)
20. Index Group of Companies Ltd. / TBD Site: (CWB held-Sold Assets- future dev't)

**LOAN AMOUNT:** up to \$4,500,000 as follows:

1. **Term Loan 1** for \$1,050,000 or up to 75% of the acceptable documented costs for Denny's Newmarket new build location, whichever is less;
2. **Term Loan 2** for \$975,000 or up to 75% of the acceptable documented costs for Denny's Brantford new build location, whichever is less;
3. **Term Loan 3** for \$975,000 or up to 75% of the acceptable documented costs for Denny's Rexdale new build location, whichever is less;

4. **A Mortgage/Construction** Loan for up to \$1,075,000 for the London Real Property. Financing will be first for refinance of the existing Mortgage securing land at \$480,000, followed by a construction and term facility for \$595,000 or 75% of the acceptable building shell costs for the location, whichever is less.
5. A modification/increase to **Line of Credit #101012723068** ("LOC") to a total facility of \$250,000.
6. A modification/increase to **Credit Card #MD2020209930** ("CC") to a total availability of \$175,000.

Each of the Term Loan 1, Term Loan 2, Term Loan 3, the Mortgage/Construction Loan and the LOC and CC may from time to time be individually referred to as a "Loan" and are collectively called the "Loans".

**TERM/AMORTIZATION:** Term Loans 1, 2 3, over a **7 year** amortization. Term of 5 years (co-terminus with first term-out), starts with **3 months interest-only**, followed by payments of principal & interest, and one balloon payment. Mortgage Loan is co-terminus, with an amortization over 20 years, and starts **with 3 months of interest-only**.

**SPECIAL CONDITIONS:** All funding is subject to CWB's satisfactory receipt of the following:

**PREFUNDING CONDITIONS:**

1. Insurance Certificate showing CWB named as first loss payee and additional insured for the 3 new Denny's locations (Newmarket, Brantford and Rexdale) as opened, and any existing sites secured. Evidence of Builder's risk coverage is to be provided during advances prior to opening.
2. Insurance Certificate showing CWB named first loss payee and additional insured on the RE property (421 Wharnclyffe Rd.), Builder's Risk policy during construction.
3. Executed Lease Agreements and Franchise Agreements for the 3 new build Denny locations, as available.
4. Assignment and Postponement of Creditors Claim signed by 1) 2790760 Ontario Inc., 2) 2775290 Ontario Inc., 3) 2775296 Ontario Inc., 4) 421 Wharnclyffe Ltd., 5) 2737338 Ontario Inc., 6) 2723714 Ontario Inc.
5. Proof of payment to be provided for the balance owing on 2020 NOA for Abdul Muqet.
6. Title Insurance for the RE property (421 Wharnclyffe Rd.) to be registered in the minimum amount of \$1.1MM (to cover initial refi amount + project loan term out).
7. A rental/lease agreement that is acceptable to CWB between the operating company that rents/leases and assets provided as security for the Loan for the 421 Wharnclyffe location.
8. Original real estate land purchase agreement naming Borrower/Secured Guarantor as purchaser with corresponding title search confirming registration on title is in the name of borrower/Secured Guarantor
9. Confirmation that all real estate taxes are paid to date on 421 Wharnclyffe
10. Payout statement from Private Lender on the real property at 421 Wharnclyffe with written confirmation the CWB or Borrower's counsel will attend to the discharge of registration at close.
11. Solicitor's Opinion Letter regarding 421 Wharnclyffe Ltd.
12. Finalized Phase II Environmental Site Assessment with Reliance letter addressed to CWB on 421 Wharnclyffe.
13. Appraisal Reliance Letter on 421 Wharnclyffe addressed to CWB
14. All draws for the 3 Denny's locations are to follow a 50%/40%/10% funding methodology with satisfactory invoices and proof of payment to be provided at each stage
15. Construction advance requirements on 421 Wharnclyffe to include:

DRAW 1 – 50%

- Building Permit and Site Approval Letter
- Signed GC Contract with Union General Contracting
- WSIB Certificate from Union General Contracting
- Confirmation of Builder's Risk and Wrap Up Liability insurance prior to initial advance and/or permanent Insurance Certificate showing Canadian Western Bank named as first loss mortgagee and additional insured;
- Title search prior to initial draw

DRAW 2: 40%

- Invoices and proof of payment in support of the first advance
- Statutory Declaration
- WSIB Certificate
- Title search

DRAW 3: 10% : to occur no sooner than 60 days per the Ontario lien act, following receipt of:

1. Final invoices and proof of payment
2. Occupancy Certificate
3. Certificate of Publication/Substantial Completions
4. Statutory Declaration Holdback Release from either the GC (if applicable) or each of the subtrades
5. Engineer & Architect stamped certificate
6. Site inspection by CWB representative
7. Clear title search on day of funding
8. Copy of the lease agreement between Borrower and Church's Chicken tenant

All monthly payments are to be made via pre-authorized payment (PAP)

All current or future loans between CWB and the Borrower(s), or any affiliated companies are to be cross-defaulted, cross-guaranteed and cross-collateralized.

**LOAN CLOSING DATE:** First advance on or before December 15, 2021

**SECURITY:** As outlined in the Proposal Letter.

**COMMITMENT EXPIRATION:** This commitment letter shall expire within 30 days of the date of this letter, if not accepted by Borrower prior thereto.

---

**INTEREST RATE & INSTALMENTS:**

**VARIABLE RATE** – calculated daily, not in advance.

1. **Term Loan 1, 2 & 3:** Prime + 2.65%
2. **Mortgage/Construction Loan:** Prime + 2.65%
3. **Line of Credit ("LOC"):** Prime + 2.50%

For reference purposes only, as of November 2021, the Interest Rate for Term Loans 1, 2 & 3 and the Mortgage/Construction loan would be 5.10% and 4.95% for the LOC.

**LOAN INSTALMENTS:** Loan instalments would consist of consecutive and equal payments of blended principal and interest. The amount of the Loan Instalments would be determined by Lender on the date of the disbursement based on the Interest Rate and would remain firm for the Loan Term. Loan installments would be payable in Canadian dollars, monthly in arrears, using electronic funds transfer, and subject to applicable taxes.

In order to preserve CWB's net economic return, CWB in its sole discretion may adjust the pricing at any time prior to any advance under the Loans to reflect: (a) changes in the pricing assumptions; (b) Change in CWB's funding index rate; (c) Tax law changes applicable to the Borrower; (d) General market conditions.

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**PREPAYMENT:** as outlined in the Proposal Letter

**LOAN FEE:** as outlined in the Proposal Letter

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**COVENANTS AND FINANCIAL REPORTING:** During the Term, within **120** days of the Borrower's fiscal year-end, the Covenant Parties are required to submit to CWB complete **Notice to Reader Consolidated/Combined** year-end financial statements for the Covenant Parties, as well as individual Notice to Reader year-end financial statements.

In addition, within **45** days of the Borrower's quarter-end, the Covenant Parties are required to submit to CWB internal Trailing-Twelve month financial statements.

Evidence of Property Taxes paid in full and building insurance on the Real Property at 421 Wharnclyffe is required annually.

Personal Guarantors are required to submit updated Personal Net Worth statements every 2 years (bi-annually).

**COVENANT PARTIES:** The Borrower and the Secured Corporate Guarantors, as applicable.

**COVENANTS:** Covenants are measured for the Covenant Parties based on the most recent financial results. Exact covenants to be determined during the underwriting process, however for indication typical covenants would include the following:

**(1) Fixed Charge Coverage Ratio, Pre-Compensation (FCCR-Pre):** As measured for the Covenant Parties on the last day of the Borrower's reporting period, the Covenant Parties must have a Pre-Compensation Consolidated FCCR equal to or greater than **1.30:1.0**.

*"Pre-Compensation Consolidated FCCR"* means, with respect to the 12-month period of time immediately preceding the date of determination, the ratio, calculated for the Covenant Parties for such time period, each as determined in accordance with GAAP, of: (i) the sum of net income, interest expense, income taxes, depreciation, amortization, and operating lease expenses (rent expense), and officers' salaries expensed on the income statement, plus or minus other non-cash adjustments or non-recurring items (as allowed by Lender); to (ii) the sum of operating lease expenses (rent expense, not including common area maintenance or property taxes), principal payments on long term debt, the current portion of all capital leases, and interest expense (excluding non-cash interest expense and amortization of non-cash financing expenses).

**(2) Fixed Charge Coverage Ratio, Post-Compensation (FCCR-Post):** As measured for the Covenant Parties on the last day of the Borrower's reporting period, the Covenant Parties must have a Post-Compensation Consolidated FCCR equal to or greater than **1.10:1.0**.

*"Post-Compensation Consolidated FCCR"* means, with respect to the 12-month period of time immediately preceding the date of determination, the ratio, calculated for the Covenant Parties for such time period, each as determined in accordance with GAAP, of: (i) the sum of net income, interest expense, income taxes, depreciation, amortization, and operating lease expenses (rent expense, not including common area maintenance or property taxes), plus or minus other non-cash adjustments or non-recurring items (as allowed by Lender), minus increases in officer or shareholder loan receivables and minus dividends or distributions not otherwise expensed on the applicable income statement(s); to (ii) the sum of operating lease expenses (rent expense, not including common area maintenance or property taxes), principal payments on long term debt, the current portion of all capital leases, and interest expense (excluding non-cash interest expense and amortization of non-cash financing expenses).

**(3) Funded Debt to EBITDA (Senior Leverage):** As measured for the Covenant Parties on the last day of the Borrower's reporting period, Consolidated Funded Debt to Consolidated EBITDA shall be equal to or less than **3.75:1.0**.

**“Consolidated Funded Debt”** is defined as the outstanding principal balance of all indebtedness of the Covenant Parties, including capital leases and the outstanding balances of any revolving lines of credit, as at the last day of the fiscal period being measured. **“Consolidated EBITDA”** is defined as the aggregate sum, for the 12-month period of time immediately preceding the last day of the fiscal period being measured, for the Covenant Parties, of all net income, interest expense, income taxes, depreciation, and amortization, but less non-recurring miscellaneous income and plus non-recurring miscellaneous expenses (as allowed by Lender), each as determined in accordance with GAAP.

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**EVENTS of DEFAULT:** Events of Default will include, but will not be limited to: (a) failure to make timely payment of any amount owing to CWB; (b) failure to maintain in full force the required insurance coverage (c) default under any Covenants, including failure to provide Financial Reporting as due at the required time (d) misrepresentation; (e) bankruptcy, insolvency, cessation of business, or appointment of trustee, receiver or similar official; (f) seizure of the equipment or other assets; (g) default on other material debt obligations; (h) the expiration, revocation or other termination of the Franchise Agreement(s) or the sale or other transfer of the security without the CWB’s prior written consent; (i) the expiration, revocation or other termination of the Lease agreement(s) between the Borrower and its landlord(s), as applicable (j) change of ownership or control, amalgamation or dissolution; (k) material adverse change; (l) any of the above events occurring in respect of any Guarantors, persons controlling the Borrower, or affiliate of the Borrower.

**EQUIPMENT SUBSTANTIATION:** CWB will require copies of invoices for the Equipment. It is understood that such information will be provided by The Borrower or its suppliers. To reimburse The Borrower for invoices already paid, CWB will also require both a bank statement and copy of the cleared cheques.

**INSURANCE:** The Borrower will be responsible for maintaining in force property, liability and business interruption insurance with insurers and in amounts and coverage’s satisfactory to CWB. Deductibles on any insurance must be less than CDN \$10,000. CWB will be identified on the Borrower’s insurance policies as “First Loss Payee” for property and business interruption coverage and “Additional Insured” for liability coverage.

**MATERIAL CHANGES:** The obligation of CWB to close the transactions contemplated in this Commitment will be subject to satisfaction of the conditions precedent set forth in this Commitment issued in connection with the Proposal, or deemed appropriate by CWB and the following: CWB has determined that:

- a. No Material Adverse Effect (as hereinafter defined) has occurred since issuance of the proposal;
- b. All representations and warranties in the loan documentation are true and correct as of the closing;
- c. There are no facts or circumstances existing and not previously disclosed in writing to CWB with respect to the Borrower or any guarantor, the proposed collateral, the seller, if any, of such collateral, any other person representing or otherwise acting on behalf of The Borrower or any Guarantor, or the transaction that, in CWB judgment, are inconsistent in a material and adverse manner with any such information disclosed to CWB prior to issuance of the proposal that, if known at the time of issuance of the proposal, will have caused CWB not to issue the proposal;

“Material Adverse Effect” means any fact, event or circumstance that, alone or when taken with other events or conditions occurring or existing concurrently with such event or condition:

1. Has or could reasonably be expected to have a material adverse effect on the business, assets, operations, condition (financial or otherwise), or prospects of The Borrower or any Guarantor;
2. Materially impairs or could reasonably be expected to materially impair the ability of The Borrower or any Guarantor to pay and perform its obligations under the loan documentation to which it is a party;
3. Materially impairs or could reasonably be expected to materially impair the validity or enforceability of any loan documentation or the rights and remedies of CWB under any loan documentation; or
4. Has or is reasonably expected to have any material adverse effect on the proposed collateral, the existence or priority of CWB liens in the proposed collateral, the general availability and cost of credit to CWB or the market conditions with respect to the Property or Canada in general.





You may indicate your acceptance of this Commitment by executing this letter and returning it to my attention. If you have any questions regarding this matter, please feel free to contact me.

Sincerely,

A handwritten signature in cursive script, appearing to read 'Trish Halliwell'.

Trish Halliwell  
Senior Manager - Restaurants, CWB Franchise Finance  
Phone: T. 289-998-0276 / C. 647-465-7752

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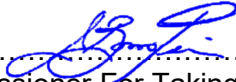
The above terms and conditions are hereby agreed to and accepted this 01 day of November, 2021.

**INDEX HOLDING GROUP INC.**

By: Rana Muqete

Title: ABDUL MUQEET

This is **Exhibit “F”** referred to in the affidavit of Tyson Hartwell, sworn before me by videoconference on April 27, 2023 in accordance with O.Reg. 431/20: Administering Oath or Declaration Remotely. The deponent was located in the City of Calgary in the Province of Alberta and I was located in the City of Toronto in the Province of Ontario.



.....  
A Commissioner For Taking Affidavits

Jeremy Bornstein  
LSO#: 65425C



CANADIAN WESTERN BANK  
2000 Argentia Rd., Plaza #1, Suite 300,  
Mississauga, Ontario L5N 1P7

**EQUIPMENT LOAN AND  
SECURITY AGREEMENT**

CLIENT: **INDEX HOLDING GROUP INC.**

ADDRESS: 110 Herdwick Street  
Brampton, Ontario L6R 0N7

CONTACT: **Abdul Muqeet**  
Tel.:

**COLLATERAL**

All present and after-acquired personal property (as such term is defined in accordance with the applicable personal property laws in the jurisdiction where the personal property is located) of the Client used in the operations of its business, and the proceeds therefrom, all as more specifically described in this Agreement and the security agreement given by the Client to the Lender as contemplated by this Agreement.

Collateral mortgage registration against the real property located at 421 Wharnccliffe Rd. S., London, ON as more fully described as PT LT 1, PL 29, PTS 1 & 2, 33R5153 & PT 2, 33R5487 S/T 837774 IF ANY, S/T 583284 IF ANY; LONDON/WESTMINSTER

FINANCED AMOUNT	FINANCING RATE	INSTALMENTS
Loan Amount <b>\$3,000,000.00 + CAD</b>	Variable Rate: <b>Prime Rate: plus 2.65% p.a.</b>	Instalments: <b>Refer to Schedule A</b>
		Instalment date: <b>Refer to Schedule A</b>
		Frequency: <b>monthly</b>
	Change in Prime Rate effective: <b>Daily</b>	Number of Instalments: <b>Refer to Schedule A</b>
<b>Financed Amount: \$3,000,000.00 = CAD</b>		First Instalment date: <b>Refer to Schedule A</b>
		Original Term: <b>60 months</b>

**ADDITIONAL PROVISIONS**

Each of the following Schedules form an integral part of this Agreement:

- Schedule "A" – Provisions
- Schedule "B" – Request for Advance
- Schedule "C" – Acknowledgement of Receipt of Financed Amount
- Schedule "D" – Conditions Precedent
- Schedule "E" – Terms and Conditions

In consideration of the loan (the "Loan") made or to be made by Lender to Client in the amount specified under the heading "Financed Amount" above, the receipt of which Client hereby acknowledges, Client acknowledges itself indebted and promises to repay to Lender the Obligations. Client also acknowledges that it has agreed to grant to Lender a security interest in the Collateral to secure repayment of the Obligations on the terms and conditions set forth above, on all applicable schedules and other attachments hereto, all of which terms and conditions form part of this Agreement.

IN WITNESS WHEREOF, the parties hereto have executed this Equipment Loan and Security Agreement at Brampton, Ontario this November 16, 2021.

**INDEX HOLDING GROUP INC.**

By: Abdul Muqeet ("Client")  
Name: Abdul Muqeet  
Title: Director

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

SIGNATURE OF AUTHORIZED OFFICERS

**CANADIAN WESTERN BANK**

By: \_\_\_\_\_ ("Lender")  
Name: Trish Halliwell  
Title: Senior Manager, Restaurants

By: Wendy Black B-C240  
Name: Wendy Black  
Title: Senior Documentation Specialist

SIGNATURE OF AUTHORIZED OFFICERS

**SCHEDULE A  
PROVISIONS**

**This SCHEDULE A is an integral part of the EQUIPMENT LOAN AND SECURITY AGREEMENT executed at Brampton, Ontario this 16<sup>th</sup> day of November, 2021**

The following provisions are in addition to, and shall be deemed to form part of, the terms and conditions of this Agreement. Capitalised terms not defined herein shall have the meanings set forth in the terms and conditions schedule attached as Schedule “E” to this Agreement.

“Advance” means any advance in respect to the Financed Amount made by Lender to Client hereunder.

“Corporate Guarantor” means **INDEX GROUP OF COMPANIES INC., INDEX INTERNATIONAL INC., INDEX FOODS INC., 2640179 ONTARIO INC., 11030434 CANADA LTD., 2700774 ONTARIO INC., 2700767 ONTARIO INC., 2683960 ONTARIO LTD., 11030418 CANADA INC., 2723710 ONTARIO INC., 2718366 ONTARIO INC., 2737332 ONTARIO INC., 2737334 ONTARIO INC., 2723714 ONTARIO INC., 2723716 ONTARIO INC., 2737338 ONTARIO INC., 2790760 ONTARIO INC., 2775290 ONTARIO INC., 2775296 ONTARIO INC. and 421 WHARNCLIFFE LTD.** and any New Entity.

“Covenant Parties” means, collectively, the Client, Corporate Guarantors and any New Entity as determined by Lender from time to time.

“Effective Date” means the date on which the first Advance under any Tranche is disbursed.

The term “Financed Amount” provided in Section 1.1(n) of Schedule “E” to this Agreement is hereby replaced by: “Financed Amount” means the total amount advanced under all Tranches or the total unpaid outstanding balance, as the context requires.

“New Entities” means any new legal entity to be formed which will be an Affiliate of Client (each new entity a “New Entity” and collectively referred to as “New Entities”).

“Personal Guarantor” means ABDUL MUQEET.

“Sites” means any present or future location subject to a financing by the Lender and any location where the Covenant Parties operates its business including, but not limiting the following Sites (each location a “Site” and collectively referred to as “Sites”):

**Popeyes Louisiana Kitchen - owned by and located:**

<b>OWNERSHIP</b>	<b>COLLATERAL SITES</b>
Index International Inc.	4-1525 Dundas St. E., Whitby, ON
Index Foods Inc.	965 Dundas St. W. Whitby, ON
2640179 Ontario Inc.	1571 Sandhurst Circle, #106D, Toronto, ON
2700774 Ontario Inc.	22 Stevenson Rd. S., Oshawa, ON
2700767 Ontario Inc.	9 Jim Kimmett Blvd., Napanee, ON
2683960 Ontario Ltd.	2 Douglas Rd., Uxbridge, ON
11030418 Canada Inc.	72 Baldwin St. N.,(Brooklin) Whitby, ON
2723710 Ontario Inc.	165 E. Liberty Street, Toronto, ON
2737332 Ontario Inc.	900 Dufferin St., Toronto, ON
2737334 Ontario Inc.	674-676 Sheppard Ave. W., Toronto, ON
2737338 Ontario Inc	Future site to be determined
2723714 Ontario Inc.	Future site to be determined
2718366 Ontario Inc.	Future site to be determined
Index Group of Companies Ltd.	Future site to be determined

**Denny’s - owned by and located:**

2723716 Ontario Inc. dba Denny’s Woodbine	8502 Woodbine Ave., Markham, ON
11030434 Canada Ltd. dba Denny’s Burlington	1200 Brant St., Burlington, ON
2790760 Ontario Inc. dba Denny’s Newmarket	17725 Yonge St., Newmarket, ON

2775290 Ontario Inc. dba Denny's Brantford	195 Henry Street, Brantford, ON -
2775296 Ontario Inc. dba Denny's Rexdale	445 Rexdale Boulevard, Etobicoke ON

**FEE SIMPLE REAL ESTATE PROPERTY**

421 Wharncliffe Ltd.	421 Wharncliffe Rd., London, ON PT LT 1, PL 29, PTS 1 & 2, 33R5153 & PT 2, 33R5487 S/T 837774 IF ANY, S/T 583284 IF ANY; LONDON/WESTMINSTER
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The Financed Amount shall be used towards a) the lesser of \$1,050,000.00 or 75%% of the acceptable new build costs, as determined by Lender, for Denny's Newmarket located at 17725 Yonge St., Newmarket, ON and b). the lesser of \$975,000.00 or 75%% of the acceptable new build costs, as determined by Lender, for Denny's Brantford located at 195 Henry Street, Brantford, ON and c) the lesser of \$975,000.00 or 75%% of the acceptable new build costs, as determined by Lender for Denny's Rexdale located at 445 Rexdale Boulevard, Etobicoke, ON. Any such acceptable costs must be supported by invoices and proof of payment provided to Lender prior to the second Advance made during the term of this Agreement, or upon request by Lender.

"Tranche" means the tranches defined below (each a "Tranche", and collectively referred to as "Tranches"). The Financed Amount shall be advanced by Lender to Client in different Tranches as follows:

- "Tranche 1" means the portion of the Financed Amount to be used towards the new build costs for Denny's Newmarket;
- "Tranche 2" means the portion of the Financed Amount to be used towards the new build costs for Denny's Brantford; and
- "Tranche 3" means the portion of the Financed Amount to be used towards the new build costs for Denny's Rexdale.

**PREPAYMENT**

Notwithstanding the terms of Section 2.2 of Schedule "E" to this Agreement, each year and upon 30-days prior notice to Lender, Client shall have the right to prepay up to 10% of the outstanding balance of the Financed Amount without any Liquidated Damages.

**CLIENT'S GENERAL REPRESENTATIONS, WARRANTIES AND COVENANTS**

Section 27 of Schedule "E" to this Agreement is amended by replacing the last two sentences with the following:

"Client agrees to furnish Lender a copy of its annual accountant prepared notice to reader consolidated combined financial statements for the Covenant Parties promptly upon availability and in any event within 120 days of each fiscal year-end. Client agrees also to furnish its internal trailing twelve month quarterly financial statements promptly upon availability and in any event within 45 days of each financial quarter-end.

In addition, evidence of property taxes paid in full and building insurance coverage on the Real Property located at 421 Wharncliffe Rd., London, ON is required annually.

For greater certainty, the beginning of Section 27 of Schedule "E" to this Agreement remains unchanged.

**PERSONAL NET WORTH STATEMENTS – PERSONAL GUARANTORS**

Client hereby undertakes to obtain and furnish to Lender, on a biennially basis, a net worth statement from the Personal Guarantor within 120 days of the Client's fiscal year-end.

**UNDERTAKING: RIGHT TO TERMINATE MANAGEMENT AGREEMENT**

Client hereby (i) confirms that no management agreement is in place with respect of any of the Sites and (ii) undertakes to obtain Lender's consent prior to entering into any management agreement in respect of any Sites, which consent may be conditional upon obtaining a subordination and undertaking agreement from the manager. It is also agreed that should Lender consent, in its sole discretion, to such management agreement, the manager shall be approved by Lender.

**NEGATIVE PLEDGE ON THE FRANCHISE AGREEMENT**

Client hereby undertakes and agrees that it shall not assign any Franchise Agreement nor grant, create or cause to be created, any lien, including hypothecs, in or on any Franchise Agreement or agree or consent to any of the foregoing.

## **LOAN FEE**

Client shall pay to Lender a non-refundable loan fee equivalent to 1% of the total Advances made by Lender to Client under each Tranche ("Loan Fee"), whether funded or not. For the purposes of paying the Loan Fee, Client agrees that Lender may, at its discretion, (i) deduct the Loan Fee (or any portion thereof) from the funds to be advanced to Client, and/or (ii) if Client provided a good faith deposit to Lender, Lender may retain the whole or portion of such good faith deposit in full or partial satisfaction thereof.

## **INTERIM LOANS**

The following sub-sections (a) to (f) will apply.

### a. General

Subject to the terms and conditions contained in this Agreement, Lender may agree, in its sole discretion to make an interim loan or interim loans to Client which loan amounts will be disbursed as partial advances of the total amount to be advanced under each Tranche upon request by Client and shall form part of the Obligations secured hereunder (**interim loan and interim loans to be collectively called, the "Interim Loan"**). The Interim Loan shall be available until the earliest of (i) disbursement by Lender of the total amount to be advanced under each Tranche, (ii) the date that is six (6) months from the Effective Date under each Tranche, or (iii) such other date mutually agreed upon by Client and Lender (such earliest date hereafter referred to as "Tranche 1 Closing Date" or "Tranche 2 Closing Date" or "Tranche 3 Closing Date" ( "**Tranche Closing Date**"), as applicable. Without in any way derogating from the un-committed nature of the Interim Loan, Lender shall have no obligation whatsoever to make an Interim Loan: (a) which is less than \$100,000; (b) which is within thirty (30) days of any previous Interim Loan having been made; (c) if a Default or event that, with the lapse of time or the giving of notice or both, would constitute a Default, has occurred or is continuing; or (d) if any condition precedent to funding is not satisfied or ceases to be satisfied, in Lender's sole judgment.

### b. Manner of Borrowing of the Interim Loans

Client shall give Lender at least ten (10) business days' notice by sending a request for advance of loan proceeds in the form attached hereto as Schedule B (**the "Request"**). If required by Lender, the Request shall be accompanied by a copy of the invoices for Equipment to be paid from the proceeds of the Interim Loan. Each Request shall be deemed to constitute a representation and warranty by Client that as at the date of the Request, no Default or event that, with the lapse of time or the giving of notice or both, would constitute a Default, has occurred or is continuing. Subject to the conditions stated in this Agreement and when required by Lender, upon receipt from Client of proof acceptable to Lender that such invoices were paid by Client, Lender will disburse the amounts set out in the Request to Client.

### c. Interim Loan Financing Rate and Instalments

Notwithstanding the Financing Rate, each Interim Loan shall bear interest at the Interim Loan Financing Rate, as defined below, from each Advance Date to the each respective Tranche Closing Date. The Interim Loan Financing Rate shall be equal to the Prime Rate plus 2.65% per annum ("Interim Loan Financing Rate").

From the Advance Date of each Interim Loan to each Tranche Closing Date, each Interim Loan Instalment, as defined below, shall consist of interest only payments payable monthly in arrears starting on the month following the disbursement of the Interim Loan ("Interim Loan Instalment(s)"). Unless otherwise agreed by the parties, the Interim Loan Instalments are due each month on the same calendar day, which will be the same calendar day: (i) as the day that the Loan Instalment was disbursed or (ii) the day of the first Advance under first Interim Loan. The Interim Loan Instalment shall be payable to Lender by electronic fund transfer. The Interim Loan Instalments shall be consecutive payments of interest only. The amount of the Interim Loan Instalments for each Interim Loan shall be determined by Lender on the date of disbursement of each Interim Loan based on the Interim Loan Financing Rate, subject to an adjustment calculated at each Tranche Closing Date commencing from the first Instalment date, to reflect monthly fluctuations in the Prime Rate.

For the purposes of the Interim Loans, the following terms are amended as follows:

- (a) the term "Instalments" provided in Section 1.1 (t) of Schedule "E" of this Agreement shall include the Interim Loan Instalments;
- (b) the term "Financing Rate" provided in Section 1.1 (o) of Schedule "E" of this Agreement shall include the Interim Loan Financing Rate.

### d. Payment of Interim Loan - Principal and Interest

At each respective Tranche Closing Date, the amount of all outstanding Interim Loan principal balances shall be deemed to form part of the Obligations. The terms applicable to each Tranche shall apply to the Interim Loan as if they were advanced to Client as part of the Financed Amount for each Tranche. The total amount of all Advances made under each Interim Loan shall bear interest from each respective Tranche Closing Date at the Financing Rate.

If any, the outstanding accrued interest resulting from the Interim Loan ("Interim Loan Accrued Interest") shall be due and payable on each Tranche Closing Date, Client authorizes Lender to debit the Interim Loan Accrued Interest from its banking account on each respective Tranche Closing Date. Client acknowledges that the Interim Loan Accrued Interest forms part of the Obligations.

For clarification, the amount of each Interim Loan shall not in any way increase the amount that Lender has agreed to make available to Client under each Tranche.

Client shall pay on demand any amount outstanding in excess of the amount that Lender has agreed to make available to Client under this Agreement, including without limitation the Interim Loan Accrued Interest, fees and expenses. Nothing herein shall be construed to require Lender to advance any funds to or on behalf of Client at any time, including on each Tranche Closing Date, if a Default or event that, with the lapse of time or the giving of notice or both, would constitute a Default, has occurred or is continuing.

**e) Acknowledgment of Receipt and Confirmation of Indebtedness**

The receipt of the total amount that Lender has agreed to make available to Client under each Tranche and, as Lender "may see fit, of each Advance shall be evidenced and acknowledged by Client in writing, in the form attached hereto as Schedule C. Client hereby acknowledges and agrees that notwithstanding the foregoing, Lender's books and records in any form relating to this Agreement, including as they may relate to any and all Obligations thereunder from time to time, shall constitute prima facie, conclusive evidence of all such Obligations.

**f) Security**

The Collateral and all other security and guarantee agreements granted to Lender in relation to this Agreement is given as a general and continuing security for the payment and performance of the Obligations, including without limitation all Interim advances.

**CROSS DEFAULT**

In addition to the Defaults provided in Section 19 of Schedule "E" of this Agreement, (i) a Default under this Agreement shall be deemed to constitute a default under all other present and future agreements entered into between a corporation affiliated to Client (or any Guarantor or Covenant Party) and Lender or any Affiliate, nominee or agent of Lender ("Affiliate Agreement"), and (ii) a Default under any Affiliate Agreement shall be deemed to constitute a default under this Agreement.

**CROSS-COLLATERIZATION**

The security granted in connection with this Agreement is given also to secure the payment and performance of any and all debts, obligations and liabilities of any kind or description whatsoever (whether due or to become due) of Client or any affiliates of Client (or any Guarantor or Covenant Party) to Lender under this Agreement and any other agreements with lender or any Affiliate of Lender. This security shall be deemed to be a continuing security which will not be released or discharged in whole or in part until satisfaction in full of all such debts, obligations and liabilities.

**TERM, INSTALMENTS AND FINANCED AMOUNT AMORTIZATION**

The term for:

- a) Tranche 1 shall be 60 months as of the Tranche 1 Closing Date. The Instalments for Tranche 1 shall consist of 3 interest only payments and 56 consecutive and equal payments of blended principal and interest and one final balloon payment based on an 84 month amortization.
- b) The term for Tranche 2 as of the Tranche 2 Closing Date shall be co-terminus with the term of Tranche 1 and the Instalments shall consist of 3 interest only payments and consecutive and equal payments of blended principal and interest and one final balloon payment based on an 84 month amortization.
- c) The term for Tranche 3 as of the Tranche 3 Closing Date shall be co-terminus with the term of Tranche 1 and the Instalments shall consist of 3 interest only payments and consecutive and equal payments of blended principal and interest and one final balloon payment based on an month amortization.

For clarity, each Tranche shall be co-terminus to the closing date of the first Tranche Closing Date whether that be in the order stated above or not.

The Instalments for each Tranche shall be determined by Lender on each Advance Date.

## **LOAN FINANCIAL COVENANTS**

On a quarterly basis, Lender shall monitor the following financial covenants on the combined results of the Covenant Parties:

**COVENANTS:** Covenants are measured for the Covenant Parties based on the most recent financial results. Exact covenants to be determined during the underwriting process, however for indication typical covenants would include the following:

- Evidence of Property Taxes paid in full and building insurance on the Real Property at 421 Wharncliffe is required annually.

**(1) Fixed Charge Coverage Ratio, Pre-Compensation (FCCR-Pre):** As measured for the Covenant Parties on the last day of the Client's reporting period, the Covenant Parties must have a Pre-Compensation Consolidated FCCR equal to or greater than **1.30:1.0**.

**"Pre-Compensation Consolidated FCCR"** means, with respect to the 12-month period of time immediately preceding the date of determination, the ratio, calculated for the Covenant Parties for such time period, each as determined in accordance with GAAP, of: (i) the sum of net income, interest expense, income taxes, depreciation, amortization, and operating lease expenses (rent expense), and officers' salaries expensed on the income statement, plus or minus other non-cash adjustments or non-recurring items (as allowed by Lender); to (ii) the sum of operating lease expenses (rent expense, not including common area maintenance or property taxes), principal payments on long term debt, the current portion of all capital leases, and interest expense (excluding non-cash interest expense and amortization of non-cash financing expenses).

**(2) Fixed Charge Coverage Ratio, Post-Compensation (FCCR-Post):** As measured for the Covenant Parties on the last day of the Client's reporting period, the Covenant Parties must have a Post-Compensation Consolidated FCCR equal to or greater than **1.10:1.0**.

**"Post-Compensation Consolidated FCCR"** means, with respect to the 12-month period of time immediately preceding the date of determination, the ratio, calculated for the Covenant Parties for such time period, each as determined in accordance with GAAP, of: (i) the sum of net income, interest expense, income taxes, depreciation, amortization, and operating lease expenses (rent expense, not including common area maintenance or property taxes), plus or minus other non-cash adjustments or non-recurring items (as allowed by Lender), minus increases in officer or shareholder loan receivables and minus dividends or distributions not otherwise expensed on the applicable income statement(s); to (ii) the sum of operating lease expenses (rent expense, not including common area maintenance or property taxes), principal payments on long term debt, the current portion of all capital leases, and interest expense (excluding non-cash interest expense and amortization of non-cash financing expenses).

**(3) Funded Debt to EBITDA (Senior Leverage):** As measured for the Covenant Parties on the last day of the Client's reporting period, Consolidated Funded Debt to Consolidated EBITDA shall be equal to or less than **3.75:1.0**.

**"Consolidated Funded Debt"** is defined as the outstanding principal balance of all indebtedness of the Covenant Parties, including capital leases and the outstanding balances of any revolving lines of credit, as at the last day of the fiscal period being measured. **"Consolidated EBITDA"** is defined as the aggregate sum, for the 12-month period of time immediately preceding the last day of the fiscal period being measured, for the Covenant Parties, of all net income, interest expense, income taxes, depreciation, and amortization, but less non-recurring miscellaneous income and plus non-recurring miscellaneous expenses (as allowed by Lender), each as determined in accordance with GAAP.

## **ENTIRE AGREEMENT**

This Agreement, including the Schedules hereto and all related security documents, constitutes the entire agreement between Lender and Client with respect to the subject matter contained herein and supersedes all prior negotiations, undertakings, representations and understandings, whether written or oral, including any proposal letter.





**SCHEDULE B  
FORM OF ADVANCE REQUEST**

**This SCHEDULE B is an integral part of the EQUIPMENT LOAN AND SECURITY AGREEMENT executed at Brampton, Ontario, this 16<sup>th</sup> day of November, 2021.**

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**TO: CANADIAN WESTERN BANK ("Lender")**  
**FROM: INDEX HOLDING GROUP INC. ("Client")**  
**RE: EQUIPMENT LOAN AND SECURITY AGREEMENT dated as of November 16, 2021 between the Client and the Lender (as amended, modified, supplemented, restated, replaced or otherwise modified from time to time, the "Loan Agreement")**

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This Advance Request is delivered to you pursuant to Schedule A of the Loan Agreement. All defined terms set forth in this Advance Request shall have the respective meanings set forth in the Loan Agreement.

1. Client hereby requests an Advance under the Loan Agreement as follows:
  - (a) Date of Advance: \_\_\_\_\_
  - (b) Amount of Advance: \_\_\_\_\_
2. Client confirms that as at the date of this Advance Request:
  - (a) no Default or event that, with the lapse of time or the giving of notice or both, would constitute a Default has occurred and is continuing or will have occurred and be continuing on the applicable Advance Date, or will result from the Advance requested in this Advance Request;
  - (b) the representations and warranties contained in the Loan Agreement and the other documents, instruments and agreements given in connection therewith are true and correct in every respect with the same effect as if such representations and warranties had been made on and as of the date of this Advance Request (provided that if any such representation or warranty expressly speaks only as of a specific date, such representation or warranty is true and correct only as of such date); and
  - (c) the aggregate principal amount of all Advances under the the Loan Agreement made by Lender as at the date of this Advance Request plus the principal amount of the Advance requested in this Advance Request is not greater than Cdn \$3,000,000.00.
3. Client confirms that there are no Liens in respect of the applicable existing Sites for which the proceeds of the Advance will be used.
4. All of the condition precedents to the Advance requested in this Advance Request, as specified in Schedule E of the Loan Agreement, have been satisfied including, but not limited to, those reports and documents described therein which are either attached as an Annex hereto or have been delivered separately to Lender.

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

**INDEX HOLDING GROUP INC.**

Per: \_\_\_\_\_  
Name:  
Title:



**SCHEDULE C  
ACKNOWLEDGEMENT OF RECEIPT OF FINANCED AMOUNT**

This SCHEDULE C is an integral part of the EQUIPMENT LOAN AND SECURITY AGREEMENT executed at Brampton, Ontario this 16<sup>th</sup> day of November, 2021.

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**ACKNOWLEDGEMENT OF RECEIPT OF FINANCED AMOUNT**

**TO:** CANADIAN WESTERN BANK (“Lender”)  
**FROM:** INDEX HOLDING GROUP INC. “Client”  
**RE:** EQUIPMENT LOAN AND SECURITY AGREEMENT dated as of November 16, 2021 between Client and Lender (as amended, modified, supplemented, restated, replaced or otherwise modified from time to time, the “Loan Agreement”)

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Client acknowledges receipt of an amount of \$ \_\_\_\_\_ (the “**Financed Amount**”) as stated and in accordance with the Loan Agreement and acknowledged itself indebted and promises to repay the Lender the Financed Amount, together with interest and all other amounts owing in accordance with the terms and conditions of the Loan Agreement.

**DATED** this \_\_\_ day of \_\_\_\_\_, 202\_\_.

Per: \_\_\_\_\_  
Name:  
Title:

Per: \_\_\_\_\_  
Name:  
Title:



## **SCHEDULE D CONDITIONS PRECEDENT**

**This SCHEDULE D is an integral part of the EQUIPMENT LOAN AND SECURITY AGREEMENT executed at Brampton, Ontario this 16<sup>th</sup> day of November.**

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Prior to the Advance, each of the following conditions precedent shall have been satisfied, at Client's sole cost and expense, all as determined by Lender in its sole discretion. Lender shall not be obliged to make any Advance hereunder unless it has received, in each case in form and substance satisfactory to it, each of the following conditions (or evidence thereof, as the case may be).

All conditions precedent to the obligation of the Lender to make the Advance are stipulated solely for the benefit of the Lender and may be waived by the Lender, in whole or in part, at any time and in its sole discretion.

- (a) Executed copy of the Equipment Loan and Security Agreement and all ancillary documents thereto (including certificates, resolutions, articles of incorporation, and opinions);
- (b) Executed general security agreement ("GSA") creating a first priority lien on all present and after acquired personal property including any and all intellectual property, equipment used at or in connection with the Sites, as well as all improvements, additions, replacements and substitutions of the Equipment, and all proceeds thereof (including insurance proceeds), from Client and the Corporate Guarantors (and any control agreement with third party bank as required to perfect cash collateral security)
- (c) Executed joint and several (solidarily for the Province of Quebec) guarantee and indemnity agreements from all Corporate Guarantors together with subordination of claims of each such party;
- (d) Executed guarantee and indemnity agreements from all Personal Guarantors together with subordination of claims from each such Personal Guarantor;
- (e) Executed Assignment and Postponement of Creditor's Claims agreements from Client and 2790760 Ontario Inc., 2775290 Ontario Inc., 2775296 Ontario Inc., 421 Wharnclyffe Ltd., and Rajandeep Singh Dhillon;
- (f) Receipt by Lender of fully executed, complete copies of the Franchise Agreements and all renewals, extensions and amendments, if applicable, with respect to each Site;
- (g) Receipt by Lender of fully executed, complete copies of the Lease Agreements and all renewals, extensions and amendments, if applicable, with respect to each Site;
- (h) Receipt by Lender of evidence that all insurance required by the present agreement has been obtained and is in full force and effect with respect to each Site;
- (i) Receipt of proof of payment for the balance owing to Canada Revenue Agency ("CRA") showing on the 2020 Notice of Assessment for Abdul Muqet;
- (j) All debt between Client and Corporate Guarantors to be jointly and severally (solidarily for the Province of Quebec) cross-collateralized, cross-defaulted and cross-guaranteed;
- (k) All fees required to be paid by Client;
- (l) No Default has occurred;
- (m) No Material Adverse Effect shall have occurred and be continuing on and as of the Advance Date, nor shall a requested Advance result in the occurrence of a Material Adverse Effect;
- (n) Any other document reasonably required by the Lender (or its solicitors).

## SCHEDULE E TERMS AND CONDITIONS

### 1. Interpretation

#### 1.1 For the purpose of this Agreement:

- (a) "Accrued Liability" at any time means the amount equal to the sum of the Financed Amount, any Liquidated Damages and all other amounts then payable hereunder, including without limitation, any Overdue Payment and accrued interest.
- (b) "Advance Date" means the business day on which the Advance is made by Lender to Client hereunder.
- (c) "Affiliate" means in respect of a person, a person or persons that, directly or indirectly through one or more intermediaries, control, are controlled by, or are under common control with, such person.
- (d) "Agreement" means this Loan Agreement and any applicable schedules hereto, unless the context otherwise requires, and "hereof", "herein", "hereby", "hereunder" and similar expressions refer to this Agreement.
- (e) "business day" means a day when the office of Lender at the address stated on the face hereof is open for business dealings, but excludes Saturday, Sunday and any other day which is a statutory holiday in the province of Lender.
- (f) "Claims" has the meaning assigned in Section 22.
- (g) "Client" means the client of Lender stated on the face hereof and, in respect of any obligations regarding the Equipment, the Sites or other similar obligations, including all of the related obligations, covenants, undertaking, representations and warranties set out in Sections 4, 5, 6, 9, 14, 15, 17, 18, 19, 25, 26, and 27 the Covenant Parties (as defined in Schedule A).
- (h) "Collateral" has the meaning assigned in Section 5.1.
- (i) "control" means the power to direct or cause the direction of the management and policies of a person whether through the ownership of voting securities or otherwise.
- (j) "Conversion Rate" means the rate, expressed in Canadian dollars (CAD) for the purchase of one US dollar (USD), determined by adding 0.0100 CAD/USD to the highest rate which appears on the Bloomberg CAD GIT Page between 7 AM and 5 PM (EST).
- (k) "Default" means any of those events or circumstances specified in Section 19.
- (l) "Equipment" means all present and after-acquired personal property of a person.
- (m) "Equities" means existing or future rights of counterclaim, defence, set-off, compensation, abatement or offset, legal or equitable.
- (n) "Financed Amount" means the amount stated as such on the face hereof owing by Client to Lender or the unpaid outstanding balance thereof, as the context requires.
- (o) "Financing Rate" means the rate per annum stated as such on the face hereof, or in Schedule A, as the context requires.
- (p) "Franchise Agreement" means any franchise, license or area development agreement granted with regard to the Sites.
- (q) "Franchise Parties" means any party that entered into or will enter into a Franchise Agreement.
- (r) "GAAP" means generally accepted accounting principles in effect from time to time in Canada or IFRS applicable to the relevant person, applied in a consistent manner from period to period.
- (s) "Guarantor" means, collectively, the Corporate Guarantors and the Personal Guarantors, as applicable.
- (t) "Instalments" means the periodic repayment instalments of the Financed Amount, together with interest calculated at the Financing Rate as provided on the face hereof, such instalments stated on the face hereof.
- (u) "Lease Agreement" means any lease, sub-lease or storage agreement with regard to the Sites.
- (v) "Lease Parties" means any party that entered into or will enter into a Lease Agreement.
- (w) "Lender" means Lender stated on the face hereof.
- (x) "Lien" means any lien, privilege, mortgage, pledge, hypothec, charge, security interest, attachment, assignment, seizure, sequestration, distress, levy or other encumbrance of any nature or kind whatsoever.
- (y) "Liquidated Damages" means liquidated damages determined in accordance with Section 2.2.
- (z) "Loss of Equipment" means:
  - (i) a total or constructive total loss of Equipment, or damage thereto, or theft thereof which, in the reasonable opinion of Lender, renders it impossible or impractical to use the Equipment for its intended purpose; or
  - (ii) expropriation or confiscation of Equipment by any authority absolutely or for more than 180 days.
- (aa) "Material Adverse Effect" means, when used with reference to any event or circumstance or any person, an event, fact or circumstance that, either alone or when taken together with any other event, fact, or circumstance, has or could reasonably be expected to have a material adverse effect on: (i) the business, assets, operations, prospects, property, or condition (financial or otherwise), of Client, any Covenant Party or Guarantor, any of the Sites, the Collateral or any portion thereof; (ii) the ability of Client or any Guarantor to perform and discharge its respective obligations under this Agreement or any of the related documents; (iii) the validity or enforceability of any of such documents, including this Agreement or any of Lender's security, or Lender's ability to enforce any of its rights or remedies under any of such documents; or (iv) the existence or priority of any of the liens in favour of Lender including any liens affecting any of the Sites or such Equipment.
- (bb) "Obligation" means any obligation of Client to pay any amount owing hereunder or under any documents, instruments or security delivered in connection herewith, including the Financed Amount, Overdue Payments and all other amounts owing hereunder, or to perform any other obligation of Client hereunder or under any documents, instruments or security delivered in connection herewith.
- (cc) "Overdue Payment" means any amount owing by Client hereunder and any sum disbursed by Lender pursuant to Section 21 which is not paid when due hereunder, or any portion thereof.
- (dd) "Paydown Amount" has the meaning assigned in Section 13.2.
- (ee) "person" includes any natural person, corporation, firm, partnership, trust, sole proprietorship or governmental agency, authority or other entity, however constituted or designated.
- (ff) "Prime Rate" means the variable reference rate of interest per year declared by Lender from time to time to be its "Prime Rate" for Canadian dollar loans made by Lender in Canada, such rate to be adjusted automatically, without notice, as of the opening of business on the effective date of any change in such rate by Lender by public announcement or otherwise.
- (gg) "Supplier" means any manufacturer, supplier, vendor or dealer or any other person from whom Client has acquired any of the Equipment.
- (hh) "Taxes" means any and all taxes, imposts, levies, fees, duties and charges imposed by any taxing authority on Lender, Client, the Equipment, its purchase, sale, ownership, security interest thereon, delivery, possession, operation or use including, without limitation, sales, excise, use, health services, property, goods and services, business transfer and value added taxes (including any penalties or interest based on late or non-payment), but excluding taxes imposed on or measured by Lender's overall net income.
- (ii) "TTM" means on a trailing twelve month basis.
- (jj) "Unwinding Costs" means the costs Lender incurs when a fixed rate loan is paid out early. The unwinding costs are based on an

interest rate differential between the loan rate and the bid side yield for Government of Canada securities with the same maturity as the loan, for the remaining term of the loan at the time of repayment.

(kk) "Warranties" means any and all warranties, guarantees, representations, service contracts, contracts to stock spare parts and similar agreements, oral or written, express, implied or statutory, relating to the Equipment.

1.2 In this Agreement, unless the context otherwise requires, the singular includes the plural and vice-versa and words importing gender include each gender.

1.3 All references herein to statutes include the statute as it may be amended, restated or replaced with legislation of comparable effect. Unless otherwise specified, all references to Sections and Schedules are to Sections of, and Schedules to this Agreement. The words "hereto", "herein", "hereof", "hereunder" and similar expressions refer to this Agreement and not to any particular Section or other provision of this Agreement. When used in the context of a general statement followed by a reference to one or more specific items or matters, the term "including" shall mean "including, without limitation", and the term "includes" shall mean "includes, without limitation". Any reference herein to the exercise of discretion by Lender (including phrases such as "in its discretion", "in the discretion of", "in the opinion of", "to the satisfaction of" and similar phrases) shall mean that such discretion is absolute and unfettered and shall not imply any obligation to act reasonably, unless otherwise expressly stated herein.

1.4 Other than payments, which shall be made on the date each payment is due, acts to be performed hereunder on non-business days shall be performed on the following business day.

## 2. Instalments

2.1 Client hereby acknowledges that it has borrowed from Lender and is thereby, or has otherwise become, indebted to and agrees to repay to Lender, at the address of Lender stated on the face hereof or such other place notified by Lender to Client, the Financed Amount, together with interest thereon, by paying the Instalments stated on the face hereof or in Schedule A hereto. Unless otherwise stated, Instalments are due on the dates stated on the face hereof in each month, or other period (or the last day of the month, if there is no corresponding date), in arrears, throughout the term hereof. On the final Instalment date, Client shall pay Lender the outstanding balance of the Financed Amount, all accrued and unpaid interest thereon (including any adjustments to reflect changes in any applicable rates of interest) and all other amounts payable hereunder.

2.2 Client may not at any time prepay in whole or in part the unpaid outstanding balance of the Financed Amount, except as follows: Commencing 36 months after the Closing Date, upon 30-day prior notice to Lender, Client will have the right to prepay all, but not less than all, of the outstanding balance of the Loan at any time during the remainder of the term of this Agreement provided Client also pays all accrued interest and costs outstanding hereunder at the time of prepayment and liquidated damages determined as follows:

(a) The Liquidated Damages shall be three (3) months' interest calculated on the unpaid principal balance at the rate provided herein plus, if Loan is fixed, a prepayment charge equal to Lender's Unwinding Costs.

2.3 Any portion of the Financed Amount prepaid shall be applied to the remaining Instalments in inverse order of maturity. No part of the Liquidated Damages shall be applied in reduction of said remaining Instalments. If a Default or a Loss of Equipment occurs, the Liquidated Damages shall also be payable by Client and shall be calculated by reference to the outstanding balance of the Financed Amount at the time of such Default or Loss of Equipment, as applicable.

## 3. Interest

3.1 The Financed Amount shall bear interest at the Financing Rate from the date hereof until the Financed Amount is unconditionally paid in full to Lender, and shall be payable in arrears on each Instalment date.

3.2 In addition to interest payable under Section 3.1, each Overdue Payment shall bear interest from the date due until unconditionally paid in full to Lender at the rate of 18% per annum, and shall be payable on demand by Lender.

3.3 Interest payable hereunder shall accrue and be calculated daily upon the daily outstanding balance of the Financed Amount or an

Overdue Payment, as applicable, on the basis of the actual number of days elapsed in a year of 365 days or 366 days, as the case may be. All interest payments to be made under this Agreement in respect of the outstanding balance of the Financed Amount or any Overdue Payment, as applicable, shall be paid both before and after maturity and before and after Default and/or judgment, if any, until full and unconditional payment of the outstanding balance of the Financed Amount or such Overdue Payment is made. The yearly rate of interest to which each rate of interest expressed herein is equivalent is the product of: (a) such rate, multiplied by (b) the actual number of days in the calendar year in which the same is to be ascertained divided by 365 or 366, as the case may be. Notwithstanding anything herein or in any other agreement with Lender to the contrary, in no event shall the combination of interest, costs, and fees payable herein exceed that rate which is one percent (1%) less than the effective annual rate of interest which is prohibited under Section 347 of the *Criminal Code* (Canada), as amended from time to time (the "**Maximum Amount**") and if any payment, collection or demand pursuant to this Agreement or any other agreement with Lender exceed the Maximum Amount then such payment, collection or demand will be deemed to have been made by mutual mistake of Client or Guarantors (as the case may be) and Lender and the amount of such payment or collection will, at the option of Lender, either be refunded to Client, or be applied to the Obligations (whether or not due and payable) as determined by Lender, and not to the payment of interest.

3.4 If the Financing Rate is a variable rate based on Prime Rate, a change in Prime Rate automatically changes the rate of interest payable hereunder to the same extent and in the same manner effective with the frequency stated on the face hereof or in Schedule A. Lender shall not be obliged to notify Client of any such change, any such right to notice being hereby irrevocably waived by Client.

3.5 In order to preserve Lender's net economic return, Lender in its sole discretion may adjust the pricing at any time prior to any Advance to reflect: (1) changes in the pricing assumptions of this Agreement; (2) a change in Lender's funding index rate; (3) tax law changes applicable to Client or Lender; and (4) general market conditions.

## 4. Title, Ownership

Title to, ownership of, and all property in the Collateral shall remain with Client, but subject always to the security interests and other provisions hereof, and at Client's sole risk, until full payment in cash of all amounts repayable hereunder; prior to such payment, Client's rights therein are to quiet enjoyment and use on the terms and conditions of this Agreement so long as a Default has not occurred.

## 5. Security Interest and Warranties as to the Collateral

5.1 As general and continuing security for the payment and performance of the Obligations, Client hereby grants to Lender and Lender hereby takes a security interest in: (a) the Equipment, (b) all present and after-acquired intellectual property and other intangibles relating to the Equipment; (c) all present and after-acquired contracts, written or oral, for the sale, exchange, lease, license, rental or other disposition of any kind whatsoever of the foregoing; (d) all insurance claims and proceeds resulting therefrom with respect to any loss or damage to any of the foregoing; and (e) all proceeds of the foregoing in the form of chattel paper, documents of title, goods, instruments, intangibles, money, fixtures or investment property, (collectively, the "Collateral"), and as further general and continuing security for the payment and performance of the Obligations Client hereby mortgages, transfers, pledges, charges and assigns the Collateral to Lender. The general and continuing security provided for in this Section 5.1 is in addition to and not as substitution for any other security provided by Client to Lender from time to time.

5.2 Client represents and warrants to Lender that Client has, and shall continue to have at all times until while the Obligations remain outstanding, good and marketable title to the Collateral, free and clear of all Liens except for Liens granted in favour of or taken by Lender hereunder or pursuant to any other agreement between Client and Lender or any nominee or agent of Lender. Client agrees to comply with all Warranties accruing to Client pertaining to the Equipment; however, any failure by any receiver to comply with any Warranty shall not affect Client's Obligations to Lender.

## 6. Personal Property and Waivers

6.1 The Equipment shall at all times be and remain moveable personal property. Notwithstanding any purpose for which the Equipment

- may be used or that it may become affixed or attached to land or any structure thereon, the Equipment shall remain subject to all rights of Lender hereunder as if it were not so affixed or attached.
- 6.2 Client agrees to obtain a waiver, if required by and in a form satisfactory to Lender, from any landlord, mortgagee, hypothecary creditor or other encumbrancer of the premises where Collateral is situated (and prior to any Equipment becoming affixed if it is to be affixed).
- 7. Postponement**  
All shareholder, Affiliate and related entity debt shall be subordinated and postponed to Lender's debt.
- 8. Cost Overruns**  
All cost overruns shall be borne by the Client. Any cost overruns in excess of 10% of the loan amount must be approved in writing by Lender.
- 9. Maintenance, Use, Operation, Alterations, Upgrades, etc.**
- 9.1 Client shall at its own expense:
- maintain Equipment in good operating condition, repair and appearance, ordinary wear and tear only excepted;
  - comply with all recommendations or requirements of Suppliers so as to preserve all Warranties; and
  - at Lender's request, enter into a maintenance agreement for Equipment for the full term of this Agreement with a Supplier or a competent service and maintenance agent satisfactory to Lender.
- 9.2 Client shall not, without Lender's prior written consent, make any alterations, additions, accessions or attachments to any Collateral. Such consent will only be granted if such changes:
- do not materially decrease the value of Collateral or limit, interfere with or frustrate its intended use;
  - do not prejudice or adversely affect any Warranties; and
  - are free from, and do not subject any Collateral to, any Lien.
- 9.3 All replacement parts and components, alterations, additions, accessions and attachments to Collateral shall automatically become subject to the security interests created hereby as soon as they are acquired by or on behalf of Client.
- 9.4 Client shall affix and keep affixed to Collateral any labels supplied by Lender identifying its security interests in Collateral.
- 10. Inspection**  
Any representative of Lender shall have the right to inspect the Collateral or any part thereof at all reasonable times upon notice to Client.
- 11. Franchise Agreement**
- 11.1 Client represents and warrants to Lender that the copies of each Franchise Agreement together with all amendments, modifications and supplements thereto, provided to Lender or executed by the Franchise Parties is a true and complete copy, subject to no amendment and that Franchise Parties are in good standing thereunder.
- 11.2 The expiration, revocation or other termination of a Franchise Agreement or the assignment or other transfer of a Franchise Parties' rights under a Franchise Agreement, without Lender's prior written consent, shall, constitute a Default hereunder, and Lender may invoke any remedies permitted under this Agreement. The consent to any such sale or transfer shall be in Lender's sole discretion, and shall be subject to the execution by the purchaser or transferee, prior to such sale or transfer, of a written assumption agreement containing such terms as Lender may require. In addition, any such consent shall be conditioned upon payment by Client to Lender of (i) a fee equal to one percent (1%) of the then unpaid outstanding balance of the Financed Amount and (ii) all out-of-pocket costs and expenses incurred by Lender in connection with such consent, including, without limitation, legal fees.
- 12. Rented Facilities**  
Client represents and warrants to Lender that the Lease Agreements for all sites together with all amendments, modifications and supplements thereto, provided to Lender are true and complete, subject to no amendments and that Client is in good standing thereunder.
- 13. Early Lease Expiry**
- 13.1 Client covenants and agrees that, in the event the term of any Lease Agreement expires before the expiration of the term of this Agreement, it shall or shall force the Lease Parties to cause the term of such Lease Agreement to be renewed or otherwise extended to a date that occurs on or after the expiration of the term of this Agreement. Failure to do so shall constitute a Default and Lender shall be entitled to exercise any and all rights and remedies it may have under this Agreement or at law.
- 13.2 Notwithstanding the foregoing, Lender may, at its sole option, require Client pay to Lender an amount to be determined by Lender at that time (the "Paydown Amount"). Failure to pay the Paydown Amount as required by Lender shall constitute a Default and Lender shall be entitled to exercise any and all rights and remedies it may have under this Agreement or at law. The Paydown Amount shall be deemed a payment of principal, shall be applied in the inverse order of maturity, and shall otherwise be applied in accordance with the terms of this Agreement.
- 14. Insurance**
- 14.1 Client shall at its own expense place and maintain with insurers acceptable to Lender:
- comprehensive all risks insurance on the Equipment for the greater of the Financed Amount or the full replacement value of the Equipment. Such insurance shall include: (i) a loss payable clause in favour of Lender and (ii) a waiver of subrogation clause in favour of Lender;
  - general public liability and property damage insurance with limits of liability at least equal to \$1,000,000 or such greater amount as Lender may require. Such insurance shall extend to all liabilities of Client under this Agreement arising out of its use or possession of Collateral and to any potential vicarious liability of Lender as holder of security interests in Collateral created hereby; and
  - business interruption coverage at least equal to the gross revenues for the last 12 months or such greater amount as Lender may require.
- 14.2 All such of insurance policies shall be in place at the effective date of this Agreement and shall contain endorsements providing that: (a) 30 days' written notice shall be given to Lender before the policy lapses or is materially altered or cancelled; (b) the insurance shall be primary and not contributory; (c) Lender's interests therein shall not be invalidated or otherwise adversely affected by any act or omission, deliberate, negligent or otherwise, of Client or its agents, servants or employees (the so-called "standard mortgage clause"); (d) Lender shall not be responsible for payment of any premiums; and (e) Lender may elect to have all proceeds of loss payable only to itself.
- 14.3 Client shall supply Lender with certified copies of all insurance policies, endorsements or other evidence of the required coverage satisfactory to Lender within 30 days of the effective date of this Agreement and on request.
- 14.4 In the event of damage to any item of Equipment amounting to Loss of Equipment, Lender shall be entitled to receive immediate payment of the amount equal to the Accrued Liability with respect to such item of Equipment. Lender may retain any monies received from the insurance proceeds in an amount equal thereto, Client remaining liable for any deficiency.
- 15. Taxes, etc.**  
Client shall have the sole responsibility for and shall duly and punctually pay all Taxes and all licence and similar fees payable at any time upon, or in respect of, Collateral, this Agreement and any payments or transactions contemplated hereunder.
- 16. Additional Debt**  
No additional debt (other than the loan(s) described herein) or guarantee of any kind shall be incurred by Client or any Covenant Parties without the prior written consent of Lender.
- 17. Liens**  
Client shall keep the Collateral free of all Liens, other than any Liens granted to, or taken by, Lender.
- 18. Laws and Regulations**  
Client is and shall continue to be in compliance with all laws and regulations relating to use, operation or possession of Collateral or the security interests therein in favour of Lender, and those relating to the prevention of money laundering and terrorism.
- 19. Default**  
It shall be a Default under this Agreement if:
- Client fails to pay any Instalment within 10 days after its due date;
  - any representation or warranty of Client made herein or in any instrument or document delivered to Lender in connection herewith is false or materially incorrect or misleading;
  - any insurance coverage required to be obtained and maintained by Client under this Agreement shall lapse, expire or be cancelled;

- (d) Client defaults in any other Obligation, or defaults in any obligation under any other agreement with Lender or any Affiliate, nominee or agent of Lender, and such default continues for 10 days after notice thereof by Lender or such Affiliate, nominee or agent, as applicable, to Client;
- (e) any act of bankruptcy takes place respecting Client, or any proceeding, petition or notice, voluntary or involuntary, is commenced, made, given or filed, as the case may be, by Client or any other person, under any present or future statute or law relating to bankruptcy, insolvency or relief from or compromise or arrangement with creditors of Client;
- (f) Client ceases or threatens to cease to carry on business or makes or proposes to make any sale of the whole or any substantial portion of its assets in bulk, or otherwise out of the normal course of business;
- (g) any execution, sequestration, expropriation or similar process is brought or threatened, by way of notice or otherwise, against, or a distress or analogous process is levied upon the whole or any part of the property of Client or Collateral;
- (h) any trustee, receiver, interim receiver, administrator, manager, receiver and manager or similar official is appointed with respect to all or any part of the property, assets or undertaking of Client (including the Collateral), whether pursuant to any private instrument or agreement or by order of any court;
- (i) if ownership or control and direction over the assets or undertaking of Client or its voting shares changes, by amalgamation, merger, sale, transfer of shares or otherwise, except pursuant to death of the shareholder, or Client passes any resolution concerning any matter referred to in paragraph (e) or with respect to, or any proceedings, voluntary or involuntary, are commenced under, any present or future law relating to amalgamation, liquidation, winding-up or dissolution;
- (j) an event occurs which, in the opinion of Lender, could reasonably be expected to have a material adverse effect on the condition (financial or otherwise), business, operations, assets, liabilities or prospects of Client, Client's ability to perform any Obligation, or any obligation under any other agreement with Lender or any Affiliate, nominee or agent of Lender, or on the rights and remedies of Lender thereunder, and continues for 10 days after notice thereof by Lender or such Affiliate, nominee or agent, as applicable, to Client;
- (k) Client fails to maintain any financial covenant under this Agreement;
- (l) the expiration, revocation or other termination of the Franchise Agreement or the assignment or other transfer of Franchise Parties' rights under the Franchise Agreement, without Lender's prior written consent;
- (m) Franchise Parties default under any Franchise Agreement and such default is not cured within any curative period provided for under such Franchise Agreement;
- (n) the expiration, revocation or other termination of any Lease Agreement between the Lease Parties and its landlord or the assignment or other transfer of the Lease Parties' rights under such Lease Agreement, without Lender's prior written consent;
- (o) Client defaults under any Lease Agreement between the Lease Parties and its landlord for the rented facilities where any Equipment of any Covenant Party is located and such default is not cured within the curative period, if any, granted to the Lease Parties under such Lease Agreement;
- (p) any Affiliate of Client defaults in any obligation under any other agreement with Lender or any Affiliate of Lender and such default continues for 10 days after notice thereof by Lender or such Affiliate, as applicable, to Affiliate of Client;
- (q) the Covenant Parties create, grant or permit to exist any hypothec on the Sites or their present and future movable, corporeal and incorporeal property, other than hypothecs granted in favor of Lender. For greater certainty, no subordinate hypothecs shall be permitted without the prior written consent of Lender; or
- (r) any event or circumstance described in any paragraph (b) through (r) inclusive occurs with respect to any Covenant Parties, guarantor or surety of Client respecting this Agreement or any person who controls Client or any Affiliate of Client.

A Default under this Agreement shall be deemed a default under all other present and future agreements entered into between Client and Lender or any Affiliate, nominee or agent of Lender.

## **20. Lender's Remedies on Default**

Upon Default, Lender shall be entitled to do one or more of the following:

- (a) declare this Agreement to be in default (with or without terminating this Agreement) whereupon all Obligations shall be immediately due, payable and enforceable without any notice or demand whatsoever;
  - (b) declare any or all of the Obligations to be immediately due and payable, or be subject to immediate performance, as the case may be, without presentment, protest or notice of dishonour, all of which are expressly waived;
  - (c) take possession of any Collateral, without demand, notice or legal proceeding and enter on any premises of Client or any other person for such purpose;
  - (d) sell, lease or otherwise dispose of any Collateral by public or private transaction for such consideration payable immediately and/or deferred and on such terms and conditions as Lender in its discretion determines;
  - (e) whether or not this Agreement may have been or be deemed to have been terminated, demand, sue for and recover the amount equal to the Accrued Liability, less, if applicable, the net proceeds to Lender derived from the sale, lease or other disposition of the Collateral, after deducting all amounts payable by Client pursuant to Section 23 hereof; and
  - (f) exercise any other rights or remedies and/or take any proceedings available to Lender hereunder, at law or in equity.
- In lieu of selling, leasing or otherwise disposing of Collateral, Lender may retain Collateral and cause Collateral to be valued by a qualified appraiser selected by it and such value shall be substituted for and deducted as net proceeds to Lender under subparagraph (e) of this Section. Proceeds of sale, lease or disposal need be deducted only when received, unless Lender elects to take the present value of payments to be received, discounted at the Financing Rate then in effect, compounded monthly.

## **21. Lender's Rights to Remedy Defaults**

If Client fails to perform or comply with any obligation hereunder, Lender may, but has no obligation to, perform same in the name of Client or Lender and make all necessary disbursements in connection therewith, which shall be reimbursed by Client immediately on demand. Lender is hereby appointed Client's lawful attorney to take any such action in Client's name.

## **22. Client's General Indemnities**

Client shall indemnify and save harmless Lender from and against all existing or future losses, costs, charges, expenses, liabilities, claims, demands, penalties, damages, suits, actions and causes of action of every nature and kind whatsoever, including strict liability in tort or in delict (collectively, "Claims") sustained or suffered by Lender, or for which Lender may become liable, resulting from or arising out of:

- (a) Lender's lawful exercise or performance of its rights or obligations under this Agreement;
- (b) the holding by Lender of a security interest in the Collateral;
- (c) any Default;
- (d) any personal injury or property damage or other commercial loss arising out of the sale or delivery to, installation, ownership, use, operation, maintenance, condition, return, removal and re-delivery of Collateral; or
- (e) any use or operation of Collateral which infringes any patent or other industrial or intellectual property right, unless caused by the gross negligence or wilful misconduct of Lender, its employees, servants or agents.

## **23. Fees and Expenses**

Client shall pay to Lender on demand Lender's prevailing fees and all costs, expenses and disbursements (including, without limitation, legal fees on a solicitor and his own client basis) that Lender incurs, pays or becomes liable for in connection with the preparation, negotiation and registration of this Agreement (or any agreement, instrument or document contemplated hereby) and any other agreement evidencing or relating to the Obligations, the perfection or preservation of any Liens granted to or taken by Lender, processing of payments, rendering statements to Client, the failure of Client to pay or perform any of the Obligations, the enforcement by any means of any of the Obligations or any provision of this Agreement, the exercise of any rights, powers or remedies under this Agreement or any other agreement evidencing or relating to the Obligations (including all such costs, expenses and disbursements in connection with recovering or taking possession of the Collateral, removing or taking custody of, the storing, preserving, processing, repair, reconditioning or dismantling of Collateral, preparing Collateral for lease, sale or other disposition and leasing, selling or otherwise

disposing of Collateral) and any professional advice sought in connection with any of the foregoing.

**24. Pre-Authorized Payments**

Client shall execute and deliver to Lender from time to time upon request pre-authorized payment orders in such form as Lender may reasonably request. Lender is hereby authorized to deliver such orders to the financial institution named therein. Client hereby appoints Lender its lawful attorney to take all action contemplated by such payment orders to receive payment of any amount due under this Agreement. Lender may decline any other form of payment. All monthly payments under this Agreement by the Client are to be made via such pre-authorized payment.

**25. Location of Collateral; Client's Name**

25.1 Except as otherwise expressly permitted hereunder, Client shall not part with possession of any Collateral nor remove any of same from any province such Collateral is located as of the date of this Agreement.

25.2 Client covenants that it shall not change its name or chief executive office or move the Collateral from the locations stated herein, or otherwise disclosed to Lender in writing, without first providing at least 30 days prior written notice to Lender.

**26. Assignment and Leasing**

Client shall not assign any rights hereunder and Client shall not sell or attempt to sell any Collateral nor lease or rent or attempt to lease or rent any Collateral, in any case without the prior written consent of Lender, and such consent may be withheld by Lender in its sole and unfettered discretion. No action aforesaid by Client shall relieve Client of any of its Obligations.

**27. Client's General Representations, Warranties and Covenants**

Client represents and warrants to and covenants with Lender that: (a) Client has been duly incorporated, amalgamated, merged or continued, as the case may be (or if Client is not a corporation, has been duly formed, created or established as a partnership, limited partnership, trust or other applicable entity) and validly exists under and is governed by the laws of its jurisdiction of formation, amalgamation, merger, continuance, establishment or creation, as the case may be, with the power and authority to own its assets and property, carry on its business as currently conducted, and to enter into this Agreement; (b) this Agreement and all other agreements, documents and instruments delivered in connection with this Agreement or the transactions contemplated hereby have been duly authorized, executed and delivered by all necessary action on the part of Client and constitute legal and valid agreements binding upon Client enforceable in accordance with their respective terms; (c) all Information as defined in Section 48 provided by Client to Lender is accurate; and (d) all payments to Lender are and will be derived from legal sources. Client agrees to furnish to Lender a copy of its most recent annual financial statements, audited if applicable, promptly upon availability and in any event, within 90 days of each financial year-end. Upon request by Lender, Client agrees also to furnish its quarterly financial statements promptly upon availability and, in any event, within 60 days of each financial quarter-end.

**28. Statutory Waivers and Acknowledgement**

28.1 To the extent permitted by law, Client waives its right to receive a copy of any financing statement or financing change statement registered by Lender and of any related verification statement.

28.2 Client waives, to the fullest extent permitted by law, the application of the provisions of (a) *The Limitation of Civil Rights Act* (Saskatchewan); and (b) *The Distress Act* (Manitoba). Client agrees that the provisions of this Agreement are commercially reasonable.

**29. No Set-Off – Exclusion And Assignment Of Warranties**

29.1 Client irrevocably and unconditionally waives all equities against any Instalment and other amount due to Lender hereunder and agrees to pay each such Instalment and other amount without regard to any equities. Neither defects in, damage to, nor loss or destruction of Collateral shall terminate this Agreement or reduce any Obligations, except as otherwise expressly provided herein.

29.2 Client represents and warrants to and covenants with Lender that Collateral is and will be used for commercial, industrial or business purposes only and not for personal, family, household or farming purposes;

29.3 (a) Lender shall not be bound by or be deemed to have made or be liable for any representation, warranty or promise made by Supplier or otherwise; (b) Lender shall not be liable for any failure of Equipment including any latent defect or alleged fundamental breach of this Agreement; (c) neither Lender nor any of its employees, servants or agents has made and does not now make any representation or warranty whatsoever, express or implied,

with respect to Equipment or any intellectual or industrial property rights therein including, without limitation, the design, specifications, condition, quality, merchantability or fitness for Client's purposes and (d) Lender shall have no liability for any direct, indirect, punitive, exemplary, special or consequential damages or loss of profits, actual or anticipated, or for any damages based on strict or absolute tort or delictual liability or Lender's or Supplier's negligence. Nothing herein shall deprive Client of its rights against Supplier or any person other than Lender. Client shall make any claims with respect to Equipment directly against Supplier.

29.4 If Equipment is seized or sold by Lender, all warranties of Supplier and rights to all software, other intellectual and industrial property licenses accompanying goods shall be deemed assigned by Client to Lender.

**30. Notices**

Any notice, demand, consent or other communication required or permitted hereunder ("Notice") shall be in writing and may be delivered, or sent by prepaid registered mail, or by telex, telecopier or other means which produces a permanent written record (a "transmission"). Mailed Notice shall be deemed to have been given two business days after mailing provided there is no general disruption or stoppage of postal services then in effect, in which case delivery shall be made by one of the other methods permitted herein; delivered Notice shall be effective upon delivery during business hours to an apparently responsible adult, and transmissions shall be deemed to have been received at the opening of the business day immediately following transmission. Addresses for Notice shall be those addresses stated on the face hereof and may be changed in accordance with the foregoing.

**31. Remedies Cumulative**

All rights and remedies of Lender hereunder are cumulative and not exclusive or alternative and may be exercised by Lender separately or together, in any order, sequence or combination.

**32. Forbearance, Indulgence and Waivers**

Forbearance or indulgence by Lender in any instance shall not constitute a general waiver of the obligation under this Agreement to which the same applies. Any waiver by Lender of its rights must be in writing and shall not extend to any other obligation or right.

**33. Allocations**

Client hereby irrevocably and unconditionally waives any present or future right to allocate any payment made to Lender to any specific Obligation due under this Agreement or under any other agreement with Lender or any Affiliate, nominee or agent of Lender. Lender may allocate and apply any payment received to any obligation due hereunder or under any other agreement with Lender or Affiliate, nominee or agent of Lender and may reverse, reallocate and re-apply any such payment as many times and in such manners as Lender from time to time sees fit. Payments received shall be allocated upon receipt of legal tender or cleared funds. Lender is hereby irrevocably authorized to combine and set off amounts payable by it to Client with amounts owing to it from Client (in each case whether matured or not and whether absolute or contingent) under the same or different agreements.

**34. Time**

Time is and shall remain of the essence of this Agreement.

**35. Entire Agreement**

There are no representations, warranties, covenants, agreements or acknowledgements by Lender affecting the Financed Amount, the Obligations, the Accrued Liability, this Agreement or the Collateral, other than as expressed in this Agreement or expressed in the other documents, instruments or security delivered in connection herewith. No amendment, restatement, supplement or other modification to this Agreement will be valid or binding unless set forth in writing and duly executed by each of the parties hereto.

**36. Severability**

Any term, condition or provision of this Agreement which is deemed to be void, prohibited or unenforceable in any jurisdiction shall, as to such jurisdiction, be severed herefrom and ineffective to the extent of such invalidity, prohibition or unenforceability, without in any way invalidating the balance hereof.

**37. No Merger in Judgment**

The taking of any judgment by Lender under this Agreement shall not operate as a merger or novation of any term or condition hereof or of any Obligation.

**38. Further Assurances and Power of Attorney**

38.1 Client and Lender each shall do, execute and perform all such acts, deeds, documents and things as may be reasonably required to enable Lender to have the full benefit of all rights and remedies



intended to be reserved or created hereby and to better assure, register and perfect the Liens granted or taken in relation to the Collateral or any part of the Collateral. Lender is hereby appointed Client's lawful attorney to complete and/or correct any information on the face hereof or in any Schedule hereto.

38.2 Each power of attorney granted in this Agreement is granted with full power of substitution, is irrevocable, is coupled with an interest, shall survive termination of this Agreement and may be exercised during any subsequent legal incapacity of Client or Lender.

**39. Currency**

Unless otherwise stated in this Agreement, all sums of money payable hereunder shall be paid in Canadian dollars. If any amount payable pursuant to this Agreement needs to be converted from US dollars to Canadian dollars, including for purposes of determining the amount of the Financed Amount or any Instalment, such conversion shall be made by Lender on the relevant date at the Conversion Rate and Lender will notify Client of the Canadian dollar amount so converted.

**40. Survival**

Notwithstanding any other Section, any accrued Obligations, the Obligations of Client under Sections 14.4, 15, 21, 22, 23, 28, and 33 and all rights of Lender hereunder, whether accrued or not, shall survive the termination or expiration of this Agreement and the payment of the Accrued Liability and all other amounts payable hereunder.

**41. Section Headings**

Section headings in this Agreement are for convenience of reference only and do not affect the interpretation or construction hereof.

**42. Assignment**

42.1 Client shall not assign this Agreement or any Obligations or rights hereunder without the prior written consent of Lender, and such consent may be withheld by Lender in its sole and unfettered discretion. No action aforesaid by Client shall relieve Client of any of its Obligations.

42.2 Lender may assign or transfer in whole or in part its rights under this Agreement or the Collateral, and/or grant a security interest, mortgage, transfer, charge or assignment in its rights hereunder or in the Collateral and any assignee, transferee or beneficiary of such security interest, mortgage, transfer, charge or assignment ("Assignee") shall be unrestricted in the exercise of such rights. Client shall recognize any such assignment, transfer or grant and shall not assert against any Assignee any Claims or Equities which it may have against Lender respecting this Agreement or the Collateral and waives all Claims and Equities against Assignee's rights to enforce this Agreement based on Lender's alleged failure to perform same or any Supplier's breach of Warranties.

**43. Benefit of the Agreement**

This Agreement shall enure to the benefit of and be binding upon Lender and Client, and each of their respective heirs, executors, administrators, personal representatives, successors and permitted assigns and lessees, including without limitation any successor or assign arising as a result of an amalgamation or other corporate or business reorganization.

**44. Choice of Law**

This Agreement shall be governed, construed, performed and enforced in accordance with the laws of the Province where the address of Client is located as stated on the face of this Agreement.

**45. Language**

The parties hereto have expressly required that this Agreement and all documents, agreements and notices related thereto be drafted in the English language. Les parties aux présentes ont expressément exigé que le présent contrat et tous les autres documents, conventions ou avis qui y sont afférents soient rédigés en langue anglaise.

**46. Joint and Several Liability**

If more than one person executes this Agreement as Client their obligations hereunder shall be joint and several and, where the context so admits, each reference in this Agreement to "Client" shall include reference to any one or more or all such persons and the acts or omissions of and such persons shall bind all of them.

**47. Receipt of Agreement**

Client acknowledges receipt of an executed copy of this Agreement.

**48. Information**

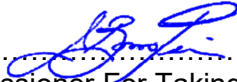
Client hereby consents and authorizes Lender and its Affiliates, agents, nominees, contractors and representatives, at any time, (a) to collect, verify, use, communicate with and disclose to third parties (including credit reporting agencies, financial institutions, creditors, vendors and other persons) any credit, financial and other

information, including personal information (as applicable) and information related to the credit rating, financial capacity and payment history, with respect to Client ("Information"), as Lender deems necessary to process, complete, service and enforce the transactions hereby contemplated and any other existing or potential transactions, or as required or otherwise permitted by law; (b) to respond to inquiries from, and exchange any Information with, third parties concerning Client's credit rating, financial capacity and payment history; (c) to provide Information to persons to whom Lender considers assigning, granting a participation or otherwise disposing of rights or obligations under the transactions hereby contemplated; and (d) to provide to any person copies of this Agreement. This consent is in addition to and does not replace any consent previously given.

**49. Fund off Fax**

This Agreement may be executed in several counterparts and such counterparts together shall constitute one and the same instrument and shall be effective as of the formal date hereof. Each of Client and Lender agrees that if the original of this Agreement and/or related certificates, authorizations or other documents (collectively, the "Closing Documents") is not received by Lender, then Lender, in its sole discretion, may decide to treat and rely on the executed version of any such Closing Document that has been transmitted to Lender by facsimile transmission ("fax") or by the use of other electronic means such as email (any such other electronic transmission being herein referred to as "pdf") as the signed original of such Closing Document. Without limiting the generality of the foregoing, each of Client and Lender further agrees that any Closing Document signed and transmitted by fax or pdf shall be treated for all purposes as an original document, the signature of any party on such Closing Document shall be considered as an original signature and the Closing Document transmitted by fax or pdf shall have the same effect as a counterpart thereof containing original signatures. No party shall raise as a defense to the enforcement of any Closing Document that a facsimile, email or other electronic transmission was used to transmit any signature of a party to such Closing Document.

This is **Exhibit "G"** referred to in the affidavit of Tyson Hartwell, sworn before me by videoconference on April 27, 2023 in accordance with O.Reg. 431/20: Administering Oath or Declaration Remotely. The deponent was located in the City of Calgary in the Province of Alberta and I was located in the City of Toronto in the Province of Ontario.



.....  
A Commissioner For Taking Affidavits

Jeremy Bornstein  
LSO#: 65425C



**CANADIAN WESTERN BANK**  
 2000 Argentia Rd., Plaza #1, Suite 300,  
 Mississauga, Ontario L5N 1P7

**EQUIPMENT LOAN AND  
 SECURITY AGREEMENT**

**REAL ESTATE**

**CLIENT: INDEX HOLDING GROUP INC.**

**ADDRESS:** 110 Herdwick Street  
 Brampton, Ontario L6R 0N7

**CONTACT: Abdul Muqeeet**  
 Tel.:

**COLLATERAL**

All present and after-acquired personal property (as such term is defined in accordance with the applicable personal property laws in the jurisdiction where the personal property is located) of the Client used in the operations of its business, and the proceeds therefrom, all as more specifically described in this Agreement and the security agreement given by the Client to the Lender as contemplated by this Agreement.

Collateral mortgage registration against the real property located at 421 Whamcliffe Rd. S., London, ON as more fully described as PT LT 1, PL 29, PTS 1 & 2, 33R5153 & PT 2, 33R5487 S/T 837774 IF ANY, S/T 583284 IF ANY; LONDON/WESTMINSTER

FINANCED AMOUNT		FINANCING RATE		INSTALMENTS	
Loan Amount	<b>\$1,075,000.00 + CAD</b>	Variable Rate:		Instalments:	<b>Refer to Schedule A</b>
		<b>Prime Rate: plus 2.65% p.a.</b>		Instalment date:	<b>Refer to Schedule A</b>
				Frequency:	<b>monthly</b>
		Change in Prime Rate effective:		Number of Instalments:	<b>Refer to Schedule A</b>
		<b>Daily</b>		First Instalment date:	<b>Refer to Schedule A</b>
<b>Financed Amount:</b>	<b>\$1,075,000.00 = CAD</b>			Original Term:	<b>60 months</b>

**ADDITIONAL PROVISIONS**

Each of the following Schedules form an integral part of this Agreement:

- Schedule "A" – Provisions
- Schedule "B" – Request for Advance
- Schedule "C" – Acknowledgement of Receipt of Financed Amount
- Schedule "D" – Conditions Precedent
- Schedule "E" – Terms and Conditions

In consideration of the loan (the "Loan") made or to be made by Lender to Client in the amount specified under the heading "Financed Amount" above, the receipt of which Client hereby acknowledges, Client acknowledges itself indebted and promises to repay to Lender the Obligations. Client also acknowledges that it has agreed to grant to Lender a security interest in the Collateral to secure repayment of the Obligations on the terms and conditions set forth above, on all applicable schedules and other attachments hereto, all of which terms and conditions form part of this Agreement.

IN WITNESS WHEREOF, the parties hereto have executed this Equipment Loan and Security Agreement at Brampton, Ontario this Dec 21, 2021.

**INDEX HOLDING GROUP INC.**

("Client")

By:   
 Name: Abdul Muqeeet  
 Title: Director

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

SIGNATURE OF AUTHORIZED OFFICERS

**CANADIAN WESTERN BANK**

("Lender")

By: \_\_\_\_\_  
 Name: Trish Halliwell  
 Title: Senior Manager, Restaurants

By: \_\_\_\_\_  
 Name: Wendy Black  
 Title: Senior Documentation Specialist

SIGNATURE OF AUTHORIZED OFFICERS



**SCHEDULE A  
PROVISIONS**

This SCHEDULE A is an integral part of the EQUIPMENT LOAN AND SECURITY AGREEMENT executed at Brampton, Ontario this 21 day of DEC, 2021

The following provisions are in addition to, and shall be deemed to form part of, the terms and conditions of this Agreement. Capitalised terms not defined herein shall have the meanings set forth in the terms and conditions schedule attached as Schedule "E" to this Agreement.

"Advance" means any advance in respect to the Financed Amount made by Lender to Client hereunder.

"Corporate Guarantor" means INDEX GROUP OF COMPANIES INC., INDEX INTERNATIONAL INC., INDEX FOODS INC., 2640179 ONTARIO INC., 11030434 CANADA LTD., 2700774 ONTARIO INC., 2700767 ONTARIO INC., 2683960 ONTARIO LTD., 11030418 CANADA INC., 2723710 ONTARIO INC., 2718366 ONTARIO INC., 2737332 ONTARIO INC., 2737334 ONTARIO INC., 2723714 ONTARIO INC., 2723716 ONTARIO INC., 2737338 ONTARIO INC., 2790760 ONTARIO INC., 2775290 ONTARIO INC., 2775296 ONTARIO INC. and 421 WHARNCLIFFE LTD. and any New Entity.

"Covenant Parties" means, collectively, the Client, Corporate Guarantors and any New Entity as determined by Lender from time to time..

"Effective Date" means the date on which the first Advance under Tranche 1 is disbursed.

The term "Financed Amount" provided in Section 1.1(n) of Schedule "E" to this Agreement is hereby replaced by: "Financed Amount" means the total amount advanced under all Tranches or the total unpaid outstanding balance, as the context requires.

"New Entities" means any new legal entity to be formed which will be an Affiliate of Client (each new entity a "New Entity" and collectively referred to as "New Entities").

"Personal Guarantor" means ABDUL MUQEET.

"Sites" means any present or future location subject to a financing by the Lender and any location where the Covenant Parties operates its business including, but not limiting the following Sites (each location a "Site" and collectively referred to as "Sites"):

**Popeyes Louisiana Kitchen - owned by and located:**

OWNERSHIP	COLLATERAL SITES
Index International Inc.	4-1525 Dundas St. E., Whitby, ON
Index Foods Inc.	965 Dundas St. W. Whitby, ON
2640179 Ontario Inc.	1571 Sandhurst Circle, #106D, Toronto, ON
2700774 Ontario Inc.	22 Stevenson Rd. S., Oshawa, ON
2700767 Ontario Inc.	9 Jim Kimmett Blvd., Napanee, ON
2683960 Ontario Ltd.	2 Douglas Rd., Uxbridge, ON
11030418 Canada Inc.	72 Baldwin St. N.,(Brooklin) Whitby, ON
2723710 Ontario Inc.	165 E. Liberty Street, Toronto, ON
2737332 Ontario Inc.	900 Dufferin St., Toronto, ON
2737334 Ontario Inc.	674-676 Sheppard Ave. W., Toronto, ON
2737338 Ontario Inc	Future site to be determined
2723714 Ontario Inc.	Future site to be determined
2718366 Ontario Inc.	Future site to be determined
Index Group of Companies Ltd.	Future site to be determined

**Denny's - owned by and located:**

2723716 Ontario Inc. dba Denny's Woodbine	8502 Woodbine Ave., Markham, ON
11030434 Canada Ltd. dba Denny's Burlington	1200 Brant St., Burlington, ON
2790760 Ontario Inc. dba Denny's Newmarket	17725 Yonge St., Newmarket, ON
2775290 Ontario Inc. dba Denny's Brantford	195 Henry Street, Brantford, ON

2775296 Ontario Inc. dba Denny's Rexdale	445 Rexdale Boulevard, Etobicoke ON
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**FEE SIMPLE REAL ESTATE PROPERTY**

421 Whamcliffe Ltd.	421 Whamcliffe Rd., London, ON PT LT 1, PL 29, PTS 1 & 2, 33R5153 & PT 2, 33R5487 S/T 837774 IF ANY, S/T 583284 IF ANY; LONDON/WESTMINSTER
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**The Financed Amount shall be used as follows:**

- a) \$480,000.00 for the refinance of the existing land mortgage currently owing to a private lender by 421 Whamcliffe Ltd. and
- b) the lesser of \$595,000.00 or 75% of the acceptable building shell costs for the property located at 421 Whamcliffe Rd. S., London, ON, as determined by Lender. The following must be provided prior to the respective advances under Tranche 2:

**Prior to the 1<sup>st</sup> advance of Tranche 2:**

- Building Permit and Site Approval Letter
- Signed GC Contract with Union General Contracting
- WSIB Certificate from Union General Contracting
- Confirmation of Builder's Risk and Wrap Up Liability insurance prior to initial advance and/or permanent Insurance Certificate showing Canadian Western Bank named as first loss mortgagee and additional insured;
- Title search prior to initial draw

**Prior to the 2<sup>nd</sup> advance of Tranche 2:**

- Invoices and proof of payment in support of the first advance
- Statutory Declaration
- WSIB Certificate
- Title search prior to 2<sup>nd</sup> advance

**Prior to the final advance of Tranche 2 and to occur no sooner than 60 days per the Ontario lien act:**

- Final invoices and proof of payment
- Occupancy Certificate
- Certificate of Publication/Substantial Completion
- Statutory Declaration Holdback Release from either the GC (if applicable) or each of the subtrades
- Engineer & Architect stamped certificate
- Site inspection by CWB representative
- Clear title search on day of final advance and once lien period has expired
- Copy of the lease agreement between Borrower and Church's Chicken tenant

"Tranche" means the tranches defined below (each a "Tranche", and collectively referred to as "Tranches"). The Financed Amount shall be advanced by Lender to Client in different Tranches as follows:

- "Tranche 1" means the portion of the Financed Amount to be used towards the refinance of the existing land mortgage owing by 421 Whamcliffe Ltd.
- "Tranche 2" means the portion of the Financed Amount to be used towards the building shell costs for 421 Whamcliffe Rd., S., London, ON.

**PREPAYMENT**

Notwithstanding the terms of Section 2.2 of Schedule "E" to this Agreement, each year and upon 30-days prior notice to Lender, Client shall have the right to prepay up to 10% of the outstanding balance of the Financed Amount without any Liquidated Damages.

**CLIENT'S GENERAL REPRESENTATIONS, WARRANTIES AND COVENANTS**

Section 27 of Schedule "E" to this Agreement is amended by replacing the last two sentences with the following:

"Client agrees to furnish Lender a copy of its annual accountant prepared notice to reader consolidated combined financial statements as for the Covenant Parties promptly upon availability and in any event within 120 days of each fiscal year-end. Client agrees also to furnish its internal trailing twelve month quarterly financial statements promptly upon availability and in any event within 45 days of each financial quarter-end.

In addition, evidence of property taxes paid in full and building insurance coverage on the Real Property located at 421 Wharncliffe Rd., London, ON is required annually.

For greater certainty, the beginning of Section 27 of Schedule "E" to this Agreement remains unchanged.

#### **PERSONAL NET WORTH STATEMENTS – PERSONAL GUARANTORS**

Client hereby undertakes to obtain and furnish to Lender, on a biennially basis, a net worth statement from the Personal Guarantor within 120 days of the Client's fiscal year-end.

#### **UNDERTAKING: RIGHT TO TERMINATE MANAGEMENT AGREEMENT**

Client hereby (i) confirms that no management agreement is in place with respect of any of the Sites and (ii) undertakes to obtain Lender's consent prior to entering into any management agreement in respect of any Sites, which consent may be conditional upon obtaining a subordination and undertaking agreement from the manager. It is also agreed that should Lender consent, in its sole discretion, to such management agreement, the manager shall be approved by Lender.

#### **NEGATIVE PLEDGE ON THE FRANCHISE AGREEMENT**

Client hereby undertakes and agrees that it shall not assign any Franchise Agreement nor grant, create or cause to be created, any lien, including hypothecs, in or on any Franchise Agreement or agree or consent to any of the foregoing.

#### **LOAN FEE**

Client shall pay to Lender a non-refundable loan fee equivalent to 1% of the total Advances made by Lender to Client under each Tranche ("Loan Fee"), whether funded or not. For the purposes of paying the Loan Fee, Client agrees that Lender may, at its discretion, (i) deduct the Loan Fee (or any portion thereof) from the funds to be advanced to Client, and/or (ii) if Client provided a good faith deposit to Lender, Lender may retain the whole or portion of such good faith deposit in full or partial satisfaction thereof.

#### **INTERIM LOANS**

The following sub-sections (a) to (f) will apply.

##### **a. General**

Subject to the terms and conditions contained in this Agreement, Lender may agree, in its sole discretion to make an interim loan or interim loans to Client which loan amounts will be disbursed as partial advances of the total amount to be advanced under each Tranche upon request by Client and shall form part of the Obligations secured hereunder (**interim loan and interim loans to be collectively called, the "Interim Loan"**). The Interim Loan shall be available until the earliest of (i) disbursement by Lender of the total amount to be advanced under each Tranche, (ii) the date that is six (6) months from the Effective Date under each Tranche, or (iii) such other date mutually agreed upon by Client and Lender (such earliest date hereafter referred to as "**Tranche 1 Closing Date**" or "**Tranche 2 Closing Date**", as applicable. Without in any way derogating from the un-committed nature of the Interim Loan, Lender shall have no obligation whatsoever to make an Interim Loan: (a) which is less than \$100,000; (b) which is within thirty (30) days of any previous Interim Loan having been made; (c) if a Default or event that, with the lapse of time or the giving of notice or both, would constitute a Default, has occurred or is continuing; or (d) if any condition precedent to funding is not satisfied or ceases to be satisfied, in Lender's sole judgment.

##### **b. Manner of Borrowing of the Interim Loans**

Client shall give Lender at least ten (10) business days' notice by sending a request for advance of loan proceeds in the form attached hereto as Schedule B (**the "Request"**). If required by Lender, the Request shall be accompanied by a copy of the invoices for Equipment to be paid from the proceeds of the Interim Loan. Each Request shall be deemed to constitute a representation and warranty by Client that as at the date of the Request, no Default or event that, with the lapse of time or the giving of notice or both, would constitute a Default, has occurred or is continuing. Subject to the conditions stated in this Agreement and when required by Lender, upon receipt from Client of proof acceptable to Lender that such invoices were paid by Client, Lender will disburse the amounts set out in the Request to Client.

##### **c. Interim Loan Financing Rate and Instalments**

Notwithstanding the Financing Rate, each Interim Loan shall bear interest at the Interim Loan Financing Rate, as defined below, from each Advance Date to each respective Tranche Closing Date. The Interim Loan Financing Rate shall be equal to the Prime Rate plus 2.65% per annum ("Interim Loan Financing Rate").

From the Advance Date of each Interim Loan to each Tranche Closing Date, each Interim Loan Instalment, as defined below, shall consist of interest only payments payable monthly in arrears starting on the month following the disbursement of the Interim Loan ("Interim Loan Instalment(s)"). Unless otherwise agreed by the parties, the Interim Loan Instalments are due each month on the same calendar day, which will be the same calendar day: (i) as the day that the Loan Instalment was disbursed or (ii) the day of the first Advance under first Interim Loan. The Interim Loan Instalment shall be payable to Lender by electronic fund transfer. The Interim Loan Instalments shall be consecutive payments of interest only. The amount of the Interim Loan Instalments for each Interim Loan shall be determined by Lender on the date of disbursement of each Interim Loan based on the Interim Loan Financing Rate, subject to an adjustment calculated at each Tranche Closing Date commencing from the first Instalment date, to reflect monthly fluctuations in the Prime Rate.

For the purposes of the Interim Loans, the following terms are amended as follows:

- (a) the term "Instalments" provided in Section 1.1 (t) of Schedule "E" of this Agreement shall include the Interim Loan Instalments;
- (b) the term "Financing Rate" provided in Section 1.1 (o) of Schedule "E" of this Agreement shall include the Interim Loan Financing Rate.

**d. Payment of Interim Loan - Principal and Interest**

At each respective Tranche Closing Date, the amount of all outstanding Interim Loan principal balances shall be deemed to form part of the Obligations. The terms applicable to each Tranche shall apply to the Interim Loan as if they were advanced to Client as part of the Financed Amount for each Tranche. The total amount of all Advances made under each Interim Loan shall bear interest from each respective Tranche Closing Date at the Financing Rate.

If any, the outstanding accrued interest resulting from the Interim Loan ("Interim Loan Accrued Interest") shall be due and payable on each Tranche Closing Date. Client authorizes Lender to debit the Interim Loan Accrued Interest from its banking account on each respective Tranche Closing Date. Client acknowledges that the Interim Loan Accrued Interest forms part of the Obligations.

For clarification, the amount of each Interim Loan shall not in any way increase the amount that Lender has agreed to make available to Client under each Tranche.

Client shall pay on demand any amount outstanding in excess of the amount that Lender has agreed to make available to Client under this Agreement, including without limitation the Interim Loan Accrued Interest, fees and expenses. Nothing herein shall be construed to require Lender to advance any funds to or on behalf of Client at any time, including on each Tranche Closing Date, if a Default or event that, with the lapse of time or the giving of notice or both, would constitute a Default, has occurred or is continuing.

**e) Acknowledgment of Receipt and Confirmation of Indebtedness**

The receipt of the total amount that Lender has agreed to make available to Client under each Tranche and, as Lender "may see fit, of each Advance shall be evidenced and acknowledged by Client in writing, in the form attached hereto as Schedule C. Client hereby acknowledges and agrees that notwithstanding the foregoing, Lender's books and records in any form relating to this Agreement, including as they may relate to any and all Obligations thereunder from time to time, shall constitute prima facie, conclusive evidence of all such Obligations.

**f) Security**

The Collateral and all other security and guarantee agreements granted to Lender in relation to this Agreement is given as a general and continuing security for the payment and performance of the Obligations, including without limitation all interim advances.

**CROSS DEFAULT**

In addition to the Defaults provided in Section 19 of Schedule "E" of this Agreement, (i) a Default under this Agreement shall be deemed to constitute a default under all other present and future agreements entered into between a corporation affiliated to Client (or any Guarantor or Covenant Party) and Lender or any Affiliate, nominee or agent of Lender ("Affiliate Agreement"), and (ii) a Default under any Affiliate Agreement shall be deemed to constitute a default under this Agreement.



## CROSS-COLLATERIZATION

The security granted in connection with this Agreement is given also to secure the payment and performance of any and all debts, obligations and liabilities of any kind or description whatsoever (whether due or to become due) of Client or any affiliates of Client (or any Guarantor or Covenant Party) to Lender under this Agreement and any other agreements with lender or any Affiliate of Lender. This security shall be deemed to be a continuing security which will not be released or discharged in whole or in part until satisfaction in full of all such debts, obligations and liabilities.

## TERM, INSTALMENTS AND FINANCED AMOUNT AMORTIZATION

Tranche 1 shall be interest only payments to a maximum of 12 months OR until the Tranche 2 Closing Date, whichever is first, at which time Tranche 1 and Tranche 2 shall be combined into one term loan for 60 months.. The Instalments shall then consist of 3 interest only payments and 56 consecutive and equal payments of blended principal and interest and one final balloon payment based on a 240 month amortization.

The Instalments for each Tranche shall be determined by Lender on each Advance Date. The Instalments for the term loan shall be determined by Lender on the Tranche 2 Closing Date.

## LOAN FINANCIAL COVENANTS

On a quarterly basis, Lender shall monitor the following financial covenants on the combined results of the Covenant Parties:

- **Evidence of Property Taxes paid in full and building insurance on the Real Property at 421 Wharncliffe is required annually.**

**COVENANTS:** Covenants are measured for the Covenant Parties based on the most recent financial results. Exact covenants to be determined during the underwriting process, however for indication typical covenants would include the following:

**(1) Fixed Charge Coverage Ratio, Pre-Compensation (FCCR-Pre):** As measured for the Covenant Parties on the last day of the Client's reporting period, the Covenant Parties must have a Pre-Compensation Consolidated FCCR equal to or greater than **1.30:1.0**.

**"Pre-Compensation Consolidated FCCR"** means, with respect to the 12-month period of time immediately preceding the date of determination, the ratio, calculated for the Covenant Parties for such time period, each as determined in accordance with GAAP, of: (i) the sum of net income, interest expense, income taxes, depreciation, amortization, and operating lease expenses (rent expense), and officers' salaries expensed on the income statement, plus or minus other non-cash adjustments or non-recurring items (as allowed by Lender); to (ii) the sum of operating lease expenses (rent expense, not including common area maintenance or property taxes), principal payments on long term debt, the current portion of all capital leases, and interest expense (excluding non-cash interest expense and amortization of non-cash financing expenses).

**(2) Fixed Charge Coverage Ratio, Post-Compensation (FCCR-Post):** As measured for the Covenant Parties on the last day of the Client's reporting period, the Covenant Parties must have a Post-Compensation Consolidated FCCR equal to or greater than **1.10:1.0**.

**"Post-Compensation Consolidated FCCR"** means, with respect to the 12-month period of time immediately preceding the date of determination, the ratio, calculated for the Covenant Parties for such time period, each as determined in accordance with GAAP, of: (i) the sum of net income, interest expense, income taxes, depreciation, amortization, and operating lease expenses (rent expense, not including common area maintenance or property taxes), plus or minus other non-cash adjustments or non-recurring items (as allowed by Lender), minus increases in officer or shareholder loan receivables and minus dividends or distributions not otherwise expensed on the applicable income statement(s); to (ii) the sum of operating lease expenses (rent expense, not including common area maintenance or property taxes), principal payments on long term debt, the current portion of all capital leases, and interest expense (excluding non-cash interest expense and amortization of non-cash financing expenses).

**(3) Funded Debt to EBITDA (Senior Leverage):** As measured for the Covenant Parties on the last day of the Client's reporting period, Consolidated Funded Debt to Consolidated EBITDA shall be equal to or less than **3.75:1.0**.



**"Consolidated Funded Debt"** is defined as the outstanding principal balance of all indebtedness of the Covenant Parties, including capital leases and the outstanding balances of any revolving lines of credit, as at the last day of the fiscal period being measured. **"Consolidated EBITDA"** is defined as the aggregate sum, for the 12-month period of time immediately preceding the last day of the fiscal period being measured, for the Covenant Parties, of all net income, interest expense, income taxes, depreciation, and amortization, but less non-recurring miscellaneous income and plus non-recurring miscellaneous expenses (as allowed by Lender), each as determined in accordance with GAAP.

**ENTIRE AGREEMENT**

This Agreement, including the Schedules hereto and all related security documents, constitutes the entire agreement between Lender and Client with respect to the subject matter contained herein and supersedes all prior negotiations, undertakings, representations and understandings, whether written or oral, including any proposal letter.

A handwritten signature in black ink, appearing to be 'Ami', is located in the bottom right corner of the page.



**SCHEDULE D  
CONDITIONS PRECEDENT**

**This SCHEDULE D is an integral part of the EQUIPMENT LOAN AND SECURITY AGREEMENT executed at Brampton, Ontario this 21 day of Dec 2021**

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Prior to the Advance, each of the following conditions precedent shall have been satisfied, at Client's sole cost and expense, all as determined by Lender in its sole discretion. Lender shall not be obliged to make any Advance hereunder unless it has received, in each case in form and substance satisfactory to it, each of the following conditions (or evidence thereof, as the case may be).

All conditions precedent to the obligation of the Lender to make the Advance are stipulated solely for the benefit of the Lender and may be waived by the Lender, in whole or in part, at any time and in its sole discretion.

- (a) Executed copy of the Equipment Loan and Security Agreement and all ancillary documents thereto (including certificates, resolutions, articles of incorporation, and opinions);
- (b) Executed general security agreement ("GSA") creating a first priority lien on all present and after acquired personal property including any and all intellectual property, equipment used at or in connection with the Sites, as well as all improvements, additions, replacements and substitutions of the Equipment, and all proceeds thereof (including insurance proceeds), from Client and the Corporate Guarantors (and any control agreement with third party bank as required to perfect cash collateral security)
- (c) Executed joint and several (solidarily for the Province of Quebec) guarantee and indemnity agreements from all Corporate Guarantors together with subordination of claims of each such party;
- (d) Executed guarantee and indemnity agreements from all Personal Guarantors together with subordination of claims from each such Personal Guarantor;
- (e) Executed Assignment and Postponement of Creditor's Claims agreements from Client and 2790760 Ontario Inc., 2775290 Ontario Inc., 2775296 Ontario Inc., 421 Wharnclyffe Ltd., and Rajandeep Singh Dhillon. **RECEIVED**
- (f) Receipt by Lender of fully executed, complete copies of the Franchise Agreements and all renewals, extensions and amendments, if applicable, with respect to each Site;
- (g) Receipt by Lender of fully executed, complete copies of the Lease Agreements and all renewals, extensions and amendments, if applicable, with respect to each Site;
- (h) Receipt by Lender of evidence that all insurance required by the present agreement has been obtained and is in full force and effect with respect to each Site;
- (i) Receipt of Builder's Risk and Wrap Up Liability insurance during construction prior to initial advance and/or permanent Insurance Certificate showing Canadian Western Bank named as first loss mortgagee and additional insured for the property located at 421 Wharnclyffe Rd., London, ON,;
- (j) Title Insurance for the Real Estate property located at 421 Wharnclyffe Rd., London, ON to be registered in the minimum amount of \$1,100,000.00;
- (k) Receipt of a rental/lease agreement that is acceptable to Lender between the Client or Secured Guarantor and the operating company that rents/leases any assets provided as security for the loan;
- (l) Original real estate land purchase agreement naming Client / Secured Guarantor, (421 Wharnclyffe Ltd.), as purchaser with corresponding title search confirming registration on title is in the name of Client/Secured Guarantor;
- (m) Confirmation that all real estate property taxes are paid to date on 421 Wharnclyffe Rd. London, ON;
- (n) Payout statement from Private Lender for the amount owing on the real property at 421 Wharnclyffe Rd., London, ON with written confirmation the Lender's counsel or Client's counsel will attend to the discharge of registration at close.
- (o) Solicitor's Opinion Letter regarding 421 Wharnclyffe Ltd. from Client counsel;
- (p) Finalized Phase II Environmental Site Assessment with Reliance letter addressed to Lender with respect to 421 Wharnclyffe Rd., London, ON;
- (q) Appraisal reliance letter addressed to Lender with respect to 421 Wharnclyffe Rd., London, ON;
- (r) Receipt of proof of payment for the balance owing to Canada Revenue Agency ("CRA") showing on the 2020 Notice of Assessment for Abdul Muqet; **RECEIVED**

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- (s) All debt between Client and Corporate Guarantors to be jointly and severally (solidarily for the Province of Quebec) cross-collateralized, cross-defaulted and cross-guaranteed;
- (t) All fees required to be paid by Client;
- (u) No Default has occurred;
- (v) No Material Adverse Effect shall have occurred and be continuing on and as of the Advance Date, nor shall a requested Advance result in the occurrence of a Material Adverse Effect;
- (w) Any other document reasonably required by the Lender (or its solicitors).

**TRANCHE 2 ADVANCE REQUIREMENTS:**

**Prior to the 1<sup>st</sup> advance of Tranche 2:**

- Building Permit and Site Approval Letter
- Signed GC Contract with Union General Contracting
- WSIB Certificate from Union General Contracting
- Confirmation of Builder's Risk and Wrap Up Liability insurance prior to initial advance and/or permanent Insurance Certificate showing Canadian Western Bank named as first loss mortgagee and additional insured;
- Title search prior to initial draw

**Prior to the 2<sup>nd</sup> advance of Tranche 2:**

- Invoices and proof of payment in support of the first advance
- Statutory Declaration
- WSIB Certificate
- Title search prior to 2<sup>nd</sup> advance

**Prior to the final advance of Tranche 2 and to occur no sooner than 60 days per the Ontario lien act:**

- Final invoices and proof of payment
- Occupancy Certificate
- Certificate of Publication/Substantial Completion
- Statutory Declaration Holdback Release from either the GC (if applicable) or each of the subtrades
- Engineer & Architect stamped certificate
- Site inspection by CWB representative
- Clear title search on day of final advance and once lien period has expired
- Copy of the lease agreement between Borrower and Church's Chicken tenant

**SCHEDULE E  
TERMS AND CONDITIONS**

**1. Interpretation**

1.1 For the purpose of this Agreement:

- (a) "Accrued Liability" at any time means the amount equal to the sum of the Financed Amount, any Liquidated Damages and all other amounts then payable hereunder, including without limitation, any Overdue Payment and accrued interest.
- (b) "Advance Date" means the business day on which the Advance is made by Lender to Client hereunder.
- (c) "Affiliate" means in respect of a person, a person or persons that, directly or indirectly through one or more intermediaries, control, are controlled by, or are under common control with, such person.
- (d) "Agreement" means this Loan Agreement and any applicable schedules hereto, unless the context otherwise requires, and "hereof", "herein", "hereby", "hereunder" and similar expressions refer to this Agreement.
- (e) "business day" means a day when the office of Lender at the address stated on the face hereof is open for business dealings, but excludes Saturday, Sunday and any other day which is a statutory holiday in the province of Lender.
- (f) "Claims" has the meaning assigned in Section 22.
- (g) "Client" means the client of Lender stated on the face hereof and, in respect of any obligations regarding the Equipment, the Sites or other similar obligations, including all of the related obligations, covenants, undertaking, representations and warranties set out in Sections 4, 5, 6, 9, 14, 15, 17, 18, 19, 25, 26, and 27 the Covenant Parties (as defined in Schedule A).
- (h) "Collateral" has the meaning assigned in Section 5.1.
- (i) "control" means the power to direct or cause the direction of the management and policies of a person whether through the ownership of voting securities or otherwise.
- (j) "Conversion Rate" means the rate, expressed in Canadian dollars (CAD) for the purchase of one US dollar (USD), determined by adding 0.0100 CAD/USD to the highest rate which appears on the Bloomberg CAD GIT Page between 7 AM and 5 PM (EST).
- (k) "Default" means any of those events or circumstances specified in Section 19.
- (l) "Equipment" means all present and after-acquired personal property of a person.
- (m) "Equities" means existing or future rights of counterclaim, defence, set-off, compensation, abatement or offset, legal or equitable.
- (n) "Financed Amount" means the amount stated as such on the face hereof owing by Client to Lender or the unpaid outstanding balance thereof, as the context requires.
- (o) "Financing Rate" means the rate per annum stated as such on the face hereof, or in Schedule A, as the context requires.
- (p) "Franchise Agreement" means any franchise, license or area development agreement granted with regard to the Sites.
- (q) "Franchise Parties" means any party that entered into or will enter into a Franchise Agreement.
- (r) "GAAP" means generally accepted accounting principles in effect from time to time in Canada or IFRS applicable to the relevant person, applied in a consistent manner from period to period.
- (s) "Guarantor" means, collectively, the Corporate Guarantors and the Personal Guarantors, as applicable.
- (t) "Installments" means the periodic repayment instalments of the Financed Amount, together with interest calculated at the Financing Rate as provided on the face hereof, such instalments stated on the face hereof.
- (u) "Lease Agreement" means any lease, sub-lease or storage agreement with regard to the Sites.
- (v) "Lease Parties" means any party that entered into or will enter into a Lease Agreement.
- (w) "Lender" means Lender stated on the face hereof.
- (x) "Lien" means any lien, privilege, mortgage, pledge, hypothec, charge, security interest, attachment, assignment, seizure, sequestration, distress, levy or other encumbrance of any nature or kind whatsoever.
- (y) "Liquidated Damages" means liquidated damages determined in accordance with Section 2.2.
- (z) "Loss of Equipment" means:
  - (i) a total or constructive total loss of Equipment, or damage thereto, or theft thereof which, in the reasonable opinion of Lender, renders it impossible or impractical to use the Equipment for its intended purpose; or
  - (ii) expropriation or confiscation of Equipment by any authority absolutely or for more than 180 days.
- (aa) "Material Adverse Effect" means, when used with reference to any event or circumstance or any person, an event, fact or circumstance that, either alone or when taken together with any other event, fact, or circumstance, has or could reasonably be expected to have a material adverse effect on: (i) the business, assets, operations, prospects, property, or condition (financial or otherwise), of Client, any Covenant Party or Guarantor, any of the Sites, the Collateral or any portion thereof; (ii) the ability of Client or any Guarantor to perform and discharge its respective obligations under this Agreement or any of the related documents; (iii) the validity or enforceability of any of such documents, including this Agreement or any of Lender's security, or Lender's ability to enforce any of its rights or remedies under any of such documents; or (iv) the existence or priority of any of the liens in favour of Lender including any liens affecting any of the Sites or such Equipment.
- (bb) "Obligation" means any obligation of Client to pay any amount owing hereunder or under any documents, instruments or security delivered in connection herewith, including the Financed Amount, Overdue Payments and all other amounts owing hereunder, or to perform any other obligation of Client hereunder or under any documents, instruments or security delivered in connection herewith.
- (cc) "Overdue Payment" means any amount owing by Client hereunder and any sum disbursed by Lender pursuant to Section 21 which is not paid when due hereunder, or any portion thereof.
- (dd) "Paydown Amount" has the meaning assigned in Section 13.2.
- (ee) "person" includes any natural person, corporation, firm, partnership, trust, sole proprietorship or governmental agency, authority or other entity, however constituted or designated.
- (ff) "Prime Rate" means the variable reference rate of interest per year declared by Lender from time to time to be its "Prime Rate" for Canadian dollar loans made by Lender in Canada, such rate to be adjusted automatically, without notice, as of the opening of business on the effective date of any change in such rate by Lender by public announcement or otherwise.
- (gg) "Supplier" means any manufacturer, supplier, vendor or dealer or any other person from whom Client has acquired any of the Equipment.
- (hh) "Taxes" means any and all taxes, imposts, levies, fees, duties and charges imposed by any taxing authority on Lender, Client, the Equipment, its purchase, sale, ownership, security interest thereon, delivery, possession, operation or use including, without limitation, sales, excise, use, health services, property, goods and services, business transfer and value added taxes (including any penalties or interest based on late or non-payment), but excluding taxes imposed on or measured by Lender's overall net income.
- (ii) "TTM" means on a trailing twelve month basis.
- (jj) "Unwinding Costs" means the costs Lender incurs when a fixed rate loan is paid out early. The unwinding costs are based on an



interest rate differential between the loan rate and the bid side yield for Government of Canada securities with the same maturity as the loan, for the remaining term of the loan at the time of repayment.

(kk) "Warranties" means any and all warranties, guarantees, representations, service contracts, contracts to stock spare parts and similar agreements, oral or written, express, implied or statutory, relating to the Equipment.

1.2 In this Agreement, unless the context otherwise requires, the singular includes the plural and vice-versa and words importing gender include each gender.

1.3 All references herein to statutes include the statute as it may be amended, restated or replaced with legislation of comparable effect. Unless otherwise specified, all references to Sections and Schedules are to Sections of, and Schedules to this Agreement. The words "hereto", "herein", "hereof", "hereunder" and similar expressions refer to this Agreement and not to any particular Section or other provision of this Agreement. When used in the context of a general statement followed by a reference to one or more specific items or matters, the term "including" shall mean "including, without limitation", and the term "includes" shall mean "includes, without limitation". Any reference herein to the exercise of discretion by Lender (including phrases such as "in its discretion", "in the discretion of", "in the opinion of", "to the satisfaction of" and similar phrases) shall mean that such discretion is absolute and unfettered and shall not imply any obligation to act reasonably, unless otherwise expressly stated herein.

1.4 Other than payments, which shall be made on the date each payment is due, acts to be performed hereunder on non-business days shall be performed on the following business day.

## 2. Instalments

2.1 Client hereby acknowledges that it has borrowed from Lender and is thereby, or has otherwise become, indebted to and agrees to repay to Lender, at the address of Lender stated on the face hereof or such other place notified by Lender to Client, the Financed Amount, together with interest thereon, by paying the Instalments stated on the face hereof or in Schedule A hereto. Unless otherwise stated, Instalments are due on the dates stated on the face hereof in each month, or other period (or the last day of the month, if there is no corresponding date), in arrears, throughout the term hereof. On the final Instalment date, Client shall pay Lender the outstanding balance of the Financed Amount, all accrued and unpaid interest thereon (including any adjustments to reflect changes in any applicable rates of interest) and all other amounts payable hereunder.

2.2 Client may not at any time prepay in whole or in part the unpaid outstanding balance of the Financed Amount, except as follows: Commencing 36 months after the Closing Date, upon 30-day prior notice to Lender, Client will have the right to prepay all, but not less than all, of the outstanding balance of the Loan at any time during the remainder of the term of this Agreement provided Client also pays all accrued interest and costs outstanding hereunder at the time of prepayment and liquidated damages determined as follows:

(a) The Liquidated Damages shall be three (3) months' interest calculated on the unpaid principal balance at the rate provided herein plus, if Loan is fixed, a prepayment charge equal to Lender's Unwinding Costs.

2.3 Any portion of the Financed Amount prepaid shall be applied to the remaining Instalments in inverse order of maturity. No part of the Liquidated Damages shall be applied in reduction of said remaining Instalments. If a Default or a Loss of Equipment occurs, the Liquidated Damages shall also be payable by Client and shall be calculated by reference to the outstanding balance of the Financed Amount at the time of such Default or Loss of Equipment, as applicable.

## 3. Interest

3.1 The Financed Amount shall bear interest at the Financing Rate from the date hereof until the Financed Amount is unconditionally paid in full to Lender, and shall be payable in arrears on each Instalment date.

3.2 In addition to interest payable under Section 3.1, each Overdue Payment shall bear interest from the date due until unconditionally paid in full to Lender at the rate of 18% per annum, and shall be payable on demand by Lender.

3.3 Interest payable hereunder shall accrue and be calculated daily upon the daily outstanding balance of the Financed Amount or an

Overdue Payment, as applicable, on the basis of the actual number of days elapsed in a year of 365 days or 366 days, as the case may be. All interest payments to be made under this Agreement in respect of the outstanding balance of the Financed Amount or any Overdue Payment, as applicable, shall be paid both before and after maturity and before and after Default and/or judgment, if any, until full and unconditional payment of the outstanding balance of the Financed Amount or such Overdue Payment is made. The yearly rate of interest to which each rate of interest expressed herein is equivalent is the product of: (a) such rate, multiplied by (b) the actual number of days in the calendar year in which the same is to be ascertained divided by 365 or 366, as the case may be. Notwithstanding anything herein or in any other agreement with Lender to the contrary, in no event shall the combination of interest, costs, and fees payable herein exceed that rate which is one percent (1%) less than the effective annual rate of interest which is prohibited under Section 347 of the *Criminal Code* (Canada), as amended from time to time (the "Maximum Amount") and if any payment, collection or demand pursuant to this Agreement or any other agreement with Lender exceed the Maximum Amount then such payment, collection or demand will be deemed to have been made by mutual mistake of Client or Guarantors (as the case may be) and Lender and the amount of such payment or collection will, at the option of Lender, either be refunded to Client, or be applied to the Obligations (whether or not due and payable) as determined by Lender, and not to the payment of interest.

3.4 If the Financing Rate is a variable rate based on Prime Rate, a change in Prime Rate automatically changes the rate of interest payable hereunder to the same extent and in the same manner effective with the frequency stated on the face hereof or in Schedule A. Lender shall not be obliged to notify Client of any such change, any such right to notice being hereby irrevocably waived by Client.

3.5 In order to preserve Lender's net economic return, Lender in its sole discretion may adjust the pricing at any time prior to any Advance to reflect: (1) changes in the pricing assumptions of this Agreement; (2) a change in Lender's funding index rate; (3) tax law changes applicable to Client or Lender; and (4) general market conditions.

## 4. Title, Ownership

Title to, ownership of, and all property in the Collateral shall remain with Client, but subject always to the security interests and other provisions hereof, and at Client's sole risk, until full payment in cash of all amounts repayable hereunder; prior to such payment, Client's rights therein are to quiet enjoyment and use on the terms and conditions of this Agreement so long as a Default has not occurred.

## 5. Security Interest and Warranties as to the Collateral

5.1 As general and continuing security for the payment and performance of the Obligations, Client hereby grants to Lender and Lender hereby takes a security interest in: (a) the Equipment, (b) all present and after-acquired intellectual property and other intangibles relating to the Equipment; (c) all present and after-acquired contracts, written or oral, for the sale, exchange, lease, license, rental or other disposition of any kind whatsoever of the foregoing; (d) all insurance claims and proceeds resulting therefrom with respect to any loss or damage to any of the foregoing; and (e) all proceeds of the foregoing in the form of chattel paper, documents of title, goods, instruments, intangibles, money, fixtures or investment property, (collectively, the "Collateral"), and as further general and continuing security for the payment and performance of the Obligations Client hereby mortgages, transfers, pledges, charges and assigns the Collateral to Lender. The general and continuing security provided for in this Section 5.1 is in addition to and not as substitution for any other security provided by Client to Lender from time to time.

5.2 Client represents and warrants to Lender that Client has, and shall continue to have at all times until while the Obligations remain outstanding, good and marketable title to the Collateral, free and clear of all Liens except for Liens granted in favour of or taken by Lender hereunder or pursuant to any other agreement between Client and Lender or any nominee or agent of Lender. Client agrees to comply with all Warranties accruing to Client pertaining to the Equipment; however, any failure by any receiver to comply with any Warranty shall not affect Client's Obligations to Lender.

## 6. Personal Property and Waivers

6.1 The Equipment shall at all times be and remain moveable personal property. Notwithstanding any purpose for which the Equipment

may be used or that it may become affixed or attached to land or any structure thereon, the Equipment shall remain subject to all rights of Lender hereunder as if it were not so affixed or attached.

- 6.2 Client agrees to obtain a waiver, if required by and in a form satisfactory to Lender, from any landlord, mortgagee, hypothecary creditor or other encumbrancer of the premises where Collateral is situated (and prior to any Equipment becoming affixed if it is to be affixed).
- 7. Postponement**  
All shareholder, Affiliate and related entity debt shall be subordinated and postponed to Lender's debt.
- 8. Cost Overruns**  
All cost overruns shall be borne by the Client. Any cost overruns in excess of 10% of the loan amount must be approved in writing by Lender.
- 9. Maintenance, Use, Operation, Alterations, Upgrades, etc.**
- 9.1 Client shall at its own expense:
- (a) maintain Equipment in good operating condition, repair and appearance, ordinary wear and tear only excepted;
  - (b) comply with all recommendations or requirements of Suppliers so as to preserve all Warranties; and
  - (c) at Lender's request, enter into a maintenance agreement for Equipment for the full term of this Agreement with a Supplier or a competent service and maintenance agent satisfactory to Lender.
- 9.2 Client shall not, without Lender's prior written consent, make any alterations, additions, accessions or attachments to any Collateral. Such consent will only be granted if such changes:
- (a) do not materially decrease the value of Collateral or limit, interfere with or frustrate its intended use;
  - (b) do not prejudice or adversely affect any Warranties; and
  - (c) are free from, and do not subject any Collateral to, any Lien.
- 9.3 All replacement parts and components, alterations, additions, accessions and attachments to Collateral shall automatically become subject to the security interests created hereby as soon as they are acquired by or on behalf of Client.
- 9.4 Client shall affix and keep affixed to Collateral any labels supplied by Lender identifying its security interests in Collateral.
- 10. Inspection**  
Any representative of Lender shall have the right to inspect the Collateral or any part thereof at all reasonable times upon notice to Client.
- 11. Franchise Agreement**
- 11.1 Client represents and warrants to Lender that the copies of each Franchise Agreement together with all amendments, modifications and supplements thereto, provided to Lender or executed by the Franchise Parties is a true and complete copy, subject to no amendment and that Franchise Parties are in good standing thereunder.
- 11.2 The expiration, revocation or other termination of a Franchise Agreement or the assignment or other transfer of a Franchise Parties' rights under a Franchise Agreement, without Lender's prior written consent, shall, constitute a Default hereunder, and Lender may invoke any remedies permitted under this Agreement. The consent to any such sale or transfer shall be in Lender's sole discretion, and shall be subject to the execution by the purchaser or transferee, prior to such sale or transfer, of a written assumption agreement containing such terms as Lender may require. In addition, any such consent shall be conditioned upon payment by Client to Lender of (i) a fee equal to one percent (1%) of the then unpaid outstanding balance of the Financed Amount and (ii) all out-of-pocket costs and expenses incurred by Lender in connection with such consent, including, without limitation, legal fees.
- 12. Rented Facilities**  
Client represents and warrants to Lender that the Lease Agreements for all sites together with all amendments, modifications and supplements thereto, provided to Lender are true and complete, subject to no amendments and that Client is in good standing thereunder.
- 13. Early Lease Expiry**
- 13.1 Client covenants and agrees that, in the event the term of any Lease Agreement expires before the expiration of the term of this Agreement, it shall or shall force the Lease Parties to cause the term of such Lease Agreement to be renewed or otherwise extended to a date that occurs on or after the expiration of the term of this Agreement. Failure to do so shall constitute a Default and

Lender shall be entitled to exercise any and all rights and remedies it may have under this Agreement or at law.

- 13.2 Notwithstanding the foregoing, Lender may, at its sole option, require Client pay to Lender an amount to be determined by Lender at that time (the "Paydown Amount"). Failure to pay the Paydown Amount as required by Lender shall constitute a Default and Lender shall be entitled to exercise any and all rights and remedies it may have under this Agreement or at law. The Paydown Amount shall be deemed a payment of principal, shall be applied in the inverse order of maturity, and shall otherwise be applied in accordance with the terms of this Agreement.

**14. Insurance**

- 14.1 Client shall at its own expense place and maintain with insurers acceptable to Lender:
- (a) comprehensive all risks insurance on the Equipment for the greater of the Financed Amount or the full replacement value of the Equipment. Such insurance shall include: (i) a loss payable clause in favour of Lender and (ii) a waiver of subrogation clause in favour of Lender;
  - (b) general public liability and property damage insurance with limits of liability at least equal to \$1,000,000 or such greater amount as Lender may require. Such insurance shall extend to all liabilities of Client under this Agreement arising out of its use or possession of Collateral and to any potential vicarious liability of Lender as holder of security interests in Collateral created hereby; and
  - (c) business interruption coverage at least equal to the gross revenues for the last 12 months or such greater amount as Lender may require.
- 14.2 All such of insurance policies shall be in place at the effective date of this Agreement and shall contain endorsements providing that: (a) 30 days' written notice shall be given to Lender before the policy lapses or is materially altered or cancelled; (b) the insurance shall be primary and not contributory; (c) Lender's interests therein shall not be invalidated or otherwise adversely affected by any act or omission, deliberate, negligent or otherwise, of Client or its agents, servants or employees (the so-called "standard mortgage clause"); (d) Lender shall not be responsible for payment of any premiums; and (e) Lender may elect to have all proceeds of loss payable only to itself.
- 14.3 Client shall supply Lender with certified copies of all insurance policies, endorsements or other evidence of the required coverage satisfactory to Lender within 30 days of the effective date of this Agreement and on request.
- 14.4 In the event of damage to any item of Equipment amounting to Loss of Equipment, Lender shall be entitled to receive immediate payment of the amount equal to the Accrued Liability with respect to such item of Equipment. Lender may retain any monies received from the insurance proceeds in an amount equal thereto, Client remaining liable for any deficiency.

**15. Taxes, etc.**

Client shall have the sole responsibility for and shall duly and punctually pay all Taxes and all licence and similar fees payable at any time upon, or in respect of, Collateral, this Agreement and any payments or transactions contemplated hereunder.

**16. Additional Debt**

No additional debt (other than the loan(s) described herein) or guarantee of any kind shall be incurred by Client or any Covenant Parties without the prior written consent of Lender.

**17. Liens**

Client shall keep the Collateral free of all Liens, other than any Liens granted to, or taken by, Lender.

**18. Laws and Regulations**

Client is and shall continue to be in compliance with all laws and regulations relating to use, operation or possession of Collateral or the security interests therein in favour of Lender, and those relating to the prevention of money laundering and terrorism.

**19. Default**

It shall be a Default under this Agreement if:

- (a) Client fails to pay any instalment within 10 days after its due date;
- (b) any representation or warranty of Client made herein or in any instrument or document delivered to Lender in connection herewith is false or materially incorrect or misleading;
- (c) any insurance coverage required to be obtained and maintained by Client under this Agreement shall lapse, expire or be cancelled;

- (d) Client defaults in any other Obligation, or defaults in any obligation under any other agreement with Lender or any Affiliate, nominee or agent of Lender, and such default continues for 10 days after notice thereof by Lender or such Affiliate, nominee or agent, as applicable, to Client;
- (e) any act of bankruptcy takes place respecting Client, or any proceeding, petition or notice, voluntary or involuntary, is commenced, made, given or filed, as the case may be, by Client or any other person, under any present or future statute or law relating to bankruptcy, insolvency or relief from or compromise or arrangement with creditors of Client;
- (f) Client ceases or threatens to cease to carry on business or makes or proposes to make any sale of the whole or any substantial portion of its assets in bulk, or otherwise out of the normal course of business;
- (g) any execution, sequestration, expropriation or similar process is brought or threatened, by way of notice or otherwise, against, or a distress or analogous process is levied upon the whole or any part of the property of Client or Collateral;
- (h) any trustee, receiver, interim receiver, administrator, manager, receiver and manager or similar official is appointed with respect to all or any part of the property, assets or undertaking of Client (including the Collateral), whether pursuant to any private instrument or agreement or by order of any court;
- (i) if ownership of or control and direction over the assets or undertaking of Client or its voting shares changes, by amalgamation, merger, sale, transfer of shares or otherwise, except pursuant to death of the shareholder, or Client passes any resolution concerning any matter referred to in paragraph (e) or with respect to, or any proceedings, voluntary or involuntary, are commenced under, any present or future law relating to amalgamation, liquidation, winding-up or dissolution;
- (j) an event occurs which, in the opinion of Lender, could reasonably be expected to have a material adverse effect on the condition (financial or otherwise), business, operations, assets, liabilities or prospects of Client, Client's ability to perform any Obligation, or any obligation under any other agreement with Lender or any Affiliate, nominee or agent of Lender, or on the rights and remedies of Lender thereunder, and continues for 10 days after notice thereof by Lender or such Affiliate, nominee or agent, as applicable, to Client;
- (k) Client fails to maintain any financial covenant under this Agreement;
- (l) the expiration, revocation or other termination of the Franchise Agreement or the assignment or other transfer of Franchise Parties' rights under the Franchise Agreement, without Lender's prior written consent;
- (m) Franchise Parties default under any Franchise Agreement and such default is not cured within any curative period provided for under such Franchise Agreement;
- (n) the expiration, revocation or other termination of any Lease Agreement between the Lease Parties and its landlord or the assignment or other transfer of the Lease Parties' rights under such Lease Agreement, without Lender's prior written consent;
- (o) Client defaults under any Lease Agreement between the Lease Parties and its landlord for the rented facilities where any Equipment of any Covenant Party is located and such default is not cured within the curative period, if any, granted to the Lease Parties under such Lease Agreement;
- (p) any Affiliate of Client defaults in any obligation under any other agreement with Lender or any Affiliate of Lender and such default continues for 10 days after notice thereof by Lender or such Affiliate, as applicable, to Affiliate of Client;
- (q) the Covenant Parties create, grant or permit to exist any hypothec on the Sites or their present and future moveable, corporeal and incorporeal property, other than hypothecs granted in favor of Lender. For greater certainty, no subordinate hypothecs shall be permitted without the prior written consent of Lender; or
- (r) any event or circumstance described in any paragraph (b) through (r) inclusive occurs with respect to any Covenant Parties, guarantor or surety of Client respecting this Agreement or any person who controls Client or any Affiliate of Client.

A Default under this Agreement shall be deemed a default under all other present and future agreements entered into between Client and Lender or any Affiliate, nominee or agent of Lender.

## 20. Lender's Remedies on Default

Upon Default, Lender shall be entitled to do one or more of the following:

- (a) declare this Agreement to be in default (with or without terminating this Agreement) whereupon all Obligations shall be immediately due, payable and enforceable without any notice or demand whatsoever;
- (b) declare any or all of the Obligations to be immediately due and payable, or be subject to immediate performance, as the case may be, without presentment, protest or notice of dishonour, all of which are expressly waived;
- (c) take possession of any Collateral, without demand, notice or legal proceeding and enter on any premises of Client or any other person for such purpose;
- (d) sell, lease or otherwise dispose of any Collateral by public or private transaction for such consideration payable immediately and/or deferred and on such terms and conditions as Lender in its discretion determines;
- (e) whether or not this Agreement may have been or be deemed to have been terminated, demand, sue for and recover the amount equal to the Accrued Liability, less, if applicable, the net proceeds to Lender derived from the sale, lease or other disposition of the Collateral, after deducting all amounts payable by Client pursuant to Section 23 hereof; and
- (f) exercise any other rights or remedies and/or take any proceedings available to Lender hereunder, at law or in equity.

In lieu of selling, leasing or otherwise disposing of Collateral, Lender may retain Collateral and cause Collateral to be valued by a qualified appraiser selected by it and such value shall be substituted for and deducted as net proceeds to Lender under subparagraph (e) of this Section. Proceeds of sale, lease or disposal need be deducted only when received, unless Lender elects to take the present value of payments to be received, discounted at the Financing Rate then in effect, compounded monthly.

## 21. Lender's Rights to Remedy Defaults

If Client fails to perform or comply with any obligation hereunder, Lender may, but has no obligation to, perform same in the name of Client or Lender and make all necessary disbursements in connection therewith, which shall be reimbursed by Client immediately on demand. Lender is hereby appointed Client's lawful attorney to take any such action in Client's name.

## 22. Client's General Indemnities

Client shall indemnify and save harmless Lender from and against all existing or future losses, costs, charges, expenses, liabilities, claims, demands, penalties, damages, suits, actions and causes of action of every nature and kind whatsoever, including strict liability in tort or in delict (collectively, "Claims") sustained or suffered by Lender, or for which Lender may become liable, resulting from or arising out of:

- (a) Lender's lawful exercise or performance of its rights or obligations under this Agreement;
- (b) the holding by Lender of a security interest in the Collateral;
- (c) any Default;
- (d) any personal injury or property damage or other commercial loss arising out of the sale or delivery to, installation, ownership, use, operation, maintenance, condition, return, removal and re-delivery of Collateral; or
- (e) any use or operation of Collateral which infringes any patent or other industrial or intellectual property right, unless caused by the gross negligence or willful misconduct of Lender, its employees, servants or agents.

## 23. Fees and Expenses

Client shall pay to Lender on demand Lender's prevailing fees and all costs, expenses and disbursements (including, without limitation, legal fees on a solicitor and his own client basis) that Lender incurs, pays or becomes liable for in connection with the preparation, negotiation and registration of this Agreement (or any agreement, instrument or document contemplated hereby) and any other agreement evidencing or relating to the Obligations, the perfection or preservation of any Liens granted to or taken by Lender, processing of payments, rendering statements to Client, the failure of Client to pay or perform any of the Obligations, the enforcement by any means of any of the Obligations or any provision of this Agreement, the exercise of any rights, powers or remedies under this Agreement or any other agreement evidencing or relating to the Obligations (including all such costs, expenses and disbursements in connection with recovering or taking possession of the Collateral, removing or taking custody of, the storing, preserving, processing, repair, reconditioning or dismantling of Collateral, preparing Collateral for lease, sale or other disposition and leasing, selling or otherwise

disposing of Collateral) and any professional advice sought in connection with any of the foregoing.

**24. Pre-Authorized Payments**

Client shall execute and deliver to Lender from time to time upon request pre-authorized payment orders in such form as Lender may reasonably request. Lender is hereby authorized to deliver such orders to the financial institution named therein. Client hereby appoints Lender its lawful attorney to take all action contemplated by such payment orders to receive payment of any amount due under this Agreement. Lender may decline any other form of payment. All monthly payments under this Agreement by the Client are to be made via such pre-authorized payment.

**25. Location of Collateral; Client's Name**

25.1 Except as otherwise expressly permitted hereunder, Client shall not part with possession of any Collateral nor remove any of same from any province such Collateral is located as of the date of this Agreement.

25.2 Client covenants that it shall not change its name or chief executive office or move the Collateral from the locations stated herein, or otherwise disclosed to Lender in writing, without first providing at least 30 days prior written notice to Lender.

**26. Assignment and Leasing**

Client shall not assign any rights hereunder and Client shall not sell or attempt to sell any Collateral nor lease or rent or attempt to lease or rent any Collateral, in any case without the prior written consent of Lender, and such consent may be withheld by Lender in its sole and unfettered discretion. No action aforesaid by Client shall relieve Client of any of its Obligations.

**27. Client's General Representations, Warranties and Covenants**

Client represents and warrants to and covenants with Lender that: (a) Client has been duly incorporated, amalgamated, merged or continued, as the case may be (or if Client is not a corporation, has been duly formed, created or established as a partnership, limited partnership, trust or other applicable entity) and validly exists under and is governed by the laws of its jurisdiction of formation, amalgamation, merger, continuance, establishment or creation, as the case may be, with the power and authority to own its assets and property, carry on its business as currently conducted, and to enter into this Agreement; (b) this Agreement and all other agreements, documents and instruments delivered in connection with this Agreement or the transactions contemplated hereby have been duly authorized, executed and delivered by all necessary action on the part of Client and constitute legal and valid agreements binding upon Client enforceable in accordance with their respective terms; (c) all information as defined in Section 48 provided by Client to Lender is accurate; and (d) all payments to Lender are and will be derived from legal sources. Client agrees to furnish to Lender a copy of its most recent annual financial statements, audited if applicable, promptly upon availability and in any event, within 90 days of each financial year-end. Upon request by Lender, Client agrees also to furnish its quarterly financial statements promptly upon availability and, in any event, within 60 days of each financial quarter-end.

**28. Statutory Waivers and Acknowledgement**

28.1 To the extent permitted by law, Client waives its right to receive a copy of any financing statement or financing change statement registered by Lender and of any related verification statement.

28.2 Client waives, to the fullest extent permitted by law, the application of the provisions of (a) *The Limitation of Civil Rights Act* (Saskatchewan); and (b) *The Distress Act* (Manitoba). Client agrees that the provisions of this Agreement are commercially reasonable.

**29. No Set-Off - Exclusion And Assignment Of Warranties**

29.1 Client irrevocably and unconditionally waives all equities against any Instalment and other amount due to Lender hereunder and agrees to pay each such Instalment and other amount without regard to any equities. Neither defects in, damage to, nor loss or destruction of Collateral shall terminate this Agreement or reduce any Obligations, except as otherwise expressly provided herein.

29.2 Client represents and warrants to and covenants with Lender that Collateral is and will be used for commercial, industrial or business purposes only and not for personal, family, household or farming purposes;

29.3 (a) Lender shall not be bound by or be deemed to have made or be liable for any representation, warranty or promise made by Supplier or otherwise; (b) Lender shall not be liable for any failure of Equipment including any latent defect or alleged fundamental breach of this Agreement; (c) neither Lender nor any of its employees, servants or agents has made and does not now make any representation or warranty whatsoever, express or implied,

with respect to Equipment or any intellectual or industrial property rights therein including, without limitation, the design, specifications, condition, quality, merchantability or fitness for Client's purposes and (d) Lender shall have no liability for any direct, indirect, punitive, exemplary, special or consequential damages or loss of profits, actual or anticipated, or for any damages based on strict or absolute tort or delictual liability or Lender's or Supplier's negligence. Nothing herein shall deprive Client of its rights against Supplier or any person other than Lender. Client shall make any claims with respect to Equipment directly against Supplier.

29.4 If Equipment is seized or sold by Lender, all warranties of Supplier and rights to all software, other intellectual and industrial property licenses accompanying goods shall be deemed assigned by Client to Lender.

**30. Notices**

Any notice, demand, consent or other communication required or permitted hereunder ("Notice") shall be in writing and may be delivered, or sent by prepaid registered mail, or by telex, telecopier or other means which produces a permanent written record (a "transmission"). Mailed Notice shall be deemed to have been given two business days after mailing provided there is no general disruption or stoppage of postal services then in effect, in which case delivery shall be made by one of the other methods permitted herein; delivered Notice shall be effective upon delivery during business hours to an apparently responsible adult, and transmissions shall be deemed to have been received at the opening of the business day immediately following transmission. Addresses for Notice shall be those addresses stated on the face hereof and may be changed in accordance with the foregoing.

**31. Remedies Cumulative**

All rights and remedies of Lender hereunder are cumulative and not exclusive or alternative and may be exercised by Lender separately or together, in any order, sequence or combination.

**32. Forbearance, Indulgence and Waivers**

Forbearance or indulgence by Lender in any instance shall not constitute a general waiver of the obligation under this Agreement to which the same applies. Any waiver by Lender of its rights must be in writing and shall not extend to any other obligation or right.

**33. Allocations**

Client hereby irrevocably and unconditionally waives any present or future right to allocate any payment made to Lender to any specific Obligation due under this Agreement or under any other agreement with Lender or any Affiliate, nominee or agent of Lender. Lender may allocate and apply any payment received to any obligation due hereunder or under any other agreement with Lender or Affiliate, nominee or agent of Lender and may reverse, reallocate and re-apply any such payment as many times and in such manners as Lender from time to time sees fit. Payments received shall be allocated upon receipt of legal tender or cleared funds. Lender is hereby irrevocably authorized to combine and set off amounts payable by it to Client with amounts owing to it from Client (in each case whether matured or not and whether absolute or contingent) under the same or different agreements.

**34. Time**

Time is and shall remain of the essence of this Agreement.

**35. Entire Agreement**

There are no representations, warranties, covenants, agreements or acknowledgements by Lender affecting the Financed Amount, the Obligations, the Accrued Liability, this Agreement or the Collateral, other than as expressed in this Agreement or expressed in the other documents, instruments or security delivered in connection herewith. No amendment, restatement, supplement or other modification to this Agreement will be valid or binding unless set forth in writing and duly executed by each of the parties hereto.

**36. Severability**

Any term, condition or provision of this Agreement which is deemed to be void, prohibited or unenforceable in any jurisdiction shall, as to such jurisdiction, be severed herefrom and ineffective to the extent of such invalidity, prohibition or unenforceability, without in any way invalidating the balance hereof.

**37. No Merger in Judgment**

The taking of any judgment by Lender under this Agreement shall not operate as a merger or novation of any term or condition hereof or of any Obligation.

**38. Further Assurances and Power of Attorney**

38.1 Client and Lender each shall do, execute and perform all such acts, deeds, documents and things as may be reasonably required to enable Lender to have the full benefit of all rights and remedies



intended to be reserved or created hereby and to better assure, register and perfect the Liens granted or taken in relation to the Collateral or any part of the Collateral. Lender is hereby appointed Client's lawful attorney to complete and/or correct any information on the face hereof or in any Schedule hereto.

38.2 Each power of attorney granted in this Agreement is granted with full power of substitution, is irrevocable, is coupled with an interest, shall survive termination of this Agreement and may be exercised during any subsequent legal incapacity of Client or Lender.

**39. Currency**

Unless otherwise stated in this Agreement, all sums of money payable hereunder shall be paid in Canadian dollars. If any amount payable pursuant to this Agreement needs to be converted from US dollars to Canadian dollars, including for purposes of determining the amount of the Financed Amount or any Instalment, such conversion shall be made by Lender on the relevant date at the Conversion Rate and Lender will notify Client of the Canadian dollar amount so converted.

**40. Survival**

Notwithstanding any other Section, any accrued Obligations, the Obligations of Client under Sections 14.4, 15, 21, 22, 23, 28, and 33 and all rights of Lender hereunder, whether accrued or not, shall survive the termination or expiration of this Agreement and the payment of the Accrued Liability and all other amounts payable hereunder.

**41. Section Headings**

Section headings in this Agreement are for convenience of reference only and do not affect the interpretation or construction hereof.

**42. Assignment**

42.1 Client shall not assign this Agreement or any Obligations or rights hereunder without the prior written consent of Lender, and such consent may be withheld by Lender in its sole and unfettered discretion. No action aforesaid by Client shall relieve Client of any of its Obligations.

42.2 Lender may assign or transfer in whole or in part its rights under this Agreement or the Collateral, and/or grant a security interest, mortgage, transfer, charge or assignment in its rights hereunder or in the Collateral and any assignee, transferee or beneficiary of such security interest, mortgage, transfer, charge or assignment ("Assignee") shall be unrestricted in the exercise of such rights. Client shall recognize any such assignment, transfer or grant and shall not assert against any Assignee any Claims or Equities which it may have against Lender respecting this Agreement or the Collateral and waives all Claims and Equities against Assignee's rights to enforce this Agreement based on Lender's alleged failure to perform same or any Supplier's breach of Warranties.

**43. Benefit of the Agreement**

This Agreement shall enure to the benefit of and be binding upon Lender and Client, and each of their respective heirs, executors, administrators, personal representatives, successors and permitted assigns and lessees, including without limitation any successor or assign arising as a result of an amalgamation or other corporate or business reorganization.

**44. Choice of Law**

This Agreement shall be governed, construed, performed and enforced in accordance with the laws of the Province where the address of Client is located as stated on the face of this Agreement.

**45. Language**

The parties hereto have expressly required that this Agreement and all documents, agreements and notices related thereto be drafted in the English language. Les parties aux présentes ont expressément exigé que le présent contrat et tous les autres documents, conventions ou avis qui y sont afférents soient rédigés en langue anglaise.

**46. Joint and Several Liability**

If more than one person executes this Agreement as Client their obligations hereunder shall be joint and several and, where the context so admits, each reference in this Agreement to "Client" shall include reference to any one or more or all such persons and the acts or omissions of and such persons shall bind all of them.

**47. Receipt of Agreement**

Client acknowledges receipt of an executed copy of this Agreement.

**48. Information**


Client hereby consents and authorizes Lender and its Affiliates, agents, nominees, contractors and representatives, at any time, (a) to collect, verify, use, communicate with and disclose to third parties (including credit reporting agencies, financial institutions, creditors, vendors and other persons) any credit, financial and other

information, including personal information (as applicable) and information related to the credit rating, financial capacity and payment history, with respect to Client ("Information"), as Lender deems necessary to process, complete, service and enforce the transactions hereby contemplated and any other existing or potential transactions, or as required or otherwise permitted by law; (b) to respond to inquiries from, and exchange any Information with, third parties concerning Client's credit rating, financial capacity and payment history; (c) to provide Information to persons to whom Lender considers assigning, granting a participation or otherwise disposing of rights or obligations under the transactions hereby contemplated; and (d) to provide to any person copies of this Agreement. This consent is in addition to and does not replace any consent previously given.

**49. Fund off Fax**

This Agreement may be executed in several counterparts and such counterparts together shall constitute one and the same instrument and shall be effective as of the formal date hereof. Each of Client and Lender agrees that if the original of this Agreement and/or related certificates, authorizations or other documents (collectively, the "Closing Documents") is not received by Lender, then Lender, in its sole discretion, may decide to treat and rely on the executed version of any such Closing Document that has been transmitted to Lender by facsimile transmission ("fax") or by the use of other electronic means such as email (any such other electronic transmission being herein referred to as "pdf") as the signed original of such Closing Document. Without limiting the generality of the foregoing, each of Client and Lender further agrees that any Closing Document signed and transmitted by fax or pdf shall be treated for all purposes as an original document, the signature of any party on such Closing Document shall be considered as an original signature and the Closing Document transmitted by fax or pdf shall have the same effect as a counterpart thereof containing original signatures. No party shall raise as a defense to the enforcement of any Closing Document that a facsimile, email or other electronic transmission was used to transmit any signature of a party to such Closing Document.

This is **Exhibit “H”** referred to in the affidavit of Tyson Hartwell, sworn before me by videoconference on April 27, 2023 in accordance with O.Reg. 431/20: Administering Oath or Declaration Remotely. The deponent was located in the City of Calgary in the Province of Alberta and I was located in the City of Toronto in the Province of Ontario.



.....  
A Commissioner For Taking Affidavits

Jeremy Bornstein  
LSO#: 65425C



November 23, 2021

Index Holding Group Inc.,  
110 Herdwick Street,  
Brampton, Ontario  
L6R 0N7

**Attention: Mr. Abdul Muqet**

Dear Sir:

On the basis of the financial statements and other information provided by Index Holding Group Inc. (the “Borrower”), and Index Group of Companies Inc., Index International Inc., Index Foods Inc., 2640179 Ontario Inc., 11030434 Canada Ltd., 2700774 Ontario Inc., 2700767 Ontario Inc., 2683960 Ontario Ltd., 11030418 Canada Inc., 2723710 Ontario Inc., 2737332 Ontario Inc., 2737334 Ontario Inc., 2723714 Ontario Inc., 2723716 Ontario Inc., 2737338 Ontario Inc., 2718366 Ontario Inc., 2790760 Ontario Inc., 2775290 Ontario Inc., 2775296 Ontario Inc., 421 Wharncliffe Ltd. (“Corporate Guarantors”) and Mr. Abdul Muqet (“Personal Guarantor”) in connection with your request for financing, Canadian Western Bank (the “Bank”) has authorized the following loan subject to the terms and conditions outlined in this Commitment Letter (the “Agreement”).

1. **LOAN AMOUNT:**

- 1.1. Loan Segment (1): Business Lines of Credit \$250,000
- 1.2. Loan Segment (2): Business Visa \$175,000

Referred to as “the Loan”.

2. **PURPOSE OF LOAN:**

Amounts advanced by the Bank are to be used by the Borrower as follows:

- 2.1. Loan Segment (1): To finance the day-to-day operations of the Borrower’s business.
- 2.2. Loan Segment (2): To finance miscellaneous day-to-day expenses.

3. **INTEREST RATE:**

Loans shall bear interest while outstanding before and after maturity and default at the following rate:

- 3.1. Loan Segment (1): Interest to float at a rate of 2.50% per annum above the Bank’s Prime Lending Rate (“Prime”). As of the date of this Agreement, Prime is 2.45% per annum.
- 3.2. Loan Segment (2): Interest to be paid as per Visa cardholder Agreement

Unless otherwise specified, all interest shall be payable without demand on the dates specified by the Bank and shall be calculated daily, compounded monthly. Overdue interest shall bear interest at the same rate.

4. **ADVANCES:**

- 4.1. Loan Segment (1): To revolve with Overdraft and will be available following satisfaction of the Conditions Precedent as set forth in Schedule “D” herein attached.
- 4.2. Loan Segment (2): As per Visa cardholder agreement.

Suite 101, Plaza 1, 2000 Argentia Road  
Mississauga, ON L5N 1P7  
t. 289.998.2688 | F. 833.341.7556  
[cwb.com](http://cwb.com)

5. **REPAYMENT:**

All amounts outstanding under all segments shall be repaid on demand. Unless demanded, the Bank will accept payment as follows:

- 5.1. Loan Segment (1): On demand, interest payable monthly in arrears.
- 5.2. Loan Segment (2): As per Visa cardholder agreement.

6. **FEES:**

- 6.1. The Borrower shall pay to the Bank an application fee of \$625, of which \$0 has been paid to the Bank and the balance of \$625 shall be paid to the Bank at the time of acceptance of this Agreement and which fee shall be deemed to have been fully earned and not be refundable.

7. **SECURITY:**

The attached Schedule "A" forms part of this Agreement.

8. **KEY COVENANTS/ CONDITIONS:**

The attached Schedule "B" forms part of this Agreement.

9. **REPORTING REQUIREMENTS:**

The attached Schedule "C" forms part of this Agreement.

10. **CONDITIONS PRECEDENT TO DRAWDOWN:**

The attached Schedule "D" forms part of this Agreement.

11. **GENERAL CONDITIONS:**

The attached Schedule "E" forms part of this Agreement.

12. **STANDARD LOAN TERMS AND DEFINITIONS:**

The attached Schedule "F" forms part of this Agreement.

13. **REVIEW:**

All loans are subject to review at any time by the Bank, and in any event will be reviewed annually, based on the year-end financial statements of the Borrower and Guarantor.

14. **COSTS:**

All costs, including, but not limited to, legal counsel expense, appraisal fees, cost consultant fees and reasonable out-of-pocket expenses incurred by the Bank in connection with the preparation and registration of this Agreement and the Bank's security and the enforcement of the Bank's rights under this Agreement or the Bank's security are for the account of the Borrower and this Agreement will serve as the Bank's authority to charge this amount to the Borrower's deposit account under advice to the Borrower.

15. **ASSIGNMENT BY BORROWER:**

The Borrower shall not assign or encumber its rights and obligations under the Loan, this Agreement or the whole or any part of any advance to be made hereunder, without the prior written consent of the Bank.

16. **BANK'S COUNSEL:**

Legal work and documentation to be performed at the Borrower's expense through the Bank's counsel (if applicable).

17. **MATERIAL CHANGE:**

Acceptance of this Agreement by the Borrower provides full and sufficient acknowledgement that, if in the opinion of the Bank any material adverse change in risk occurs, including without limiting the generality of the foregoing, any material adverse change in the financial condition of the Borrower or any Guarantor, any obligation by the Bank to advance all or any portion of the loan may be withdrawn or cancelled at the sole discretion of the Bank, acting in a commercially reasonable manner.

18. **NON-MERGER:**

The terms and conditions set out herein shall not be superseded by nor merge in and shall survive the execution, delivery and/or registration of any instruments of security or evidences of indebtedness granted by the Borrower and/or any Guarantor hereafter, and the advance of any funds by the Bank. In the event of a conflict between the security documents and the terms of this letter, the terms of the security documents shall govern.

19. **ACCOUNTING CHANGES:**

In the event that any Accounting Change (as defined below) shall occur and such change results in a change in the method of calculation of financial covenants, standards or terms in the Commitment Letter, then the Borrower and the Bank agree to enter into negotiations in order to amend such provisions of the Commitment Letter so as to reflect equitably such Accounting Changes with the desired result that the criteria for evaluating the Borrower's financial condition shall be substantially the same after such Accounting Changes as if such Accounting Changes had not been made. Until such time as an amendment shall have been executed and delivered by the Borrower(s) to the Bank all financial covenants, standards and terms in this Agreement shall continue to be calculated or construed as if such Accounting Changes had not occurred.

Accounting Changes refers to changes in accounting principles required by the promulgation of any rule, regulation, pronouncement or opinion by the Canadian Institute of Chartered Accountants, and all events including changes resulting from implementation of the International Financial Reporting Standards to the extent required by the Canadian Accounting Standards Board.

**ACCEPTANCE:**

To become effective, this Agreement must be accepted in writing by the Borrower and all Guarantors.

If you are in agreement with the above terms and conditions (which includes by reference, all of those terms and conditions set forth in all of the attached Schedules), please sign and return the enclosed copy of this letter. This Agreement will expire if not accepted by November 26<sup>th</sup> 2021

The foregoing Agreement is offered in good faith and is to be held in strict confidence.

Yours truly,  
**CANADIAN WESTERN BANK**



Karan Sidhu  
Relationship Manager, Commercial Banking



AVP, Commercial Accounts

**ACKNOWLEDGEMENT:**

The Borrower certifies that all information provided to the Bank is true and hereby accept the terms and conditions set forth in the above Agreement (including all Schedules attached thereto).

**BORROWER: Index Holding Group Inc.**

Signed



Accepted

2021-11-23

Date

**GUARANTORS:**

I acknowledge receiving advice of the Agreement described above and agree my guarantee is binding even if the Bank changes or waives compliance with the terms of this Agreement.

**Abdul Muqet**

Signed



Accepted

2021-11-23

Date

**Index International Inc.**

Signed



Accepted

2021-11-23

Date

**Index Foods Inc.**

Signed



Accepted

2021-11-23

Date

**2640179 Ontario Inc.**

Signed



Accepted

2021-11-23

Date

**11030434 Canada Ltd.**Signed 

Accepted

2021-11-23

Date

**2707774 Ontario Inc.**Signed 

Accepted

2021-11-23

Date

**2700767 Ontario Inc.**Signed 

Accepted

2021-11-23

Date

**2683960 Ontario Ltd.**Signed 

Accepted

2021-11-23

Date

**11030418 Canada Inc.**Signed 

Accepted

2021-11-23

Date

**2723710 Ontario Inc.**Signed 

Accepted

2021-11-23

Date

**2737332 Ontario Inc.**Signed 

Accepted

2021-11-23

Date

**2737334 Ontario Inc.**Signed 

Accepted

2021-11-23

Date

**2723716 Ontario Inc.**Signed 

Accepted

2021-11-23

Date

**2790760 Ontario Inc.**

Signed



Accepted

2021-11-23

Date

**2775290 Ontario Inc.**

Signed



Accepted

2021-11-23

Date

**2775296 Ontario Inc.**

Signed



Accepted

2021-11-23

Date

**421 Wharnclyffe Ltd.**

Signed



Accepted

2021-11-23

Date

**2737338 Ontario Inc.**

Signed



Accepted

2021-11-23

Date

**2723714 Ontario Inc.**

Signed



Accepted

2021-11-23

Date

**2718366 Ontario Inc.**

Signed



Accepted

2021-11-23

Date

**Index Group of Companies Ltd.**

Signed



Accepted

2021-11-23

Date



**SCHEDULE "A" - DEMAND****SECURITY**

All security documentation described herein must be prepared, executed and registered, as required by the Bank, prior to drawdown of any funds. The types of security, supporting resolutions and agreements to be provided by the Borrower to the Bank will be in form and content satisfactory to the Bank and/or its solicitors, and without restricting the generality of the foregoing, will include:

**To be Obtained:**

1. Loan Agreement executed by the Borrower and Guarantors;
2. General Security Agreement providing a security interest in all present and after acquired property to be registered in all appropriate jurisdictions pari passu with CWB;
3. Revolving Credit Agreement in the amount of \$250,000;
4. Visa Application and Agreement;
5. Full Liability Guarantee from Abdul Muqet in favour of the Bank guaranteeing all indebtedness of the Borrower to the Bank;
6. Full Liability Guarantee from Index Group of Companies Inc. in favour of the Bank guaranteeing all indebtedness of the Borrower to the Bank;
7. Full Liability Guarantee from Index International Inc. in favour of the Bank guaranteeing all indebtedness of the Borrower to the Bank;
8. Full Liability Guarantee from Index Foods Inc. in favour of the Bank guaranteeing all indebtedness of the Borrower to the Bank;
9. Full Liability Guarantee from 2640179 Ontario Inc. in favour of the Bank guaranteeing all indebtedness of the Borrower to the Bank;
10. Full Liability Guarantee from 11030434 Canada Ltd. in favour of the Bank guaranteeing all indebtedness of the Borrower to the Bank;
11. Full Liability Guarantee from 2700774 Ontario Inc. in favour of the Bank guaranteeing all indebtedness of the Borrower to the Bank;
12. Full Liability Guarantee from 2700767 Ontario Inc. in favour of the Bank guaranteeing all indebtedness of the Borrower to the Bank;
13. Full Liability Guarantee from 2683960 Ontario Ltd. in favour of the Bank guaranteeing all indebtedness of the Borrower to the Bank;
14. Full Liability Guarantee from 11030418 Canada Inc. in favour of the Bank guaranteeing all indebtedness of the Borrower to the Bank;
15. Full Liability Guarantee from 2723710 Ontario Inc. in favour of the Bank guaranteeing all indebtedness of the Borrower to the Bank;
16. Full Liability Guarantee from 2737332 Ontario Inc. in favour of the Bank guaranteeing all indebtedness of the Borrower to the Bank;
17. Full Liability Guarantee from 2737334 Ontario Inc. in favour of the Bank guaranteeing all indebtedness of the Borrower to the Bank;

18. Full Liability Guarantee from 2723714 Ontario Inc. in favour of the Bank guaranteeing all indebtedness of the Borrower to the Bank;
19. Full Liability Guarantee from 2723716 Ontario Inc. in favour of the Bank guaranteeing all indebtedness of the Borrower to the Bank;
20. Full Liability Guarantee from 2737338 Ontario Inc. in favour of the Bank guaranteeing all indebtedness of the Borrower to the Bank;
21. Full Liability Guarantee from 2718366 Ontario Inc. in favour of the Bank guaranteeing all indebtedness of the Borrower to the Bank;
22. Full Liability Guarantee from 2790760 Ontario Inc. in favour of the Bank guaranteeing all indebtedness of the Borrower to the Bank;
23. Full Liability Guarantee from 2775290 Ontario Inc. in favour of the Bank guaranteeing all indebtedness of the Borrower to the Bank;
24. Full Liability Guarantee from 2775296 Ontario Inc. in favour of the Bank guaranteeing all indebtedness of the Borrower to the Bank;
25. Full Liability Guarantee from 421 Wharncliffe Ltd. in favour of the Bank guaranteeing all indebtedness of the Borrower to the Bank;
26. Creditor Life Insurance Application/Waiver executed by Abdul Muqet;
27. Lodgment of Evidence of Insurance;
28. Such additional securities as the Bank may deem necessary or advisable for the purpose of obtaining and perfecting the foregoing security.

The Borrower and Guarantors acknowledge and agree that the securities above described provided by the Borrower, support all loans and secure all indebtedness of the Borrower to the Bank.

**SCHEDULE "B" - DEMAND****KEY COVENANTS/CONDITIONS****KEY COVENANTS:**

The Borrower agrees:

1. to pay all sums of money when due under this Agreement;
2. to give the Bank prompt notice of any Event of Default or any event which, with notice or lapse of time or both, would constitute an Event of Default;
3. to not hold a second Line of Credit facility anywhere outside of the Bank so long as Loan Segment (1) is outstanding;
4. the Borrower are to maintain their main operating bank account with Canadian Western Bank;
5. To maintain the following ratios:
  - 5.1. Fixed Charge Coverage Ratio, Pre-Compensation (FCCR-Pre) minimum 1.30x
  - 5.2. Fixed Charge Coverage Ratio, Post-Compensation (FCCR-Post) minimum 1.10x
  - 5.3. Funded Debt to EBITDA maximum 3.75x
6. Any event of default under the borrower's lending program arrangement with CWB Franchise Finance shall be considered an event of default under the borrower's lending arrangement with the Bank and vice versa;
7. to give the Bank 30 days prior notice in writing of any intended change in the ownership of its shares or any of its subsidiaries;
8. not to sell, transfer, convey, lease or otherwise dispose of any part of its property or assets, without the prior written consent of the Bank, except in the ordinary course of business;
9. not to change its name or merge, amalgamate or consolidate with any other corporation;
10. to insure and to keep fully insured all properties customarily insured by companies carrying on a similar business to that of the Borrower [including accidental pollution liability], business/rental interruption, general liability, etc.;
11. not to invest in, lend to, guarantee or otherwise provide for, on a direct or indirect or contingent basis, the payment of any monies or performance of any obligations by any third party except as provided herein;
12. to file on a timely basis, all material tax returns which are or will be required to be filed, to pay or make provision for payment of all material taxes (including interest and penalties) and other potential Priority Claims which are or will become due and payable and to provide adequate reserves for the payment of any tax, the payment of which is being contested;
13. to comply with all applicable environmental laws and regulations; to advise the Bank promptly of any breach of any environmental regulations or licenses or any control orders, work orders, stop orders, action requests or violation notices received concerning any of the Borrower's property; to comply with any such requests or notices, to diligently clean up any spills; and to hold the Bank harmless for any costs or expenses which the Bank incurs for any environment related liabilities existent now or in the future with respect to the Borrower's property;
14. to provide the Bank and its agents, nominees, and consultants with the right to enter the premises of the Borrower from time to time, and to carry out such environmental reviews as the Bank in its sole discretion deems advisable and in that connection to make good faith enquiries with government agencies and to examine the records, books, assets, affairs and business operations of the Borrower;

**SCHEDULE "C" - DEMAND**  
**REPORTING REQUIREMENTS**

The Borrower agrees to provide the following to the Bank:

1. Notice to Reader, annual financial statements of the Borrower prepared by a firm of qualified professional accountants within 120 days of the Borrower's fiscal year-end;
2. Notice to Reader, annual financial statements of each of the Corporate Guarantors prepared by a firm of qualified professional accountants within 120 days of the fiscal year-end;
3. Internally prepared quarterly financial statements of each of the Corporate Guarantors prepared by a firm of qualified professional accountants within 45 days of the quarter-end;
4. Updated personal net worth statement of Abdul Muqet on the Canadian Western Bank forms duly completed and signed as and when requested by the bank;
5. Insurance certificates for all locations annually within 120 days of the fiscal year-end;
6. Any further information, data, financial reports and records, accounting or banking statements, certificates, evidence of insurance and other assurances which the Bank may from time to time require in its sole discretion, acting reasonably.

**SCHEDULE "D" - DEMAND**

**CONDITIONS PRECEDENT TO DRAWDOWN**

The following conditions precedent must be fulfilled prior to the Bank having any obligation to advance:

1. the Bank shall be satisfied with the business, assets and financial condition of the Borrower and Guarantors and all security documentation and supporting agreements and documents must be completed in a form satisfactory to the Bank and its solicitors, and must be executed and registered, as appropriate, and the Bank shall have received a solicitor's letter of opinion with respect to the same;
2. any participation by way of equity, shareholders' loans, or other cash injection required under the terms of this Agreement must be in place and satisfactory evidence provided to the Bank confirming same;
3. the Bank shall be satisfied with the business insurance policy with the Bank listed as loss payee.

**SCHEDULE "E" - DEMAND****GENERAL CONDITIONS****EVENTS OF DEFAULT**

1. Notwithstanding anything expressed or implied to the contrary, all indebtedness and liability of the Borrower's to the Bank under this Agreement is deemed to be repayable **ON DEMAND** and such indebtedness and liability may be demanded by the Bank at any time in the Bank's sole and exclusive discretion. In addition to being of a demand nature, the full amount of the indebtedness and liability of the Borrower then outstanding, together with accrued interest and any other charges then owing by the Borrower to the Bank shall, at the option of the Bank, forthwith be accelerated and be due and payable, and upon being declared to be due and payable, the securities shall immediately become enforceable and the Bank may proceed to realize and enforce the same upon the occurrence and during the continuance of any of the following events or circumstances (which events or circumstances are herein referred to as the "Events of Default"):
  - (a) the Borrower or any Guarantor fails to make when due, whether on demand or at a fixed payment date, by acceleration or otherwise any payment of interest, principal, fees, or other amounts payable to the Bank;
  - (b) there is a breach by the Borrower of any other term or condition contained in this Agreement or in any other agreement to which the Borrower and the Bank are parties and the Borrower has not corrected such breach within 15 days of notice having been provided to the Borrower;
  - (c) any default occurs under the terms of any security to be provided in accordance with this Agreement or under any other credit, loan or security agreement to which the Borrower is a party and the Borrower has not corrected such breach within 15 days of notice having been provided to the Borrower;
  - (d) any bankruptcy, re-organization, compromise, arrangement, insolvency or liquidation proceedings or other analogous proceedings are instituted by or against the Borrower and, if instituted against the Borrower are allowed against or consented to by the Borrower or are not dismissed or stayed within 60 days after such institution;
  - (e) a Receiver is appointed over any property of the Borrower or any judgement or order or any process of any court becomes enforceable against the Borrower or any property of the Borrower or any creditor takes possession of any property of the Borrower;
  - (f) any adverse change occurs in the financial condition of the Borrower or any Guarantor;
  - (g) any adverse change occurs in the environmental condition of:
    - (i) the Borrower, or either of them, or any Guarantor of the Borrower; or
    - (ii) any property, equipment, or business activities of the Borrower or any Guarantor of the Borrower.

**MISCELLANEOUS CONDITIONS**

1. The rights and remedies of the Bank pursuant to this Agreement and the securities taken pursuant hereto are cumulative and not alternative, and not in substitution for any other rights, remedies, or powers of the Bank.
2. Any failure or delay by the Bank to exercise, or exercise fully, its rights and remedies pursuant to this Agreement and the securities taken pursuant hereto shall not be construed as a waiver of such rights and remedies.
3. In the absence of a formal Loan Agreement being entered into, this Agreement shall continue in full force and effect and shall not merge in any securities provided by the Borrower to the Bank.
4. This Agreement and the security documentation to be provided by the Borrower pursuant hereto shall be construed in accordance with and governed by the laws of the Province of Ontario.



## SCHEDULE "F" – DEMAND

### SCHEDULE – STANDARD LOAN TERMS

#### ARTICLE 1 – GENERAL

- 1.1. **Interest Rate.** You will pay interest on each Loan at nominal rates per year at the rate specified in this Agreement.
- 1.2. **Floating rate of interest.** Each floating rate of interest provided for under this Agreement will change automatically, without notice, whenever the Bank's Prime Rate or the U.S. Base Rate, as the case may be, changes.
- 1.3. **Payment of interest.** Interest is calculated on the daily balance of the Loan at the end of each day. Interest is due once a month, unless the Agreement states otherwise. Unless you have made other arrangements with us, we will automatically debit your Operating Account for interest amounts owing. If your Operating Account is in overdraft and you do not deposit to the account an amount equal to the monthly interest payment, the effect is that we will be charging interest on overdue interest (which is known as compounding). Unpaid interest continues to compound whether or not we have demanded payment from you or started a legal action, or get judgment, against you.
- 1.4. **Fees.** You will pay the Bank's fees for the Loans as outlined in the Agreement. You will also reimburse us for all reasonable fees (including legal fees on a solicitor and his own client basis) and out-of-pocket expenses incurred in registering any security, and in enforcing our rights under this Agreement or any security. We will automatically debit your Operating Account for fee amounts owing.
- 1.5. **Our rights re demand Loans.** We believe that the banker-customer relationship is based on mutual trust and respect. It is important for us to know all the relevant information (whether good or bad) about your business. Canadian Western Bank is itself a business. Managing risks and monitoring our customers' ability to repay is critical to us. We can only continue to lend when we feel that we are likely to be repaid. As a result, if you do something that jeopardizes that relationship, or if we no longer feel that you are likely to repay all amounts borrowed, we may have to act. We may decide to act, for example, because of something you have done, information we receive about your business, or changes to the economy that affect your business. Some of the actions that we may decide to take include requiring you to give us more financial information, negotiating a change in the interest rate or fees, or asking you to get further accounting assistance, put more cash into the business, provide more security, or produce a satisfactory business plan. It is important to us that your business succeeds. We may demand immediate repayment of any outstanding amounts under any demand Loan. We may also, at any time and for any cause, cancel the unused portion of any demand Loan.
- 1.6. **Payments.** If any payment is due on a day other than a Business Day, then the payment is due on the next Business Day.
- 1.7. **Applying money received.** If you have not made payments as required by this Agreement, or if you have failed to satisfy any term of this Agreement (or any other agreement you have that relates to this Agreement), or at any time before default but after we have given you appropriate notice, we may decide how to apply any money that we receive. This means that we may choose which Loan to apply the money against, or what mix of principal, interest, fees and overdue amounts within any Loan will be paid.
- 1.8. **Information requirements.** We may from time to time reasonably require you to provide further information about your business. We may require information from you to be in a form acceptable to us.
- 1.9. **Insurance.** You will keep all your business assets and property insured (to the full insurable value) against loss or damage by fire and all other risks usual for property such as yours (plus for any other risks we may reasonably require). If we request, these policies will include a loss payee clause (and if you are giving us mortgage security, a Standard Mortgagee Clause). As further security, you assign all insurance proceeds to us. If we ask, you will give us either the policies themselves or adequate evidence of their existence. If your insurance coverage for any reason stops, we may (but do not have to) insure the property. We will automatically debit your Operating Account for this amount. In the event there are no funds on deposit, we may add the insurance cost to your Loan. Finally, you will notify us immediately of any loss or damage to the property.
- 1.10. **Environmental Matters.** You will carry on your business, and maintain your assets and property, in accordance with all applicable environmental laws and regulations. If (a) there is any release, deposit, discharge or disposal of pollutants of any sort (collectively, a "Discharge") in connection with either your business or your property, and we pay any fines or for any clean-up, or (b) we suffer any loss or damage as a result of any Discharge, you will reimburse the Bank, its directors, officers, employees and agents for any and all losses, damages, fines, costs and other amounts (including amounts spent preparing any necessary environmental assessment or other reports, or defending any lawsuits) that result. If we ask, you will defend any lawsuits, investigations or prosecutions brought against the Bank or any of its directors, officers, employees and agents in connection with any Discharge. Your obligation to us under this section continues even after all Loans have been repaid and this Agreement has terminated.
- 1.11. **Consent to release information.** We may from time to time give any loan or other information about you to, or receive such information from, (a) any financial institution, credit reporting agency, rating agency or credit bureau, (b) any person, firm or corporation with whom you may have or propose to have financial dealings, and (c) any person, firm or corporation in connection with any dealings you have or propose to have with us. You agree that we may use that information to establish and maintain your relationship with us and offer any services as permitted by law, including services and products offered by our subsidiaries when it is considered that this may be suitable to you.
- 1.12. **Proof of debt.** This Agreement provides the proof, between the Bank and you, of the loans made available to you. There may be times when the type of loan you have requires you to sign additional documents. Throughout the time that we provide you loans under this Agreement, our loan accounting records will provide complete proof of all terms and conditions of your loan (such as principal loan balances, interest calculations, and payment dates).
- 1.13. **Renewals of this Agreement.** This Agreement will remain in effect for your Loans for as long as they remain unchanged. If there are no changes to the Loans this Agreement will continue to apply, and you will not need to sign anything further. If there are any changes, we will provide you with either an amending agreement, or a new replacement Letter, for you to sign.
- 1.14. **Confidentiality.** The terms of this Agreement are confidential between you and the Bank. You therefore agree not to disclose the contents of this Agreement to anyone except your professional advisors and where required by law.



- 1.15. **Pre-conditions.** You may use the Loans granted to you under this Agreement only if:
- (a) we have received properly signed copies of all documentation that we may require in connection with the operation of your accounts and your ability to borrow and give security;
  - (b) all the required security has been received and registered to our satisfaction;
  - (c) any special provisions or conditions set forth in the Agreement have been complied with; and
  - (d) if applicable, you have given us the required number of days notice for a drawing under a Loan.
- 1.16. **Notices.** We may give you any notice in person or by telephone, or by letter that is sent either by fax or by mail.
- 1.17. **Use of the Operating Loan.** You will use your Operating Loan only for your business operating cash needs. You are responsible for all debits from the Operating Account that you have either initiated (such as cheques, loan payments, pre-authorized debits, etc.) or authorized us to make. Payments are made by making deposits to the Operating Account. You may not at any time exceed the lesser of the Loan Amount and the maximum available under the Margin Requirements. We may, without notice to you, return any debit from the Operating Account that, if paid, would result in the Loan Amount being exceeded, unless you have made prior arrangements with us. If we pay any of these debits, you must repay us immediately the amount by which the Loan Amount is exceeded.
- 1.18. **Non-Revolving Loans.** The following terms apply to each Non-Revolving Loan:
- (a) **Non-revolving Loans.** Unless otherwise stated in the Agreement, any principal payment made permanently reduces the available Loan Amount. Any payment we receive is applied first to overdue interest, then to current interest owing, then to overdue principal, then to any fees and charges owing, and finally to current principal.
  - (b) **Floating Rate Non-Revolving Loans.** Floating Rate Loans may have either (i) blended payments or (ii) payments of fixed principal amounts, plus interest as described below:
    - (i) **Blended payments.** If you have a Floating Rate Loan that has blended payments, the amount of your monthly payment is fixed for the term of the loan, but the interest rate varies with changes in the Prime Rate or U.S. Base Rate (as the case may be). If the Prime Rate or U.S. Base Rate during any month is lower than what the rate was at the outset, you may end up paying off the loan before the scheduled end date. If, however, the Prime Rate or U.S. Base Rate is higher than what it was at the outset, the amount of principal that is paid off is reduced. As a result, you may end up still owing principal at the end of the term because of these changes in the Prime Rate or U.S. Base Rate. We will advise you from time to time of any changes in the blended payment necessary to maintain the original amortization period, should we choose to do so.
- (ii) **Payments of fixed principal plus interest.** If you have a Floating Rate Loan that has regular principal payments, plus interest, the principal payment amount of your Loan is due on the payment date specified in the Agreement. Although the principal payment amount is fixed, your interest payment will usually be different each month, for at least one and possibly more reasons, namely: the reducing principal balance of your loan, the number of days in the month, and changes to the Prime Rate or U.S. Base Rate (as the case may be).
  - (c) **Demand of Fixed Rate Demand Non-Revolving Loans.** If you have a Fixed Rate Demand Non-Revolving Loan and we make demand for payment, you will owe us (i) all outstanding principal, (ii) interest, (iii) any other amount due under this Agreement, and (iv) a prepayment charge. The prepayment charge is equal to the greater of three (3) months interest calculated on the unpaid balance at the rate authorized or the Bank's Unwinding Costs.

## ARTICLE 2 – DEFINITIONS

2.1. **Definitions.** In this Agreement, the following terms have the following meanings:

“*Agreement*” means the letter agreement between you and Canadian Western Bank to which this Schedule and any other Schedules are attached.

“*Business Day*” means any day (other than a Saturday or a Sunday) that the CWB Branch/Centre is open for business.

“*Cash Flow Coverage Ratio*” means for any fiscal year the ratio of X to Y where:

X =  
 Net profit after tax  
 + amortization/depreciation  
 + all interest expenses  
 + all taxes  
 = EBITDA

Y =  
 All interest paid or accrued during the trailing fiscal year + the Borrower’s actual principal payment obligations for the trailing fiscal year under the CWB credit facility and any other document or agreement including without limitation:

- o in respect of any indebtedness for borrowed money as classified in the balance sheet of the Borrower and in accordance with generally accepted accounting principals; and
- o in respect of any capital lease in accordance with generally accepted accounting principles entered into by the Borrower.

“*Current Assets*” are cash, accounts receivable, inventory and other assets that are likely to be converted into cash, sold, exchanged or expended in the normal course of business within one year or less, excluding amounts due from related parties.

“*Current Liabilities*” means debts that are or will become payable within one year or one operating cycle, whichever is longer, excluding amounts due to related parties, and which will require Current Assets to pay. They usually include accounts payable, accrued expenses, deferred revenue and the current portion of long-term debt.

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

“*Customer Automated Funds Transfer (CAFT)*” is a WEB based service that provides non-personal customers the ability to make multiple electronic transactions for purposes of direct deposit for payroll or direct payment of accounts payable.

“*CWB Branch/Centre*” means the Canadian Western Bank branch or banking centre noted on the first page of this Agreement, as changed from time to time by agreement between the parties.

“*CWBdirect*” is a service available to allow customers the capability to access their bank accounts and general banking information using a personal computer with via the internet.

“*Debt to Tangible Net Worth Ratio*” means the ratio of Debt to Tangible Net Worth, where:

- (a) Debt is defined as: all liabilities listed on the balance sheet less loans from shareholders or affiliates where the bank has a registered postponement of claim. The after tax portion of management bonuses not yet re-invested as shareholders’ loans may be excluded from debt where written confirmation has been obtained from the borrower regarding the re-investment.
- (b) Tangible Net Worth is defined as: the aggregate of share capital, retained earnings, shareholder and affiliated company loans specifically postponed to the Bank, less intangible assets such as goodwill, investments in and advances to affiliated companies and any other asset determined by the Bank to be intangible. The after tax portion of management bonuses not yet re-invested as shareholders’ loans may be included in tangible net worth where written confirmation has been obtained from the

borrower regarding the re-investment and providing these loans are specifically postponed to the Bank.

“*Demand Non-Revolving Loan*” means an instalment loan that is payable upon demand. Such a Loan may be either at a fixed or a floating rate of interest.

“*Fixed Rate Loan*” means any loan drawn down, converted or extended under a Loan at an interest rate which was fixed for a term, instead of referenced to a floating rate such as the Prime Rate or U.S. Base Rate, at the time of such drawdown, conversion or extension.

“*Intangibles*” means assets of the business that have no value in themselves but represent value. They include such things as copyright, goodwill, patents and trademarks; franchises, licenses, leases, research and development costs, and deferred development costs.

“*Letter of Credit*” or “*L/C*” means a documentary or stand-by Letter of Credit, a Letter of Guarantee, or a similar instrument in form and substance satisfactory to us.

“*Lien*” includes a mortgage, charge, lien, security interest or encumbrance of any sort on an asset, and includes conditional sales contracts, title retention agreements, capital trusts and capital leases.

“*Loan*” means any loan segment referred to in the Agreement and if there are two or more segments, “*Loan*” includes reference to each segment.

“*Loan Amount*” of any Loan means the amount specified in the Agreement and if there are two or more segments, “*Loan Amount*” includes reference to each segment.

“*Mandatory Capital Expenditures*” means net capital expenditures incurred by you not financed by long term debt. Net capital expenditures means all capitalized fixed asset purchases less fixed asset sales.

“*Monthly Statement of Borrowing Limit*” means the CWB form 1099 by that name, as it may from time to time be changed.

“*Normal Course Lien*” means a Lien that (a) arises by operation of law or in the ordinary course of business as a result of owning any such asset (but does not include a Lien given to another creditor or to secure debts owed to that Loan) and (b) taken together with all other Normal Course Liens, does not materially affect the value of the asset or its use in the business.

“*Operating Account*” means the account that you normally use for the day-to-day cash needs of your business, and may be either or both of a Canadian dollar and a U.S. dollar account.

“*Postponed Debt*” means any debt owed by you that has been formally postponed to the Bank.

“*Principal Sum*” means the loan balance outstanding.

“*Priority Claims*” means priorities that are created when a borrower does not remit monies due for Income Tax, Workers Compensation, Canada Pension Plan, Employment Insurance, GST, Provincial Sales Tax, wage claims including unpaid holiday entitlement, unpaid utility bills and arrears of rent for business premises. These are considered to be deemed trust and rank in priority to all security interests.

“*Prime Rate*” means the variable reference rate of interest per year declared by the Bank from time to time to be its Prime rate for Canadian dollar loans made by the Bank in Canada.

“*Purchase Money Lien*” means a Lien incurred in the ordinary course of business only to secure the purchase price of an asset, or to secure debt used only to finance the purchase of the asset.

“*Shareholders’ Equity*” means paid-in capital, retained earnings and attributed or contributed surplus.

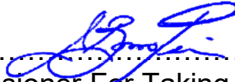
“*Standard Overdraft Rate*” means the variable reference interest rate per year declared by the Bank from time to time to be its standard overdraft rate on overdrafts in Canadian or U.S. dollar accounts maintained with the Bank in Canada.

“*Unwinding Costs*” means the costs the Bank incurs when a fixed rate loan is paid out early. The unwinding costs are based on an interest rate differential

between the loan rate and the bid side yield for Government of Canada securities with the same maturity as the loan, for the remaining term of the loan at the time of repayment.

*“U.S. Base Rate”* means the variable reference rate of interest per year as declared by the Bank from time to time to be its base rate for U.S. dollar loans made by the Bank in Canada.

This is **Exhibit "I"** referred to in the affidavit of Tyson Hartwell, sworn before me by videoconference on April 27, 2023 in accordance with O.Reg. 431/20: Administering Oath or Declaration Remotely. The deponent was located in the City of Calgary in the Province of Alberta and I was located in the City of Toronto in the Province of Ontario.



.....  
A Commissioner For Taking Affidavits

Jeremy Bornstein  
LSO#: 65425C



# CANADIAN WESTERN BANK

## REVOLVING CREDIT AGREEMENT

**TO:** CANADIAN WESTERN BANK (the "Bank")

Plaza 1  
300, 2000 Argentia Road  
Mississauga, ON L5N 1PZ

**FROM:** INDEX HOLDING GROUP INC. (the "Borrower")

110 HERDWICK STREET  
BRAMPTON, ON L6S 0A5

**Re: Revolving Line of Credit (the "Credit")**

**Credit Limit: \$250,000.00 (including letters of credit and letters of guarantee)**

The Bank and the Borrower (jointly and severally if more than one) agree as follows:

1. The Borrower agrees to repay all amounts outstanding under the Credit On Demand, together with interest, calculated on the daily balance of the amount owing and payable monthly, both before and after demand and judgement, at a variable nominal rate per annum of 2.500% percentage points above the Prime Lending Rate established from time to time with interest on overdue interest at the same rate; PROVIDED the interest rate hereunder shall vary automatically on the day the Prime Lending Rate is varied by the Bank and without notice by the Bank to the undersigned. The "Prime Lending Rate" is the rate of interest established from time to time as the Bank's Prime Lending Rate for loans denominated in Canadian dollars, adjusted automatically upon any change by the Bank. The Bank's Prime Lending Rate is 2.450% per annum as of the date hereof.
2. The Bank may advance or re-advance funds under the Credit from time to time by credit to the Borrower's account # 101012702443 (the "Account"). Advances or re-advances shall be in multiples of \$0.01 as required to meet directions to pay on or withdrawals or payments from the Account.
3. The Borrower acknowledges that the outstanding principal balance owing to the Bank under existing credit facilities (excluding any issued and outstanding letters of credit or letters of guarantee) which shall be replaced by this Credit, was \$0.00 as at the start of business on the date hereof. Such amount shall constitute the initial outstanding principal balance under the Credit, and all transactions and entries not included in such amount, whether entered into under such existing credit facilities or the Credit, shall be governed by this agreement from this date forward.
4. The Borrower agrees that at no time shall the amount owing under the Credit exceed the Credit Limit and that the Bank shall have no obligation to honour any request for funds which would have the effect of making the amount owing exceed the Credit Limit. Notwithstanding the foregoing, if at any time amounts advanced and outstanding on the Credit exceed the Credit Limit, any such overdraft which occurs in excess of the Credit Limit shall be governed by the provisions of this agreement except that the Bank may, in its sole discretion, impose on the amount of such overdraft, and the Borrower hereby agrees to pay thereon, a rate of interest equal to the Bank's highest overdraft interest rate established and published from time to time and chargeable on overdraft balances, even though such interest rate may be higher than the rate set out in paragraph 1 hereof, with interest on overdue interest at the same rate.
5. The Borrower authorizes the Bank to debit the Account to pay amounts outstanding under this agreement

including without limitation interest, principal, administration fees, costs related to the preparation, perfection and enforcement of this agreement and any collateral securities or documents and recovery of amounts outstanding on the Credit, all of which fees and costs the Borrower agrees to pay on demand with interest after demand at the rate set out in paragraph 1. Any interest accrued on any such amounts which is not paid by the next date on which an interest installment is payable shall be compounded on such date and on all further installment dates until paid and, as overdue interest, bear interest at the same rate as on principal. All monies received by the Bank, whether by way of debit as aforesaid or otherwise, may be applied and allocated by the Bank to such parts of the outstanding indebtedness (whether by interest, principal, fees or other costs) as the Bank determines.

6. The Credit Limit shall include the Bank's liability or contingent liability under any letters of credit or letters of guarantee issued by the Bank in favour of the Borrower.
7. ~~This agreement is given for advances by the Bank to the Borrower pursuant to the application for credit and promise to give security made by the Borrower to the Bank and dated the 31st day of October, 2021, and any application(s) for credit and promise(s) to give security supplemental thereto, under section 427 of the Bank Act. The Borrower promises to give to the Bank from time to time, as often as requested by the Bank, warehouse receipts and/or bills of lading covering the property described in the said application(s) for credit and promise(s) to give security or any part thereof which is now or may hereafter be covered by warehouse receipts as security for the said advances. No such security shall be merged in any subsequent security or be taken to be substituted for any security previously acquired.~~
- A.M initial
- [Delete paragraph #7 if Bank Act security not held and have Borrower initial deletion]**
8. The Bank and the Borrower may be parties to other agreements relating to the Credit or the Account. In the case of a conflict between this agreement and such other agreements, such other agreements shall prevail. If there is no conflict, this agreement and such other agreements shall be read in conjunction with and as supplementary to each other. If the Bank at any time or from time to time takes a promissory note or notes from the Borrower representing any advances under the Credit, whether in whole or part and whether in the case of overdrafts or otherwise, such note shall not extinguish or pay such advances but shall evidence the same only.

IN WITNESS WHEREOF the undersigned has executed this agreement this 24th day of November, 2021 .

INDEX HOLDING GROUP INC.

Kiranjot Kaur

KIRANJOT KAUR

Witness (if Borrower individual(s))

Rana Kaur

(Authorized Signatory)

This is **Exhibit "J"** referred to in the affidavit of Tyson Hartwell, sworn before me by videoconference on April 27, 2023 in accordance with O.Reg. 431/20: Administering Oath or Declaration Remotely. The deponent was located in the City of Calgary in the Province of Alberta and I was located in the City of Toronto in the Province of Ontario.



.....  
A Commissioner For Taking Affidavits

Jeremy Bornstein  
LSO#: 65425C

## CASH MANAGEMENT ONBOARDING FORMS

Business General Information					
Legal Name of the Business: <b>INDEX HOLDING GROUP INC.</b>					
Is the Operating Name different than the Legal Name of the Business? <b>No</b>					
Physical Address: (P.O. Box IS NOT acceptable)					
Street Address: (Must match T24) <b>110 HERDWICK ST</b>			City: <b>BRAMPTON</b>	Province: <b>ON</b>	
Postal Code: <b>L6S 0A5</b>					
Is the Mailing Address different than the physical address? <b>No</b>					
Business Telephone Number: <b>(647) 771-0762</b>	Ext. (opt.):	Business Fax (opt.):	Nature of Principal Business: <b>Retail/Wholesale</b>		
Type of Business: (Must match what's in T24) <b>Corporation</b>					
CIF: <b>723436</b>		Branch Name: <b>CWB VIRTUAL BRANCH</b>		Branch Transit: <b>03979</b>	
Is there a promotion for this client?: <b>NO</b>					
VISA Services General Information					
Have you completed a Name Search on FDD (Fircosoft Due Diligence) for all cardholders and authorized business representatives? <input checked="" type="checkbox"/> <b>Yes</b>					
Name of Business to be printed on the Card: <b>INDEX GROUP</b>			Total Authorized credit limit for facility: <b>\$60,000.00</b>		
Card selection and credit limit per selected card type					
<input type="checkbox"/> Low Rate Visa            Limit \$ _____					
<input type="checkbox"/> No Fee Cashback Visa    Limit \$ _____					
<input checked="" type="checkbox"/> Infinite Visa                Limit \$ <b>60,000.00</b>					
Is this a Rush Application?				Account Type:	
<input type="checkbox"/> Yes (5-7 days for delivery via express courier, and charged accordingly, to a physical address only)				<b>Consolidated</b>	
<input checked="" type="checkbox"/> No (up to 15 days for delivery via Canada Post)					
Are there any Business Owners that own more than 25% of the business that are not listed as Directors? <b>No</b>					
How many Directors are there?: <b>1</b>					
Director Name: <b>ABDUL MUQEET</b>				% of business ownership: <b>100</b>	
Home Address					
Country <b>Canada</b>	Street Address: (must match T24) <b>110 HERDWICK ST</b>			City <b>BRAMPTON</b>	
			Province <b>ON</b>	Postal Code <b>L6S 0A5</b>	
Is this Director a Politically Exposed Person? <b>No</b>					
Visa Authorized Representatives (Max. 2 permitted on a file)					
How many Authorized Business Representatives are required? <b>1</b>					
Name <b>ABDUL MUQEET</b>		Email: <b>muqeet.rana@hotmail.com</b>		Telephone Number: <b>(647) 771-0762</b>	
MySelect Rewards Authorized Redeemer					



Is a MySelect Rewards Authorized Redeemer required? No	
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<b>General User Information</b>
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Total Number of Users and/or Cardholders Applicable to the actions today? 6
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<b>1</b>	Legal First Name: <b>ABDUL</b>	Legal Last Name: <b>MUQEET</b>	
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Which products does the user require access to?
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VISA Card : New User
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Home Address (P.O. box IS NOT acceptable)
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Country Canada	Street Address: (Must match T24) 110 HERDWICK ST	City BRAMPTON	Province ON	Postal Code L6S0A6
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Home Phone Number: (647) 771-0762	Date of Birth: 14/01/1993	Mother's Maiden Name: AKHTAR	
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<b>VISA Cardholder Information</b>
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Credit Card Limit Requested: \$60,000.00	Credit Card Type: Infinite Visa	
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<b>2</b>	Legal First Name: <b>OMERA</b>	Legal Last Name: <b>MOHMAND</b>	
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Which products does the user require access to?
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VISA Card : New User
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Home Address (P.O. box IS NOT acceptable)
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Country Canada	Street Address: (Must match T24) 1774 WOODVIEW AVE	City PICKERING	Province ON	Postal Code L1V6V4
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Home Phone Number: (905) 302-9700	Date of Birth: 01/11/1993	Mother's Maiden Name: AZIZI	
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<b>VISA Cardholder Information</b>
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Credit Card Limit Requested: \$5,000.00	Credit Card Type: Infinite Visa	
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<b>3</b>	Legal First Name: <b>RAJANDEEP</b>	Legal Last Name: <b>SINGH DHILLON</b>	
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Which products does the user require access to?
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VISA Card : New User
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Home Address (P.O. box IS NOT acceptable)
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Country Canada	Street Address: (Must match T24) 569 OXFORD ST E.	City LONDON	Province ON	Postal Code N5Y3H9
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Home Phone Number: (438) 926-3458	Date of Birth: 28/02/1994	Mother's Maiden Name: SIMERJIT	
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<b>VISA Cardholder Information</b>
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Credit Card Limit Requested: \$5,000.00	Credit Card Type: Infinite Visa	
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<b>4</b>	Legal First Name: <b>GURPREET</b>	Legal Last Name: <b>SINGH</b>	
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Which products does the user require access to?
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VISA Card : New User
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Home Address (P.O. box IS NOT acceptable)				
Country Canada	Street Address: (Must match T24) 1187 OXFORD ST E.	City LONDON	Province ON	Postal Code N5Y3M2
Home Phone Number: (647) 449-3885	Date of Birth: 29/10/1999	Mother's Maiden Name: KAUR		
<b>VISA Cardholder Information</b>				
Credit Card Limit Requested: \$5,000.00	Credit Card Type: Infinite Visa			
<b>5</b>	Legal First Name: <b>PARSHAD</b>	Legal Last Name: <b>PATEL</b>		
Which products does the user require access to? VISA Card : New User				
Home Address (P.O. box IS NOT acceptable)				
Country Canada	Street Address: (Must match T24) 20 EASTWAY ST	City BRAMPTON	Province ON	Postal Code L6S0A4
Home Phone Number: (647) 460-5476	Date of Birth: 11/08/1994	Mother's Maiden Name: SULABHAB		
<b>VISA Cardholder Information</b>				
Credit Card Limit Requested: \$20,000.00	Credit Card Type: Infinite Visa			
<b>6</b>	Legal First Name: <b>KALA</b>	Legal Last Name: <b>NARAYANAN</b>		
Which products does the user require access to? VISA Card : New User				
Home Address (P.O. box IS NOT acceptable)				
Country Canada	Street Address: (Must match T24) 8-7115 REXWOOD RD.	City MISSISSAUGA	Province ON	Postal Code L4T4L3
Home Phone Number: (905) 677-7000	Date of Birth: 15/05/1962	Mother's Maiden Name: MEENAKSH		
<b>VISA Cardholder Information</b>				
Credit Card Limit Requested: \$5,000.00	Credit Card Type: Infinite Visa			
<b>Signature</b>				
<b>The client acknowledges that they are agreeing to add, modify, or delete the following products to their portfolio with CWB; and that they have been provided with, and agree to the Terms and Conditions in, the Master Service Agreement.</b>				
These Products have been selected: VISA - New				
<b>The Canadian Western Bank Business Visa Cardholder Agreement and Disclosure Statement will be provided once your account has been set up.</b>				
Dated at <u>Brampton</u> this <u>16</u> day of <u>July</u> , 20 <u>20</u> .				
How many authorized signatures are required? <u>1</u>				

Job Title: DIRECTOR

E-SIGNED by Abdul Muqheet  
on 2020-07-16 11:45:20 MDT

Date 2020-07-16

Signer's name: ABDUL MUQEET

NEIL THOMAS

E-SIGNED by Neil Thomas  
on 2020-07-16 11:50:24 MDT

Date 2020-07-16

Account Manager Name:

Signature

**Cash Management Support**

Processed by \_\_\_\_\_ Print Name \_\_\_\_\_ Date: \_\_\_\_\_

Audited by \_\_\_\_\_ Print Name \_\_\_\_\_ Date: \_\_\_\_\_

# CANADIAN WESTERN BANK BUSINESS VISA\* APPLICATION



To apply, please fill out this application form  
and return it to your nearest  
Canadian Western Bank branch.



## 1. BUSINESS APPLICANT INFORMATION

Type of Business:  Corporation  Sole Proprietor  Partnership  Other \_\_\_\_\_

Legal Name of Business: INDEX HOLDING GROUP INC.

(name of individual unless a corporation, partnership or other legal entity)

Name of Business to Be Printed On Card: I N D E X G R O U P

(maximum of 21 characters)

Business Operating Name: \_\_\_\_\_  
(if different than legal name)

Business Address: 110 HERDWICK ST, BRAMPTON, ON L6S 0A5  
(Street Address, City, Province, Postal Code)

Business Phone: (647) 771-0762 Business Fax: \_\_\_\_\_

Mailing Address: \_\_\_\_\_  
(if different than business address)

Nature of Principal Business:  Professional Services  Manufacturing  Retail/Wholesale  Financial

Construction  Real Estate  Energy  Other: \_\_\_\_\_  
(please describe)

Total Authorized Credit Limit: \$60,000.00

Card Selection & Credit Limit **per selected card type**. Sum of all card types must equal Total Authorized Credit Limit as indicated above.

Low Rate Visa & Limit \$ \_\_\_\_\_

No Fee Cash Back Visa & Limit \$ \_\_\_\_\_

Infinite Visa & Limit \$60,000.00

Switch From (if applicable)

Low Rate Visa & Limit

No Fee Cash Back Visa & Limit

Infinite Visa & Limit

Issue via:  Canada Post (15 days)  Express Courier (5-7 days)

Account Type:  Consolidated  Individual

## 2. BUSINESS OWNER INFORMATION

(Please complete this section if the Business Applicant is **not** a corporation)  
List all Business Owners who own or control all or a portion of the Business Applicant

Business Owner Name: \_\_\_\_\_ Date of Birth: \_\_\_\_\_  
(First, Initial, Last) (MM/DD/YY)

Home Address: \_\_\_\_\_  
(Street Address, City, Province, Postal Code)

Home Phone: \_\_\_\_\_ Business Phone: \_\_\_\_\_

Percentage of Business Ownership: \_\_\_\_\_ Occupation: \_\_\_\_\_

Is this Business Owner a Politically Exposed Foreign Person? \*  Yes  No  
(If yes, a Questionnaire For Determination Of Politically Exposed Person is required, (Form 4193))

## 3. DIRECTOR INFORMATION

### COMPLETE THIS SECTION IF THE BUSINESS APPLICANT IS A CORPORATION

Please list the name of each director of the corporation.

Director Name: ABDUL MUQEET  
(First, Initial, Last)

**4. ADDITIONAL INFORMATION**

**COMPLETE THIS SECTION IF THE BUSINESS APPLICANT IS A CORPORATION OR IF ANY BUSINESS OWNER LISTED IN SECTION 2 ABOVE IS NOT A NATURAL PERSON (i.e. if the Business Owner is a legal entity).**

Ownership/Control: Please provide information for each person who owns or controls 25% or more of the Business Applicant, either directly or indirectly.

Name: ABDUL MUQEET

Home Address: 110 HERDWICK ST, BRAMPTON, ON , L6S 0A5

Is this Individual a Politically Exposed Foreign Person? \*\*  Yes  No (If yes, a Questionnaire For Determination Of Politically Exposed Person is required, [\(Form 4193\)](#))

\*\* Politically Exposed Foreign Person is defined by the *Proceeds of Crime (Money Laundering) and Terrorist Financing (PCMLTF) Act and Regulations* to be a person (or a family member of a person) who holds or has held one of the following offices or positions in or on behalf of a foreign state: (a) head of state or government, (b) member of the executive council of government or member of legislature, (c) deputy minister or equivalent rank, (d) ambassador or an ambassador's attaché or or counselor, (e) a military general (or higher rank), (f) a president of a state owned company or bank, (g) head of a government agency, (h) judge, or (i) a leader or president of a political party in a legislature. Family members include mother, father, child, spouse or common-law spouse, mother or father of spouse or common-law spouse, and any sibling or half-sibling.

**5. AUTHORIZED BUSINESS REPRESENTATIVE**

The Business Applicant and Business Owners request that each individual below be designated an Authorized Business Representative. An Authorized Business Representative is granted access to account information and the ability to perform certain administrative functions. An Authorized Business Representative may (1) review cardholder details including balance and credit limits, (2) inquire about transactions on all Visa cards, (3) temporarily block cardholder accounts, (4) close/add cardholders, and (5) change cardholder contact information. On MyCard Info, Authorized Business Representatives may also (1) review cardholder memo statements and consolidated central billing statements and (2) modify cardholder credit limits within the limits set below.

Authorized Business Representative Name\*: ABDUL MUQEET

(First, Initial, Last)

Business Address: 110 HERDWICK ST, BRAMPTON, ON , L6S 0A5

(Street Address, City, Province, Postal Code)

Business Phone: (647) 771-0762 Business Email: muqeet.rana@hotmail.com

\* Up to 4 Authorized Business Representatives per company.

**6. AUTHORIZED REDEEMER**

The Business Applicant requests that each individual below be designated an Authorized Redeemer. An Authorized Redeemer may view the Business Applicant's reward points online and redeem for merchandise and travel rewards. Note: This section only applies for No Fee Cash Back and Infinite Cards.

Authorized Redeemer Name: \_\_\_\_\_

(First, Initial, Last)

Business Phone: \_\_\_\_\_ Business Email: \_\_\_\_\_

**7. CARDHOLDER INFORMATION**

Please identify each employee who will be issued a Card below and the Card Limit you would like assigned to each Cardholder's Card. The aggregate of all Card Limits shall not exceed the total Credit Limit granted to the Business Applicant. Please also input the type of card (see below) requested for each Cardholder. The Business Applicant and the Business Owner hereby certify that they have received the consent of each individual named below to provide their personal information to Collabria (the Issuer of the Visa Account) and Canadian Western Bank (a service provider to Collabria) which will be used and retained by Collabria and Canadian Western Bank.

Cardholder Name: ABDUL MUQEET

(First, Initial, Last)

Home Address: 110 HERDWICK ST, BRAMPTON, ON , L6S 0A6

(Street Address, City, Province, Postal Code)

Telephone Number: (647) 771-0762 Date of Birth: 14/01/93

(MM/DD/YY)

Mother's Maiden Name: AKHTAR Card Limit: \$60,000.00 Card Type:  No Fee Cashback Visa  
 Low Rate Visa  
 Infinite Visa

Cardholder Name: OMERA MOHMAND

(First, Initial, Last)

Home Address: 1774 WOODVIEW AVE, PICKERING, ON L1V 6V4

(Street Address, City, Province, Postal Code)

Telephone Number: (905) 302-9700 Date of Birth: 01/11/93

(MM/DD/YY)

Mother's Maiden Name: AZIZI Card Limit: \$5,000.00 Card Type:  No Fee Cashback Visa  
 Low Rate Visa  
 Infinite VisaCardholder Name: RAJANDEEP SINGH DHILLON

(First, Initial, Last)

Home Address: 569 OXFORD ST E., LONDON, ON N5Y 3H9

(Street Address, City, Province, Postal Code)

Telephone Number: (438) 926-3458 Date of Birth: 28/02/94

(MM/DD/YY)

Mother's Maiden Name: SIMERJIT Card Limit: \$5,000.00 Card Type:  No Fee Cashback Visa  
 Low Rate Visa  
 Infinite VisaCardholder Name: GURPREET SINGH

(First, Initial, Last)

Home Address: 1187 OXFORD ST E., LONDON, ON N5Y 3M2

(Street Address, City, Province, Postal Code)

Telephone Number: (647) 449-3885 Date of Birth: 29/10/99

(MM/DD/YY)

Mother's Maiden Name: KAUR Card Limit: \$5,000.00 Card Type:  No Fee Cashback Visa  
 Low Rate Visa  
 Infinite VisaCardholder Name: PARSHAD PATEL

(First, Initial, Last)

Home Address: 20 EASTWAY ST, BRAMPTON, ON L6S 0A4

(Street Address, City, Province, Postal Code)

Telephone Number: (647) 460-5476 Date of Birth: 11/08/94

(MM/DD/YY)

Mother's Maiden Name: SULABHAB Card Limit: \$20,000.00 Card Type:  No Fee Cashback Visa  
 Low Rate Visa  
 Infinite VisaCardholder Name: KALA NARAYANAN

(First, Initial, Last)

Home Address: 8-7115 REXWOOD RD., MISSISSAUGA, ON L4T 4L3

(Street Address, City, Province, Postal Code)

Telephone Number: (905) 677-7000 Date of Birth: 15/05/62

(MM/DD/YY)

Mother's Maiden Name: MEENAKSH Card Limit: \$5,000.00 Card Type:  No Fee Cashback Visa  
 Low Rate Visa  
 Infinite Visa

This is **Exhibit “K”** referred to in the affidavit of Tyson Hartwell, sworn before me by videoconference on April 27, 2023 in accordance with O.Reg. 431/20: Administering Oath or Declaration Remotely. The deponent was located in the City of Calgary in the Province of Alberta and I was located in the City of Toronto in the Province of Ontario.



.....  
A Commissioner For Taking Affidavits

Jeremy Bornstein  
LSO#: 65425C



To: Canadian Western Bank (the "Secured Party")  
Date: June \_\_, 2020

### GENERAL SECURITY AGREEMENT

For good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged by the Debtor, the Debtor hereby agrees as follows:

#### Definitions and Interpretation

1. In this agreement, the following words shall, unless otherwise provided, have the meanings set out below:

"**Business Day**" means a day, other than a Saturday, Sunday or statutory holiday in the Province of Ontario.

"**Collateral**" means all present and future property, assets and undertaking of the Debtor pledged, assigned, mortgaged, charged, hypothecated or made subject to a security interest pursuant to this agreement.

"**Contractual Right**" means any agreement, right, franchise, royalty, licence, authorization, approval, privilege or permit (a) to which the Debtor is now or hereafter becomes a party, (b) in which the Debtor now or hereafter has any interest or (c) of which the Debtor is or hereafter becomes a beneficiary.

"**Debtors**" means the signatories to this agreement and "Debtor" means any one of them.

"**Intellectual Property**" means all patents, trademarks, trade names, business names, trade styles, logos and other business identifiers, copyrights, technology, inventions, industrial designs, know-how, trade secrets and other industrial and intellectual property in which the Debtor now or in the future has any right, title or interest.

"**Investment Collateral**" means all present and future Investment Property (as such term is defined in the PPSA) and Financial Assets (as such term is defined in the STA) of the Debtor, including all present and future options and warrants of the Debtor and all other rights and entitlements arising therefrom or related thereto, and the Debtor's present and future interests in partnerships, limited partnerships, limited liability partnerships and limited liability companies, and including all substitutions for any of the foregoing and dividends and income derived therefrom or payable in connection therewith, including, for greater certainty, any Investment Collateral listed or described in Schedule "C" hereto.

"**Loan Agreement**" means any equipment loan and security agreement between the Debtor and the Secured Party, as may be amended, supplemented, otherwise modified, restated or replaced from time to time.

"**Obligations**" means all present and future indebtedness, liabilities and obligations, direct or indirect, absolute or contingent, matured or unmatured, joint or several, of the Debtors (collectively) to the Secured Party, including without limitation any such indebtedness, liabilities and obligations arising under any Loan Agreements or any guarantees given in respect thereof.

"**Other Collateral**" shall have the meaning ascribed to such term in subsection 11(b).

A handwritten signature in black ink, appearing to be the initials 'AM'.



**“Permitted Encumbrances”** means any and all liens, charges, mortgages, security interests, hypothecs and other encumbrances which affect all or any portion of the Collateral and which have been permitted or consented to in writing by the Secured Party (including any such liens, charges, mortgages, security interests and encumbrances the particulars of which are listed in Schedule “B” hereto).

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

**“PPSA”** means the *Personal Property Security Act* (Ontario), as amended from time to time and any legislation substituted therefor and any amendments thereto.

**“Receiver”** means a receiver, receiver-manager and receiver and manager.

**“Security Interest”** means the pledges, assignments, mortgages, charges and hypothecations of and the security interests in the Collateral created in favour of the Secured Party hereunder.

**“STA”** means the *Securities Transfer Act* (Ontario), as amended from time to time and any legislation substituted therefor and any amendments thereto.

2. References such as “this agreement”, “hereof”, “herein”, “hereto” and like references refer to this agreement and any exhibits or schedules attached hereto (all of which exhibits and schedules, form a part of this agreement) and not to any particular section, subsection, paragraph or other subdivision of this agreement.
3. The division of this agreement into sections, subsections and paragraphs and the insertion of headings in this agreement are for convenience of reference only and shall not affect the construction or interpretation of this agreement.
4. Terms used herein which are defined in the PPSA shall have the same meanings herein as are ascribed to such terms in the PPSA, unless such terms are otherwise defined.
5. The word “Debtor”, 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. The term “successors” shall include, without limiting its meaning, any corporation resulting from the amalgamation of a corporation with another corporation. Where the context so requires, words used herein (including defined terms) importing the singular shall include the plural and vice versa and words used herein (including defined terms) importing gender shall include all genders (including the neuter).
6. This agreement shall be binding upon each Debtor as if each such Debtor had executed and delivered a separate agreement to the Secured Party in the same form as this agreement without any other signatories thereto; and each reference to “the Debtor” in this Agreement shall refer to each Debtor individually. The addition of any Debtors as parties to this agreement from time to time, and the release by the Secured Party of any Debtors from this agreement from time to time, shall not require the consent of any other Debtor; and for greater certainty the obligations of each Debtor hereunder shall remain in full force and effect until this agreement is released by the Secured Party in accordance with the terms hereof notwithstanding the said addition or release of any other Debtor. Any notice delivered to a Debtor hereunder shall be deemed to have been received by all Debtors concurrently. The Secured Party’s rights hereunder may be enforced from time to time against any Debtor or its assets without the requirement on the part of the Secured Party

to marshal any of its claims or to exercise any of its rights against or for the benefit of any Debtor or to exhaust any remedies available to it against any Debtor or to resort to any other source or means of obtaining payment of any of the Obligations or to elect any other remedy.

7. Nothing herein (including the definition and use of the term Permitted Encumbrances) is intended or shall be deemed to subordinate the Security Interest to any Permitted Encumbrance or any other lien, charge, mortgage, security interest, hypothec or encumbrance affecting all or any portion of the Collateral.
8. If one or more of the provisions contained herein shall be invalid, illegal or unenforceable in any respect, such provision or provisions shall be severed from this agreement only to the extent necessary, and the validity, legality and enforceability of the remaining provisions hereof, including the provision or provisions remaining after such severance, shall not in any way be affected or impaired thereby.
9. Unless otherwise expressly provided in this agreement, if any matter in this agreement is subject to the determination, consent or approval of the Secured Party or is to be acceptable to the Secured Party, such determination, consent, approval or determination of acceptability will be in the sole discretion of the Secured Party, which means the Secured Party shall have sole and unfettered discretion, without any obligation to act reasonably. If any provision in this agreement refers to any action taken or to be taken by the Debtor, or which the Debtor is prohibited from taking, such provision will be interpreted to include any and all means, direct or indirect, of taking, or not taking, such action. When used in the context of a general statement followed by a reference to one or more specific items or matters, the term "including" shall mean "including, without limitation" and the use of the term "includes" shall mean "includes, without limitation".
10. This agreement shall be governed by and construed in accordance with the laws of the Province of [Province of Debtor] and the federal laws of Canada applicable therein. The Debtor hereby irrevocably and unconditionally attorns and submits to the non-exclusive jurisdiction of the courts of the Province of [Province of Debtor], provided that nothing herein shall prevent the Secured Party from proceeding at its election against the Debtor in the courts of any other province, country or jurisdiction.

#### **Grant of Security Interest**

11. As continuing security for the payment and performance of all Obligations, the Debtor:
  - (a) hereby pledges, assigns, mortgages, charges and hypothecates to the Secured Party and grants to the Secured Party a security interest in the following:
    - (i) all present and future equipment of the Debtor, including all of its present and future machinery, fixtures, plant, tools, furniture; books, records, documents, vehicles of any nature, kind or description, and all accessions to any of the foregoing, including all spare parts and accessories installed in or affixed or attached to any of the foregoing, and all drawings, specifications, plans and manuals relating to the foregoing;
    - (ii) all present and future inventory of the Debtor, including all of its present and future raw materials, materials used or consumed in its business, work-in-progress, finished goods, goods used for packing and goods acquired or held for sale or lease or that have been leased or furnished or that are to be furnished under contracts of rental or service, and all accessions to any of the foregoing, including all spare parts and accessories installed in or affixed or attached to any of the foregoing;



- (iii) all present and future Contractual Rights and all other intangibles of the Debtor, including all of its present and future accounts and other amounts receivable, book debts, goodwill, Intellectual Property, choses in action of every nature and kind and interests in partnerships;
  - (iv) all present and future documents of title, chattel paper, instruments and money of the Debtor;
  - (v) all present and future Investment Collateral; and
  - (vi) all proceeds arising from the property, assets and undertaking of the Debtor referred to in this section 11, including insurance proceeds and any other payment representing indemnity or compensation for loss of or damage thereto; and
- (b) hereby charges as and by way of a floating charge in favour of the Secured Party all present and future real property, personal property, assets, and undertaking of the Debtor of any nature or kind, including all real property, personal property, assets and undertaking at any time owned, leased or licenced by the Debtor or in which the Debtor at any time has any right or interest or to which the Debtor is or may at any time become entitled, other than the property, assets and undertaking of the Debtor validly pledged or assigned or subjected to a valid mortgage, charge, hypothec or security interest by subsection 11(a)(i), 11(a)(ii), 11(a)(iii), 11(a)(iv) and 11(a)(v) hereof and subject to the exceptions hereinafter contained (all of which property, assets, effects and undertakings so charged by this clause are herein collectively called the “**Other Collateral**”) and the charge created by this subsection 11(b) shall be a floating charge such that the Debtor shall not have power without the prior written consent of the Secured Party to:
- (i) create or permit to exist any lien, encumbrance or security interest against any of the Other Collateral which ranks or could in any event rank in priority to or pari passu with the Security Interest, save for Permitted Encumbrances; or
  - (ii) grant, sell, exchange, transfer, assign, lease or otherwise dispose of the Other Collateral.

#### **Limited Exceptions to Grant of Security Interest**

12. Despite any other provision of this agreement, the last day of any term reserved by any lease of real property, oral or written, or any agreement therefor, now held or hereafter acquired by the Debtor, and whether falling within the general or particular description of the Collateral, is hereby and shall be excepted out of the Security Interest, but the Debtor shall stand possessed of the reversion of one day remaining in the Debtor in respect of any such term, for the time being demised, as aforesaid, upon trust to assign and dispose of the same as any purchaser of such term shall direct.
13. Despite any other provision of this agreement, the Security Interest shall not attach to any Contractual Right to the extent that the granting of the Security Interest therein would constitute a breach of, or permit any Person to terminate such Contractual Right, but the Debtor shall hold its interest in each such Contractual Right in trust for the Secured Party and shall, after the Security Interest shall have become enforceable, specifically assign each such Contractual Right to the Secured Party, or as the Secured Party may otherwise direct. The Debtor agrees that it shall, upon the request of the Secured Party, whether before or after the Security Interest has become enforceable, use all commercially reasonable efforts to obtain any consent

required to permit any such Contractual Right to be subjected to the Security Interest, and the Security Interest shall attach to such Contractual Right following the receipt of such consent.

14. Despite any other provision of this agreement, the interests granted to the Secured Party pursuant to this agreement in the Debtor's existing and after-acquired trademarks shall be limited to the Secured Party's security interests therein.

#### **Attachment**

15. The Debtor confirms and agrees that:
- (a) value has been given by the Secured Party to the Debtor;
  - (b) the Debtor has rights in all existing Collateral and power to transfer rights in the Collateral to the Secured Party; and
  - (c) the Debtor and the Secured Party have not postponed the time for attachment of the Security Interest, and the Security Interest shall attach to existing Collateral upon the execution of this agreement and shall attach to Collateral in which the Debtor hereafter acquires rights at the time that the Debtor acquires rights in such Collateral.

#### **Provisions with respect to Investment Collateral**

16. Whenever any Investment Collateral is a certificated security, an uncertificated security or a security entitlement, the Debtor shall, or shall cause the issuer of such Investment Collateral to, or shall cause the securities intermediary that holds such Investment Collateral to, take all steps as are necessary to give exclusive control over such Investment Collateral to the Secured Party in a manner satisfactory to the Secured Party.
17. All certificates representing Investment Collateral may remain registered in the name of the Debtor, but the Debtor shall, promptly at the request of the Secured Party, duly endorse such certificates in blank for transfer or execute stock powers of attorney in respect thereof and deliver such certificates or powers of attorney to the Secured Party; in either case with signatures guaranteed and with all documentation being in form and substance satisfactory to the Secured Party. Upon the request of the Secured Party:
- (a) the Debtor shall promptly cause the Investment Collateral to be registered in the name of the Secured Party or its nominee, and the Secured Party is hereby appointed the irrevocable attorney (coupled with an interest) of the Debtor with full power of substitution to cause any or all of the Investment Collateral to be registered in the name of the Secured Party or its nominee;
  - (b) the Debtor shall promptly cause each securities intermediary that holds any Investment Collateral that is a security entitlement to record the Secured Party as the entitlement holder of such Investment Collateral; and
  - (c) the Debtor shall promptly:
    - (i) cause a security certificate to be issued for any Investment Collateral that is in the form of an uncertificated security or a security entitlement;
    - (ii) endorse such security certificate in blank;

- (iii) deliver such security certificate to the Secured Party; and
- (iv) take all other steps necessary to give exclusive control over such certificated security to the Secured Party,

in a manner satisfactory to the Secured Party.

18. Until further notice is given by the Secured Party to the Debtor terminating such rights of the Debtor, the Debtor shall be entitled to exercise all voting rights attached to the Investment Collateral and give consents, waivers and ratifications in respect thereof; provided that no vote shall be cast or consent, waiver or ratification given or action taken which would be prejudicial to the interests of the Secured Party or which would have the effect of reducing the value of the Investment Collateral as security for the Obligations, or imposing any restriction on the transferability of any of the Investment Collateral. All such rights of the Debtor to vote and give consents, waivers and ratifications shall cease immediately upon receipt by the Debtor of such notice by the Secured Party.
19. All dividends, distributions, interest and other income in respect of Investment Collateral and all proceeds received by the Debtor in respect of Investment Collateral may be received by the Debtor in the ordinary course and distributed in the ordinary course to the Debtor's shareholder or shareholders until further notice by the Secured Party. Upon receipt by the Debtor of such notice, the Debtor shall not be entitled to retain or distribute to its shareholder or shareholders any such dividends, distributions, interest or other income or proceeds and, if any such amounts are received by the Debtor after the Debtor receives such notice by the Secured Party, the Debtor shall hold such amounts in trust, as trustee for the Secured Party, and the Debtor shall forthwith pay such amounts to the Secured Party, to be applied to reduce the Obligations or, at the option of the Secured Party, to be held as additional security for the Obligations.
20. The responsibility of the Secured Party in respect of any Investment Collateral held by the Secured Party shall be limited to exercising the same degree of care which it gives valuable property of the Secured Party at the Secured Party's office where such Investment Collateral is held. The Secured Party shall not be bound under any circumstances to realize on any Investment Collateral or allow any Investment Collateral to be sold, or exercise any option or right attaching thereto, or be responsible for any loss occasioned by any sale of Investment Collateral or by the retention or other refusal to sell the same; nor shall the Secured Party be obliged to collect or see to the payment of interest or dividends thereon but, subject to section 19, all such interest and dividends, if and when received by the Debtor, shall be held by the Debtor in trust for the Secured Party and shall be forthwith paid to the Secured Party.

#### **Representations and Warranties of the Debtor**

21. The Debtor hereby represents and warrants to the Secured Party that:
  - (a) the Debtor has the capacity and authority to incur the Obligations, to create the Security Interest and to execute and deliver and perform its obligations under this agreement;
  - (b) the execution and delivery of this agreement and the performance by the Debtor of its obligations hereunder have been duly authorized by all necessary proceedings;
  - (c) this agreement constitutes a legal, valid and binding obligation of the Debtor, enforceable against the Debtor in accordance with its terms subject only to bankruptcy, insolvency, reorganization,



moratorium and other similar laws of general application affecting creditors' rights and the discretion exercisable by courts of competent jurisdiction in respect of the availability of equitable remedies;

- (d) except for the Security Interest and any Permitted Encumbrances, the Collateral is owned by the Debtor free from any mortgage, charge, lien, pledge, security interest or other encumbrance or claim whatsoever;
- (e) the chief executive office of the Debtor is located at the address listed in Part I of Schedule "A" of this agreement;
- (f) a description of each real property leased by the Debtor is listed in Part II of Schedule "A" of this agreement;
- (g) the Debtor does not keep tangible Collateral at any location(s) except:
  - (i) the location listed in Part I of Schedule "A" hereto, and
  - (ii) any location(s) listed in Part II of Schedule "A" hereto,other than tangible Collateral in transit to or from such locations;
- (h) the Collateral does not include any goods which are used or acquired by the Debtor primarily for personal, family or household purpose;
- (i) the Debtor has made all necessary filings, registrations and recordations to protect all of its right, title and interest in the Intellectual Property including all relevant renewals; and all such filings, registrations and recordations have been duly and properly made and are in full force and effect and are not subject to dispute by any governmental authority or agency;
- (j) all Contractual Rights relating to or affecting the Intellectual Property are in good standing;
- (k) the Debtor owns directly or is entitled to use by Contractual Right or otherwise all of the Intellectual Property; and
- (l) no litigation is pending or threatened which contains allegations respecting the validity, enforceability, infringement or ownership of any of the Intellectual Property, including any of right, title or interest of the Debtor in the Intellectual Property.

#### **Covenants of the Debtor**

22. The Debtor agrees with the Secured Party that, until the Obligations have been satisfied and paid in full, it will:
- (a) observe, perform and satisfy the Obligations when due;
  - (b) maintain the tangible Collateral in good condition and repair and allow the Secured Party or its agent access to all premises of the Debtor to inspect any and all Collateral;
  - (c) make and maintain all filings, registrations and recordations necessary or desirable to protect its right, title and interest in the Collateral, including all filings, registrations and recordations necessary or desirable in respect of patents, trade-marks, copyrights and industrial designs included in the Intellectual Property;

- (d) defend the Collateral against any actions, claims and demands of any Person (other than the Secured Party) claiming the Collateral (or any of it) or an interest therein;
- (e) pay all taxes, rates, levies, assessments and other impositions and charges, of every nature and kind, which may now or hereafter be lawfully levied, assessed or imposed on or in respect of the Debtor or the Collateral (or any of it), including those which could result in the creation of a statutory lien or deemed trust affecting the Debtor or the Collateral, as and when the same become due and payable;
- (f) maintain its corporate existence and file or cause to be filed any returns, documents or other information necessary to preserve such corporate existence;
- (g) notify the Secured Party of any loss or damage to the Collateral, any change in any information provided in this agreement (including the schedules hereto) or any actual or potential claim affecting the Debtor, the Collateral or the Security Interest;
- (h) hold the proceeds received from any direct or indirect dealing with the Collateral in trust for the Secured Party after either the Security Interest becomes enforceable or any of the Collateral is sold other than in the ordinary course of business of the Debtor and for the purpose of carrying on such business;
- (i) comply with every covenant and undertaking herein and in any other agreement with the Secured Party;
- (j) permit the Secured Party at any time after the Security Interest shall have become enforceable, to require any account debtor of the Debtor to make payment to the Secured Party of any or all amounts owing by the account debtor to the Debtor and the Secured Party may take control of any proceeds referred to in subsection 11(a)(vi) hereof and may hold all amounts received from any account debtor and any proceeds as cash collateral as part of the Collateral and as security for the Obligations;
- (k) prevent any Collateral from becoming an accession to any personal property not subject to the Security Interest, or becoming affixed to any real property;
- (l) deliver to the Secured Party, at the Secured Party's request, duly endorsed and/or accompanied by such assignments, transfers, powers of attorney or other documents as the Secured Party may request, all items of the Collateral comprising chattel paper, instruments, Investment Collateral and documents of title;
- (m) deliver to the Secured Party, at the Secured Party's request, a written agreement from each landlord of the Debtor in favour of the Secured Party and in form and substance satisfactory to the Secured Party, whereby such landlord:
  - (i) agrees to give notice to the Secured Party of any default by the Debtor under the Debtor's lease and a reasonable opportunity to cure such default prior to the exercise of any remedies by the landlord; and

- (ii) consents to the Security Interest and agrees that the Secured Party shall be entitled to enforce the Security Interest in priority to any right, interest or claim of the landlord in the Collateral;
  - (n) pay, on demand by the Secured Party, all costs and expenses (including all legal fees) incurred by the Secured Party in the preparation, perfection, administration and enforcement of this agreement (including expenses incurred in considering, protecting or improving the Secured Party's position, or attempting to do so, whether before or after default) and all such costs and expenses shall bear interest at the highest rate applicable to the Obligations, shall form part of the Obligations and shall be secured by the Security Interest;
  - (o) at all times, both before and after the occurrence of a default, do or cause to be done such further and additional acts and things and execute and deliver or cause to be executed and delivered all such further and additional documents and agreements as the Secured Party may reasonably require to better pledge, assign, mortgage, charge and hypothecate the Collateral in favour of the Secured Party, to perfect the Security Interest and, without limiting the generality of the foregoing, to accomplish the intentions of this agreement;
  - (p) preserve the Debtor's rights, powers, licences, privileges, franchises and goodwill, comply with all applicable laws, regulations and orders (including environmental laws, regulations and orders) affecting the Debtor or the Collateral and conduct its business in a proper and efficient manner so as to protect the Collateral, the Security Interest and the business and undertaking of the Debtor; and
  - (q) without limiting the generality of any of the foregoing, perform all covenants required of the Debtor under any Contractual Right relating to or affecting the Intellectual Property (or any of it), including promptly paying all required fees, royalties and taxes, to maintain each and every item of Intellectual Property in full force and effect, and vigorously protect, preserve and maintain all of the value of, and all of the right, title and interest of the Debtor in, all Intellectual Property, by way of the prosecution of or defence against suits concerning the validity, infringement, enforceability or ownership of the Intellectual Property (or any of it) or otherwise; and
23. The Debtor agrees with the Secured Party that, until the Obligations have been satisfied and paid in full, it will not, without the prior written consent of the Secured Party:
- (a) incur or create any further or additional indebtedness except to the Secured Party and except such normal indebtedness as may be incidental to the ordinary course of its business;
  - (b) create any lien upon, assign or transfer as security, or pledge, hypothecate, charge, mortgage or grant a security interest in any Collateral except to the Secured Party and except for Permitted Encumbrances;
  - (c) other than in the ordinary course of business and for the purpose of carrying on such business, sell, transfer, assign, or otherwise dispose of any Collateral or any group of property and assets forming part of the Collateral;



- (d) guarantee, endorse or otherwise become surety for or upon the obligations of others except to the Secured Party or by endorsement of negotiable instruments for deposit or collection in the ordinary course of the Debtor's business;
- (d) declare or pay any dividends on or make any other payment or distribution in respect of any shares of its capital stock or make any change in its issued or authorized capital stock either by way of redemption of stock or otherwise;
- (e) pay any amount to officers or directors of the Debtor in their capacities as officers or directors by way of salary, bonus, commission, directors' fees or otherwise in excess of the scale of such payments to such officers or directors now being made by the Debtor;
- (f) lend money to or invest money in any Person, by way of loan, acquisition of shares, acquisition of debt obligations or in any other way whatsoever;
- (g) change its name;
- (h) merge or amalgamate with any other corporation;
- (i) change the location of its chief executive office from that set out in Part I of Schedule "A" hereto without providing the Secured Party with thirty (30) Business Days' prior written notice thereof;
- (j) keep tangible Collateral at any location other than the location(s) listed in Parts I and II of Schedule "A" hereto without providing the Secured Party with thirty (30) Business Days' prior written notice thereof; or
- (k) make payments to any shareholders of the Debtor, or any Persons related to the Debtor or any of its shareholders within the meaning of the *Income Tax Act* (Canada), whether by way of loans, advances, repayment of indebtedness owing by the Debtor, interest on such indebtedness, salaries, dividends, guarantees, compensation or benefits of any kind whatsoever, other than as contemplated by subsection 23(f).

#### Default

24. Without prejudice to any right which the Secured Party may now or hereafter have to demand payment of any of the Obligations, the Obligations shall, at the option of the Secured Party, become payable and the Security Interest shall become enforceable in each and every of the following events:
- (a) if the Debtor defaults in the payment of any of the Obligations when due;
  - (b) if there occurs an event of default under any Loan Agreement or if the Debtor defaults in the observance or performance of any other written agreement or undertaking heretofore or hereafter given by the Debtor to the Secured Party, whether contained herein or not;
  - (c) if an order is made or a resolution passed for the winding-up, liquidation or dissolution of the Debtor, or if a petition is presented or filed for the winding-up of the Debtor, whether pursuant to the *Winding-up and Restructuring Act* (Canada) or otherwise;
  - (d) if the Debtor ceases or threatens to cease to carry on business or makes a bulk sale of its assets, or if a Receiver or trustee for the Debtor or any of its property or assets is appointed (whether privately or by court order);

- (e) if the Debtor becomes insolvent or commits or threatens to commit any act of bankruptcy or if the Debtor makes an assignment or proposal in bankruptcy or files a notice of intention to make a proposal in bankruptcy or if a bankruptcy petition is filed or presented against the Debtor or if the Debtor otherwise becomes subject to proceedings under the *Bankruptcy and Insolvency Act* (Canada) or any other bankruptcy, insolvency or analogous law in any jurisdiction;
- (f) if any proceedings with respect to the Debtor are commenced under the *Companies' Creditors Arrangement Act* (Canada) or if the Debtor seeks relief or consents to the filing of a petition against it under any law which involves any compromise of any creditor's rights against the Debtor;
- (g) if an execution or any other process of any court becomes enforceable against the Debtor or if a distress or analogous process is initiated or levied against or upon the property of the Debtor or any part thereof;
- (h) if the Debtor permits any sum which has been admitted as due by the Debtor or is not disputed to be due by it and which forms or is capable of being made a charge on any Collateral in priority to the Security Interest to remain unpaid after proceedings have been taken to enforce such charge;
- (i) if any representation or warranty made by the Debtor or any of its officers, employees or agents to the Secured Party shall be false or inaccurate in any material respect;
- (j) if the Debtor defaults in the observance or performance of any provision relating to the indebtedness or liability of the Debtor to any Person other than the Secured Party; or
- (k) if any licence, permit or approval required by any law, regulation or governmental policy or any governmental agency or commission for the operation by the Debtor of its business shall be withdrawn or cancelled.

#### **Remedies of the Secured Party**

25. Whenever the Security Interest shall have become enforceable, and so long as it shall remain enforceable, the Secured Party may proceed to realize the Security Interest and the Collateral and to enforce its rights by doing any one or more of the following:
- (a) entering upon the Collateral and any lands and premises where any Collateral is or may be located;
  - (b) taking possession of Collateral by any method permitted by law;
  - (c) occupying any lands and premises owned or occupied by the Debtor and using all or any part of such lands and premises and the equipment and other Collateral located thereon;
  - (d) leasing, selling, licensing or otherwise disposing of the whole or any part or parts of the Collateral;
  - (e) collecting, selling or otherwise dealing with any accounts or other amounts receivable by the Debtor, including notifying any Person obligated to the Debtor in respect of an account, chattel paper or instrument to make payment to the Secured Party of all present and future amounts due thereon;
  - (f) taking steps and expending such monies as it considers necessary or desirable in its sole discretion to maintain, preserve and protect the Collateral, including making payments on account of other security interests affecting the Collateral; provided that the Secured Party shall have no obligation

to take any such actions or make any such expenditures; but any such amounts paid by the Secured Party shall be added to the Obligations and shall be secured by the Security Interest;

- (g) collecting any rents, income, and profits received in connection with the business of the Debtor or the Collateral, without carrying on such business;
- (h) exercising all voting rights attached to any Collateral constituting Investment Collateral (whether or not registered in the name of the Secured Party or its nominee) and giving or withholding all consents, waivers and ratifications in respect thereof and otherwise acting with respect thereto as though it were the absolute owner thereof;
- (i) exercising any and all rights of conversion, exchange, subscription or any other rights, privileges or options pertaining to any Collateral constituting Investment Collateral as if it were the absolute owner thereof including the right to exchange at its sole discretion any and all of such Investment Collateral upon the merger, consolidation, reorganization, recapitalization or other readjustment of any issuer thereof, or upon the exercise by any issuer of any right, privilege or option pertaining to any such Investment Collateral, and in connection therewith, to deposit and deliver any such Investment Collateral with any committee, depository, transfer agent, registrar or other designated agency upon such terms and conditions as it may determine in its sole discretion, all without liability except to account for property actually received by it;
- (j) complying with any limitation or restriction in connection with any proposed sale or other disposition of Collateral constituting Investment Collateral as may be necessary in order to comply with applicable law or regulation or any policy imposed by any stock exchange, securities commission or other governmental or regulatory authority or official, and the Debtor agrees that such compliance shall not result in such sale being considered or deemed not to have been made in a commercially reasonable manner, and the Secured Party shall not be liable or accountable to the Debtor for any discount in the sale price of any such Investment Collateral which may be given by reason of the fact that such Investment Collateral are sold in compliance with any such limitation or restriction;
- (k) carrying on the business of the Debtor or any portion thereof;
- (l) exercising any and all of the rights and remedies granted pursuant to the PPSA and any other applicable legislation, or otherwise available at law or in equity;
- (m) demanding, commencing, continuing or defending any judicial or administrative proceedings for the purpose of protecting, seizing, collecting, realizing or obtaining possession or payment of the Collateral, and giving valid and effectual receipts and discharges therefor and to compromise or give time for the payment or performance of all or any part of the accounts or other amounts receivable of the Debtor or any other obligation of any third party to the Debtor;
- (n) borrowing money for the maintenance, preservation or protection of the Collateral or for the carrying on of the business of the Debtor, and charge and grant further security interests in the Collateral in priority to the Security Interest or otherwise, as security for the money so borrowed;
- (o) accepting the Collateral in satisfaction of the Obligations;

- (p) appointing by instrument in writing a Receiver or Receivers of the Collateral or any part thereof;
  - (q) bringing proceedings in any court of competent jurisdiction for the appointment of a Receiver or Receivers or for the sale of the Collateral or any part thereof; and
  - (r) filing such proofs of claim and other documents as may be necessary or advisable in order to have its claim lodged in any bankruptcy, winding-up or other judicial proceedings relating to the Debtor or the Collateral.
26. Any Receiver appointed by the Secured Party may be any Person or Persons (including one or more officers or employees of the Secured Party), and the Secured Party may remove any Receiver so appointed and appoint another or others instead. Any such Receiver may exercise any and all of the rights, remedies and powers of the Secured Party provided in this agreement. The Secured Party shall not be responsible for the actions, errors or omissions of any Receiver it appoints and any such Receiver shall be deemed to act as agent for the Debtor for all purposes, including the occupation of any lands and premises of the Debtor and in carrying on the Debtor's business, unless the Secured Party expressly specifies in writing that the Receiver shall be agent for the Secured Party for one or more purposes. Without limiting the generality of the foregoing, for the purposes of realizing upon the Security Interest, any Receiver may sell, lease, or otherwise dispose of Collateral as agent for the Debtor or as agent for the Secured Party as the Secured Party may specify in writing in its sole discretion. The Debtor agrees to ratify and confirm all actions of any Receiver appointed by the Secured Party acting as agent for the Debtor, and to release and indemnify the Receiver in respect of all such actions.
27. Without limiting the ability of the Secured Party or any Receiver to dispose of Collateral in any other manner, the Debtor agrees that any sale, lease or other disposition of the Collateral hereunder may be completed by public auction, public tender or private contract, with or without notice, with or without advertising and with or without any other formality (except as required by law), all of which are hereby waived by the Debtor. Any such disposition of Collateral may involve all or part of the Collateral and may be on such terms and conditions as to credit or otherwise and as to upset or reserve bid or price as the Secured Party or any Receiver appointed by the Secured Party may, in its sole discretion, deem advantageous and may take place whether or not the Secured Party or any such Receiver has taken possession of such Collateral. Any purchaser or lessee of Collateral may be a customer of the Secured Party.
28. The Secured Party shall not be liable for any delay or failure to enforce any rights, powers or remedies available to it or to institute any proceedings for such purposes.
29. No right, power or remedy of the Secured Party (whether granted herein or otherwise) shall be exclusive of or dependent on or merge in any other right, power or remedy, but all such rights, powers and remedies may from time to time be exercised independently or in combination.
30. The Debtor agrees to pay to the Secured Party, forthwith on demand by the Secured Party, all costs and expenses incurred by the Secured Party in connection with the exercise by the Secured Party of its rights, powers and remedies hereunder, including:
- (a) any costs and expenses incurred by the Secured Party in taking, holding, moving, storing, recovering, possessing, repairing, processing, preparing for disposition or disposing of Collateral;

- (b) any legal fees and expenses incurred by the Secured Party in enforcing its rights, powers and remedies, including those incurred in connection with any proceedings taken for the purpose of enforcing its rights, powers and remedies hereunder or otherwise relating to the non-payment or non-performance of any Obligations;
- (c) the cost of borrowing amounts as hereinbefore provided (for the purpose of carrying on the Debtor's business or otherwise), including, the principal amount or any such amount borrowed, all interest thereon and fees relating thereto; and
- (d) all costs and expenses of or incurred by any Receiver, agent or consultant appointed by the Secured Party (including any legal fees and expenses incurred by any such Receiver, agent or consultant).

All such sums shall bear interest at the highest rate applicable to the Obligations, shall form part of the Obligations and shall be secured by the Security Interest.

- 31. Any and all payments made in respect of the Obligations from time to time and moneys realized from any Collateral (including moneys realized on any enforcement of this agreement) may be applied to such part or parts of the Obligations as the Secured Party may see fit, and the Secured Party shall at all times and from time to time have the right to change any appropriation as the Secured Party may see fit.
- 32. The Debtor shall remain liable for all Obligations that are outstanding following realization of all or any part of the Collateral.

#### **Rights of the Secured Party**

- 33. The Secured Party may pay the whole or any part of any liens, taxes, rates, charges or encumbrances now or hereafter existing in respect of any Collateral and such payments together with all costs, charges and expenses which may be incurred in connection with making such payments shall form part of the Obligations, shall bear interest at the highest rate applicable to the Obligations, and shall be secured by the Security Interest. Whenever the Secured Party pays any such lien, tax, rate, charge or encumbrance, it shall be entitled to all the equities and securities of the Person or Persons so paid and is hereby authorized to obtain any discharge thereof and hold such discharge without registration for so long as it may deem advisable to do so.
- 34. If the Debtor fails to perform or comply with any covenant or other obligation of the Debtor under this agreement, the Secured Party may, but need not, perform or otherwise cause the performance or compliance of such covenant or other obligation, provided that any performance or compliance undertaken by the Secured Party will not constitute a waiver, remedy or satisfaction of such failure. The costs and expenses of the Secured Party incurred in connection with any such performance or compliance shall be payable by the Debtor to the Secured Party on demand, form part of the Obligations, bear interest at the highest rate applicable to the Obligations and be secured by the Security Interest.
- 35. The Debtor grants to the Secured Party the right to set off against the Obligations (or any portion thereof) any amount owed by the Secured Party to the Debtor, including the amount of any and all accounts, credits or balances maintained by the Debtor with the Secured Party.
- 36. The Secured Party, without exonerating in whole or in part the Debtor, may grant time, renewals, extensions, indulgences, releases and discharges to, may take securities from and give the same and any or all existing

securities up to, may abstain from taking securities from or from perfecting securities of, may accept compositions from, and may otherwise deal with the Debtor and all other Persons and securities as the Secured Party may see fit.

37. Nothing herein shall obligate the Secured Party to extend or amend any credit to the Debtor or to any other Person.
38. The Secured Party may assign, transfer and deliver to any transferee any of the Obligations or any security or any documents or instruments held by the Secured Party in respect thereof. The Debtor shall not assign any of its rights or obligations hereunder without the prior written consent of the Secured Party.

#### **Notices**

39. Any notice, demand or other communication permitted or required to be given hereunder shall be delivered to the borrower in accordance with the notice provisions under the Loan Agreement.

#### **Miscellaneous**

40. In the event that any day, on or before which any action is required to be taken hereunder, is not a Business Day, then such action shall be required to be taken on or before the first Business Day thereafter.
41. Time shall be of the essence of this agreement.
42. Upon payment and fulfillment by the Debtor, its successors or permitted assigns, of all Obligations and provided that the Secured Party is then under no obligation (conditional or otherwise) to make any further loan or extend any other type of credit to the Debtor or to any of its affiliates the payment of which is secured, directly or indirectly, by this agreement, the Secured Party shall, upon request in writing by the Debtor, delivered to the Secured Party at the Secured Party's address as set out in the Loan Agreement and at the Debtor's expense, discharge this agreement.
43. This agreement is in addition to and not in substitution for any other security now or hereafter held by the Secured Party and shall be general and continuing security notwithstanding that the Obligations shall be at any time or from time to time fully satisfied or paid.
44. No provision of this agreement, or any other document or instrument in existence among the parties may be modified, waived or terminated except by an instrument in writing executed by the party against whom such modification, waiver or termination is sought to be enforced. Possession of an executed copy of this agreement by the Secured Party constitutes conclusive evidence that it was executed and delivered by the Debtor free of all conditions.
45. The Secured Party may in writing (and not otherwise) waive any default by the Debtor in the observance or performance of any provision of this agreement; provided that no waiver by the Secured Party shall extend to or be taken in any manner whatsoever to affect any subsequent default, whether of the same or a different nature, or the rights resulting therefrom.
46. In accordance with the *Conveyancing and Law of Property Act*, the doctrine of consolidation applies to this agreement.

47. This agreement shall enure to the benefit of the Secured Party, its successors and assigns, and shall be binding on the Debtor, its successors and permitted assigns.
48. The Debtor agrees that the Secured Party may from time to time provide information concerning this agreement (including a copy hereof), the Collateral and the Obligations to any Person the Secured Party in good faith believes is entitled thereto pursuant to applicable legislation.
49. The Debtor acknowledges receipt of an executed copy of this agreement and waives all rights to receive from the Secured Party a copy of any financing statement or financing change statement filed, or any verification statement received, at any time in respect of this agreement.

*(The remainder of the page has intentionally been left blank; the signature page follows.)*

A handwritten signature or set of initials in the bottom right corner of the page, appearing to be 'AM'.

IN WITNESS WHEREOF, this agreement has been executed by the Debtor as of the date on the face hereof.

**INDEX HOLDING GROUP INC.**

By: Abdul Muqees  
Name: Abdul Muqees  
Title: Director

**INDEX GROUP OF COMPANIES INC.**

By: Abdul Muqees  
Name: Abdul Muqees  
Title: Director

**INDEX INTERNATIONAL INC.**

By: Abdul Muqees  
Name: Abdul Muqees  
Title: Director

**INDEX FOODS INC.**

By: Abdul Muqees  
Name: Abdul Muqees  
Title: Director

**2640179 ONTARIO INC.**

By: Abdul Muqees  
Name: Abdul Muqees  
Title: Director

**11030434 CANADA LTD.**

By: Abdul Muqees  
Name: Abdul Muqees  
Title: Director

**2700774 ONTARIO INC.**

By: Abdul Muqees  
Name: Abdul Muqees  
Title: Director

**2700767 ONTARIO INC.**

By: Abdul Muqees  
Name: Abdul Muqees  
Title: Director

**2683960 ONTARIO LTD.**

By: Abdul Muqees  
Name: Abdul Muqees  
Title: Director

**11030418 CANADA INC.**

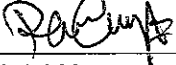
By: Abdul Muqees  
Name: Abdul Muqees  
Title: Director

**2723710 ONTARIO INC.**

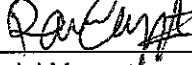
By: Abdul Muqees  
Name: Abdul Muqees  
Title: Director




2718366 ONTARIO INC.

By:   
Name: Abdul Muqees  
Title: Director

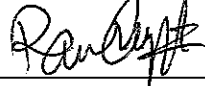
2737332 ONTARIO INC.

By:   
Name: Abdul Muqees  
Title: Director

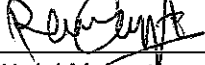
2737334 ONTARIO INC.

By:   
Name: Abdul Muqees  
Title: Director

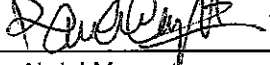
2723714 ONTARIO INC.

By:   
Name: Abdul Muqees  
Title: Director

2723716 ONTARIO INC.

By:   
Name: Abdul Muqees  
Title: Director

2737338 ONTARIO INC.

By:   
Name: Abdul Muqees  
Title: Director

**SCHEDULE "A"**

**Part I**

**Location of the Debtor's Chief Executive Office**

**110 Herdwick Street, Brampton, ON L6S 0A5**

**Part II**

**Locations of Leased Properties**

<b>OWNERSHIP</b>	<b>COLLATERAL SITES</b>
Index Group of Companies Inc.	395 Clarke Rd., London, ON
Index International Inc.	4-1525 Dundas St. E., Whitby, ON
Index Foods Inc.	965 Dundas St. W. Whitby, ON
2640179 Ontario Inc.	1571 Sandhurst Circle, #106D, Toronto, ON
11030434 Canada Ltd.	323-275 Caradoc St. S., Strathroy, ON
2700774 Ontario Inc.	22 Stevenson Rd. S., Oshawa, ON
2700767 Ontario Inc.	9 Jim Kimmett Blvd., Napanee, ON
2683960 Ontario Ltd.	2 Douglas Rd., Uxbridge, ON
11030418 Canada Inc.	72 Baldwin St. N., Whitby, ON
2723710 Ontario Inc.	165 E. Liberty Street, Toronto, ON
2718366 Ontario Inc.	181 Dundas St., London, ON
2737332 Ontario Inc.	900 Dufferin St., Toronto, ON
2737334 Ontario Inc.	674-676 Sheppard Ave. W., Toronto, ON
2723714 Ontario Inc.	New Build #1 – To be determined
2723716 Ontario Inc.	New Build #2 – to be determined
2737338 Ontario Inc.	New Build #3 – to be determined

**SCHEDULE "B"**  
**Permitted Encumbrances**

1. statutory liens which secure payment of amounts not then overdue;
2. statutory liens which secure payment of amounts which are then overdue but the validity of which is being contested in good faith and in respect of which reserves satisfactory to the Secured Party in its sole discretion have been established;
3. security given to a public utility, municipality, government or statutory or public authority to secure obligations incurred to such utility, municipality, government or other authority in the ordinary course of business and not then overdue;
4. liens and privileges arising out of judgments or awards in respect of which an appeal or proceeding for review has been commenced, provided a stay of execution pending such appeal or proceedings for review has been obtained and provided reserves satisfactory to the Secured Party in its sole discretion have been established;
5. liens or rights of distress reserved in or exercisable under any lease of real property for rent not then overdue or for compliance with the provisions of such lease not then in default;
6. security deposits given under leases of real property not in excess of an amount equivalent to six months' rent;
7. liens securing obligations or duties affecting real property due to any public utility, municipality, government, or statutory or public authority with respect to any franchise, grant, licence or permit in good standing and any minor irregularities in title to any real property, provided such obligations, duties and minor title irregularities do not materially impair the use, value or marketability of such real property;
8. liens incurred or deposits made in connection with contracts, bids or tenders made in the ordinary course of business or in connection with expropriation proceedings, surety or appeal bonds or costs of litigation to the extent required by law;
9. liens (including builders' liens) arising in connection with the construction or improvement of any real property or arising out of the furnishing of materials or supplies therefor, provided that such liens secure payment of amounts not then overdue (or if overdue, the validity of which is being contested in good faith and in respect of which reserves satisfactory to the Secured Party in its sole discretion have been established) and provided notice of such lien has not been given to the Secured Party and such lien has not been registered against title to such real property;
10. zoning and building by-laws affecting real property provided they are complied with;
11. garage keepers' liens securing amounts not then overdue; and
12. encumbrances in favour of the Secured Party.

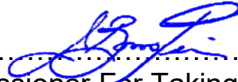
Schedule "C"

Investment Collateral



*Am*

This is **Exhibit “L”** referred to in the affidavit of Tyson Hartwell, sworn before me by videoconference on April 27, 2023 in accordance with O.Reg. 431/20: Administering Oath or Declaration Remotely. The deponent was located in the City of Calgary in the Province of Alberta and I was located in the City of Toronto in the Province of Ontario.



.....  
A Commissioner For Taking Affidavits

Jeremy Bornstein  
LSO#: 65425C

## GUARANTEE AND INDEMNITY

TO: CANADIAN WESTERN BANK ("CWB")

In consideration of the covenants and agreements herein contained, the sum of \$1.00 now paid by CANADIAN WESTERN BANK ("CWB") to each of INDEX HOLDING GROUP INC., INDEX GROUP OF COMPANIES INC., INDEX INTERNATIONAL INC., INDEX FOODS INC., 2640179 ONTARIO INC., 11030434 CANADA LTD., 2700774 ONTARIO INC., 2700767 ONTARIO INC., 2683960 ONTARIO LTD., 11030418 CANADA INC., 2723710 ONTARIO INC., 2718366 ONTARIO INC., 2737332 ONTARIO INC., 2737334 ONTARIO INC., 2723714 ONTARIO INC., 2723716 ONTARIO INC. And 2737338 ONTARIO INC. (collectively, the "Obligors") and other good and valuable consideration (the receipt and sufficiency of which are hereby acknowledged), the Obligors covenant and agree with CWB as follows:

**1. INTERPRETATION** — Wherever throughout this Guarantee and Indemnity ("Guarantee"), the Obligors or CWB are mentioned or referred to, such mention or reference shall extend to their respective successors and assigns, as the case may be. Reference to the term "Obligations" herein shall be to any and all obligations from time to time owing by each Obligor to CWB whether under a loan agreement, promissory note, leasing agreement, master leasing agreement, leasing schedule, conditional sale contract, security agreement, guarantee, chattel mortgage, hypothec, pledge, debenture or any other instrument (hereinafter singularly or collectively called "Finance Instruments") between CWB and any of the Obligors and whether any such Finance Instrument was executed prior to the execution of this Agreement, is executed concurrently herewith or at any time in the future.

### 2. GUARANTEE

**2.1 Guarantee** — Each Obligor hereby irrevocably and unconditionally guarantees and covenants with CWB as principal debtor of CWB and not merely as surety, that each of the other Obligors will duly and punctually perform all of the Obligations, and pay or cause to be paid to CWB the rentals under and the principal of and interest on the Finance Instruments evidencing or securing the Obligations (including, in case of default, interest on the amount in default) as and when the same becomes due and payable, whether by lapse of time, by extension, or upon a declaration or otherwise according to the terms of the Finance Instruments and all other moneys owing on or under the Finance Instruments or in any way relating thereto including all expenses, including legal expenses and service charges. The liability of each Obligor hereunder shall be irrevocable and unlimited and shall include all interest, fees, costs or expenses (including, without limitation, legal fees and expenses) which may now or hereafter accrue or be incurred with respect to such Obligations and any fees, costs or expenses (including without limitation, legal fees and expenses) that may be incurred by CWB by reason of any Obligors' default under this Guarantee.

**2.2 Terms of the Finance Instruments** — The Obligors hereby consent to and approve of the terms of the Finance Instruments; the guarantee and the agreements of the Obligors herein contained shall take effect and shall be and are hereby declared to be binding upon the Obligors notwithstanding any defect in or omission from the Finance Instruments or any non-registration or non-filing or defective registration or filing of any Finance Instruments or notice of the interest of CWB created thereby or by reason of any failure of the security intended to be created by the Finance Instruments or pursuant thereto.

**2.3 Guarantee Absolute** — The liability of each Obligor hereunder shall be absolute and unconditional and shall not be affected by:

- (a) any lack of validity or enforceability of any agreements between any Obligor and CWB; any change in the time, manner or place of payment or in any other term of such agreements or the failure on the part of any Obligor to carry out any of its obligations under such agreements;
- (b) any impossibility, impracticability, frustration of purpose, illegality, force majeure or act of government;
- (c) the bankruptcy, winding-up, liquidation, dissolution or insolvency of any Obligor, CWB or any party to any agreement to which CWB is a party;
- (d) any lack or limitation of power, incapacity or disability on the part of any Obligor or of the directors, partners or agents thereof or any other irregularity, defect or informality on the part of any Obligor in its obligations to CWB; or
- (e) any other law, regulation or other circumstance which might otherwise constitute a defense available to, or a discharge of, any Obligor in respect of any or all of the Obligations.

The Obligors shall be held and bound to CWB as principal debtor, and not as surety, in respect of the payment of any or all of the Obligations. All amounts payable to CWB shall be paid to CWB forthwith after demand therefore as provided herein.

**2.4 No Waiver** — The Obligors hereby agree that their obligations hereunder shall be unconditional and no waiver by CWB of any of its rights hereunder or under the Finance Instruments and no action by CWB to enforce any of its rights hereunder or under the Finance Instruments or failure to take, or delay in taking any such action shall affect any other obligation of the Obligors hereunder.

**3. INDEMNITY** — Each Obligor also covenants and agrees with CWB that it will at all times and from time to time hereafter, indemnify and keep indemnified and save harmless CWB from any and all losses, costs, damages and expenses, including legal fees and disbursements and the costs of all distresses, actions, proceedings, claims and demands incurred or made by CWB if CWB does not receive payment of all amounts due and owing under the Finance Instruments or if any Obligor defaults in the payment of any instalment payable or in the performance of the Obligations under the Finance Instruments which, if the Finance Instruments were in full force and effect and good standing, would be payable or required to be performed under the Finance Instruments. In addition to the foregoing, the Obligors agree to pay CWB, as administrative costs, an amount equal to fifteen percent (15%) of all amounts payable hereunder in the event that court proceedings are instituted against any Obligor because such Obligor has failed to respect their obligations hereunder.

*Am*

#### 4. DEALINGS WITH OBLIGOR AND OTHERS

- 4.1 **No Release** — The liability of the Obligors hereunder shall not be released, discharged, limited or in any way affected by anything done, suffered or permitted by **CWB** in connection with any duties or liabilities of any Obligor to **CWB** of any security thereof including any loss of or in respect of any security received by **CWB** from any Obligor or others. **CWB**, without releasing, discharging, limiting or otherwise affecting in whole or in part the Obligors' liability hereunder, may:
- (a) grant time, renewals, extensions, indulgences, releases, waivers and discharges to any Obligor;
  - (b) grant substitutions for the Obligations or any part thereof or any agreement related thereto;
  - (c) take or abstain from taking securities or collateral from any Obligor or from perfecting securities or collateral of any Obligor;
  - (d) accept compromises from any Obligor;
  - (e) apply all money at any time received from any Obligor or from securities upon such part of the Obligations as **CWB** may see fit or change any such application in whole or in part from time to time as **CWB** may see fit;
  - (f) amend any of the Finance Instruments; or
  - (g) otherwise deal with any Obligor and all other persons and securities as **CWB** may see fit.
- 4.2 **No Exhaustion of Remedies** — **CWB** shall not be bound or obligated to exhaust its recourse against any Obligor or other persons or any securities or collateral it may hold or take any other action (other than to make demand pursuant to Section **CWB** before being entitled to demand payment from any Obligor hereunder. The obligations of each Obligor hereunder are joint and several with those of the other Obligors and any other guarantor, security or other person liable in any way for the Obligations. This Guarantee is in addition and not in substitution for any other guarantee, by whomsoever given, at any time held by **CWB**, and without prejudice to any other security, by whomsoever given, at any time held by **CWB**, and **CWB** shall be under no obligation to marshal in favour of any Obligor any such security or any of the funds or assets **CWB** may be entitled to receive or have a claim upon.
- 4.3 **Conclusive Statement** — Any account settled or stated in writing by or between **CWB** and an Obligor shall be prima facie evidence that the balance or amount thereof appearing due to **CWB** is so due.
- 4.4 **No Set-Off** — No Obligor shall claim any set-off or counterclaim against any other Obligor in respect of any liability of such other Obligor to it.

#### 5. CONTINUING GUARANTEE

- 5.1 **Continuing Guarantee** — This Guarantee shall be a continuing guarantee, notwithstanding any extensions, modifications, renewals or indulgences with respect to, or substitutions for, the Obligations or any part thereof, and shall remain in full force and effect until the Obligations are performed and paid in full. This Guarantee shall continue to be effective even if at any time any payment of any of the Obligations is rendered unenforceable or is rescinded or terminated or must otherwise be returned by **CWB** upon the occurrence of any action or event including the insolvency, bankruptcy or reorganization of any Obligor or otherwise, all as though such payment had not been made.

#### 6. DEMAND FOR PAYMENT

- 6.1 **Demand for Payment** — **CWB** shall be entitled to make demand upon any Obligor at any time upon a default in payment of any amount owing by any Obligor to **CWB** and upon such default **CWB** may treat all Obligations as due and payable and may forthwith collect from any Obligor the total amount guaranteed hereunder. Each Obligor shall make payment to or performance in favour of **CWB** of the total amount guaranteed hereunder forthwith after demand thereof is made to such Obligor.
- 6.2 **Interest** — The Obligors shall pay interest to **CWB** at the rate of 24% per annum on the unpaid portion of all amounts payable by the Obligors under this Guarantee, such interest to be calculated daily from the date of demand by **CWB** on the Obligors.

#### 7. ASSIGNMENT, POSTPONEMENT AND SUBROGATION

- 7.1 **Assignment and Postponement** — All debts and liabilities, present and future, of each Obligor to any other Obligor are hereby assigned to **CWB** and postponed to the Obligations, and all money received by any Obligor in respect thereof shall be received in trust for **CWB** and forthwith upon receipt shall be paid over to **CWB**, the whole without in any way lessening or limiting the liability of each of the Obligors hereunder and this assignment and postponement is independent of this Guarantee and shall remain in full force and effect until, in the case of the assignment, the liability of the Obligors under this Guarantee has been discharged or terminated and, in the case of the postponement, until payment in full to **CWB** of all obligations of the Obligors under this Guarantee.
- 7.2 **Subrogation** — The Obligors will not exercise any rights which it may acquire by way of subrogation under this Guarantee and Indemnity, by any payment made hereunder or otherwise, until all Obligations shall have been paid and performed in full. If any amount shall be paid to any Obligor on account of such subrogation rights at any time when all the Obligations shall not have been paid in full, such amount shall be held in trust for the benefit of **CWB** and shall forthwith be paid to **CWB** to be credited and applied upon the Obligations. If (i) the Obligors perform or make payment to **CWB** of all amounts owing by the Obligors to **CWB** under this Guarantee and (ii) the Obligations are performed and paid in full, **CWB** will, at the Obligors' request and at the Obligors' expense, execute and deliver to the Obligors appropriate documents, without recourse and without representation and warranty, necessary to evidence the transfer by subrogation to the Obligors of an interest in the Obligations and any security held therefor resulting from such performance or payment by the Obligors.

#### 8. COVENANTS OF THE OBLIGORS — Each Obligor hereby represents, covenants and warrants that:

- (a) if the Obligor is a corporation, the making and performance of this Guarantee has been duly authorized by all necessary corporate actions on the part of such Obligor, do not require any shareholders' approval, and will not violate any provisions of such Obligor's incorporating documents or by-laws or result in the breach of, constitute a default under, contravene any provisions of or result in the creation of any lien, charge, encumbrance or security interest upon any property or assets of such Obligor pursuant to any of such Obligor's stocks, bonds, notes or debentures outstanding, or any agreement, indenture or other instrument to which such Obligor is a party or by which such Obligor or its property may be bound or affected;
- (b) this Guarantee constitutes a legal, valid and binding obligation of such Obligor in accordance with the terms hereof;



- (c) there is no pending or, to the best of the knowledge of such Obligor, threatened action or proceeding affecting such Obligor or, if the Obligor is a corporation, any of their subsidiaries before any court, governmental agency or arbitrator, which would materially adversely affect the legality, validity or enforceability of this Guarantee;
- (d) all information as defined in Section **CWB** provided by such Obligor to **CWB** is accurate;
- (e) all payments to **CWB** are and will be derived from legal sources and **CWB** may decline any form of payment; and
- (f) it is and shall continue to be in compliance with all laws and regulations relating to the prevention of money laundering and terrorism.

**9. GENERAL**

- 9.1 Waivers** — The Obligors waive notice of acceptance of this Guarantee and of the extension or continuation of the Obligations or any part thereof. The Obligors further waive presentment, protest, notice, demand or action in respect of the Obligations or any part thereof, including any right to require **CWB** to sue any Obligor, or any other person obligated with respect to the Obligations or any part thereof, or otherwise to enforce payment thereof against any collateral securing the Obligations or any part thereof. Without limiting the generality of the foregoing, each Obligor is jointly and severally liable with each other Obligor for the due and punctual payment and performance of the Obligations, the Obligors each hereby waiving the benefit of division and discussion. The Obligors waive their right to receive a copy of any financing statement or financing change statement registered by **CWB** and of any related verification statement.
- 9.2 Information** — The Obligors hereby consent and authorize **CWB** and its affiliates, agents, contractors and representatives, at any time, a) to collect, verify, use, communicate with and disclose to third parties (including credit reporting agencies, financial institutions, creditors, vendors and other persons) any credit, financial and other information, including personal information (as applicable) and information related to the credit rating, financial capacity and payment history, with respect to the Obligors ("**Information**"), as **CWB** deems necessary to process, complete, service and enforce the transactions hereby contemplated and any other existing or potential transactions, or as required or otherwise permitted by law; b) to respond to inquiries from, and exchange any Information with, third parties concerning any Obligor's credit rating, financial capacity and payment history; c) to provide information to persons to whom **CWB** considers assigning, granting a participation or otherwise disposing of rights or obligations under the transactions hereby contemplated; and d) to provide to any person copies of this Guarantee. This consent is in addition to and does not replace any consent previously given.
- 9.3 Benefit of the Guarantee** — This Guarantee shall enure to the benefit of and be binding upon the respective heirs, executors, administrators, successors and permitted assigns of the Obligors and **CWB**.
- 9.4 Entire Agreement** — This Guarantee constitutes the entire agreement between **CWB** and the Obligors with respect to the subject matter hereof and cancels and supersedes any prior understandings and agreements between such parties with respect thereto. There are no representations, warranties, terms, conditions, undertakings or collateral agreements, expressed, implied or statutory, between such parties other than as expressly set forth in this Guarantee.
- 9.5 No Waiver, Remedies** — No failure on the part of **CWB** to exercise, and no delay in exercising, any right hereunder shall operate as a waiver thereof, nor shall any single or partial exercise of any right hereunder preclude the other or further exercise thereof or the exercise of any other right. The remedies herein provided are cumulative and not exclusive of any remedies provided by law.
- 9.6 Severability** — If any provision of this Guarantee is determined to be invalid or unenforceable in whole or in part, such invalidity or unenforceability shall attach only to such provision or part thereof and the remaining part of such provision and all other provisions hereof shall continue in full force and effect.
- 9.7 Notices** — Any demand, notice or other communications (hereinafter in this Section **CWB** referred to as a "**Communication**") to be given in connection with this Guarantee shall be given in writing and may be given by personal delivery or by registered mail addressed to the recipient at the address indicated on the signature page hereby or such other address as may be designated by notice by any party to the other. Any Communication given by personal delivery shall be conclusively deemed to have been given on the day of actual delivery thereof and, if given by registered mail, on the third day following the deposit thereof in the mail. If the party giving any Communication knows or ought reasonably to know of any difficulties with the postal system which might affect the delivery of mail, any such Communication shall not be mailed but shall be given by personal delivery.
- 9.8 Assignment** — The rights of **CWB** under this Guarantee may be assigned by **CWB** without the prior consent of the Obligors. No Obligor may assign its obligations under this Guarantee.
- 9.9 Governing Law** — This guarantee shall be governed by and construed in accordance with the laws of the Province of Ontario and the laws of Canada applicable therein.
- 9.10 Language** — The parties hereby acknowledge that it is their express wish that this Guarantee and Indemnity be drawn in the English language; les parties reconnaissent qu'il est de leur volonté expresse que la présente caution soit rédigée en langue anglaise seulement.

*[Signature page follows]*

*AM*

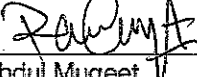


IN WITNESS WHEREOF, the Obligors have executed this Guarantee this June 23, 2020.


**INDEX HOLDING GROUP INC.**

By:   
Name: Abdul Muqeeet  
Title: Director


**INDEX GROUP OF COMPANIES INC.**

By:   
Name: Abdul Muqeeet  
Title: Director


**INDEX INTERNATIONAL INC.**

By:   
Name: Abdul Muqeeet  
Title: Director


**INDEX FOODS INC.**

By:   
Name: Abdul Muqeeet  
Title: Director

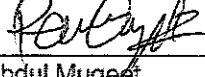
**2640179 ONTARIO INC.**

By:   
Name: Abdul Muqeeet  
Title: Director


**11030434 CANADA LTD.**

By:   
Name: Abdul Muqeeet  
Title: Director

**2700774 ONTARIO INC.**

By:   
Name: Abdul Muqeeet  
Title: Director


**2700767 ONTARIO INC.**

By:   
Name: Abdul Muqeeet  
Title: Director


**2683960 ONTARIO LTD.**

By:   
Name: Abdul Muqeeet  
Title: Director


**11030418 CANADA INC.**

By:   
Name: Abdul Muqeeet  
Title: Director

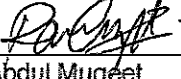
**2723710 ONTARIO INC.**

By:   
Name: Abdul Muqeeet  
Title: Director

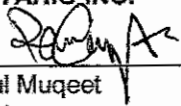
**2718366 ONTARIO INC.**

By:   
Name: Abdul Muqeeet  
Title: Director

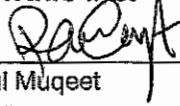
**2737332 ONTARIO INC.**

By:   
Name: Abdul Muqeeet  
Title: Director

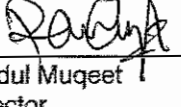
2737334 ONTARIO INC.

By:   
Name: Abdul Muqeeet  
Title: Director

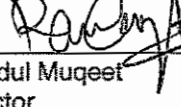
2723714 ONTARIO INC.

By:   
Name: Abdul Muqeeet  
Title: Director

2723716 ONTARIO INC.

By:   
Name: Abdul Muqeeet  
Title: Director

2737338 ONTARIO INC.

By:   
Name: Abdul Muqeeet  
Title: Director



**EXCERPT OF A RESOLUTION  
OF THE BOARD OF DIRECTORS OF**

**INDEX HOLDING GROUP INC.**

(the "Corporation")

**Guarantee and Indemnity**

In consideration of the loan agreement, guarantee and general security agreement, entered or which may be entered into by or granted in favor of **CANADIAN WESTERN BANK ("CWB")** with its client **INDEX GROUP OF COMPANIES INC., INDEX INTERNATIONAL INC., INDEX FOODS INC., 2640179 ONTARIO INC., 11030434 CANADA LTD., 2700774 ONTARIO INC., 2700767 ONTARIO INC., 2683960 ONTARIO LTD., 11030418 CANADA INC., 2723718 ONTARIO INC., 2718366 ONTARIO INC., 2737332 ONTARIO INC., 2737334 ONTARIO INC., 2723714 ONTARIO INC., 2723716 ONTARIO INC. and 2737338 ONTARIO INC.** (collectively, the "Client") or the loans and advances of money granted or which may be granted by **CWB** to its Client, as the case may be for the purpose of Client's business, and, generally, in consideration of the business relations between **CWB** and its Client as well as the business relations between the said Client and this Corporation.

Now therefore be it resolved:

That this Corporation be and is hereby authorized to be a surety and to guarantee the repayment of all sums of money which the client owes or in future may owe to **CWB**, together with the interest, costs and accessories, and this, jointly and severally with the Client towards **CWB** and subject to all the terms and conditions set out on the form in use at **CWB** entitled "Guarantee and Indemnity", a copy of which is attached hereto after having been submitted to the Directors and that:

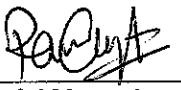
**DIRECTOR, ABDUL MUQEET**

be and is hereby authorized to sign such Guarantee and Indemnity for and on behalf and in the name of the Corporation.

That all acts and things done and all documents executed on behalf of the Corporation as hereinbefore authorized shall be valid and binding upon the Corporation whether or not the corporate seal of the Corporation has been affixed to any such document.

The foregoing is a true and correct copy of a resolution of the Board of Directors of **INDEX HOLDING GROUP INC.** duly adopted on **June 23, 2020** which resolution is in effect and has not been modified or rescinded as of the date hereof.

Dated at Brampton, Ontario, this 23 of June, 2020.

(s)   
\_\_\_\_\_  
Name: Abdul Muqeet  
Title: Director



**EXCERPT OF A RESOLUTION  
OF THE BOARD OF DIRECTORS OF**

**INDEX GROUP OF COMPANIES INC.**

(the "Corporation")

**Guarantee and Indemnity**

In consideration of the loan agreement, guarantee and general security agreement, entered or which may be entered into by or granted in favor of **CANADIAN WESTERN BANK ("CWB")** with its client **INDEX HOLDING GROUP INC., INDEX INTERNATIONAL INC., INDEX FOODS INC., 2640179 ONTARIO INC., 11030434 CANADA LTD., 2700774 ONTARIO INC., 2700767 ONTARIO INC., 2683960 ONTARIO LTD., 11030418 CANADA INC., 2723710 ONTARIO INC., 2718366 ONTARIO INC., 2737332 ONTARIO INC., 2737334 ONTARIO INC., 2723714 ONTARIO INC., 2723716 ONTARIO INC. and 2737338 ONTARIO INC.** (collectively, the "Client") or the loans and advances of money granted or which may be granted by **CWB** to its Client, as the case may be for the purpose of Client's business, and, generally, in consideration of the business relations between **CWB** and its Client as well as the business relations between the said Client and this Corporation.

Now therefore be it resolved:

That this Corporation be and is hereby authorized to be a surety and to guarantee the repayment of all sums of money which the client owes or in future may owe to **CWB**, together with the interest, costs and accessories, and this, jointly and severally with the Client towards **CWB** and subject to all the terms and conditions set out on the form in use at **CWB** entitled "Guarantee and Indemnity", a copy of which is attached hereto after having been submitted to the Directors and that:

**DIRECTOR, ABDUL MUQEET**

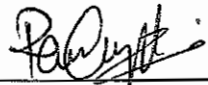
be and is hereby authorized to sign such Guarantee and Indemnity for and on behalf and in the name of the Corporation.

That all acts and things done and all documents executed on behalf of the Corporation as hereinbefore authorized shall be valid and binding upon the Corporation whether or not the corporate seal of the Corporation has been affixed to any such document.

The foregoing is a true and correct copy of a resolution of the Board of Directors of **INDEX GROUP OF COMPANIES INC.** duly adopted on **June 23, 2020** which resolution is in effect and has not been modified or rescinded as of the date hereof.

Dated at Brampton, Ontario, this 23 of June, 2020.

(s)

  
Name: Abdul Muqeet  
Title: Director



**EXCERPT OF A RESOLUTION  
OF THE BOARD OF DIRECTORS OF**

**INDEX INTERNATIONAL INC.**

(the "Corporation")

**Guarantee and Indemnity**

In consideration of the loan agreement, guarantee and general security agreement, entered or which may be entered into by or granted in favor of **CANADIAN WESTERN BANK ("CWB")** with its client **INDEX HOLDING GROUP INC., INDEX GROUP OF COMPANIES INC., INDEX FOODS INC., 2640179 ONTARIO INC., 11030434 CANADA LTD., 2700774 ONTARIO INC., 2700767 ONTARIO INC., 2683960 ONTARIO LTD., 11030418 CANADA INC., 2723710 ONTARIO INC., 2718366 ONTARIO INC., 2737332 ONTARIO INC., 2737334 ONTARIO INC., 2723714 ONTARIO INC., 2723716 ONTARIO INC. and 2737338 ONTARIO INC.** (collectively, the "Client") or the loans and advances of money granted or which may be granted by **CWB** to its Client, as the case may be for the purpose of Client's business, and, generally, in consideration of the business relations between **CWB** and its Client as well as the business relations between the said Client and this Corporation.

Now therefore be it resolved:

That this Corporation be and is hereby authorized to be a surety and to guarantee the repayment of all sums of money which the client owes or in future may owe to **CWB**, together with the interest, costs and accessories, and this, jointly and severally with the Client towards **CWB** and subject to all the terms and conditions set out on the form in use at **CWB** entitled "Guarantee and Indemnity", a copy of which is attached hereto after having been submitted to the Directors and that:

**DIRECTOR, ABDUL MUQEET**

be and is hereby authorized to sign such Guarantee and Indemnity for and on behalf and in the name of the Corporation.

That all acts and things done and all documents executed on behalf of the Corporation as hereinbefore authorized shall be valid and binding upon the Corporation whether or not the corporate seal of the Corporation has been affixed to any such document.

The foregoing is a true and correct copy of a resolution of the Board of Directors of **INDEX INTERNATIONAL INC.** duly adopted on **June 23, 2020** which resolution is in effect and has not been modified or rescinded as of the date hereof.

Dated at Brampton, Ontario, this **23** of June, 2020.

(s)   
\_\_\_\_\_  
Name: Abdul Muqeet  
Title: Director



**EXCERPT OF A RESOLUTION  
OF THE BOARD OF DIRECTORS OF**

**INDEX FOODS INC.**

(the "Corporation")

**Guarantee and Indemnity**

In consideration of the loan agreement, guarantee and general security agreement, entered or which may be entered into by or granted in favor of **CANADIAN WESTERN BANK ("CWB")** with its client **INDEX HOLDING GROUP INC., INDEX GROUP OF COMPANIES INC., INDEX INTERNATIONAL INC., 2640179 ONTARIO INC., 11030434 CANADA LTD., 2700774 ONTARIO INC., 2700767 ONTARIO INC., 2683960 ONTARIO LTD., 11030418 CANADA INC., 2723710 ONTARIO INC., 2718366 ONTARIO INC., 2737332 ONTARIO INC., 2737334 ONTARIO INC., 2723714 ONTARIO INC., 2723716 ONTARIO INC. and 2737338 ONTARIO INC.** (collectively, the "Client") or the loans and advances of money granted or which may be granted by **CWB** to its Client, as the case may be for the purpose of Client's business, and, generally, in consideration of the business relations between **CWB** and its Client as well as the business relations between the said Client and this Corporation.

Now therefore be it resolved:

That this Corporation be and is hereby authorized to be a surety and to guarantee the repayment of all sums of money which the client owes or in future may owe to **CWB**, together with the interest, costs and accessories, and this, jointly and severally with the Client towards **CWB** and subject to all the terms and conditions set out on the form in use at **CWB** entitled "Guarantee and Indemnity", a copy of which is attached hereto after having been submitted to the Directors and that:

**DIRECTOR, ABDUL MUQEET**

be and is hereby authorized to sign such Guarantee and Indemnity for and on behalf and in the name of the Corporation.

That all acts and things done and all documents executed on behalf of the Corporation as hereinbefore authorized shall be valid and binding upon the Corporation whether or not the corporate seal of the Corporation has been affixed to any such document.

The foregoing is a true and correct copy of a resolution of the Board of Directors of **INDEX FOODS INC.** duly adopted on **June 23, 2020** which resolution is in effect and has not been modified or rescinded as of the date hereof.

Dated at Brampton, Ontario, this 23 of June, 2020.

(s)

  
Name: Abdul Muqeet

Title: Director



**EXCERPT OF A RESOLUTION  
OF THE BOARD OF DIRECTORS OF**

**2640179 ONTARIO INC.**

(the "Corporation")

**Guarantee and Indemnity**

In consideration of the loan agreement, guarantee and general security agreement, entered or which may be entered into by or granted in favor of **CANADIAN WESTERN BANK ("CWB")** with its client **INDEX HOLDING GROUP INC., INDEX GROUP OF COMPANIES INC., INDEX INTERNATIONAL INC., INDEX FOODS INC., 11030434 CANADA LTD., 2700774 ONTARIO INC., 2700767 ONTARIO INC., 2683960 ONTARIO LTD., 11030418 CANADA INC., 2723710 ONTARIO INC., 2718366 ONTARIO INC., 2737332 ONTARIO INC., 2737334 ONTARIO INC., 2723714 ONTARIO INC., 2723716 ONTARIO INC. and 2737338 ONTARIO INC.** (collectively, the "Client") or the loans and advances of money granted or which may be granted by **CWB** to its Client, as the case may be for the purpose of Client's business, and, generally, in consideration of the business relations between **CWB** and its Client as well as the business relations between the said Client and this Corporation.

Now therefore be it resolved:

That this Corporation be and is hereby authorized to be a surety and to guarantee the repayment of all sums of money which the client owes or in future may owe to **CWB**, together with the interest, costs and accessories, and this, jointly and severally with the Client towards **CWB** and subject to all the terms and conditions set out on the form in use at **CWB** entitled "Guarantee and Indemnity", a copy of which is attached hereto after having been submitted to the Directors and that:

**DIRECTOR, ABDUL MUQEET**


be and is hereby authorized to sign such Guarantee and Indemnity for and on behalf and in the name of the Corporation.

That all acts and things done and all documents executed on behalf of the Corporation as hereinbefore authorized shall be valid and binding upon the Corporation whether or not the corporate seal of the Corporation has been affixed to any such document.

The foregoing is a true and correct copy of a resolution of the Board of Directors of **2640179 ONTARIO INC.** duly adopted on **June 23, 2020** which resolution is in effect and has not been modified or rescinded as of the date hereof.

Dated at Brampton, Ontario, this 23 of June, 2020.

(s)

  
Name: Abdul Muqeet

Title: Director



**EXCERPT OF A RESOLUTION  
OF THE BOARD OF DIRECTORS OF**

**11030434 CANADA LTD.**

(the "Corporation")

**Guarantee and Indemnity**

In consideration of the loan agreement, guarantee and general security agreement, entered or which may be entered into by or granted in favor of **CANADIAN WESTERN BANK ("CWB")** with its client **INDEX HOLDING GROUP INC., INDEX GROUP OF COMPANIES INC., INDEX INTERNATIONAL INC., INDEX FOODS INC., 2640179 ONTARIO INC., 2700774 ONTARIO INC., 2700767 ONTARIO INC., 2683960 ONTARIO LTD., 11030418 CANADA INC., 2723710 ONTARIO INC., 2718366 ONTARIO INC., 2737332 ONTARIO INC., 2737334 ONTARIO INC., 2723714 ONTARIO INC., 2723716 ONTARIO INC. and 2737338 ONTARIO INC.** (collectively, the "Client") or the loans and advances of money granted or which may be granted by **CWB** to its Client, as the case may be for the purpose of Client's business, and, generally, in consideration of the business relations between **CWB** and its Client as well as the business relations between the said Client and this Corporation.

Now therefore be it resolved:

That this Corporation be and is hereby authorized to be a surety and to guarantee the repayment of all sums of money which the client owes or in future may owe to **CWB**, together with the interest, costs and accessories, and this, jointly and severally with the Client towards **CWB** and subject to all the terms and conditions set out on the form in use at **CWB** entitled "Guarantee and Indemnity", a copy of which is attached hereto after having been submitted to the Directors and that:

**DIRECTOR, ABDUL MUQEET**

be and is hereby authorized to sign such Guarantee and Indemnity for and on behalf and in the name of the Corporation.

That all acts and things done and all documents executed on behalf of the Corporation as hereinbefore authorized shall be valid and binding upon the Corporation whether or not the corporate seal of the Corporation has been affixed to any such document.

The foregoing is a true and correct copy of a resolution of the Board of Directors of **11030434 CANADA LTD.** duly adopted on **June 23, 2020** which resolution is in effect and has not been modified or rescinded as of the date hereof.

Dated at Brampton, Ontario, this **23** of June, 2020.

(s)

A handwritten signature in black ink, appearing to read 'Abdul Muqees', written over a horizontal line.

Name: Abdul Muqees

Title: Director





**EXCERPT OF A RESOLUTION  
OF THE BOARD OF DIRECTORS OF**

**2700774 ONTARIO INC.**

(the "Corporation")

**Guarantee and Indemnity**

In consideration of the loan agreement, guarantee and general security agreement, entered or which may be entered into by or granted in favor of **CANADIAN WESTERN BANK ("CWB")** with its client **INDEX HOLDING GROUP INC., INDEX GROUP OF COMPANIES INC., INDEX INTERNATIONAL INC., INDEX FOODS INC., 2640179 ONTARIO INC., 11030434 CANADA LTD., 2700767 ONTARIO INC., 2683960 ONTARIO LTD., 11030418 CANADA INC., 2723710 ONTARIO INC., 2718366 ONTARIO INC., 2737332 ONTARIO INC., 2737334 ONTARIO INC., 2723714 ONTARIO INC., 2723716 ONTARIO INC. and 2737338 ONTARIO INC.** (collectively, the "Client") or the loans and advances of money granted or which may be granted by **CWB** to its Client, as the case may be for the purpose of Client's business, and, generally, in consideration of the business relations between **CWB** and its Client as well as the business relations between the said Client and this Corporation.

Now therefore be it resolved:

That this Corporation be and is hereby authorized to be a surety and to guarantee the repayment of all sums of money which the client owes or in future may owe to **CWB**, together with the interest, costs and accessories, and this, jointly and severally with the Client towards **CWB** and subject to all the terms and conditions set out on the form in use at **CWB** entitled "Guarantee and Indemnity", a copy of which is attached hereto after having been submitted to the Directors and that:

**DIRECTOR, ABDUL MUQEET**

be and is hereby authorized to sign such Guarantee and Indemnity for and on behalf and in the name of the Corporation.

That all acts and things done and all documents executed on behalf of the Corporation as hereinbefore authorized shall be valid and binding upon the Corporation whether or not the corporate seal of the Corporation has been affixed to any such document.

The foregoing is a true and correct copy of a resolution of the Board of Directors of **2700774 ONTARIO INC.** duly adopted on **June 23, 2020** which resolution is in effect and has not been modified or rescinded as of the date hereof.

Dated at Brampton, Ontario, this 23 of June, 2020.

(s)

  
Name: Abdul Muqeet

Title: Director



**EXCERPT OF A RESOLUTION  
OF THE BOARD OF DIRECTORS OF**

**2700767 ONTARIO INC.**

(the "Corporation")

**Guarantee and Indemnity**

In consideration of the loan agreement, guarantee and general security agreement, entered or which may be entered into by or granted in favor of **CANADIAN WESTERN BANK ("CWB")** with its client **INDEX HOLDING GROUP INC., INDEX GROUP OF COMPANIES INC., INDEX INTERNATIONAL INC., INDEX FOODS INC., 2640179 ONTARIO INC., 11030434 CANADA LTD., 2700774 ONTARIO INC., 2683960 ONTARIO LTD., 11030418 CANADA INC., 2723710 ONTARIO INC., 2718366 ONTARIO INC., 2737332 ONTARIO INC., 2737334 ONTARIO INC., 2723714 ONTARIO INC., 2723716 ONTARIO INC. and 2737338 ONTARIO INC.** (collectively, the "Client") or the loans and advances of money granted or which may be granted by **CWB** to its Client, as the case may be for the purpose of Client's business, and, generally, in consideration of the business relations between **CWB** and its Client as well as the business relations between the said Client and this Corporation.

Now therefore be it resolved:

That this Corporation be and is hereby authorized to be a surety and to guarantee the repayment of all sums of money which the client owes or in future may owe to **CWB**, together with the interest, costs and accessories, and this, jointly and severally with the Client towards **CWB** and subject to all the terms and conditions set out on the form in use at **CWB** entitled "Guarantee and Indemnity", a copy of which is attached hereto after having been submitted to the Directors and that:

**DIRECTOR, ABDUL MUQEET**

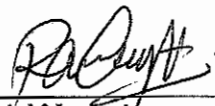
be and is hereby authorized to sign such Guarantee and Indemnity for and on behalf and in the name of the Corporation.

That all acts and things done and all documents executed on behalf of the Corporation as hereinbefore authorized shall be valid and binding upon the Corporation whether or not the corporate seal of the Corporation has been affixed to any such document.

The foregoing is a true and correct copy of a resolution of the Board of Directors of **2700767 ONTARIO INC.** duly adopted on **June 23, 2020** which resolution is in effect and has not been modified or rescinded as of the date hereof.

Dated at Brampton, Ontario, this **23** of June, 2020.

(s)

  
Name: Abdul Muqeet  
Title: Director



**EXCERPT OF A RESOLUTION  
OF THE BOARD OF DIRECTORS OF**

**2683960 ONTARIO LTD.**

(the "Corporation")

**Guarantee and Indemnity**

In consideration of the loan agreement, guarantee and general security agreement, entered or which may be entered into by or granted in favor of **CANADIAN WESTERN BANK ("CWB")** with its client **INDEX HOLDING GROUP INC., INDEX GROUP OF COMPANIES INC., INDEX INTERNATIONAL INC., INDEX FOODS INC., 2640179 ONTARIO INC., 11030434 CANADA LTD., 2700774 ONTARIO INC., 2700767 ONTARIO INC., 11030418 CANADA INC., 2723710 ONTARIO INC., 2718366 ONTARIO INC., 2737332 ONTARIO INC., 2737334 ONTARIO INC., 2723714 ONTARIO INC., 2723716 ONTARIO INC. and 2737338 ONTARIO INC.** (collectively, the "Client") or the loans and advances of money granted or which may be granted by **CWB** to its Client, as the case may be for the purpose of Client's business, and, generally, in consideration of the business relations between **CWB** and its Client as well as the business relations between the said Client and this Corporation.

Now therefore be it resolved:

That this Corporation be and is hereby authorized to be a surety and to guarantee the repayment of all sums of money which the client owes or in future may owe to **CWB**, together with the interest, costs and accessories, and this, jointly and severally with the Client towards **CWB** and subject to all the terms and conditions set out on the form in use at **CWB** entitled "Guarantee and Indemnity", a copy of which is attached hereto after having been submitted to the Directors and that:

**DIRECTOR, ABDUL MUQEET**

be and is hereby authorized to sign such Guarantee and Indemnity for and on behalf and in the name of the Corporation.

That all acts and things done and all documents executed on behalf of the Corporation as hereinbefore authorized shall be valid and binding upon the Corporation whether or not the corporate seal of the Corporation has been affixed to any such document.

The foregoing is a true and correct copy of a resolution of the Board of Directors of **2683960 ONTARIO LTD.** duly adopted on **June 23, 2020** which resolution is in effect and has not been modified or rescinded as of the date hereof.

Dated at Brampton, Ontario, this 23 of June, 2020.

(s)

  
Name: Abdul Muqeet

Title: Director



**EXCERPT OF A RESOLUTION  
OF THE BOARD OF DIRECTORS OF**

**11030418 CANADA INC.**

(the "Corporation")

**Guarantee and Indemnity**

In consideration of the loan agreement, guarantee and general security agreement, entered or which may be entered into by or granted in favor of **CANADIAN WESTERN BANK ("CWB")** with its client **INDEX HOLDING GROUP INC., INDEX GROUP OF COMPANIES INC., INDEX INTERNATIONAL INC., INDEX FOODS INC., 2640179 ONTARIO INC., 11030434 CANADA LTD., 2700774 ONTARIO INC., 2700767 ONTARIO INC., 2689960 ONTARIO LTD., 2723710 ONTARIO INC., 2718366 ONTARIO INC., 2737332 ONTARIO INC., 2737334 ONTARIO INC., 2723714 ONTARIO INC., 2723716 ONTARIO INC. and 2737338 ONTARIO INC.** (collectively, the "Client") or the loans and advances of money granted or which may be granted by **CWB** to its Client, as the case may be for the purpose of Client's business, and, generally, in consideration of the business relations between **CWB** and its Client as well as the business relations between the said Client and this Corporation.

Now therefore be it resolved:

That this Corporation be and is hereby authorized to be a surety and to guarantee the repayment of all sums of money which the client owes or in future may owe to **CWB**, together with the interest, costs and accessories, and this, jointly and severally with the Client towards **CWB** and subject to all the terms and conditions set out on the form in use at **CWB** entitled "Guarantee and Indemnity", a copy of which is attached hereto after having been submitted to the Directors and that:

**DIRECTOR, ABDUL MUQEET**

be and is hereby authorized to sign such Guarantee and Indemnity for and on behalf and in the name of the Corporation.

That all acts and things done and all documents executed on behalf of the Corporation as hereinbefore authorized shall be valid and binding upon the Corporation whether or not the corporate seal of the Corporation has been affixed to any such document.

The foregoing is a true and correct copy of a resolution of the Board of Directors of **11030418 CANADA INC.** duly adopted on **June 23, 2020** which resolution is in effect and has not been modified or rescinded as of the date hereof.

Dated at Brampton, Ontario, this 23 of June, 2020.

(s)

  
Name: Abdul Muqeet

Title: Director



**EXCERPT OF A RESOLUTION  
OF THE BOARD OF DIRECTORS OF**

**2723710 ONTARIO INC.**

(the "Corporation")

**Guarantee and Indemnity**

In consideration of the loan agreement, guarantee and general security agreement, entered or which may be entered into by or granted in favor of **CANADIAN WESTERN BANK ("CWB")** with its client **INDEX HOLDING GROUP INC., INDEX GROUP OF COMPANIES INC., INDEX INTERNATIONAL INC., INDEX FOODS INC., 2640179 ONTARIO INC., 11030434 CANADA LTD., 2700774 ONTARIO INC., 2700767 ONTARIO INC., 2683960 ONTARIO LTD., 11030418 CANADA INC., 2718366 ONTARIO INC., 2737332 ONTARIO INC., 2737334 ONTARIO INC., 2723714 ONTARIO INC., 2723716 ONTARIO INC. and 2737338 ONTARIO INC.** (collectively, the "Client") or the loans and advances of money granted or which may be granted by **CWB** to its Client, as the case may be for the purpose of Client's business, and, generally, in consideration of the business relations between **CWB** and its Client as well as the business relations between the said Client and this Corporation.

Now therefore be it resolved:

That this Corporation be and is hereby authorized to be a surety and to guarantee the repayment of all sums of money which the client owes or in future may owe to **CWB**, together with the interest, costs and accessories, and this, jointly and severally with the Client towards **CWB** and subject to all the terms and conditions set out on the form in use at **CWB** entitled "Guarantee and Indemnity", a copy of which is attached hereto after having been submitted to the Directors and that:

**DIRECTOR, ABDUL MUQEET**


be and is hereby authorized to sign such Guarantee and Indemnity for and on behalf and in the name of the Corporation.

That all acts and things done and all documents executed on behalf of the Corporation as hereinbefore authorized shall be valid and binding upon the Corporation whether or not the corporate seal of the Corporation has been affixed to any such document.

The foregoing is a true and correct copy of a resolution of the Board of Directors of **2723710 ONTARIO INC.** duly adopted on **June 23, 2020** which resolution is in effect and has not been modified or rescinded as of the date hereof.

Dated at Brampton, Ontario, this **23** of June, 2020.

(s)

  
Name: Abdul Muqeet

Title: Director



**EXCERPT OF A RESOLUTION  
OF THE BOARD OF DIRECTORS OF**

**2718366 ONTARIO INC.**

(the "Corporation")

**Guarantee and Indemnity**

In consideration of the loan agreement, guarantee and general security agreement, entered or which may be entered into by or granted in favor of **CANADIAN WESTERN BANK ("CWB")** with its client **INDEX HOLDING GROUP INC., INDEX GROUP OF COMPANIES INC., INDEX INTERNATIONAL INC., INDEX FOODS INC., 2640179 ONTARIO INC., 11030434 CANADA LTD., 2700774 ONTARIO INC., 2700767 ONTARIO INC., 2683960 ONTARIO LTD., 11030418 CANADA INC., 2723710 ONTARIO INC., 2737332 ONTARIO INC., 2737334 ONTARIO INC., 2723714 ONTARIO INC., 2723716 ONTARIO INC. and 2737338 ONTARIO INC.** (collectively, the "Client") or the loans and advances of money granted or which may be granted by **CWB** to its Client, as the case may be for the purpose of Client's business, and, generally, in consideration of the business relations between **CWB** and its Client as well as the business relations between the said Client and this Corporation.

Now therefore be it resolved:

That this Corporation be and is hereby authorized to be a surety and to guarantee the repayment of all sums of money which the client owes or in future may owe to **CWB**, together with the interest, costs and accessories, and this, jointly and severally with the Client towards **CWB** and subject to all the terms and conditions set out on the form in use at **CWB** entitled "Guarantee and Indemnity", a copy of which is attached hereto after having been submitted to the Directors and that:

**DIRECTOR, ABDUL MUQEET**


be and is hereby authorized to sign such Guarantee and Indemnity for and on behalf and in the name of the Corporation.

That all acts and things done and all documents executed on behalf of the Corporation as hereinbefore authorized shall be valid and binding upon the Corporation whether or not the corporate seal of the Corporation has been affixed to any such document.

The foregoing is a true and correct copy of a resolution of the Board of Directors of **2718366 ONTARIO INC.** duly adopted on **June 23, 2020** which resolution is in effect and has not been modified or rescinded as of the date hereof.

Dated at Brampton, Ontario, this **23** of June, 2020.

(s)

  
Name: Abdul Muqeet  
Title: Director



**EXCERPT OF A RESOLUTION  
OF THE BOARD OF DIRECTORS OF**

**2737332 ONTARIO INC.**

(the "Corporation")

**Guarantee and Indemnity**

In consideration of the loan agreement, guarantee and general security agreement, entered or which may be entered into by or granted in favor of **CANADIAN WESTERN BANK ("CWB")** with its client **INDEX HOLDING GROUP INC., INDEX GROUP OF COMPANIES INC., INDEX INTERNATIONAL INC., INDEX FOODS INC., 2640179 ONTARIO INC., 11030434 CANADA LTD., 2700774 ONTARIO INC., 2700767 ONTARIO INC., 2683960 ONTARIO LTD., 11030418 CANADA INC., 2723710 ONTARIO INC., 2718366 ONTARIO INC., 2737334 ONTARIO INC., 2723714 ONTARIO INC., 2723716 ONTARIO INC. and 2737338 ONTARIO INC.** (collectively, the "Client") or the loans and advances of money granted or which may be granted by **CWB** to its Client, as the case may be for the purpose of Client's business, and, generally, in consideration of the business relations between **CWB** and its Client as well as the business relations between the said Client and this Corporation.

Now therefore be it resolved:

That this Corporation be and is hereby authorized to be a surety and to guarantee the repayment of all sums of money which the client owes or in future may owe to **CWB**, together with the interest, costs and accessories, and this, jointly and severally with the Client towards **CWB** and subject to all the terms and conditions set out on the form in use at **CWB** entitled "Guarantee and Indemnity", a copy of which is attached hereto after having been submitted to the Directors and that:

**DIRECTOR, ABDUL MUQEET**

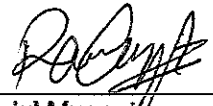
be and is hereby authorized to sign such Guarantee and Indemnity for and on behalf and in the name of the Corporation.

That all acts and things done and all documents executed on behalf of the Corporation as hereinbefore authorized shall be valid and binding upon the Corporation whether or not the corporate seal of the Corporation has been affixed to any such document.

The foregoing is a true and correct copy of a resolution of the Board of Directors of **2737332 ONTARIO INC.** duly adopted on **June 23, 2020** which resolution is in effect and has not been modified or rescinded as of the date hereof.

Dated at Brampton, Ontario, this 23 of June, 2020.

(s)

  
Name: Abdul Muqeet

Title: Director



**EXCERPT OF A RESOLUTION  
OF THE BOARD OF DIRECTORS OF**

**2737334 ONTARIO INC.**

(the "Corporation")

**Guarantee and Indemnity**

In consideration of the loan agreement, guarantee and general security agreement, entered or which may be entered into by or granted in favor of **CANADIAN WESTERN BANK ("CWB")** with its client **INDEX HOLDING GROUP INC., INDEX GROUP OF COMPANIES INC., INDEX INTERNATIONAL INC., INDEX FOODS INC., 2640179 ONTARIO INC., 11030434 CANADA LTD., 2700774 ONTARIO INC., 2700767 ONTARIO INC., 2683960 ONTARIO LTD., 11030418 CANADA INC., 2723710 ONTARIO INC., 2718366 ONTARIO INC., 2737332 ONTARIO INC., 2723714 ONTARIO INC., 2723716 ONTARIO INC. and 2737338 ONTARIO INC.** (collectively, the "Client") or the loans and advances of money granted or which may be granted by **CWB** to its Client, as the case may be for the purpose of Client's business, and, generally, in consideration of the business relations between **CWB** and its Client as well as the business relations between the said Client and this Corporation.

Now therefore be it resolved:

That this Corporation be and is hereby authorized to be a surety and to guarantee the repayment of all sums of money which the client owes or in future may owe to **CWB**, together with the interest, costs and accessories, and this, jointly and severally with the Client towards **CWB** and subject to all the terms and conditions set out on the form in use at **CWB** entitled "Guarantee and Indemnity", a copy of which is attached hereto after having been submitted to the Directors and that:

**DIRECTOR, ABDUL MUQEET**


be and is hereby authorized to sign such Guarantee and Indemnity for and on behalf and in the name of the Corporation.

That all acts and things done and all documents executed on behalf of the Corporation as hereinbefore authorized shall be valid and binding upon the Corporation whether or not the corporate seal of the Corporation has been affixed to any such document.

The foregoing is a true and correct copy of a resolution of the Board of Directors of **2737334 ONTARIO INC.** duly adopted on **June 23, 2020** which resolution is in effect and has not been modified or rescinded as of the date hereof.

Dated at Brampton, Ontario, this 23 of June, 2020.

(s)

  
Name: Abdul Muqheet  
Title: Director





**EXCERPT OF A RESOLUTION  
OF THE BOARD OF DIRECTORS OF**

**2723714 ONTARIO INC.**

(the "Corporation")

**Guarantee and Indemnity**

In consideration of the loan agreement, guarantee and general security agreement, entered or which may be entered into by or granted in favor of **CANADIAN WESTERN BANK ("CWB")** with its client **INDEX HOLDING GROUP INC., INDEX GROUP OF COMPANIES INC., INDEX INTERNATIONAL INC., INDEX FOODS INC., 2640179 ONTARIO INC., 11030434 CANADA LTD., 2700774 ONTARIO INC., 2700767 ONTARIO INC., 2683960 ONTARIO LTD., 11030418 CANADA INC., 2723710 ONTARIO INC., 2718366 ONTARIO INC., 2737332 ONTARIO INC., 2737334 ONTARIO INC., 2723716 ONTARIO INC. and 2737338 ONTARIO INC.** (collectively, the "Client") or the loans and advances of money granted or which may be granted by **CWB** to its Client, as the case may be for the purpose of Client's business, and, generally, in consideration of the business relations between **CWB** and its Client as well as the business relations between the said Client and this Corporation.

Now therefore be it resolved:

That this Corporation be and is hereby authorized to be a surety and to guarantee the repayment of all sums of money which the client owes or in future may owe to **CWB**, together with the interest, costs and accessories, and this, jointly and severally with the Client towards **CWB** and subject to all the terms and conditions set out on the form in use at **CWB** entitled "Guarantee and Indemnity", a copy of which is attached hereto after having been submitted to the Directors and that:

**DIRECTOR, ABDUL MUQEET**


be and is hereby authorized to sign such Guarantee and Indemnity for and on behalf and in the name of the Corporation.

That all acts and things done and all documents executed on behalf of the Corporation as hereinbefore authorized shall be valid and binding upon the Corporation whether or not the corporate seal of the Corporation has been affixed to any such document.

The foregoing is a true and correct copy of a resolution of the Board of Directors of **2723714 ONTARIO INC.** duly adopted on **June 23, 2020** which resolution is in effect and has not been modified or rescinded as of the date hereof.

Dated at Brampton, Ontario, this **23** of June, 2020.

(s)

  
Name: Abdul Muqeet  
Title: Director



**EXCERPT OF A RESOLUTION  
OF THE BOARD OF DIRECTORS OF**

**2723716 ONTARIO INC.**

(the "Corporation")

**Guarantee and Indemnity**

In consideration of the loan agreement, guarantee and general security agreement, entered or which may be entered into by or granted in favor of **CANADIAN WESTERN BANK ("CWB")** with its client **INDEX HOLDING GROUP INC., INDEX GROUP OF COMPANIES INC., INDEX INTERNATIONAL INC., INDEX FOODS INC., 2640179 ONTARIO INC., 11030434 CANADA LTD., 2700774 ONTARIO INC., 2700767 ONTARIO INC., 2683960 ONTARIO LTD., 11030418 CANADA INC., 2723710 ONTARIO INC., 2718366 ONTARIO INC., 2737332 ONTARIO INC., 2737334 ONTARIO INC., 2723714 ONTARIO INC. and 2737338 ONTARIO INC.** (collectively, the "Client") or the loans and advances of money granted or which may be granted by **CWB** to its Client, as the case may be for the purpose of Client's business, and, generally, in consideration of the business relations between **CWB** and its Client as well as the business relations between the said Client and this Corporation.

Now therefore be it resolved:

That this Corporation be and is hereby authorized to be a surety and to guarantee the repayment of all sums of money which the client owes or in future may owe to **CWB**, together with the interest, costs and accessories, and this, jointly and severally with the Client towards **CWB** and subject to all the terms and conditions set out on the form in use at **CWB** entitled "Guarantee and Indemnity", a copy of which is attached hereto after having been submitted to the Directors and that:

**DIRECTOR, ABDUL MUQEET**


be and is hereby authorized to sign such Guarantee and Indemnity for and on behalf and in the name of the Corporation.

That all acts and things done and all documents executed on behalf of the Corporation as hereinbefore authorized shall be valid and binding upon the Corporation whether or not the corporate seal of the Corporation has been affixed to any such document.

The foregoing is a true and correct copy of a resolution of the Board of Directors of **2723716 ONTARIO INC.** duly adopted on **June 23, 2020** which resolution is in effect and has not been modified or rescinded as of the date hereof.

Dated at Brampton, Ontario, this 23 of June, 2020.

(s)

  
Name: Abdul Muqeet

Title: Director



**EXCERPT OF A RESOLUTION  
OF THE BOARD OF DIRECTORS OF**

**2737338 ONTARIO INC**

(the "Corporation")

**Guarantee and Indemnity**

In consideration of the loan agreement, guarantee and general security agreement, entered or which may be entered into by or granted in favor of **CANADIAN WESTERN BANK ("CWB")** with its client **INDEX HOLDING GROUP INC., INDEX GROUP OF COMPANIES INC., INDEX INTERNATIONAL INC., INDEX FOODS INC., 2640179 ONTARIO INC., 11030434 CANADA LTD., 2700774 ONTARIO INC., 2700767 ONTARIO INC., 2683960 ONTARIO LTD., 11030418 CANADA INC., 2723710 ONTARIO INC., 2718366 ONTARIO INC., 2737332 ONTARIO INC., 2737334 ONTARIO INC., 2723714 ONTARIO INC. and 2723716 ONTARIO INC.** (collectively, the "Client") or the loans and advances of money granted or which may be granted by **CWB** to its Client, as the case may be for the purpose of Client's business, and, generally, in consideration of the business relations between **CWB** and its Client as well as the business relations between the said Client and this Corporation.

Now therefore be it resolved:

That this Corporation be and is hereby authorized to be a surety and to guarantee the repayment of all sums of money which the client owes or in future may owe to **CWB**, together with the interest, costs and accessories, and this, jointly and severally with the Client towards **CWB** and subject to all the terms and conditions set out on the form in use at **CWB** entitled "Guarantee and Indemnity", a copy of which is attached hereto after having been submitted to the Directors and that:

**DIRECTOR, ABDUL MUQEET**

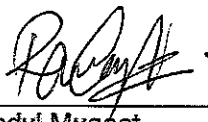
be and is hereby authorized to sign such Guarantee and Indemnity for and on behalf and in the name of the Corporation.

That all acts and things done and all documents executed on behalf of the Corporation as hereinbefore authorized shall be valid and binding upon the Corporation whether or not the corporate seal of the Corporation has been affixed to any such document.

The foregoing is a true and correct copy of a resolution of the Board of Directors of **2737338 ONTARIO INC.** duly adopted on **June 23, 2020** which resolution is in effect and has not been modified or rescinded as of the date hereof.

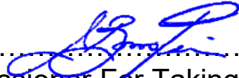
Dated at Brampton, Ontario, this 23 of June, 2020.

(s)

  
Name: Abdul Muqeet

Title: Director

This is **Exhibit "M"** referred to in the affidavit of Tyson Hartwell, sworn before me by videoconference on April 27, 2023 in accordance with O.Reg. 431/20: Administering Oath or Declaration Remotely. The deponent was located in the City of Calgary in the Province of Alberta and I was located in the City of Toronto in the Province of Ontario.



.....  
A Commissioner For Taking Affidavits

Jeremy Bornstein  
LSO#: 65425C



To: Canadian Western Bank (the “Secured Party”)

Date: November 16, 2021

## **GENERAL SECURITY AGREEMENT**

For good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged by the Debtor, the Debtor hereby agrees as follows:

### **Definitions and Interpretation**

1. In this agreement, the following words shall, unless otherwise provided, have the meanings set out below:

“**Business Day**” means a day, other than a Saturday, Sunday or statutory holiday in the Province of Ontario.

“**Collateral**” means all present and future property, assets and undertaking of the Debtor pledged, assigned, mortgaged, charged, hypothecated or made subject to a security interest pursuant to this agreement.

“**Contractual Right**” means any agreement, right, franchise, royalty, licence, authorization, approval, privilege or permit (a) to which the Debtor is now or hereafter becomes a party, (b) in which the Debtor now or hereafter has any interest or (c) of which the Debtor is or hereafter becomes a beneficiary.

“**Debtors**” means the signatories to this agreement and “Debtor” means any one of them.

“**Intellectual Property**” means all patents, trademarks, trade names, business names, trade styles, logos and other business identifiers, copyrights, technology, inventions, industrial designs, know-how, trade secrets and other industrial and intellectual property in which the Debtor now or in the future has any right, title or interest.

“**Investment Collateral**” means all present and future Investment Property (as such term is defined in the PPSA) and Financial Assets (as such term is defined in the STA) of the Debtor, including all present and future options and warrants of the Debtor and all other rights and entitlements arising therefrom or related thereto, and the Debtor’s present and future interests in partnerships, limited partnerships, limited liability partnerships and limited liability companies, and including all substitutions for any of the foregoing and dividends and income derived therefrom or payable in connection therewith, including, for greater certainty, any Investment Collateral listed or described in Schedule “C” hereto.

“**Loan Agreement**” means any equipment loan and security agreement between the Debtor and the Secured Party, as may be amended, supplemented, otherwise modified, restated or replaced from time to time.

“**Obligations**” means all present and future indebtedness, liabilities and obligations, direct or indirect, absolute or contingent, matured or unmatured, joint or several, of the Debtors (collectively) to the Secured Party, including without limitation any such indebtedness, liabilities and obligations arising under any Loan Agreements or any guarantees given in respect thereof.

“**Other Collateral**” shall have the meaning ascribed to such term in subsection 11(b).

**“Permitted Encumbrances”** means any and all liens, charges, mortgages, security interests, hypothecs and other encumbrances which affect all or any portion of the Collateral and which have been permitted or consented to in writing by the Secured Party (including any such liens, charges, mortgages, security interests and encumbrances the particulars of which are listed in Schedule “B” hereto).

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

**“PPSA”** means the *Personal Property Security Act* (Ontario), as amended from time to time and any legislation substituted therefor and any amendments thereto.

**“Receiver”** means a receiver, receiver-manager and receiver and manager.

**“Security Interest”** means the pledges, assignments, mortgages, charges and hypothecations of and the security interests in the Collateral created in favour of the Secured Party hereunder.

**“STA”** means the *Securities Transfer Act* (Ontario), as amended from time to time and any legislation substituted therefor and any amendments thereto.

2. References such as “this agreement”, “hereof”, “herein”, “hereto” and like references refer to this agreement and any exhibits or schedules attached hereto (all of which exhibits and schedules, form a part of this agreement) and not to any particular section, subsection, paragraph or other subdivision of this agreement.
3. The division of this agreement into sections, subsections and paragraphs and the insertion of headings in this agreement are for convenience of reference only and shall not affect the construction or interpretation of this agreement.
4. Terms used herein which are defined in the PPSA shall have the same meanings herein as are ascribed to such terms in the PPSA, unless such terms are otherwise defined.
5. The word “Debtor”, 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. The term “successors” shall include, without limiting its meaning, any corporation resulting from the amalgamation of a corporation with another corporation. Where the context so requires, words used herein (including defined terms) importing the singular shall include the plural and vice versa and words used herein (including defined terms) importing gender shall include all genders (including the neuter).
6. This agreement shall be binding upon each Debtor as if each such Debtor had executed and delivered a separate agreement to the Secured Party in the same form as this agreement without any other signatories thereto; and each reference to “the Debtor” in this Agreement shall refer to each Debtor individually. The addition of any Debtors as parties to this agreement from time to time, and the release by the Secured Party of any Debtors from this agreement from time to time, shall not require the consent of any other Debtor; and for greater certainty the obligations of each Debtor hereunder shall remain in full force and effect until this agreement is released by the Secured Party in accordance with the terms hereof notwithstanding the said addition or release of any other Debtor. Any notice delivered to a Debtor hereunder shall be deemed to have been received by all Debtors concurrently. The Secured Party's rights hereunder may be enforced from time to time against any Debtor or its assets without the requirement on the part of the Secured Party

to marshal any of its claims or to exercise any of its rights against or for the benefit of any Debtor or to exhaust any remedies available to it against any Debtor or to resort to any other source or means of obtaining payment of any of the Obligations or to elect any other remedy.

7. Nothing herein (including the definition and use of the term Permitted Encumbrances) is intended or shall be deemed to subordinate the Security Interest to any Permitted Encumbrance or any other lien, charge, mortgage, security interest, hypothec or encumbrance affecting all or any portion of the Collateral.
8. If one or more of the provisions contained herein shall be invalid, illegal or unenforceable in any respect, such provision or provisions shall be severed from this agreement only to the extent necessary, and the validity, legality and enforceability of the remaining provisions hereof, including the provision or provisions remaining after such severance, shall not in any way be affected or impaired thereby.
9. Unless otherwise expressly provided in this agreement, if any matter in this agreement is subject to the determination, consent or approval of the Secured Party or is to be acceptable to the Secured Party, such determination, consent, approval or determination of acceptability will be in the sole discretion of the Secured Party, which means the Secured Party shall have sole and unfettered discretion, without any obligation to act reasonably. If any provision in this agreement refers to any action taken or to be taken by the Debtor, or which the Debtor is prohibited from taking, such provision will be interpreted to include any and all means, direct or indirect, of taking, or not taking, such action. When used in the context of a general statement followed by a reference to one or more specific items or matters, the term “including” shall mean “including, without limitation” and the use of the term “includes” shall mean “includes, without limitation”.
10. This agreement shall be governed by and construed in accordance with the laws of the Province of [Province of Debtor] and the federal laws of Canada applicable therein. The Debtor hereby irrevocably and unconditionally attorns and submits to the non-exclusive jurisdiction of the courts of the Province of [Province of Debtor], provided that nothing herein shall prevent the Secured Party from proceeding at its election against the Debtor in the courts of any other province, country or jurisdiction.

#### **Grant of Security Interest**

11. As continuing security for the payment and performance of all Obligations, the Debtor:
  - (a) hereby pledges, assigns, mortgages, charges and hypothecates to the Secured Party and grants to the Secured Party a security interest in the following:
    - (i) all present and future equipment of the Debtor, including all of its present and future machinery, fixtures, plant, tools, furniture, books, records, documents, vehicles of any nature, kind or description, and all accessions to any of the foregoing, including all spare parts and accessories installed in or affixed or attached to any of the foregoing, and all drawings, specifications, plans and manuals relating to the foregoing;
    - (ii) all present and future inventory of the Debtor, including all of its present and future raw materials, materials used or consumed in its business, work-in-progress, finished goods, goods used for packing and goods acquired or held for sale or lease or that have been leased or furnished or that are to be furnished under contracts of rental or service, and all accessions to any of the foregoing, including all spare parts and accessories installed in or affixed or attached to any of the foregoing;

- (iii) all present and future Contractual Rights and all other intangibles of the Debtor, including all of its present and future accounts and other amounts receivable, book debts, goodwill, Intellectual Property, choses in action of every nature and kind and interests in partnerships;
  - (iv) all present and future documents of title, chattel paper, instruments and money of the Debtor;
  - (v) all present and future Investment Collateral; and
  - (vi) all proceeds arising from the property, assets and undertaking of the Debtor referred to in this section 11, including insurance proceeds and any other payment representing indemnity or compensation for loss of or damage thereto; and
- (b) hereby charges as and by way of a floating charge in favour of the Secured Party all present and future real property, personal property, assets, and undertaking of the Debtor of any nature or kind, including all real property, personal property, assets and undertaking at any time owned, leased or licenced by the Debtor or in which the Debtor at any time has any right or interest or to which the Debtor is or may at any time become entitled, other than the property, assets and undertaking of the Debtor validly pledged or assigned or subjected to a valid mortgage, charge, hypothec or security interest by subsection 11(a)(i), 11(a)(ii), 11(a)(iii), 11(a)(iv) and 11(a)(v) hereof and subject to the exceptions hereinafter contained (all of which property, assets, effects and undertakings so charged by this clause are herein collectively called the “**Other Collateral**”) and the charge created by this subsection 11(b) shall be a floating charge such that the Debtor shall not have power without the prior written consent of the Secured Party to:
- (i) create or permit to exist any lien, encumbrance or security interest against any of the Other Collateral which ranks or could in any event rank in priority to or pari passu with the Security Interest, save for Permitted Encumbrances; or
  - (ii) grant, sell, exchange, transfer, assign, lease or otherwise dispose of the Other Collateral.

#### **Limited Exceptions to Grant of Security Interest**

12. Despite any other provision of this agreement, the last day of any term reserved by any lease of real property, oral or written, or any agreement therefor, now held or hereafter acquired by the Debtor, and whether falling within the general or particular description of the Collateral, is hereby and shall be excepted out of the Security Interest, but the Debtor shall stand possessed of the reversion of one day remaining in the Debtor in respect of any such term, for the time being demised, as aforesaid, upon trust to assign and dispose of the same as any purchaser of such term shall direct.
13. Despite any other provision of this agreement, the Security Interest shall not attach to any Contractual Right to the extent that the granting of the Security Interest therein would constitute a breach of, or permit any Person to terminate such Contractual Right, but the Debtor shall hold its interest in each such Contractual Right in trust for the Secured Party and shall, after the Security Interest shall have become enforceable, specifically assign each such Contractual Right to the Secured Party, or as the Secured Party may otherwise direct. The Debtor agrees that it shall, upon the request of the Secured Party, whether before or after the Security Interest has become enforceable, use all commercially reasonable efforts to obtain any consent



required to permit any such Contractual Right to be subjected to the Security Interest, and the Security Interest shall attach to such Contractual Right following the receipt of such consent.

14. Despite any other provision of this agreement, the interests granted to the Secured Party pursuant to this agreement in the Debtor's existing and after-acquired trademarks shall be limited to the Secured Party's security interests therein.

#### **Attachment**

15. The Debtor confirms and agrees that:
- (a) value has been given by the Secured Party to the Debtor;
  - (b) the Debtor has rights in all existing Collateral and power to transfer rights in the Collateral to the Secured Party; and
  - (c) the Debtor and the Secured Party have not postponed the time for attachment of the Security Interest, and the Security Interest shall attach to existing Collateral upon the execution of this agreement and shall attach to Collateral in which the Debtor hereafter acquires rights at the time that the Debtor acquires rights in such Collateral.

#### **Provisions with respect to Investment Collateral**

16. Whenever any Investment Collateral is a certificated security, an uncertificated security or a security entitlement, the Debtor shall, or shall cause the issuer of such Investment Collateral to, or shall cause the securities intermediary that holds such Investment Collateral to, take all steps as are necessary to give exclusive control over such Investment Collateral to the Secured Party in a manner satisfactory to the Secured Party.
17. All certificates representing Investment Collateral may remain registered in the name of the Debtor, but the Debtor shall, promptly at the request of the Secured Party, duly endorse such certificates in blank for transfer or execute stock powers of attorney in respect thereof and deliver such certificates or powers of attorney to the Secured Party; in either case with signatures guaranteed and with all documentation being in form and substance satisfactory to the Secured Party. Upon the request of the Secured Party:
- (a) the Debtor shall promptly cause the Investment Collateral to be registered in the name of the Secured Party or its nominee, and the Secured Party is hereby appointed the irrevocable attorney (coupled with an interest) of the Debtor with full power of substitution to cause any or all of the Investment Collateral to be registered in the name of the Secured Party or its nominee;
  - (b) the Debtor shall promptly cause each securities intermediary that holds any Investment Collateral that is a security entitlement to record the Secured Party as the entitlement holder of such Investment Collateral; and
  - (c) the Debtor shall promptly:
    - (i) cause a security certificate to be issued for any Investment Collateral that is in the form of an uncertificated security or a security entitlement;
    - (ii) endorse such security certificate in blank;

- (iii) deliver such security certificate to the Secured Party; and
- (iv) take all other steps necessary to give exclusive control over such certificated security to the Secured Party,

in a manner satisfactory to the Secured Party.

18. Until further notice is given by the Secured Party to the Debtor terminating such rights of the Debtor, the Debtor shall be entitled to exercise all voting rights attached to the Investment Collateral and give consents, waivers and ratifications in respect thereof; provided that no vote shall be cast or consent, waiver or ratification given or action taken which would be prejudicial to the interests of the Secured Party or which would have the effect of reducing the value of the Investment Collateral as security for the Obligations, or imposing any restriction on the transferability of any of the Investment Collateral. All such rights of the Debtor to vote and give consents, waivers and ratifications shall cease immediately upon receipt by the Debtor of such notice by the Secured Party.
19. All dividends, distributions, interest and other income in respect of Investment Collateral and all proceeds received by the Debtor in respect of Investment Collateral may be received by the Debtor in the ordinary course and distributed in the ordinary course to the Debtor's shareholder or shareholders until further notice by the Secured Party. Upon receipt by the Debtor of such notice, the Debtor shall not be entitled to retain or distribute to its shareholder or shareholders any such dividends, distributions, interest or other income or proceeds and, if any such amounts are received by the Debtor after the Debtor receives such notice by the Secured Party, the Debtor shall hold such amounts in trust, as trustee for the Secured Party, and the Debtor shall forthwith pay such amounts to the Secured Party, to be applied to reduce the Obligations or, at the option of the Secured Party, to be held as additional security for the Obligations.
20. The responsibility of the Secured Party in respect of any Investment Collateral held by the Secured Party shall be limited to exercising the same degree of care which it gives valuable property of the Secured Party at the Secured Party's office where such Investment Collateral is held. The Secured Party shall not be bound under any circumstances to realize on any Investment Collateral or allow any Investment Collateral to be sold, or exercise any option or right attaching thereto, or be responsible for any loss occasioned by any sale of Investment Collateral or by the retention or other refusal to sell the same; nor shall the Secured Party be obliged to collect or see to the payment of interest or dividends thereon but, subject to section 19, all such interest and dividends, if and when received by the Debtor, shall be held by the Debtor in trust for the Secured Party and shall be forthwith paid to the Secured Party.

#### **Representations and Warranties of the Debtor**

21. The Debtor hereby represents and warrants to the Secured Party that:
  - (a) the Debtor has the capacity and authority to incur the Obligations, to create the Security Interest and to execute and deliver and perform its obligations under this agreement;
  - (b) the execution and delivery of this agreement and the performance by the Debtor of its obligations hereunder have been duly authorized by all necessary proceedings;
  - (c) this agreement constitutes a legal, valid and binding obligation of the Debtor, enforceable against the Debtor in accordance with its terms subject only to bankruptcy, insolvency, reorganization,

moratorium and other similar laws of general application affecting creditors' rights and the discretion exercisable by courts of competent jurisdiction in respect of the availability of equitable remedies;

- (d) except for the Security Interest and any Permitted Encumbrances, the Collateral is owned by the Debtor free from any mortgage, charge, lien, pledge, security interest or other encumbrance or claim whatsoever;
- (e) the chief executive office of the Debtor is located at the address listed in Part I of Schedule "A" of this agreement;
- (f) a description of each real property leased by the Debtor is listed in Part II of Schedule "A" of this agreement;
- (g) the Debtor does not keep tangible Collateral at any location(s) except:
  - (i) the location listed in Part I of Schedule "A" hereto, and
  - (ii) any location(s) listed in Part II of Schedule "A" hereto,other than tangible Collateral in transit to or from such locations;
- (h) the Collateral does not include any goods which are used or acquired by the Debtor primarily for personal, family or household purpose;
- (i) the Debtor has made all necessary filings, registrations and recordations to protect all of its right, title and interest in the Intellectual Property including all relevant renewals; and all such filings, registrations and recordations have been duly and properly made and are in full force and effect and are not subject to dispute by any governmental authority or agency;
- (j) all Contractual Rights relating to or affecting the Intellectual Property are in good standing;
- (k) the Debtor owns directly or is entitled to use by Contractual Right or otherwise all of the Intellectual Property; and
- (l) no litigation is pending or threatened which contains allegations respecting the validity, enforceability, infringement or ownership of any of the Intellectual Property, including any of right, title or interest of the Debtor in the Intellectual Property.

### **Covenants of the Debtor**

22. The Debtor agrees with the Secured Party that, until the Obligations have been satisfied and paid in full, it will:
- (a) observe, perform and satisfy the Obligations when due;
  - (b) maintain the tangible Collateral in good condition and repair and allow the Secured Party or its agent access to all premises of the Debtor to inspect any and all Collateral;
  - (c) make and maintain all filings, registrations and recordations necessary or desirable to protect its right, title and interest in the Collateral, including all filings, registrations and recordations necessary or desirable in respect of patents, trade-marks, copyrights and industrial designs included in the Intellectual Property;

- (d) defend the Collateral against any actions, claims and demands of any Person (other than the Secured Party) claiming the Collateral (or any of it) or an interest therein;
- (e) pay all taxes, rates, levies, assessments and other impositions and charges, of every nature and kind, which may now or hereafter be lawfully levied, assessed or imposed on or in respect of the Debtor or the Collateral (or any of it), including those which could result in the creation of a statutory lien or deemed trust affecting the Debtor or the Collateral, as and when the same become due and payable;
- (f) maintain its corporate existence and file or cause to be filed any returns, documents or other information necessary to preserve such corporate existence;
- (g) notify the Secured Party of any loss or damage to the Collateral, any change in any information provided in this agreement (including the schedules hereto) or any actual or potential claim affecting the Debtor, the Collateral or the Security Interest;
- (h) hold the proceeds received from any direct or indirect dealing with the Collateral in trust for the Secured Party after either the Security Interest becomes enforceable or any of the Collateral is sold other than in the ordinary course of business of the Debtor and for the purpose of carrying on such business;
- (i) comply with every covenant and undertaking herein and in any other agreement with the Secured Party;
- (j) permit the Secured Party at any time after the Security Interest shall have become enforceable, to require any account debtor of the Debtor to make payment to the Secured Party of any or all amounts owing by the account debtor to the Debtor and the Secured Party may take control of any proceeds referred to in subsection 11(a)(vi) hereof and may hold all amounts received from any account debtor and any proceeds as cash collateral as part of the Collateral and as security for the Obligations;
- (k) prevent any Collateral from becoming an accession to any personal property not subject to the Security Interest, or becoming affixed to any real property;
- (l) deliver to the Secured Party, at the Secured Party's request, duly endorsed and/or accompanied by such assignments, transfers, powers of attorney or other documents as the Secured Party may request, all items of the Collateral comprising chattel paper, instruments, Investment Collateral and documents of title;
- (m) deliver to the Secured Party, at the Secured Party's request, a written agreement from each landlord of the Debtor in favour of the Secured Party and in form and substance satisfactory to the Secured Party, whereby such landlord:
  - (i) agrees to give notice to the Secured Party of any default by the Debtor under the Debtor's lease and a reasonable opportunity to cure such default prior to the exercise of any remedies by the landlord; and

- (ii) consents to the Security Interest and agrees that the Secured Party shall be entitled to enforce the Security Interest in priority to any right, interest or claim of the landlord in the Collateral;
  - (n) pay, on demand by the Secured Party, all costs and expenses (including all legal fees) incurred by the Secured Party in the preparation, perfection, administration and enforcement of this agreement (including expenses incurred in considering, protecting or improving the Secured Party's position, or attempting to do so, whether before or after default) and all such costs and expenses shall bear interest at the highest rate applicable to the Obligations, shall form part of the Obligations and shall be secured by the Security Interest;
  - (o) at all times, both before and after the occurrence of a default, do or cause to be done such further and additional acts and things and execute and deliver or cause to be executed and delivered all such further and additional documents and agreements as the Secured Party may reasonably require to better pledge, assign, mortgage, charge and hypothecate the Collateral in favour of the Secured Party, to perfect the Security Interest and, without limiting the generality of the foregoing, to accomplish the intentions of this agreement;
  - (p) preserve the Debtor's rights, powers, licences, privileges, franchises and goodwill, comply with all applicable laws, regulations and orders (including environmental laws, regulations and orders) affecting the Debtor or the Collateral and conduct its business in a proper and efficient manner so as to protect the Collateral, the Security Interest and the business and undertaking of the Debtor; and
  - (q) without limiting the generality of any of the foregoing, perform all covenants required of the Debtor under any Contractual Right relating to or affecting the Intellectual Property (or any of it), including promptly paying all required fees, royalties and taxes, to maintain each and every item of Intellectual Property in full force and effect, and vigorously protect, preserve and maintain all of the value of, and all of the right, title and interest of the Debtor in, all Intellectual Property, by way of the prosecution of or defence against suits concerning the validity, infringement, enforceability or ownership of the Intellectual Property (or any of it) or otherwise; and
23. The Debtor agrees with the Secured Party that, until the Obligations have been satisfied and paid in full, it will not, without the prior written consent of the Secured Party:
- (a) incur or create any further or additional indebtedness except to the Secured Party and except such normal indebtedness as may be incidental to the ordinary course of its business;
  - (b) create any lien upon, assign or transfer as security, or pledge, hypothecate, charge, mortgage or grant a security interest in any Collateral except to the Secured Party and except for Permitted Encumbrances;
  - (c) other than in the ordinary course of business and for the purpose of carrying on such business, sell, transfer, assign, or otherwise dispose of any Collateral or any group of property and assets forming part of the Collateral;

- (d) guarantee, endorse or otherwise become surety for or upon the obligations of others except to the Secured Party or by endorsement of negotiable instruments for deposit or collection in the ordinary course of the Debtor's business;
- (d) declare or pay any dividends on or make any other payment or distribution in respect of any shares of its capital stock or make any change in its issued or authorized capital stock either by way of redemption of stock or otherwise;
- (e) pay any amount to officers or directors of the Debtor in their capacities as officers or directors by way of salary, bonus, commission, directors' fees or otherwise in excess of the scale of such payments to such officers or directors now being made by the Debtor;
- (f) lend money to or invest money in any Person, by way of loan, acquisition of shares, acquisition of debt obligations or in any other way whatsoever;
- (g) change its name;
- (h) merge or amalgamate with any other corporation;
- (i) change the location of its chief executive office from that set out in Part I of Schedule "A" hereto without providing the Secured Party with thirty (30) Business Days' prior written notice thereof;
- (j) keep tangible Collateral at any location other than the location(s) listed in Parts I and II of Schedule "A" hereto without providing the Secured Party with thirty (30) Business Days' prior written notice thereof; or
- (k) make payments to any shareholders of the Debtor, or any Persons related to the Debtor or any of its shareholders within the meaning of the *Income Tax Act* (Canada), whether by way of loans, advances, repayment of indebtedness owing by the Debtor, interest on such indebtedness, salaries, dividends, guarantees, compensation or benefits of any kind whatsoever, other than as contemplated by subsection 23(f).

#### **Default**

24. Without prejudice to any right which the Secured Party may now or hereafter have to demand payment of any of the Obligations, the Obligations shall, at the option of the Secured Party, become payable and the Security Interest shall become enforceable in each and every of the following events:
- (a) if the Debtor defaults in the payment of any of the Obligations when due;
  - (b) if there occurs an event of default under any Loan Agreement or if the Debtor defaults in the observance or performance of any other written agreement or undertaking heretofore or hereafter given by the Debtor to the Secured Party, whether contained herein or not;
  - (c) if an order is made or a resolution passed for the winding-up, liquidation or dissolution of the Debtor, or if a petition is presented or filed for the winding-up of the Debtor, whether pursuant to the *Winding-up and Restructuring Act* (Canada) or otherwise;
  - (d) if the Debtor ceases or threatens to cease to carry on business or makes a bulk sale of its assets, or if a Receiver or trustee for the Debtor or any of its property or assets is appointed (whether privately or by court order);

- (e) if the Debtor becomes insolvent or commits or threatens to commit any act of bankruptcy or if the Debtor makes an assignment or proposal in bankruptcy or files a notice of intention to make a proposal in bankruptcy or if a bankruptcy petition is filed or presented against the Debtor or if the Debtor otherwise becomes subject to proceedings under the *Bankruptcy and Insolvency Act* (Canada) or any other bankruptcy, insolvency or analogous law in any jurisdiction;
- (f) if any proceedings with respect to the Debtor are commenced under the *Companies' Creditors Arrangement Act* (Canada) or if the Debtor seeks relief or consents to the filing of a petition against it under any law which involves any compromise of any creditor's rights against the Debtor;
- (g) if an execution or any other process of any court becomes enforceable against the Debtor or if a distress or analogous process is initiated or levied against or upon the property of the Debtor or any part thereof;
- (h) if the Debtor permits any sum which has been admitted as due by the Debtor or is not disputed to be due by it and which forms or is capable of being made a charge on any Collateral in priority to the Security Interest to remain unpaid after proceedings have been taken to enforce such charge;
- (i) if any representation or warranty made by the Debtor or any of its officers, employees or agents to the Secured Party shall be false or inaccurate in any material respect;
- (j) if the Debtor defaults in the observance or performance of any provision relating to the indebtedness or liability of the Debtor to any Person other than the Secured Party; or
- (k) if any licence, permit or approval required by any law, regulation or governmental policy or any governmental agency or commission for the operation by the Debtor of its business shall be withdrawn or cancelled.

### **Remedies of the Secured Party**

25. Whenever the Security Interest shall have become enforceable, and so long as it shall remain enforceable, the Secured Party may proceed to realize the Security Interest and the Collateral and to enforce its rights by doing any one or more of the following:
- (a) entering upon the Collateral and any lands and premises where any Collateral is or may be located;
  - (b) taking possession of Collateral by any method permitted by law;
  - (c) occupying any lands and premises owned or occupied by the Debtor and using all or any part of such lands and premises and the equipment and other Collateral located thereon;
  - (d) leasing, selling, licensing or otherwise disposing of the whole or any part or parts of the Collateral;
  - (e) collecting, selling or otherwise dealing with any accounts or other amounts receivable by the Debtor, including notifying any Person obligated to the Debtor in respect of an account, chattel paper or instrument to make payment to the Secured Party of all present and future amounts due thereon;
  - (f) taking steps and expending such monies as it considers necessary or desirable in its sole discretion to maintain, preserve and protect the Collateral, including making payments on account of other security interests affecting the Collateral; provided that the Secured Party shall have no obligation

- to take any such actions or make any such expenditures; but any such amounts paid by the Secured Party shall be added to the Obligations and shall be secured by the Security Interest;
- (g) collecting any rents, income, and profits received in connection with the business of the Debtor or the Collateral, without carrying on such business;
  - (h) exercising all voting rights attached to any Collateral constituting Investment Collateral (whether or not registered in the name of the Secured Party or its nominee) and giving or withholding all consents, waivers and ratifications in respect thereof and otherwise acting with respect thereto as though it were the absolute owner thereof;
  - (i) exercising any and all rights of conversion, exchange, subscription or any other rights, privileges or options pertaining to any Collateral constituting Investment Collateral as if it were the absolute owner thereof including the right to exchange at its sole discretion any and all of such Investment Collateral upon the merger, consolidation, reorganization, recapitalization or other readjustment of any issuer thereof, or upon the exercise by any issuer of any right, privilege or option pertaining to any such Investment Collateral, and in connection therewith, to deposit and deliver any such Investment Collateral with any committee, depository, transfer agent, registrar or other designated agency upon such terms and conditions as it may determine in its sole discretion, all without liability except to account for property actually received by it;
  - (j) complying with any limitation or restriction in connection with any proposed sale or other disposition of Collateral constituting Investment Collateral as may be necessary in order to comply with applicable law or regulation or any policy imposed by any stock exchange, securities commission or other governmental or regulatory authority or official, and the Debtor agrees that such compliance shall not result in such sale being considered or deemed not to have been made in a commercially reasonable manner, and the Secured Party shall not be liable or accountable to the Debtor for any discount in the sale price of any such Investment Collateral which may be given by reason of the fact that such Investment Collateral are sold in compliance with any such limitation or restriction;
  - (k) carrying on the business of the Debtor or any portion thereof;
  - (l) exercising any and all of the rights and remedies granted pursuant to the PPSA and any other applicable legislation, or otherwise available at law or in equity;
  - (m) demanding, commencing, continuing or defending any judicial or administrative proceedings for the purpose of protecting, seizing, collecting, realizing or obtaining possession or payment of the Collateral, and giving valid and effectual receipts and discharges therefor and to compromise or give time for the payment or performance of all or any part of the accounts or other amounts receivable of the Debtor or any other obligation of any third party to the Debtor;
  - (n) borrowing money for the maintenance, preservation or protection of the Collateral or for the carrying on of the business of the Debtor, and charge and grant further security interests in the Collateral in priority to the Security Interest or otherwise, as security for the money so borrowed;
  - (o) accepting the Collateral in satisfaction of the Obligations;



- (p) appointing by instrument in writing a Receiver or Receivers of the Collateral or any part thereof;
  - (q) bringing proceedings in any court of competent jurisdiction for the appointment of a Receiver or Receivers or for the sale of the Collateral or any part thereof; and
  - (r) filing such proofs of claim and other documents as may be necessary or advisable in order to have its claim lodged in any bankruptcy, winding-up or other judicial proceedings relating to the Debtor or the Collateral.
26. Any Receiver appointed by the Secured Party may be any Person or Persons (including one or more officers or employees of the Secured Party), and the Secured Party may remove any Receiver so appointed and appoint another or others instead. Any such Receiver may exercise any and all of the rights, remedies and powers of the Secured Party provided in this agreement. The Secured Party shall not be responsible for the actions, errors or omissions of any Receiver it appoints and any such Receiver shall be deemed to act as agent for the Debtor for all purposes, including the occupation of any lands and premises of the Debtor and in carrying on the Debtor's business, unless the Secured Party expressly specifies in writing that the Receiver shall be agent for the Secured Party for one or more purposes. Without limiting the generality of the foregoing, for the purposes of realizing upon the Security Interest, any Receiver may sell, lease, or otherwise dispose of Collateral as agent for the Debtor or as agent for the Secured Party as the Secured Party may specify in writing in its sole discretion. The Debtor agrees to ratify and confirm all actions of any Receiver appointed by the Secured Party acting as agent for the Debtor, and to release and indemnify the Receiver in respect of all such actions.
27. Without limiting the ability of the Secured Party or any Receiver to dispose of Collateral in any other manner, the Debtor agrees that any sale, lease or other disposition of the Collateral hereunder may be completed by public auction, public tender or private contract, with or without notice, with or without advertising and with or without any other formality (except as required by law), all of which are hereby waived by the Debtor. Any such disposition of Collateral may involve all or part of the Collateral and may be on such terms and conditions as to credit or otherwise and as to upset or reserve bid or price as the Secured Party or any Receiver appointed by the Secured Party may, in its sole discretion, deem advantageous and may take place whether or not the Secured Party or any such Receiver has taken possession of such Collateral. Any purchaser or lessee of Collateral may be a customer of the Secured Party.
28. The Secured Party shall not be liable for any delay or failure to enforce any rights, powers or remedies available to it or to institute any proceedings for such purposes.
29. No right, power or remedy of the Secured Party (whether granted herein or otherwise) shall be exclusive of or dependent on or merge in any other right, power or remedy, but all such rights, powers and remedies may from time to time be exercised independently or in combination.
30. The Debtor agrees to pay to the Secured Party, forthwith on demand by the Secured Party, all costs and expenses incurred by the Secured Party in connection with the exercise by the Secured Party of its rights, powers and remedies hereunder, including:
- (a) any costs and expenses incurred by the Secured Party in taking, holding, moving, storing, recovering, possessing, repairing, processing, preparing for disposition or disposing of Collateral;

- (b) any legal fees and expenses incurred by the Secured Party in enforcing its rights, powers and remedies, including those incurred in connection with any proceedings taken for the purpose of enforcing its rights, powers and remedies hereunder or otherwise relating to the non-payment or non-performance of any Obligations;
- (c) the cost of borrowing amounts as hereinbefore provided (for the purpose of carrying on the Debtor's business or otherwise), including, the principal amount or any such amount borrowed, all interest thereon and fees relating thereto; and
- (d) all costs and expenses of or incurred by any Receiver, agent or consultant appointed by the Secured Party (including any legal fees and expenses incurred by any such Receiver, agent or consultant).

All such sums shall bear interest at the highest rate applicable to the Obligations, shall form part of the Obligations and shall be secured by the Security Interest.

- 31. Any and all payments made in respect of the Obligations from time to time and moneys realized from any Collateral (including moneys realized on any enforcement of this agreement) may be applied to such part or parts of the Obligations as the Secured Party may see fit, and the Secured Party shall at all times and from time to time have the right to change any appropriation as the Secured Party may see fit.
- 32. The Debtor shall remain liable for all Obligations that are outstanding following realization of all or any part of the Collateral.

#### **Rights of the Secured Party**

- 33. The Secured Party may pay the whole or any part of any liens, taxes, rates, charges or encumbrances now or hereafter existing in respect of any Collateral and such payments together with all costs, charges and expenses which may be incurred in connection with making such payments shall form part of the Obligations, shall bear interest at the highest rate applicable to the Obligations, and shall be secured by the Security Interest. Whenever the Secured Party pays any such lien, tax, rate, charge or encumbrance, it shall be entitled to all the equities and securities of the Person or Persons so paid and is hereby authorized to obtain any discharge thereof and hold such discharge without registration for so long as it may deem advisable to do so.
- 34. If the Debtor fails to perform or comply with any covenant or other obligation of the Debtor under this agreement, the Secured Party may, but need not, perform or otherwise cause the performance or compliance of such covenant or other obligation, provided that any performance or compliance undertaken by the Secured Party will not constitute a waiver, remedy or satisfaction of such failure. The costs and expenses of the Secured Party incurred in connection with any such performance or compliance shall be payable by the Debtor to the Secured Party on demand, form part of the Obligations, bear interest at the highest rate applicable to the Obligations and be secured by the Security Interest.
- 35. The Debtor grants to the Secured Party the right to set off against the Obligations (or any portion thereof) any amount owed by the Secured Party to the Debtor, including the amount of any and all accounts, credits or balances maintained by the Debtor with the Secured Party.
- 36. The Secured Party, without exonerating in whole or in part the Debtor, may grant time, renewals, extensions, indulgences, releases and discharges to, may take securities from and give the same and any or all existing

securities up to, may abstain from taking securities from or from perfecting securities of, may accept compositions from, and may otherwise deal with the Debtor and all other Persons and securities as the Secured Party may see fit.

37. Nothing herein shall obligate the Secured Party to extend or amend any credit to the Debtor or to any other Person.
38. The Secured Party may assign, transfer and deliver to any transferee any of the Obligations or any security or any documents or instruments held by the Secured Party in respect thereof. The Debtor shall not assign any of its rights or obligations hereunder without the prior written consent of the Secured Party.

### **Notices**

39. Any notice, demand or other communication permitted or required to be given hereunder shall be delivered to the borrower in accordance with the notice provisions under the Loan Agreement.

### **Miscellaneous**

40. In the event that any day, on or before which any action is required to be taken hereunder, is not a Business Day, then such action shall be required to be taken on or before the first Business Day thereafter.
41. Time shall be of the essence of this agreement.
42. Upon payment and fulfillment by the Debtor, its successors or permitted assigns, of all Obligations and provided that the Secured Party is then under no obligation (conditional or otherwise) to make any further loan or extend any other type of credit to the Debtor or to any of its affiliates the payment of which is secured, directly or indirectly, by this agreement, the Secured Party shall, upon request in writing by the Debtor, delivered to the Secured Party at the Secured Party's address as set out in the Loan Agreement and at the Debtor's expense, discharge this agreement.
43. This agreement is in addition to and not in substitution for any other security now or hereafter held by the Secured Party and shall be general and continuing security notwithstanding that the Obligations shall be at any time or from time to time fully satisfied or paid.
44. No provision of this agreement, or any other document or instrument in existence among the parties may be modified, waived or terminated except by an instrument in writing executed by the party against whom such modification, waiver or termination is sought to be enforced. Possession of an executed copy of this agreement by the Secured Party constitutes conclusive evidence that it was executed and delivered by the Debtor free of all conditions.
45. The Secured Party may in writing (and not otherwise) waive any default by the Debtor in the observance or performance of any provision of this agreement; provided that no waiver by the Secured Party shall extend to or be taken in any manner whatsoever to affect any subsequent default, whether of the same or a different nature, or the rights resulting therefrom.
46. In accordance with the *Conveyancing and Law of Property Act*, the doctrine of consolidation applies to this agreement.

47. This agreement shall enure to the benefit of the Secured Party, its successors and assigns, and shall be binding on the Debtor, its successors and permitted assigns.
48. The Debtor agrees that the Secured Party may from time to time provide information concerning this agreement (including a copy hereof), the Collateral and the Obligations to any Person the Secured Party in good faith believes is entitled thereto pursuant to applicable legislation.
49. The Debtor acknowledges receipt of an executed copy of this agreement and waives all rights to receive from the Secured Party a copy of any financing statement or financing change statement filed, or any verification statement received, at any time in respect of this agreement.

*(The remainder of the page has intentionally been left blank; the signature page follows.)*

IN WITNESS WHEREOF, this agreement has been executed by the Debtor as of the date on the face hereof.

**INDEX HOLDING GROUP INC.**

By: Rana Muqet  
Name: Abdul Muqet  
Title: Director

**INDEX GROUP OF COMPANIES INC.**

By: Rana Muqet  
Name: Abdul Muqet  
Title: Director

**INDEX INTERNATIONAL INC.**

By: Rana Muqet  
Name: Abdul Muqet  
Title: Director

**INDEX FOODS INC.**

By: Rana Muqet  
Name: Abdul Muqet  
Title: Director

**2640179 ONTARIO INC.**

By: Rana Muqet  
Name: Abdul Muqet  
Title: Director

**11030434 CANADA LTD.**

By: Rana Muqet  
Name: Abdul Muqet  
Title: Director

**2700774 ONTARIO INC.**

By: Rana Muqet  
Name: Abdul Muqet  
Title: Director

**2700767 ONTARIO INC.**

By: Rana Muqet  
Name: Abdul Muqet  
Title: Director

**2683960 ONTARIO LTD.**

By: Rana Muqet  
Name: Abdul Muqet  
Title: Director

**11030418 CANADA INC.**

By: Rana Muqet  
Name: Abdul Muqet  
Title: Director

**2723710 ONTARIO INC.**

By: Rana Muqet  
Name: Abdul Muqet  
Title: Director

**2718366 ONTARIO INC.**

By: Rana Muqete  
Name: Abdul Muqete  
Title: Director

**2737332 ONTARIO INC.**

By: Rana Muqete  
Name: Abdul Muqete  
Title: Director

**2737334 ONTARIO INC.**

By: Rana Muqete  
Name: Abdul Muqete  
Title: Director

**2723714 ONTARIO INC.**

By: Rana Muqete  
Name: Abdul Muqete  
Title: Director

**2723716 ONTARIO INC.**

By: Rana Muqete  
Name: Abdul Muqete  
Title: Director

**2737338 ONTARIO INC.**

By: Rana Muqete  
Name: Abdul Muqete  
Title: Director

**2790760 ONTARIO INC.**

By: Rana Muqete  
Name: Abdul Muqete  
Title: Director

**2775290 ONTARIO INC.**

By: Rana Muqete  
Name: Abdul Muqete  
Title: Director

**2775296 ONTARIO INC.**

By: Rana Muqete  
Name: Abdul Muqete  
Title: Director

**421 WHARNCLIFFE LTD.**

By: Rana Muqete  
Name: Abdul Muqete  
Title: Director

**SCHEDULE "A"**

**Part I**

Location of the Debtor's Chief Executive Office

**110 Herdwick Street, Brampton, ON L6S 0A5**

**Part II**

Locations of Leased Properties

**Popeyes Louisiana Kitchen:**

<b>OWNERSHIP</b>	<b>COLLATERAL SITES</b>
Index International Inc.	4-1525 Dundas St. E., Whitby, ON
Index Foods Inc.	965 Dundas St. W. Whitby, ON
2640179 Ontario Inc.	1571 Sandhurst Circle, #106D, Toronto, ON
2700774 Ontario Inc.	22 Stevenson Rd. S., Oshawa, ON
2700767 Ontario Inc.	9 Jim Kimmett Blvd., Napanee, ON
2683960 Ontario Ltd.	2 Douglas Rd., Uxbridge, ON
11030418 Canada Inc.	72 Baldwin St. N.,(Brooklin) Whitby, ON
2723710 Ontario Inc.	165 E. Liberty Street, Toronto, ON
2737332 Ontario Inc.	900 Dufferin St., Toronto, ON
2737334 Ontario Inc.	674-676 Sheppard Ave. W., Toronto, ON
2737338 Ontario Inc.	Future site – to be determined
2723714 Ontario Inc.	Future site – to be determined
2718366 Ontario Inc.	Future site – to be determined
Index Group of Companies Ltd.	Future site – to be determined

**Denny's:**

2723716 Ontario Inc. dba Denny's Woodbine	8502 Woodbine Ave., Markham, ON
11030434 Canada Ltd. dba Denny's Burlington	1200 Brant St., Burlington, ON
2790760 Ontario Inc. dba Denny's Newmarket	17725 Yonge St., Newmarket, ON
2775290 Ontario Inc. dba Denny's Brantford	195 Henry Street, Brantford, ON -
2775296 Ontario Inc. dba Denny's Rexdale	445 Rexdale Boulevard, Etobicoke ON

**FEE SIMPLE REAL ESTATE PROPERTY:**

**421 Wharncliffe Ltd.: 421 Wharncliffe Rd., London, Ontario**

Property Description: PT LT 1, PL 29, PTS 1 & 2, 33R5153 & PT 2, 33R5487 S/T 837774 IF ANY, S/T 583284 IF ANY;  
LONDON/WESTMINSTER

**SCHEDULE "B"**  
**Permitted Encumbrances**

1. statutory liens which secure payment of amounts not then overdue;
2. statutory liens which secure payment of amounts which are then overdue but the validity of which is being contested in good faith and in respect of which reserves satisfactory to the Secured Party in its sole discretion have been established;
3. security given to a public utility, municipality, government or statutory or public authority to secure obligations incurred to such utility, municipality, government or other authority in the ordinary course of business and not then overdue;
4. liens and privileges arising out of judgments or awards in respect of which an appeal or proceeding for review has been commenced, provided a stay of execution pending such appeal or proceedings for review has been obtained and provided reserves satisfactory to the Secured Party in its sole discretion have been established;
5. liens or rights of distress reserved in or exercisable under any lease of real property for rent not then overdue or for compliance with the provisions of such lease not then in default;
6. security deposits given under leases of real property not in excess of an amount equivalent to six months' rent;
7. liens securing obligations or duties affecting real property due to any public utility, municipality, government, or statutory or public authority with respect to any franchise, grant, licence or permit in good standing and any minor irregularities in title to any real property, provided such obligations, duties and minor title irregularities do not materially impair the use, value or marketability of such real property;
8. liens incurred or deposits made in connection with contracts, bids or tenders made in the ordinary course of business or in connection with expropriation proceedings, surety or appeal bonds or costs of litigation to the extent required by law;
9. liens (including builders' liens) arising in connection with the construction or improvement of any real property or arising out of the furnishing of materials or supplies therefor, provided that such liens secure payment of amounts not then overdue (or if overdue, the validity of which is being contested in good faith and in respect of which reserves satisfactory to the Secured Party in its sole discretion have been established) and provided notice of such lien has not been given to the Secured Party and such lien has not been registered against title to such real property;
10. zoning and building by-laws affecting real property provided they are complied with;
11. garage keepers' liens securing amounts not then overdue; and
12. encumbrances in favour of the Secured Party.

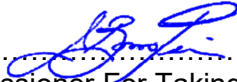


**Schedule "C"**

**Investment Collateral**

**NIL**

This is **Exhibit "N"** referred to in the affidavit of Tyson Hartwell, sworn before me by videoconference on April 27, 2023 in accordance with O.Reg. 431/20: Administering Oath or Declaration Remotely. The deponent was located in the City of Calgary in the Province of Alberta and I was located in the City of Toronto in the Province of Ontario.



.....  
A Commissioner For Taking Affidavits

Jeremy Bornstein  
LSO#: 65425C

## GUARANTEE AND INDEMNITY

**TO: CANADIAN WESTERN BANK (“CWB”)**

In consideration of the covenants and agreements herein contained, the sum of \$1.00 now paid by **CANADIAN WESTERN BANK (“CWB”)** to each of **INDEX HOLDING GROUP INC., 2790760 ONTARIO INC., 2775290 ONTARIO INC., 2775296 ONTARIO INC. and 421 WHARNCLIFFE LTD.** (collectively, the “**Obligors**”) and other good and valuable consideration (the receipt and sufficiency of which are hereby acknowledged), the **Obligors** covenant and agree with **CWB** as follows:

**1. INTERPRETATION** — Wherever throughout this Guarantee and Indemnity (“**Guarantee**”), the **Obligors** or **CWB** are mentioned or referred to, such mention or reference shall extend to their respective successors and assigns, as the case may be. Reference to the term “**Obligations**” herein shall be to any and all obligations from time to time owing by each **Obligor** to **CWB** whether under a loan agreement, promissory note, leasing agreement, master leasing agreement, leasing schedule, conditional sale contract, security agreement, guarantee, chattel mortgage, hypothec, pledge, debenture or any other instrument (hereinafter singularly or collectively called “**Finance Instruments**”) between **CWB** and any of the **Obligors** and whether any such **Finance Instrument** was executed prior to the execution of this Agreement, is executed concurrently herewith or at any time in the future.

### **2. GUARANTEE**

**2.1 Guarantee** — Each **Obligor** hereby irrevocably and unconditionally guarantees and covenants with **CWB** as principal debtor of **CWB** and not merely as surety, that each of the other **Obligors** will duly and punctually perform all of the **Obligations**, and pay or cause to be paid to **CWB** the rentals under and the principal of and interest on the **Finance Instruments** evidencing or securing the **Obligations** (including, in case of default, interest on the amount in default) as and when the same becomes due and payable, whether by lapse of time, by extension, or upon a declaration or otherwise according to the terms of the **Finance Instruments** and all other moneys owing on or under the **Finance Instruments** or in any way relating thereto including all expenses, including legal expenses and service charges. The liability of each **Obligor** hereunder shall be irrevocable and unlimited and shall include all interest, fees, costs or expenses (including, without limitation, legal fees and expenses) which may now or hereafter accrue or be incurred with respect to such **Obligations** and any fees, costs or expenses (including without limitation, legal fees and expenses) that may be incurred by **CWB** by reason of any **Obligors’** default under this **Guarantee**.

**2.2 Terms of the Finance Instruments** — The **Obligors** hereby consent to and approve of the terms of the **Finance Instruments**; the guarantee and the agreements of the **Obligors** herein contained shall take effect and shall be and are hereby declared to be binding upon the **Obligors** notwithstanding any defect in or omission from the **Finance Instruments** or any non-registration or non-filing or defective registration or filing of any **Finance Instruments** or notice of the interest of **CWB** created thereby or by reason of any failure of the security intended to be created by the **Finance Instruments** or pursuant thereto.

**2.3 Guarantee Absolute** — The liability of each **Obligor** hereunder shall be absolute and unconditional and shall not be affected by:

- (a) any lack of validity or enforceability of any agreements between any **Obligor** and **CWB**; any change in the time, manner or place of payment or in any other term of such agreements or the failure on the part of any **Obligor** to carry out any of its obligations under such agreements;
- (b) any impossibility, impracticability, frustration of purpose, illegality, force majeure or act of government;
- (c) the bankruptcy, winding-up, liquidation, dissolution or insolvency of any **Obligor**, **CWB** or any party to any agreement to which **CWB** is a party;
- (d) any lack or limitation of power, incapacity or disability on the part of any **Obligor** or of the directors, partners or agents thereof or any other irregularity, defect or informality on the part of any **Obligor** in its obligations to **CWB**; or
- (e) any other law, regulation or other circumstance which might otherwise constitute a defense available to, or a discharge of, any **Obligor** in respect of any or all of the **Obligations**.

The **Obligors** shall be held and bound to **CWB** as principal debtor, and not as surety, in respect of the payment of any or all of the **Obligations**. All amounts payable to **CWB** shall be paid to **CWB** forthwith after demand therefore as provided herein.

**2.4 No Waiver** — The **Obligors** hereby agree that their obligations hereunder shall be unconditional and no waiver by **CWB** of any of its rights hereunder or under the **Finance Instruments** and no action by **CWB** to enforce any of its rights hereunder or under the **Finance Instruments** or failure to take, or delay in taking any such action shall affect any other obligation of the **Obligors** hereunder.

**3. INDEMNITY** — Each **Obligor** also covenants and agrees with **CWB** that it will at all times and from time to time hereafter, indemnify and keep indemnified and save harmless **CWB** from any and all losses, costs, damages and expenses, including legal fees and disbursements and the costs of all distresses, actions, proceedings, claims and demands incurred or made by **CWB** if **CWB** does not receive payment of all amounts due and owing under the **Finance Instruments** or if any **Obligor** defaults in the payment of any instalment payable or in the performance of the **Obligations** under the **Finance Instruments** which, if the **Finance Instruments** were in full force and effect and good standing, would be payable or required to be performed under the **Finance Instruments**. In addition to the foregoing, the **Obligors** agree to pay **CWB**, as administrative costs, an amount equal to fifteen percent (15%) of all amounts payable hereunder in the event that court proceedings are instituted against any **Obligor** because such **Obligor** has failed to respect their obligations hereunder.

### **4. DEALINGS WITH OBLIGOR AND OTHERS**

- 4.1 No Release** — The liability of the Obligors hereunder shall not be released, discharged, limited or in any way affected by anything done, suffered or permitted by **CWB** in connection with any duties or liabilities of any Obligor to **CWB** of any security thereof including any loss of or in respect of any security received by **CWB** from any Obligor or others. **CWB**, without releasing, discharging, limiting or otherwise affecting in whole or in part the Obligors' liability hereunder, may:
- (a) grant time, renewals, extensions, indulgences, releases, waivers and discharges to any Obligor;
  - (b) grant substitutions for the Obligations or any part thereof or any agreement related thereto;
  - (c) take or abstain from taking securities or collateral from any Obligor or from perfecting securities or collateral of any Obligor;
  - (d) accept compromises from any Obligor;
  - (e) apply all money at any time received from any Obligor or from securities upon such part of the Obligations as **CWB** may see fit or change any such application in whole or in part from time to time as **CWB** may see fit;
  - (f) amend any of the Finance Instruments; or
  - (g) otherwise deal with any Obligor and all other persons and securities as **CWB** may see fit.
- 4.2 No Exhaustion of Remedies** — **CWB** shall not be bound or obligated to exhaust its recourse against any Obligor or other persons or any securities or collateral it may hold or take any other action (other than to make demand pursuant to Section 6) before being entitled to demand payment from any Obligor hereunder. The obligations of each Obligor hereunder are joint and several with those of the other Obligors and any other guarantor, security or other person liable in any way for the Obligations. This Guarantee is in addition and not in substitution for any other guarantee, by whomsoever given, at any time held by **CWB**, and without prejudice to any other security, by whomsoever given, at any time held by **CWB**, and **CWB** shall be under no obligation to marshal in favour of any Obligor any such security or any of the funds or assets **CWB** may be entitled to receive or have a claim upon.
- 4.3 Conclusive Statement** — Any account settled or stated in writing by or between **CWB** and an Obligor shall be prima facie evidence that the balance or amount thereof appearing due to **CWB** is so due.
- 4.4 No Set-Off** — No Obligor shall claim any set-off or counterclaim against any other Obligor in respect of any liability of such other Obligor to it.

## **5. CONTINUING GUARANTEE**

- 5.1 Continuing Guarantee** — This Guarantee shall be a continuing guarantee, notwithstanding any extensions, modifications, renewals or indulgences with respect to, or substitutions for, the Obligations or any part thereof, and shall remain in full force and effect until the Obligations are performed and paid in full. This Guarantee shall continue to be effective even if at any time any payment of any of the Obligations is rendered unenforceable or is rescinded or terminated or must otherwise be returned by **CWB** upon the occurrence of any action or event including the insolvency, bankruptcy or reorganization of any Obligor or otherwise, all as though such payment had not been made.

## **6. DEMAND FOR PAYMENT**

- 6.1 Demand for Payment** — **CWB** shall be entitled to make demand upon any Obligor at any time upon a default in payment of any amount owing by any Obligor to **CWB** and upon such default **CWB** may treat all Obligations as due and payable and may forthwith collect from any Obligor the total amount guaranteed hereunder. Each Obligor shall make payment to or performance in favour of **CWB** of the total amount guaranteed hereunder forthwith after demand thereof is made to such Obligor.
- 6.2 Interest** — The Obligors shall pay interest to **CWB** at the rate of 24% per annum on the unpaid portion of all amounts payable by the Obligors under this Guarantee, such interest to be calculated daily from the date of demand by **CWB** on the Obligors.

## **7. ASSIGNMENT, POSTPONEMENT AND SUBROGATION**

- 7.1 Assignment and Postponement** — All debts and liabilities, present and future, of each Obligor to any other Obligor are hereby assigned to **CWB** and postponed to the Obligations, and all money received by any Obligor in respect thereof shall be received in trust for **CWB** and forthwith upon receipt shall be paid over to **CWB**, the whole without in any way lessening or limiting the liability of each of the Obligors hereunder and this assignment and postponement is independent of this Guarantee and shall remain in full force and effect until, in the case of the assignment, the liability of the Obligors under this Guarantee has been discharged or terminated and, in the case of the postponement, until payment in full to **CWB** of all obligations of the Obligors under this Guarantee.
- 7.2 Subrogation** — The Obligors will not exercise any rights which it may acquire by way of subrogation under this Guarantee and Indemnity, by any payment made hereunder or otherwise, until all Obligations shall have been paid and performed in full. If any amount shall be paid to any Obligor on account of such subrogation rights at any time when all the Obligations shall not have been paid in full, such amount shall be held in trust for the benefit of **CWB** and shall forthwith be paid to **CWB** to be credited and applied upon the Obligations. If (i) the Obligors perform or make payment to **CWB** of all amounts owing by the Obligors to **CWB** under this Guarantee and (ii) the Obligations are performed and paid in full, **CWB** will, at the Obligors' request and at the Obligors' expense, execute and deliver to the Obligors appropriate documents, without recourse and without representation and warranty, necessary to evidence the transfer by subrogation to the Obligors of an interest in the Obligations and any security held therefor resulting from such performance or payment by the Obligors.

## **8. COVENANTS OF THE OBLIGORS** — Each Obligor hereby represents, covenants and warrants that:

- (a) if the Obligor is a corporation, the making and performance of this Guarantee has been duly authorized by all necessary corporate actions on the part of such Obligor, do not require any shareholders' approval, and will not violate any provisions of such Obligor's incorporating documents or by-laws or result in the breach of, constitute a default under, contravene any provisions of or result in the creation of any lien, charge, encumbrance or security interest upon any property or assets of such Obligor pursuant to any of such Obligor's stocks, bonds, notes or debentures outstanding, or any agreement, indenture or other instrument to which such Obligor is a party or by which such Obligor or its property may be bound or affected;
- (b) this Guarantee constitutes a legal, valid and binding obligation of such Obligor in accordance with the terms hereof;

- (c) there is no pending or, to the best of the knowledge of such Obligor, threatened action or proceeding affecting such Obligor or, if the Obligor is a corporation, any of their subsidiaries before any court, governmental agency or arbitrator, which would materially adversely affect the legality, validity or enforceability of this Guarantee;
- (d) all Information as defined in Section 9.2 provided by such Obligor to **CWB** is accurate;
- (e) all payments to **CWB** are and will be derived from legal sources and **CWB** may decline any form of payment; and
- (f) it is and shall continue to be in compliance with all laws and regulations relating to the prevention of money laundering and terrorism.

## 9. GENERAL

- 9.1 Waivers** — The Obligors waive notice of acceptance of this Guarantee and of the extension or continuation of the Obligations or any part thereof. The Obligors further waive presentment, protest, notice, demand or action in respect of the Obligations or any part thereof, including any right to require **CWB** to sue any Obligor, or any other person obligated with respect to the Obligations or any part thereof, or otherwise to enforce payment thereof against any collateral securing the Obligations or any part thereof. Without limiting the generality of the foregoing, each Obligor is jointly and severally liable with each other Obligor for the due and punctual payment and performance of the Obligations, the Obligors each hereby waiving the benefit of division and discussion. The Obligors waive their right to receive a copy of any financing statement or financing change statement registered by **CWB** and of any related verification statement.
- 9.2 Information** — The Obligors hereby consent and authorize **CWB** and its affiliates, agents, contractors and representatives, at any time, a) to collect, verify, use, communicate with and disclose to third parties (including credit reporting agencies, financial institutions, creditors, vendors and other persons) any credit, financial and other information, including personal information (as applicable) and information related to the credit rating, financial capacity and payment history, with respect to the Obligors ("**Information**"), as **CWB** deems necessary to process, complete, service and enforce the transactions hereby contemplated and any other existing or potential transactions, or as required or otherwise permitted by law; b) to respond to inquiries from, and exchange any Information with, third parties concerning any Obligor's credit rating, financial capacity and payment history; c) to provide Information to persons to whom **CWB** considers assigning, granting a participation or otherwise disposing of rights or obligations under the transactions hereby contemplated; and d) to provide to any person copies of this Guarantee. This consent is in addition to and does not replace any consent previously given.
- 9.3 Benefit of the Guarantee** — This Guarantee shall enure to the benefit of and be binding upon the respective heirs, executors, administrators, successors and permitted assigns of the Obligors and **CWB**.
- 9.4 Entire Agreement** — This Guarantee constitutes the entire agreement between **CWB** and the Obligors with respect to the subject matter hereof and cancels and supersedes any prior understandings and agreements between such parties with respect thereto. There are no representations, warranties, terms, conditions, undertakings or collateral agreements, expressed, implied or statutory, between such parties other than as expressly set forth in this Guarantee.
- 9.5 No Waiver, Remedies** — No failure on the part of **CWB** to exercise, and no delay in exercising, any right hereunder shall operate as a waiver thereof, nor shall any single or partial exercise of any right hereunder preclude the other or further exercise thereof or the exercise of any other right. The remedies herein provided are cumulative and not exclusive of any remedies provided by law.
- 9.6 Severability** — If any provision of this Guarantee is determined to be invalid or unenforceable in whole or in part, such invalidity or unenforceability shall attach only to such provision or part thereof and the remaining part of such provision and all other provisions hereof shall continue in full force and effect.
- 9.7 Notices** — Any demand, notice or other communications (hereinafter in this Section **CWB** referred to as a "**Communication**") to be given in connection with this Guarantee shall be given in writing and may be given by personal delivery or by registered mail addressed to the recipient at the address indicated on the signature page hereby or such other address as may be designated by notice by any party to the other. Any Communication given by personal delivery shall be conclusively deemed to have been given on the day of actual delivery thereof and, if given by registered mail, on the third day following the deposit thereof in the mail. If the party giving any Communication knows or ought reasonably to know of any difficulties with the postal system which might affect the delivery of mail, any such Communication shall not be mailed but shall be given by personal delivery.
- 9.8 Assignment** — The rights of **CWB** under this Guarantee may be assigned by **CWB** without the prior consent of the Obligors. No Obligor may assign its obligations under this Guarantee.
- 9.9 Governing Law** — This guarantee shall be governed by and construed in accordance with the laws of the Province of Ontario and the laws of Canada applicable therein.
- 9.10 Language** — The parties hereby acknowledge that it is their express wish that this Guarantee and Indemnity be drawn in the English language; les parties reconnaissent qu'il est de leur volonté expresse que la présente caution soit rédigée en langue anglaise seulement.

*[Signature page follows]*

IN WITNESS WHEREOF, the Obligors have executed this Guarantee this November 16, 2021.

**INDEX HOLDING GROUP INC.**

By: Rana Muqet  
Name: Abdul Muqet  
Title: Director

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

Address: 110 Herdwick St., Brampton, ON L6S 0A5  
Attention:  
Telecopier:

**2790760 ONTARIO INC.**

By: Rana Muqet  
Name: Abdul Muqet  
Title: Director

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

Address:  
Attention:  
Telecopier:

**2775290 ONTARIO INC.**

By: Rana Muqet  
Name: Abdul Muqet  
Title: Director

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

Address:  
Attention:  
Telecopier:

**2775296 ONTARIO INC.**

By: Rana Muqet  
Name: Abdul Muqet  
Title: Director

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

Address:  
Attention:  
Telecopier:

**421 WHARNCLIFFE LTD.**

By: Rana Muqet  
Name: Abdul Muqet  
Title: Director

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

Address:  
Attention:  
Telecopier:



**EXCERPT OF A RESOLUTION  
OF THE BOARD OF DIRECTORS OF**

**INDEX HOLDING GROUP INC.**

(the "Corporation")

**Guarantee and Indemnity**

In consideration of the loan agreement, guarantee and general security agreement, entered or which may be entered into by or granted in favor of **CANADIAN WESTERN BANK ("CWB")** with its client of **2790760 ONTARIO INC., 2775290 ONTARIO INC., 2775296 ONTARIO INC. and 421 WHARNCLIFFE LTD.** (collectively, the "Client") or the loans and advances of money granted or which may be granted by **CWB** to its Client, as the case may be for the purpose of Client's business, and, generally, in consideration of the business relations between **CWB** and its Client as well as the business relations between the said Client and this Corporation.

Now therefore be it resolved:

That this Corporation be and is hereby authorized to be a surety and to guarantee the repayment of all sums of money which the client owes or in future may owe to **CWB**, together with the interest, costs and accessories, and this, jointly and severally with the Client towards **CWB** and subject to all the terms and conditions set out on the form in use at **CWB** entitled "Guarantee and Indemnity", a copy of which is attached hereto after having been submitted to the Directors and that:

**DIRECTOR, ABDUL MUQEET**

be and is hereby authorized to sign such Guarantee and Indemnity for and on behalf and in the name of the Corporation.

That all acts and things done and all documents executed on behalf of the Corporation as hereinbefore authorized shall be valid and binding upon the Corporation whether or not the corporate seal of the Corporation has been affixed to any such document.

The foregoing is a true and correct copy of a resolution of the Board of Directors of **INDEX HOLDING GROUP INC.** duly adopted on **November 16, 2021** which resolution is in effect and has not been modified or rescinded as of the date hereof.

Dated at Brampton, Ontario, this 16<sup>th</sup> day of November, 2021.

*(s) Rana Muqet*

Name: Abdul Muqet

Title: Director



**EXCERPT OF A RESOLUTION  
OF THE BOARD OF DIRECTORS OF**

**2790760 ONTARIO INC.**

(the "Corporation")

**Guarantee and Indemnity**

In consideration of the loan agreement, guarantee and general security agreement, entered or which may be entered into by or granted in favor of **CANADIAN WESTERN BANK ("CWB")** with its client of **INDEX HOLDING GROUP INC., 2775290 ONTARIO INC., 2775296 ONTARIO INC. and 421 WHARNCLIFFE LTD.** (collectively, the "Client") or the loans and advances of money granted or which may be granted by **CWB** to its Client, as the case may be for the purpose of Client's business, and, generally, in consideration of the business relations between **CWB** and its Client as well as the business relations between the said Client and this Corporation.

Now therefore be it resolved:

That this Corporation be and is hereby authorized to be a surety and to guarantee the repayment of all sums of money which the client owes or in future may owe to **CWB**, together with the interest, costs and accessories, and this, jointly and severally with the Client towards **CWB** and subject to all the terms and conditions set out on the form in use at **CWB** entitled "Guarantee and Indemnity", a copy of which is attached hereto after having been submitted to the Directors and that:

**DIRECTOR, ABDUL MUQEET**

be and is hereby authorized to sign such Guarantee and Indemnity for and on behalf and in the name of the Corporation.

That all acts and things done and all documents executed on behalf of the Corporation as hereinbefore authorized shall be valid and binding upon the Corporation whether or not the corporate seal of the Corporation has been affixed to any such document.

The foregoing is a true and correct copy of a resolution of the Board of Directors of **2790760 ONTARIO INC.** duly adopted on **November 16, 2021** which resolution is in effect and has not been modified or rescinded as of the date hereof.

Dated at Brampton, Ontario, this 16<sup>th</sup> day of November, 2021.

<sup>(s)</sup> 

Name: Abdul Muqet

Title: Director





**EXCERPT OF A RESOLUTION  
OF THE BOARD OF DIRECTORS OF**

**2775296 ONTARIO INC.**

(the "Corporation")

**Guarantee and Indemnity**

In consideration of the loan agreement, guarantee and general security agreement, entered or which may be entered into by or granted in favor of **CANADIAN WESTERN BANK ("CWB")** with its client of **INDEX HOLDING GROUP INC., 2790760 ONTARIO INC., 2775290 ONTARIO INC., and 421 WHARNCLIFFE LTD.** (collectively, the "Client") or the loans and advances of money granted or which may be granted by **CWB** to its Client, as the case may be for the purpose of Client's business, and, generally, in consideration of the business relations between **CWB** and its Client as well as the business relations between the said Client and this Corporation.

Now therefore be it resolved:

That this Corporation be and is hereby authorized to be a surety and to guarantee the repayment of all sums of money which the client owes or in future may owe to **CWB**, together with the interest, costs and accessories, and this, jointly and severally with the Client towards **CWB** and subject to all the terms and conditions set out on the form in use at **CWB** entitled "Guarantee and Indemnity", a copy of which is attached hereto after having been submitted to the Directors and that:

**DIRECTOR, ABDUL MUQEET**

be and is hereby authorized to sign such Guarantee and Indemnity for and on behalf and in the name of the Corporation.

That all acts and things done and all documents executed on behalf of the Corporation as hereinbefore authorized shall be valid and binding upon the Corporation whether or not the corporate seal of the Corporation has been affixed to any such document.

The foregoing is a true and correct copy of a resolution of the Board of Directors of **2775296 ONTARIO INC.** duly adopted on **November 16, 2021** which resolution is in effect and has not been modified or rescinded as of the date hereof.

Dated at Brampton, Ontario, this 16<sup>th</sup> day of November, 2021.

  
(s) \_\_\_\_\_

Name: **ABDUL MUQEET**

Title: Director



**EXCERPT OF A RESOLUTION  
OF THE BOARD OF DIRECTORS OF**

**2775290 ONTARIO INC.**

(the "Corporation")

**Guarantee and Indemnity**

In consideration of the loan agreement, guarantee and general security agreement, entered or which may be entered into by or granted in favor of **CANADIAN WESTERN BANK ("CWB")** with its client of **INDEX HOLDING GROUP INC., 2790760 ONTARIO INC., 2775296 ONTARIO INC. and 421 WHARNCLIFFE LTD.** (collectively, the "Client") or the loans and advances of money granted or which may be granted by **CWB** to its Client, as the case may be for the purpose of Client's business, and, generally, in consideration of the business relations between **CWB** and its Client as well as the business relations between the said Client and this Corporation.

Now therefore be it resolved:

That this Corporation be and is hereby authorized to be a surety and to guarantee the repayment of all sums of money which the client owes or in future may owe to **CWB**, together with the interest, costs and accessories, and this, jointly and severally with the Client towards **CWB** and subject to all the terms and conditions set out on the form in use at **CWB** entitled "Guarantee and Indemnity", a copy of which is attached hereto after having been submitted to the Directors and that:


**DIRECTOR, ABDUL MUQEET**

be and is hereby authorized to sign such Guarantee and Indemnity for and on behalf and in the name of the Corporation.

That all acts and things done and all documents executed on behalf of the Corporation as hereinbefore authorized shall be valid and binding upon the Corporation whether or not the corporate seal of the Corporation has been affixed to any such document.

The foregoing is a true and correct copy of a resolution of the Board of Directors of **2775290 ONTARIO INC.** duly adopted on **November 16, 2021** which resolution is in effect and has not been modified or rescinded as of the date hereof.

Dated at Brampton, Ontario, this 16<sup>th</sup> day of November, 2021.

  
(s) \_\_\_\_\_

Name: **ABDUL MUQEET**

Title: Director



**EXCERPT OF A RESOLUTION  
OF THE BOARD OF DIRECTORS OF**

**421 WHARNCLIFFE LTD.**

(the "Corporation")

**Guarantee and Indemnity**

In consideration of the loan agreement, guarantee and general security agreement, entered or which may be entered into by or granted in favor of **CANADIAN WESTERN BANK ("CWB")** with its client of **INDEX HOLDING GROUP INC., 2790760 ONTARIO INC., 2775290 ONTARIO INC., and 2775296 ONTARIO INC.** (collectively, the "Client") or the loans and advances of money granted or which may be granted by **CWB** to its Client, as the case may be for the purpose of Client's business, and, generally, in consideration of the business relations between **CWB** and its Client as well as the business relations between the said Client and this Corporation.

Now therefore be it resolved:

That this Corporation be and is hereby authorized to be a surety and to guarantee the repayment of all sums of money which the client owes or in future may owe to **CWB**, together with the interest, costs and accessories, and this, jointly and severally with the Client towards **CWB** and subject to all the terms and conditions set out on the form in use at **CWB** entitled "Guarantee and Indemnity", a copy of which is attached hereto after having been submitted to the Directors and that:

**DIRECTOR, ABDUL MUQEET**

be and is hereby authorized to sign such Guarantee and Indemnity for and on behalf and in the name of the Corporation.

That all acts and things done and all documents executed on behalf of the Corporation as hereinbefore authorized shall be valid and binding upon the Corporation whether or not the corporate seal of the Corporation has been affixed to any such document.

The foregoing is a true and correct copy of a resolution of the Board of Directors of **421 WHARNCLIFFE LTD.** duly adopted on **November 16, 2021** which resolution is in effect and has not been modified or rescinded as of the date hereof.

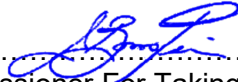
Dated at Brampton, Ontario, this 16<sup>th</sup> day of November, 2021.

*(s) Ranah Muqet*

Name: Abdul Muqet

Title: Director

This is **Exhibit “O”** referred to in the affidavit of Tyson Hartwell, sworn before me by videoconference on April 27, 2023 in accordance with O.Reg. 431/20: Administering Oath or Declaration Remotely. The deponent was located in the City of Calgary in the Province of Alberta and I was located in the City of Toronto in the Province of Ontario.



.....  
A Commissioner For Taking Affidavits

Jeremy Bornstein  
LSO#: 65425C



To: Canadian Western Bank (the “Lender”)

From: **INDEX HOLDING GROUP INC.** (the “Client”) and its successors and assigns

And From: **INDEX GROUP OF COMPANIES INC., INDEX INTERNATIONAL INC., INDEX FOODS INC., 2640179 ONTARIO INC., 11030434 CANADA LTD., 2700774 ONTARIO INC., 2700767 ONTARIO INC., 2683960 ONTARIO LTD., 11030418 CANADA INC., 2723710 ONTARIO INC., 2718366 ONTARIO INC., 2737332 ONTARIO INC., 2737334 ONTARIO INC., 2723714 ONTARIO INC., 2723716 ONTARIO INC., 2737338 ONTARIO INC., 2790760 ONTARIO INC., 2775290 ONTARIO INC., 2775296 ONTARIO INC. and 421 WHARNCLIFFE LTD.** (collectively, the “Corporate Guarantors”, and each, a “Corporate Guarantor”) and the successors and assigns of each

Date: **November 16, 2021**

#### **CROSS COLLATERALIZATION ACKNOWLEDGEMENT AND AGREEMENT**

#### **WHEREAS:**

- A. Pursuant to an equipment loan and security agreement dated as of the date hereof (as such equipment loan and security agreement may be amended, supplemented, restated, replaced or otherwise modified, from time to time, the “**Loan Agreement**”) between the Client and the Lender, the Client is now indebted or liable and may hereafter become further indebted or liable to the Lender.
- B. The Lender requires the Client and the Corporate Guarantors to execute this cross collateralization acknowledgement and agreement as a prerequisite to the effectiveness of the Loan Agreement.

#### **NOW THEREFORE:**

For good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged by the Client and the Corporate Guarantors, the Client and the Corporate Guarantors hereby agree as follows:

1. **Definitions.** In this agreement, words and phrases used but not otherwise defined shall have the meanings given to those terms under the Loan Agreement.
2. **Cross-Default, Cross Guarantee and Cross Collateralize.** The Client and each Corporate Guarantor acknowledges and agrees that, in respect of any and all loans and extensions of credit made from time to time by the Lender to or for the benefit of the Client, and/or by the Lender to or for the benefit of the Corporate Guarantors (or any of them individually) other than in respect of or under the Loan Agreement (collectively, the “**Other Indebtedness**”), notwithstanding

anything to the contrary contained in any documents, instruments or agreements relating to such Other Indebtedness, all such Other Indebtedness will be cross-defaulted, cross-guaranteed and cross-collateralized with the loans and extensions of credit made from time to time by the Lender to the Client under the Loan Agreement and, for such purpose: (i) the Client and each Corporate Guarantor hereby acknowledges and agrees that each guarantee given in connection with such Other Indebtedness shall serve as a continuing guarantee of the indebtedness, liabilities and obligations owing under the Loan Agreement; and (ii) all security given by each of them in favour of the Lender shall secure all indebtedness, liabilities and obligations owing by the Client and the Corporate Guarantors, including, without limitation, under or in connection with the Loan Agreement or such Other Indebtedness.

3. **Governing Law; Enurement.** This agreement shall be interpreted in accordance with the laws of the Province of Ontario. Without prejudice to the right of the parties to commence any proceedings with respect to this agreement in any other proper jurisdiction, the parties hereby attorn and submit to the jurisdiction of the courts of Ontario. This agreement shall be binding upon and shall enure to the benefit of the parties and their respective successors and permitted assigns; “successors” includes any corporation resulting from the amalgamation of any party with any other corporation.
4. **Execution.** This agreement may be executed and delivered by facsimile or in portable document format (“**pdf**”), and any signature contained hereon and delivered by facsimile or in pdf shall be deemed to be equivalent to an original signature for all purposes.

*(The remainder of this page has intentionally been left blank; signature pages follow.)*

**IN WITNESS WHEREOF** this agreement has been executed and delivered by the Client and the Corporate Guarantors as of the date indicated at the top of the first page hereof.

**INDEX HOLDING GROUP INC.**

By: Rana Muqet

Name: Abdul Muqet

Title: Director

**INDEX GROUP OF COMPANIES INC.**

By: Rana Muqet

Name: Abdul Muqet

Title: Director

**INDEX INTERNATIONAL INC.**

By: Rana Muqet

Name: Abdul Muqet

Title: Director

**INDEX FOODS INC.**

By: Rana Muqet

Name: Abdul Muqet

Title: Director

**2640179 ONTARIO INC.**

By: Rana Muqet

Name: Abdul Muqet

Title: Director

**11030434 CANADA LTD.**

By: Rana Muqet

Name: Abdul Muqet

Title: Director

**2700774 ONTARIO INC.**

By: Rana Muqet

Name: Abdul Muqet

Title: Director

**2700767 ONTARIO INC.**

By: Rana Muqet

Name: Abdul Muqet

Title: Director

**2683960 ONTARIO LTD.**

By: Rana Muqet

Name: Abdul Muqet

Title: Director

**11030418 CANADA INC.**

By: Rana Muqet

Name: Abdul Muqet

Title: Director

**2723710 ONTARIO INC.**

By: Rana Muqet

Name: Abdul Muqet

Title: Director

**2718366 ONTARIO INC.**

By: Rana Muqet

Name: Abdul Muqet

Title: Director

**2737332 ONTARIO INC.**

By: Rana Muqet

Name: Abdul Muqet

Title: Director

**2737334 ONTARIO INC.**

By: Rana Muqet

Name: Abdul Muqet

Title: Director

**2723714 ONTARIO INC.**

By: Rana Muqet

Name: Abdul Muqet

Title: Director

**2723716 ONTARIO INC.**

By: Rana Muqet

Name: Abdul Muqet

Title: Director

**2737338 ONTARIO INC.**

By: Rana Muqet

Name: Abdul Muqet

Title: Director

**2790760 ONTARIO INC.**

By: Rana Muqet

Name: Abdul Muqet

Title: Director

**2775290 ONTARIO INC.**

By: Rana Muqet

Name: Abdul Muqet

Title: Director

**2775296 ONTARIO INC.**

By: Rana Muqet

Name: Abdul Muqet

Title: Director

**421 WHARNCLIFFE LTD.**

By: Rana Muqet

Name: Abdul Muqet

Title: Director



This is **Exhibit "P"** referred to in the affidavit of Tyson Hartwell, sworn before me by videoconference on April 27, 2023 in accordance with O.Reg. 431/20: Administering Oath or Declaration Remotely. The deponent was located in the City of Calgary in the Province of Alberta and I was located in the City of Toronto in the Province of Ontario.



.....  
A Commissioner For Taking Affidavits

Jeremy Bornstein  
LSO#: 65425C

**Properties**

*PIN* 08398 - 0360 LT *Interest/Estate* Fee Simple  
*Description* PT LT 1, PL 29, PTS 1 & 2, 33R5153 & PT 2, 33R5487 S/T 837774 IF ANY, S/T 583284 IF ANY ; LONDON/WESTMINSTER  
*Address* LONDON

**Chargor(s)**

The chargor(s) hereby charges the land to the chargee(s). The chargor(s) acknowledges the receipt of the charge and the standard charge terms, if any.

*Name* 421 WHARNCLIFFE LTD.  
*Address for Service* 421 Wharncliffe Road South, London,  
 Ontario  
 N6J 2M6

A person or persons with authority to bind the corporation has/have consented to the registration of this document.  
 This document is not authorized under Power of Attorney by this party.

<b>Chargee(s)</b>	<b>Capacity</b>	<b>Share</b>
-------------------	-----------------	--------------

<i>Name</i>	CANADIAN WESTERN BANK
<i>Address for Service</i>	2000 Argentia Road Plaza #1, Suite 300 Mississauga, Ontario L5N 1P7

**Statements**

Schedule: See Schedules

**Provisions**

<i>Principal</i>	\$1,100,000.00	<i>Currency</i>	CDN
<i>Calculation Period</i>			
<i>Balance Due Date</i>	On Demand		
<i>Interest Rate</i>	See Schedule		
<i>Payments</i>			
<i>Interest Adjustment Date</i>			
<i>Payment Date</i>			
<i>First Payment Date</i>			
<i>Last Payment Date</i>			
<i>Standard Charge Terms</i>			
<i>Insurance Amount</i>	Full insurable value		
<i>Guarantor</i>			

**Signed By**

Matthew Andrew Roland Desrosiers	99 Bank Street, Suite 1420 Ottawa K1P 1H4	acting for Chargor(s)	Signed	2022 03 02
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Tel 613-783-9600  
 Fax 613-783-9690

I have the authority to sign and register the document on behalf of the Chargor(s).

**Submitted By**

DENTONS CANADA LLP	99 Bank Street, Suite 1420 Ottawa K1P 1H4			2022 03 02
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Tel 613-783-9600  
 Fax 613-783-9690

<b>Fees/Taxes/Payment</b>
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Statutory Registration Fee	\$66.30
Total Paid	\$66.30

## DEBENTURE

TO: CANADIAN WESTERN BANK

DATE: December 21, 2021

For good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged by the Debtor, the Debtor hereby delivers this agreement to the Secured Party and agrees as follows:

### Definitions and Interpretation

1. In this agreement, the following words shall, unless otherwise provided, have the meanings set out below:

"**Borrower**" means Index Holding Group Inc., and its successors and permitted assigns.

"**Business Day**" means a day, other than a Saturday, Sunday or statutory holiday in the Province of Ontario.

"**Collateral**" means all present and future property, assets and undertaking of the Debtor pledged, assigned, mortgaged, charged, hypothecated or made subject to a security interest pursuant to this agreement.

"**Contractual Right**" means any agreement, right, franchise, licence, authorization, approval, privilege or permit (a) to which the Debtor is now or hereafter becomes a party, (b) in which the Debtor now or hereafter has any interest or (c) of which the Debtor is or hereafter becomes a beneficiary.

"**Debtor**" means 427 Wharncliffe Ltd., and its successors and permitted assigns.

"**Default**" has the meaning given to such term under the Loan Agreement.

"**Intellectual Property**" means all patents, trade-marks, trade names, business names, trade styles, logos and other business identifiers, copyrights, technology, inventions, industrial designs, know-how, trade secrets and other industrial and intellectual property in which the Debtor now or in the future has any right, title or interest.

"**Lands**" means the Collateral described in section 11(a) hereof.

"**Loan Agreement**" means, collectively, each and every commitment letter, letter loan agreement, equipment loan and security agreement, credit agreement or other financing instrument between the Borrower, as borrower, and the Secured Party, as lender, as same may be amended, supplemented, restated, amended and restated, replaced or otherwise modified from time to time.

"**Loan Documents**" means, collectively, all documents, instruments, agreements, any guarantee given by the Debtor in favour of the Secured Party in respect of the Obligations, and opinions now or hereafter evidencing, securing, guaranteeing and/or relating to the loans made by the



Secured Party and the Obligations or any part thereof, including the Loan Agreement and this Debenture.

**"Obligations"** means all present and future indebtedness, liabilities and obligations, direct and indirect, absolute or contingent, matured or unmatured, joint or several, of the Debtor to the Secured Party, including without limitation any such indebtedness, liabilities and obligations arising under any Loan Documents.

**"Permitted Encumbrances"** means those encumbrances approved by the Secured Party and attached hereto as Schedule "C".

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

**"PPSA"** means the *Personal Property Security Act* (Ontario), as amended from time to time and any legislation substituted therefor and any amendments thereto.

**"Receiver"** means a receiver, receiver-manager and receiver and manager.

**"Secured Party"** means Canadian Western Bank, and its successors and assigns.

**"Security Interest"** means the pledges, assignments, mortgages, charges and hypothecations of and the security interests in the Collateral created in favour of the Secured Party hereunder; and

**"Term"** means sixty (60) months, commencing as of the date hereof.

2. References such as "this agreement", "hereof", "herein", "hereto" and like references refer to this agreement and any schedules, exhibits or appendices attached hereto (all of which schedules, exhibits and appendices form a part of this agreement) and not to any particular section, subsection, paragraph or other subdivision of this agreement.
3. The division of this agreement into sections, subsections and paragraphs and the insertion of headings in this agreement are for convenience of reference only and shall not affect the construction or interpretation of this agreement.
4. Terms used herein which are defined in the PPSA shall have the same meanings herein as are ascribed to such terms in the PPSA, unless such terms are otherwise defined.
5. The word "Debtor", 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. The term "successors" shall include, without limiting its meaning, any corporation resulting from the amalgamation of a corporation with another corporation. Where the context so requires, words used herein (including defined terms) importing the singular shall include the plural and vice versa and words used herein (including defined terms) importing gender shall include all genders (including the neuter).
6. Nothing herein (including the definition and use of the term Permitted Encumbrances) is intended or shall be deemed to subordinate the Security Interest to any Permitted Encumbrance

or any other lien, charge, mortgage, security interest, hypothec or encumbrance affecting all or any portion of the Collateral.

7. If one or more of the provisions contained herein shall be invalid, illegal or unenforceable in any respect, such provision or provisions shall be severed from this agreement only to the extent necessary, and the validity, legality and enforceability of the remaining provisions hereof, including the provision or provisions remaining after such severance, shall not in any way be affected or impaired thereby.
8. Unless otherwise expressly provided in this agreement, if any matter in this agreement is subject to the determination, consent or approval of the Secured Party or is to be acceptable to the Secured Party, such determination, consent, approval or determination of acceptability will be in the sole discretion of the Secured Party, which means the Secured Party shall have sole and unfettered discretion, without any obligation to act reasonably. If any provision in this agreement refers to any action taken or to be taken by the Debtor, or which the Debtor is prohibited from taking, such provision will be interpreted to include any and all means, direct or indirect, of taking, or not taking, such action. When used in the context of a general statement followed by a reference to one or more specific items or matters, the term "including" shall mean "including, without limitation" and the use of the term "includes" shall mean "includes, without limitation".
9. This agreement shall be governed by and construed in accordance with the laws of the Province of Ontario and the federal laws of Canada applicable therein. The Debtor hereby irrevocably and unconditionally attorns and submits to the non-exclusive jurisdiction of the courts of the Province of Ontario, provided that nothing herein shall prevent the Secured Party from proceeding at its election against the Debtor in the courts of any other province, country or jurisdiction.

#### **Promise To Pay**

10. For value received, the Debtor hereby acknowledges itself indebted to and agrees to pay to the Secured Party, on demand, the principal sum of \$3,975,000.00 of lawful money of Canada. The Debtor shall also pay to the Secured Party interest on such principal sum (and interest on overdue interest) at the rate of Prime plus 2.20% per annum calculated daily and payable monthly not in advance, both before and after demand, default, judgment and execution from the date hereof until payment in full of all amounts owing hereunder.

#### **Grant of Security Interest**

11. As continuing security for the payment and performance of all Obligations, the Debtor hereby pledges, assigns, mortgages, charges and hypothecates to the Secured Party and grants to the Secured Party a security interest in the following:
  - (a) by way of a fixed and specific mortgage and charge (but subject to the exceptions as to leaseholds hereinafter contained), all real and immovable property (including, by way of sub-lease, leasehold lands) now or hereafter owned or acquired by the Debtor, all the Debtor's present and future interests and rights with respect thereto, all buildings, erections and improvements now or hereafter owned or acquired by the Debtor

(whether the same form part of the realty or not) and all appurtenances to any of the foregoing including the real property described in Schedule "A" hereto;

- (b) all present and future equipment of the Debtor, including all of its present and future machinery, fixtures, plant, tools, furniture, books, records, documents, vehicles of any nature, kind or description, and all accessions to any of the foregoing, including all spare parts and accessories installed in or affixed or attached to any of the foregoing, and all drawings, specifications, plans and manuals relating to the foregoing;
- (c) all present and future inventory of the Debtor, including all of its present and future raw materials, materials used or consumed in its business, work-in-progress, finished goods, goods used for packing and goods acquired or held for sale or lease or that have been leased or furnished or that are to be furnished under contracts of rental or service, and all accessions to any of the foregoing, including all spare parts and accessories installed in or affixed or attached to any of the foregoing;
- (d) all present and future intangibles of the Debtor, including all of its present and future accounts and other amounts receivable, book debts, goodwill, Intellectual Property and choses in action of every nature and kind;
- (e) all present and future documents of title, chattel paper, instruments, money and securities of the Debtor;
- (f) by way of a floating charge, all present and future real property, personal property, assets, and undertaking of the Debtor of any nature or kind, including all real property, personal property, assets and undertaking at any time owned, leased or licenced by the Debtor or in which the Debtor at any time has any right or interest or to which the Debtor is or may at any time become entitled (other than the property, assets and undertaking of the Debtor validly pledged or assigned or subjected to a valid mortgage, charge, hypothec or security interest by subsection 11(a), 11(b), 11(c), 11(d) or 11(e) hereof and subject to the exceptions hereinafter contained); and
- (g) all proceeds arising from the property, assets and undertaking of the Debtor referred to in this section 11, including insurance proceeds and any other payment representing indemnity or compensation for loss of or damage thereto.

#### **Assignment of Leases and Rents**

12. As additional and separate security for payment and performance of the Obligations, the Debtor hereby assigns, transfers and sets over to the Secured Party, all the Debtor's rights and interests in all existing and future leases, tenancy agreements, offers to lease and other similar agreements with respect to all or part of the Lands, and all rents, incomes, profits and other amounts now or hereafter arising from or out of all or part of the Lands or any building, improvement, fixture or part thereof forming part of the Lands, and the following provisions shall apply with respect thereto:

- (a) The assignment of each of the foregoing and of each of the rents, incomes, profits and other amounts by the Debtor to the Secured Party herein contained in this Section 12 shall be deemed to be a separate assignment so that the Secured Party in its discretion

may exercise its rights in respect of any or all of such leases, offers to lease, tenancy agreements or other similar agreements or the rents, incomes, profits or other amounts paid or payable thereunder.

- (b) Until the the occurrence of a Default, the Debtor may collect, retain and apply all rents, incomes, profits and other amounts and deal with all leases, offers to lease, tenancy agreements and other similar agreements from time to time.
- (c) Nothing herein shall obligate the Secured Party to assume or perform (and nothing herein shall impose on the Secured Party) any liability or obligation of the Debtor to any tenant or other person pursuant to or in respect of any lease, offer to lease, tenancy agreement, other similar agreement or otherwise, and the Debtor hereby indemnifies and saves harmless the Secured Party from any and all claims with respect thereto (except to the extent arising from the gross negligence or wilful misconduct of the Secured Party), provided that the Secured Party may, at its sole option, assume or perform any such obligations as it considers necessary or desirable
- (d) The Secured Party may, at any time without further request or agreement by the Debtor, reassign to the Debtor or its successors or assigns, any or all of the collateral referred to in this Section 12.

#### **Limited Exceptions to Grant of Security Interest**

- 13. Despite any other provision of this agreement, the last day of any term reserved by any lease of real property, oral or written, or any agreement therefor, now held or hereafter acquired by the Debtor, and whether falling within the general or particular description of the Collateral, is hereby and shall be excepted out of the Security Interest, but the Debtor shall stand possessed of the reversion of one day remaining in the Debtor in respect of any such term, for the time being demised, as aforesaid, upon trust to assign and dispose of the same as any purchaser of such term shall direct.
- 14. Despite any other provision of this agreement, the Security Interest shall not attach to any Contractual Right to the extent that the granting of the Security Interest therein would constitute a breach of, or permit any Person to terminate such Contractual Right, but the Debtor shall hold its interest in each such Contractual Right in trust for the Secured Party and shall, after the Security Interest shall have become enforceable, specifically assign each such Contractual Right to the Secured Party, or as the Secured Party may otherwise direct. The Debtor agrees that it shall, upon the request of the Secured Party, whether before or after the Security Interest has become enforceable, use all commercially reasonable efforts to obtain any consent required to permit any such Contractual Right to be subjected to the Security Interest, and the Security Interest shall attach to such Contractual Right following the receipt of such consent.

#### **Attachment**

- 15. The Debtor confirms and agrees that value has been given by the Secured Party to the Debtor, that the Debtor has rights in all existing Collateral and that the Debtor and the Secured Party have not postponed the time for attachment of the Security Interest, such that the Security Interest shall attach to existing Collateral upon the execution of this agreement and shall attach

*Am*



to Collateral in which the Debtor hereafter acquires rights at the time that the Debtor acquires rights in such Collateral.

### **Representations and Warranties by the Debtor**

16. The Debtor hereby represents and warrants to the Secured Party that:
- (a) the Debtor has the capacity and authority to incur the Obligations, to create the Security Interest and to execute and deliver and perform its obligations under this agreement;
  - (b) the execution and delivery of this agreement and the performance by the Debtor of its obligations hereunder have been duly authorized by all necessary proceedings;
  - (c) this agreement constitutes a legal, valid and binding obligation of the Debtor, enforceable against the Debtor in accordance with its terms subject only to bankruptcy, insolvency, reorganization, moratorium and other similar laws of general application affecting creditors' rights and the discretion exercisable by courts of competent jurisdiction in respect of the availability of equitable remedies;
  - (d) the Debtor is the sole registered, legal and beneficial owner of an estate in fee simple in the Lands with good and marketable title thereto, and the Debtor is the legal and beneficial owner of the remainder of the Collateral, in each case, free of any mortgages, charges, liens, pledges, security interests or other encumbrances or claims whatsoever except Permitted Encumbrances;
  - (e) the sole place of business and chief executive office of the Debtor is located at the address listed in Part I of Schedule "B" of this agreement; and
  - (f) the Debtor does not keep tangible Collateral at any location(s) except:
    - (i) the location listed in Part I of Schedule "B" hereto, and
    - (ii) any location(s) listed in Part II of Schedule "B" hereto,
 other than tangible Collateral in transit to or from such locations.

### **Covenants of the Debtor**

17. The Debtor agrees with the Secured Party that, until the Obligations have been satisfied and paid in full:
- (a) it will:
    - (i) make and maintain all filings, registrations and recordations necessary or desirable to protect its right, title and interest in the Collateral;
    - (ii) defend the Collateral against any actions, claims and demands of any Person (other than the Secured Party) claiming the Collateral (or any of it) or an interest therein;

- (iii) pay all taxes, rates, levies, assessments and other impositions and charges, of every nature and kind, which may now or hereafter be lawfully levied, assessed or imposed on or in respect of the Debtor or the Collateral (or any of it), including those which could result in the creation of a statutory lien or deemed trust affecting the Debtor or the Collateral, as and when the same become due and payable;
- (iv) notify the Secured Party of any loss or damage to the Collateral, any change in any information provided in this agreement (including the schedules hereto) or any actual or potential claim affecting the Debtor, the Collateral or the Security Interest;
- (v) hold the proceeds received from any direct or indirect dealing with the Collateral in trust for the Secured Party after either the Security Interest becomes enforceable or any of the Collateral is sold other than in the ordinary course of business of the Debtor and for the purpose of carrying on such business;
- (vi) strictly comply with every covenant and undertaking heretofore or hereafter given by it to the Secured Party, whether contained herein or not;
- (vii) permit the Secured Party at any time after the Security Interest shall have become enforceable, to require any account debtor of the Debtor to make payment to the Secured Party of any or all amounts owing by the account debtor to the Debtor and the Secured Party may take control of any proceeds referred to in subsection 11(g) hereof and may hold all amounts received from any account debtor and any proceeds as cash collateral as part of the Collateral and as security for the Obligations;
- (viii) prevent any Collateral constituting personal property from becoming an accession to any personal property not subject to the Security Interest, or becoming affixed to any real property other than the Lands;
- (ix) deliver to the Secured Party, at the Secured Party's request, duly endorsed and/or accompanied by such assignments, transfers, powers of attorney or other documents as the Secured Party may request, all items of the Collateral comprising chattel paper, instruments, securities and documents of title;
- (x) pay, on demand by the Secured Party, all costs and expenses (including all legal fees) incurred by the Secured Party in the preparation, perfection, administration and enforcement of this agreement (including expenses incurred in considering, protecting or improving the Secured Party's position, or attempting to do so, whether before or after default) and all such costs and expenses shall bear interest at the highest rate applicable to the Obligations, shall form part of the Obligations and shall be secured by the Security Interest;
- (xi) at all times, both before and after the occurrence of a default, do or cause to be done such further and additional acts and things and execute and deliver or cause to be executed and delivered all such further and additional documents



and agreements as the Secured Party may reasonably require to better pledge, assign, mortgage, charge and hypothecate the Collateral in favour of the Secured Party, to perfect the Security Interest and, without limiting the generality of the foregoing, to accomplish the intentions of this agreement.

- (b) it will not, without the prior written consent of the Secured Party:
  - (i) change its name;
  - (ii) merge or amalgamate with any other corporation;
  - (iii) change the location of its sole place of business and chief executive office from that set out in Part I of Schedule "B" hereto without providing the Secured Party with thirty (30) Business Days' prior written notice thereof; and
  - (iv) keep tangible Collateral at any location other than the location(s) listed in Parts I and II of Schedule "B" hereto without providing the Secured Party with thirty (30) Business Days' prior written notice thereof.

**Covenants of the Debtor regarding the Lands**

18. The Debtor agrees with the Secured Party that:

- (a) in accordance with subsection 7(3) of the *Land Registration Reform Act* (Ontario), the covenants deemed to be included in a charge by subsection 7(1) of such Act are expressly excluded from this agreement;
- (b) subject to section 41 hereof, the Debtor releases to the Secured Party all the Debtor's right, title and interest in and to the Collateral and every part thereof and the Debtor shall not at any time hereafter make any claim to the Collateral, challenge the Secured Party's rights thereto or make any demands upon the Secured Party with respect to the Collateral and that the Secured Party shall be exonerated and discharged of and from all claims and demands which the Debtor might or could have against the Secured Party with respect to the Collateral;
- (c) it will at all times fully perform and comply with all obligations imposed on, assumed by or agreed to by it pursuant to any prior encumbrance of the Lands or any part thereof or its interest therein and, if the Debtor shall fail so to do, the following shall apply:
  - (i) the Secured Party may (but shall not be obliged to) take any action the Secured Party deems necessary or desirable acting reasonably to cure any default by the Debtor in the performance of or compliance with any of the Debtor's obligations imposed on, assumed by or agreed to by the Debtor pursuant to any such prior encumbrance;
  - (ii) upon receipt by the Secured Party from any such prior encumbrancer of any written notice of default by the Debtor, the Secured Party may rely thereon and take any action as aforesaid to cure such default even though the existence of

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such default or the nature thereof may be questioned or denied by the Debtor or by any Person on behalf of the Debtor;

- (iii) the Debtor hereby expressly grants to the Secured Party, and agrees that the Secured Party shall have the absolute and immediate right to enter in and upon the Lands or any part thereof to such extent and as often as the Secured Party, in its sole discretion, acting reasonably, deems necessary or desirable, in order to cure any such default by the Debtor;
- (iv) the Secured Party may pay and expend such sums of money as the Secured Party in its sole discretion, acting reasonably, deems necessary for any such purpose, and the Debtor hereby agrees to pay to the Secured Party, immediately upon notification by the Secured Party and without demand, all such sums so paid and expended by the Secured Party, together with interest thereon at the rate aforesaid from the date of each such payment; and
- (v) all sums so paid and expended by the Secured Party and such interest thereon, shall be added to and form part of the Obligations and be secured by the Security Interest in priority to all other mortgages, charges and other encumbrances.

#### **Default**

19. Without prejudice to any right which the Secured Party may now or hereafter have to demand payment of any of the Obligations, the Obligations shall, at the option of the Secured Party, become payable and the Security Interest shall become enforceable if a Default occurs.

#### **Remedies of the Secured Party**

20. Whenever the Security Interest shall have become enforceable, and so long as it shall remain enforceable, the Secured Party may proceed to realize the Security Interest and the Collateral and to enforce its rights by doing any one or more of the following:
- (a) entering upon the Lands and any other lands and premises where any Collateral is or may be located;
  - (b) taking possession of Collateral by any method permitted by law;
  - (c) occupying the Lands and any other lands and premises occupied by the Debtor and using all or any part of the Lands and such other lands and premises and the equipment and other Collateral located thereon;
  - (d) leasing, selling, licensing or otherwise disposing of the whole or any part or parts of the Lands and other Collateral;
  - (e) collecting, selling or otherwise dealing with any accounts or other amounts receivable of the Debtor, including notifying any Person obligated to the Debtor in respect of an account, chattel paper or instrument to make payment to the Secured Party of all present and future amounts due thereon;

- (f) taking steps and expending such monies as it considers necessary or desirable in its sole discretion to maintain, preserve and protect the Collateral, including making payments on account of other security interests affecting the Collateral; provided that the Secured Party shall have no obligation to take any such actions or make any such expenditures; but any such amounts paid by the Secured Party shall be added to the Obligations and shall be secured by the Security Interest;
  - (g) collecting any rents, income, and profits received in connection with the business of the Debtor or the Collateral, without carrying on such business;
  - (h) carrying on the business of the Debtor or any portion thereof;
  - (i) exercising any and all of the rights and remedies granted pursuant to the PPSA and any other applicable legislation, or otherwise available at law or in equity;
  - (j) demanding, commencing, continuing or defending any judicial or administrative proceedings for the purpose of protecting, seizing, collecting, realizing or obtaining possession or payment of the Collateral, and giving valid and effectual receipts and discharges therefor and to compromise or give time for the payment or performance of all or any part of the accounts or other amounts receivable of the Debtor or any other obligation of any third party to the Debtor;
  - (k) borrowing money for the maintenance, preservation or protection of the Collateral or for the carrying on of the business of the Debtor, and charge and grant further security interests in the Collateral in priority to the Security Interest or otherwise, as security for the money so borrowed;
  - (l) accepting the Collateral in satisfaction of the Obligations (and in connection therewith, foreclosing on the Lands);
  - (m) appointing by instrument in writing a Receiver or Receivers of the Collateral or any part thereof;
  - (n) bringing proceedings in any court of competent jurisdiction for the appointment of a Receiver or Receivers or for the sale of the Collateral or any part thereof; and
  - (o) filing such proofs of claim and other documents as may be necessary or advisable in order to have its claim lodged in any bankruptcy, winding-up or other judicial proceedings relating to the Debtor or the Collateral.
21. Any Receiver appointed by the Secured Party may be any Person or Persons (including one or more officers or employees of the Secured Party), and the Secured Party may remove any Receiver so appointed and appoint another or others instead. Any such Receiver may exercise any and all of the rights, remedies and powers of the Secured Party provided in this agreement. The Secured Party shall not be responsible for the actions, errors or omissions of any Receiver it appoints and any such Receiver shall be deemed to act as agent for the Debtor for all purposes, including the occupation of the Lands and any other premises of the Debtor and in carrying on the Debtor's business, unless the Secured Party expressly specifies in writing that the Receiver shall be agent for the Secured Party for one or more purposes. Without limiting the generality

of the forgoing, for the purposes of realizing upon the Security Interest, any Receiver may sell, lease, or otherwise dispose of Collateral as agent for the Debtor or as agent for the Secured Party as the Secured Party may specify in writing in its sole discretion. The Debtor agrees to ratify and confirm all actions of any Receiver appointed by the Secured Party acting as agent for the Debtor, and to release and indemnify the Receiver in respect of all such actions.

22. Without limiting the ability of the Secured Party or any Receiver to dispose of Collateral in any other manner, the Debtor agrees that any sale, lease or other disposition of the Collateral hereunder may be completed by public auction, public tender or private contract, with or without notice, with or without advertising and with or without any other formality (except as required by law), all of which are hereby waived by the Debtor. Any such disposition of Collateral may involve all or part of the Collateral and may be on such terms and conditions as to credit or otherwise and as to upset or reserve bid or price as the Secured Party or any Receiver appointed by the Secured Party may, in its sole discretion, deem advantageous and may take place whether or not the Secured Party or any such Receiver has taken possession of such Collateral.
23. The Secured Party shall not be liable for any delay or failure to enforce any rights, powers or remedies available to it or to institute any proceedings for such purposes.
24. No right, power or remedy of the Secured Party (whether granted herein or otherwise) shall be exclusive of or dependent on or merge in any other right, power or remedy, but all such rights, powers and remedies may from time to time be exercised independently or in combination.
25. The Debtor agrees to pay to the Secured Party, forthwith on demand by the Secured Party, all costs and expenses incurred by the Secured Party in connection with the exercise by the Secured Party of its rights, powers and remedies hereunder, including:
  - (a) any costs and expenses incurred by the Secured Party in taking, holding, moving, storing, recovering, possessing, repairing, processing, preparing for disposition or disposing of Collateral;
  - (b) any legal fees and expenses incurred by the Secured Party in enforcing its rights, powers and remedies, including those incurred in connection with any proceedings taken for the purpose of enforcing its rights, powers and remedies hereunder or otherwise relating to the non-payment or non-performance of any Obligations;
  - (c) the cost of borrowing amounts as hereinbefore provided (for the purpose of carrying on the Debtor's business or otherwise), including, the principal amount or any such amount borrowed, all interest thereon and fees relating thereto; and
  - (d) all costs and expenses of or incurred by any Receiver, agent or consultant appointed by the Secured Party (including any legal fees and expenses incurred by any such Receiver, agent or consultant).

All such sums shall bear interest at the highest rate applicable to the Obligations, shall form part of the Obligations and shall be secured by the Security Interest.

26. Any and all payments made in respect of the Obligations from time to time and moneys realized from any Collateral (including moneys realized on any enforcement of this agreement) may be applied to such part or parts of the Obligations as the Secured Party may see fit, and the Secured Party shall at all times and from time to time have the right to change any appropriation as the Secured Party may see fit.
27. The Debtor shall remain liable for all Obligations that are outstanding following realization of all or any part of the Collateral.

### **Rights of the Secured Party**

28. The Secured Party may pay the whole or any part of any liens, taxes, rates, charges or encumbrances now or hereafter existing in respect of any Collateral and such payments together with all costs, charges and expenses which may be incurred in connection with making such payments shall form part of the Obligations, shall bear interest at the highest rate applicable to the Obligations, and shall be secured by the Security Interest. Whenever the Secured Party pays any such lien, tax, rate, charge or encumbrance, it shall be entitled to all the equities and securities of the Person or Persons so paid and is hereby authorized to obtain any discharge thereof and hold such discharge without registration for so long as it may deem advisable to do so.
29. If the Debtor fails to perform or comply with any covenant or other obligation of the Debtor under this agreement, the Secured Party may, but need not, perform or otherwise cause the performance or compliance of such covenant or other obligation, provided that any performance or compliance undertaken by the Secured Party will not constitute a waiver, remedy or satisfaction of such failure. The costs and expenses of the Secured Party incurred in connection with any such performance or compliance shall be payable by the Debtor to the Secured Party on demand, form part of the Obligations, bear interest at the highest rate applicable to the Obligations and be secured by the Security Interest.
30. The Secured Party, without exonerating in whole or in part the Debtor, may grant time, renewals, extensions, indulgences, releases and discharges to, may take securities from and give the same and any or all existing securities up to, may abstain from taking securities from or from perfecting securities of, may accept compositions from, and may otherwise deal with the Debtor and all other Persons and securities as the Secured Party may see fit.
31. Nothing herein shall obligate the Secured Party to extend or amend any credit to the Debtor or to any other Person.
32. The Secured Party may assign, transfer and deliver to any transferee any of the Obligations or any security or any documents or instruments held by the Secured Party in respect thereof. The Debtor shall not assign any of its rights or obligations hereunder without the prior written consent of the Secured Party.

### **Amalgamation of Debtor**

33. If the Debtor amalgamates with any other corporation or corporations, this agreement shall continue in full force and effect and shall be binding on the amalgamated corporation and, for greater certainty:



- (a) the Security Interest shall:
- (i) continue to secure payment of all obligations of the Debtor to the Secured Party;
  - (ii) secure payment of all obligations of each other amalgamating corporation to the Secured Party; and
  - (iii) secure payment of all obligations of the amalgamated corporation to the Secured Party arising on or after the amalgamation;

and the term "Obligations" shall include all such obligations of the Debtor, the other amalgamating corporations and the amalgamated corporation;

- (b) the Security Interest shall:
- (i) continue to charge all property and assets of the Debtor;
  - (ii) charge all property and assets of each other amalgamating corporation; and
  - (iii) charge all property and assets of the amalgamated corporation in existence at the time of the amalgamation and all property and assets acquired by the amalgamated corporation after the amalgamation;

and the term "Collateral" shall include all such property and assets of the Debtor, the other amalgamating corporations and the amalgamated corporation;

- (c) all defined terms and other provisions of this agreement shall be deemed to have been amended to reflect such amalgamation, to the extent required by the context; and
- (d) the parties agree to execute and deliver all such further documents and assurances as may be necessary or desirable in connection with the foregoing.

#### Notices

34. Any notice, demand or other communication permitted or required to be given hereunder shall be given in accordance with the Loan Agreement.

#### Continuing Security for Revolving and Other Obligations

35. This agreement shall be held by the Secured Party as continuing security to secure payment of all Obligations at any time and from time to time outstanding up to, at any time, a maximum total amount equivalent to the full principal amount specified in section 10, unpaid interest then accrued thereon pursuant to section 10, and all other amounts then owing or payable by the Debtor pursuant to this agreement. Accordingly, any payment from time to time of any of the Obligations shall not reduce such maximum total amount or the principal amount specified in section 10, and this agreement shall continue, after such payment, to secure payment of all Obligations at any time outstanding (including all Obligations relating to any future loan or other extension of credit made by the Secured Party to the Debtor) up to such maximum total

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amount. For greater certainty, until discharged pursuant to section 41, this agreement shall continue as general and continuing security for payment of all future Obligations whenever the then outstanding Obligations are at any time or from time to time fully satisfied and paid.

### **Claims under this Agreement**

36. The Secured Party shall not, at any time, claim payment from the Debtor under this agreement (whether for principal, interest or both) in an amount greater than the amount of the indebtedness forming part of the Obligations at such time.

### **Satisfaction of Interest Payment Obligations**

37. Despite any other provision of this agreement, payment by the Debtor to the Secured Party of interest on all indebtedness comprising or forming part of the Obligations at the then current rate at which such indebtedness bears interest for any period of time shall constitute satisfaction of interest payable pursuant to this agreement for the equivalent period of time.

### **Miscellaneous**

38. This agreement shall not result in the merger or any indebtedness or liability of the Debtor or any other Person or Persons to the Secured Party hereunder or under any negotiable instrument or other document by which the same may now or at any time hereafter be represented or evidenced. No judgment recovered by the Secured Party shall result in the merger of any such indebtedness or liability or in any way affect the Security Interest or the Secured Party's right to interest provided for herein.
39. In the event that any day, on or before which any action is required to be taken hereunder, is not a Business Day, then such action shall be required to be taken on or before the first Business Day thereafter.
40. Time shall be of the essence of this agreement.
41. Upon payment and fulfillment by the Debtor, its successors or permitted assigns, of all Obligations and provided that the Secured Party is then under no obligation (conditional or otherwise) to make any further loan or extend any other type of credit to the Debtor or to any other Person, the payment of which is secured, directly or indirectly, by this agreement, the Secured Party shall, upon request in writing by the Debtor, delivered to the Secured Party at the Secured Party's address as set out in section 34 hereof and at the Debtor's expense, discharge this agreement.
42. This agreement is in addition to and not in substitution for any other security now or hereafter held by the Secured Party and the terms and conditions of the Loan Documents will remain binding and effective and shall not merge in this Debenture or upon the registration thereof.
43. The Secured Party may in writing (and not otherwise) waive any default by the Debtor in the observance or performance of any provision of this agreement; provided that no waiver by the Secured Party shall extend to or be taken in any manner whatsoever to affect any subsequent default, whether of the same or a different nature, or the rights resulting therefrom.




44. This agreement shall enure to the benefit of the Secured Party, its successors and assigns, and shall be binding on the Debtor, its successors and permitted assigns.
45. The Debtor agrees that the Secured Party may from time to time provide information concerning this agreement (including a copy hereof), the Collateral and the Obligations to any Person the Secured Party in good faith believes is entitled thereto pursuant to applicable legislation.
46. This agreement may be executed and delivered by facsimile, in portable document format ("**pdf**") or other electronic means, and any such signature shall be deemed to be equivalent to an original signature for all purposes.
47. The Debtor acknowledges receipt of an executed copy of this agreement.
48. To the extent that there is any inconsistency between a provision of this Debenture and a provision of the Loan Agreement, the provision of the Loan Agreement shall govern. Notwithstanding that this Debenture is expressed to be payable on demand, the Secured Party shall not make a demand for payment hereunder unless an Event of Default has occurred and is continuing under the Loan Agreement. For greater certainty, a provision of this Debenture and a provision of the Loan Agreement shall be considered to be inconsistent if both relate to the same subject-matter and one provision imposes more onerous obligations or restrictions than the corresponding provision.

*[Remainder of page intentionally blank; signature page follows.]*



IN WITNESS WHEREOF the Debtor has executed and delivered this agreement as of December 21, 2021.

427 WHARNCLIFFE LTD.

By:   
Name: ABDUL MUJEEB  
Title: DIRECTOR

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

I/We have authority to bind the Debtor

SCHEDULE "A"

Lands

**Firstly**

PIN 08398-0360 (LT)

PART LOT 1 AND PART LOT 29, PTS 1 & 2, 33R5153 & PT 2, 33R5487 S/T 837774 IF ANY, S/T 583284 IF ANY; LONDON /WESTMINSTER

**SCHEDULE "B"**

Part I

Location of the Debtor's Chief Executive Office

**110 Herdwick Street, Brampton, Ontario L6S 0A5**

Part II

Other Location(s) of the Debtor's Tangible Collateral

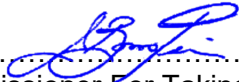
4-1525 Dundas St., E., Whitby, ON  
965 Dundas St. W., Whitby, ON  
1571 Sandhurst Circle, #16D, Toronto, ON  
22 Stevenson Rd. S., Oshawa, ON  
9 Jim Kimmett Blvd., Napanee, On  
2 Douglas Rd., Uxbridge, ON  
72 Baldwin St. N., Whitby, ON  
165 E. Liberty Street, Toronto, ON  
900 Dufferin St., Toronto, ON  
674-676 Sheppard Ave. W., Toronto, ON  
8502 Woodbine Ave., Markham, ON  
1200 Brant St., Burlington, ON  
17725 Yonge St., Newmarket, ON  
195 Henry Street, Brantford, ON  
445 Rexdale Boulevard, Etobicoke, ON

**SCHEDULE "C"**

**Permitted Encumbrances**

**As to Firstly Property:**

This is **Exhibit “Q”** referred to in the affidavit of Tyson Hartwell, sworn before me by videoconference on April 27, 2023 in accordance with O.Reg. 431/20: Administering Oath or Declaration Remotely. The deponent was located in the City of Calgary in the Province of Alberta and I was located in the City of Toronto in the Province of Ontario.



.....  
A Commissioner For Taking Affidavits

Jeremy Bornstein  
LSO#: 65425C

## DEBENTURE

TO: CANADIAN WESTERN BANK

DATE: December 21, 2021

For good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged by the Debtor, the Debtor hereby delivers this agreement to the Secured Party and agrees as follows:

### Definitions and Interpretation

1. In this agreement, the following words shall, unless otherwise provided, have the meanings set out below:

"**Borrower**" means Index Holding Group Inc., and its successors and permitted assigns.

"**Business Day**" means a day, other than a Saturday, Sunday or statutory holiday in the Province of Ontario.

"**Collateral**" means all present and future property, assets and undertaking of the Debtor pledged, assigned, mortgaged, charged, hypothecated or made subject to a security interest pursuant to this agreement.

"**Contractual Right**" means any agreement, right, franchise, licence, authorization, approval, privilege or permit (a) to which the Debtor is now or hereafter becomes a party, (b) in which the Debtor now or hereafter has any interest or (c) of which the Debtor is or hereafter becomes a beneficiary.

"**Debtor**" means 427 Wharncliffe Ltd., and its successors and permitted assigns.

"**Default**" has the meaning given to such term under the Loan Agreement.

"**Intellectual Property**" means all patents, trade-marks, trade names, business names, trade styles, logos and other business identifiers, copyrights, technology, inventions, industrial designs, know-how, trade secrets and other industrial and intellectual property in which the Debtor now or in the future has any right, title or interest.

"**Lands**" means the Collateral described in section 11(a) hereof.

"**Loan Agreement**" means, collectively, each and every commitment letter, letter loan agreement, equipment loan and security agreement, credit agreement or other financing instrument between the Borrower, as borrower, and the Secured Party, as lender, as same may be amended, supplemented, restated, amended and restated, replaced or otherwise modified from time to time.

"**Loan Documents**" means, collectively, all documents, instruments, agreements, any guarantee given by the Debtor in favour of the Secured Party in respect of the Obligations, and opinions now or hereafter evidencing, securing, guaranteeing and/or relating to the loans made by the





Secured Party and the Obligations or any part thereof, including the Loan Agreement and this Debenture.

**"Obligations"** means all present and future indebtedness, liabilities and obligations, direct and indirect, absolute or contingent, matured or unmatured, joint or several, of the Debtor to the Secured Party, including without limitation any such indebtedness, liabilities and obligations arising under any Loan Documents.

**"Permitted Encumbrances"** means those encumbrances approved by the Secured Party and attached hereto as Schedule "C".

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

**"PPSA"** means the *Personal Property Security Act* (Ontario), as amended from time to time and any legislation substituted therefor and any amendments thereto.

**"Receiver"** means a receiver, receiver-manager and receiver and manager.

**"Secured Party"** means Canadian Western Bank, and its successors and assigns.

**"Security Interest"** means the pledges, assignments, mortgages, charges and hypothecations of and the security interests in the Collateral created in favour of the Secured Party hereunder; and

**"Term"** means sixty (60) months, commencing as of the date hereof.

2. References such as "this agreement", "hereof", "herein", "hereto" and like references refer to this agreement and any schedules, exhibits or appendices attached hereto (all of which schedules, exhibits and appendices form a part of this agreement) and not to any particular section, subsection, paragraph or other subdivision of this agreement.
3. The division of this agreement into sections, subsections and paragraphs and the insertion of headings in this agreement are for convenience of reference only and shall not affect the construction or interpretation of this agreement.
4. Terms used herein which are defined in the PPSA shall have the same meanings herein as are ascribed to such terms in the PPSA, unless such terms are otherwise defined.
5. The word "Debtor", 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. The term "successors" shall include, without limiting its meaning, any corporation resulting from the amalgamation of a corporation with another corporation. Where the context so requires, words used herein (including defined terms) importing the singular shall include the plural and vice versa and words used herein (including defined terms) importing gender shall include all genders (including the neuter).
6. Nothing herein (including the definition and use of the term Permitted Encumbrances) is intended or shall be deemed to subordinate the Security Interest to any Permitted Encumbrance

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or any other lien, charge, mortgage, security interest, hypothec or encumbrance affecting all or any portion of the Collateral.

7. If one or more of the provisions contained herein shall be invalid, illegal or unenforceable in any respect, such provision or provisions shall be severed from this agreement only to the extent necessary, and the validity, legality and enforceability of the remaining provisions hereof, including the provision or provisions remaining after such severance, shall not in any way be affected or impaired thereby.
8. Unless otherwise expressly provided in this agreement, if any matter in this agreement is subject to the determination, consent or approval of the Secured Party or is to be acceptable to the Secured Party, such determination, consent, approval or determination of acceptability will be in the sole discretion of the Secured Party, which means the Secured Party shall have sole and unfettered discretion, without any obligation to act reasonably. If any provision in this agreement refers to any action taken or to be taken by the Debtor, or which the Debtor is prohibited from taking, such provision will be interpreted to include any and all means, direct or indirect, of taking, or not taking, such action. When used in the context of a general statement followed by a reference to one or more specific items or matters, the term "including" shall mean "including, without limitation" and the use of the term "includes" shall mean "includes, without limitation".
9. This agreement shall be governed by and construed in accordance with the laws of the Province of Ontario and the federal laws of Canada applicable therein. The Debtor hereby irrevocably and unconditionally attorns and submits to the non-exclusive jurisdiction of the courts of the Province of Ontario, provided that nothing herein shall prevent the Secured Party from proceeding at its election against the Debtor in the courts of any other province, country or jurisdiction.

#### **Promise To Pay**

10. For value received, the Debtor hereby acknowledges itself indebted to and agrees to pay to the Secured Party, on demand, the principal sum of \$3,975,000.00 of lawful money of Canada. The Debtor shall also pay to the Secured Party interest on such principal sum (and interest on overdue interest) at the rate of Prime plus 2.20% per annum calculated daily and payable monthly not in advance, both before and after demand, default, judgment and execution from the date hereof until payment in full of all amounts owing hereunder.

#### **Grant of Security Interest**

11. As continuing security for the payment and performance of all Obligations, the Debtor hereby pledges, assigns, mortgages, charges and hypothecates to the Secured Party and grants to the Secured Party a security interest in the following:
  - (a) by way of a fixed and specific mortgage and charge (but subject to the exceptions as to leaseholds hereinafter contained), all real and immovable property (including, by way of sub-lease, leasehold lands) now or hereafter owned or acquired by the Debtor, all the Debtor's present and future interests and rights with respect thereto, all buildings, erections and improvements now or hereafter owned or acquired by the Debtor

(whether the same form part of the realty or not) and all appurtenances to any of the foregoing including the real property described in Schedule "A" hereto;

- (b) all present and future equipment of the Debtor, including all of its present and future machinery, fixtures, plant, tools, furniture, books, records, documents, vehicles of any nature, kind or description, and all accessions to any of the foregoing, including all spare parts and accessories installed in or affixed or attached to any of the foregoing, and all drawings, specifications, plans and manuals relating to the foregoing;
- (c) all present and future inventory of the Debtor, including all of its present and future raw materials, materials used or consumed in its business, work-in-progress, finished goods, goods used for packing and goods acquired or held for sale or lease or that have been leased or furnished or that are to be furnished under contracts of rental or service, and all accessions to any of the foregoing, including all spare parts and accessories installed in or affixed or attached to any of the foregoing;
- (d) all present and future intangibles of the Debtor, including all of its present and future accounts and other amounts receivable, book debts, goodwill, Intellectual Property and choses in action of every nature and kind;
- (e) all present and future documents of title, chattel paper, instruments, money and securities of the Debtor;
- (f) by way of a floating charge, all present and future real property, personal property, assets, and undertaking of the Debtor of any nature or kind, including all real property, personal property, assets and undertaking at any time owned, leased or licenced by the Debtor or in which the Debtor at any time has any right or interest or to which the Debtor is or may at any time become entitled (other than the property, assets and undertaking of the Debtor validly pledged or assigned or subjected to a valid mortgage, charge, hypothec or security interest by subsection 11(a), 11(b), 11(c), 11(d) or 11(e) hereof and subject to the exceptions hereinafter contained); and
- (g) all proceeds arising from the property, assets and undertaking of the Debtor referred to in this section 11, including insurance proceeds and any other payment representing indemnity or compensation for loss of or damage thereto.

#### **Assignment of Leases and Rents**

12. As additional and separate security for payment and performance of the Obligations, the Debtor hereby assigns, transfers and sets over to the Secured Party, all the Debtor's rights and interests in all existing and future leases, tenancy agreements, offers to lease and other similar agreements with respect to all or part of the Lands, and all rents, incomes, profits and other amounts now or hereafter arising from or out of all or part of the Lands or any building, improvement, fixture or part thereof forming part of the Lands, and the following provisions shall apply with respect thereto:

- (a) The assignment of each of the foregoing and of each of the rents, incomes, profits and other amounts by the Debtor to the Secured Party herein contained in this Section 12 shall be deemed to be a separate assignment so that the Secured Party in its discretion

may exercise its rights in respect of any or all of such leases, offers to lease, tenancy agreements or other similar agreements or the rents, incomes, profits or other amounts paid or payable thereunder.

- (b) Until the the occurrence of a Default, the Debtor may collect, retain and apply all rents, incomes, profits and other amounts and deal with all leases, offers to lease, tenancy agreements and other similar agreements from time to time.
- (c) Nothing herein shall obligate the Secured Party to assume or perform (and nothing herein shall impose on the Secured Party) any liability or obligation of the Debtor to any tenant or other person pursuant to or in respect of any lease, offer to lease, tenancy agreement, other similar agreement or otherwise, and the Debtor hereby indemnifies and saves harmless the Secured Party from any and all claims with respect thereto (except to the extent arising from the gross negligence or wilful misconduct of the Secured Party), provided that the Secured Party may, at its sole option, assume or perform any such obligations as it considers necessary or desirable
- (d) The Secured Party may, at any time without further request or agreement by the Debtor, reassign to the Debtor or its successors or assigns, any or all of the collateral referred to in this Section 12.

#### **Limited Exceptions to Grant of Security Interest**

- 13. Despite any other provision of this agreement, the last day of any term reserved by any lease of real property, oral or written, or any agreement therefor, now held or hereafter acquired by the Debtor, and whether falling within the general or particular description of the Collateral, is hereby and shall be excepted out of the Security Interest, but the Debtor shall stand possessed of the reversion of one day remaining in the Debtor in respect of any such term, for the time being demised, as aforesaid, upon trust to assign and dispose of the same as any purchaser of such term shall direct.
- 14. Despite any other provision of this agreement, the Security Interest shall not attach to any Contractual Right to the extent that the granting of the Security Interest therein would constitute a breach of, or permit any Person to terminate such Contractual Right, but the Debtor shall hold its interest in each such Contractual Right in trust for the Secured Party and shall, after the Security Interest shall have become enforceable, specifically assign each such Contractual Right to the Secured Party, or as the Secured Party may otherwise direct. The Debtor agrees that it shall, upon the request of the Secured Party, whether before or after the Security Interest has become enforceable, use all commercially reasonable efforts to obtain any consent required to permit any such Contractual Right to be subjected to the Security Interest, and the Security Interest shall attach to such Contractual Right following the receipt of such consent.

#### **Attachment**

- 15. The Debtor confirms and agrees that value has been given by the Secured Party to the Debtor, that the Debtor has rights in all existing Collateral and that the Debtor and the Secured Party have not postponed the time for attachment of the Security Interest, such that the Security Interest shall attach to existing Collateral upon the execution of this agreement and shall attach



to Collateral in which the Debtor hereafter acquires rights at the time that the Debtor acquires rights in such Collateral.

### **Representations and Warranties by the Debtor**

16. The Debtor hereby represents and warrants to the Secured Party that:
- (a) the Debtor has the capacity and authority to incur the Obligations, to create the Security Interest and to execute and deliver and perform its obligations under this agreement;
  - (b) the execution and delivery of this agreement and the performance by the Debtor of its obligations hereunder have been duly authorized by all necessary proceedings;
  - (c) this agreement constitutes a legal, valid and binding obligation of the Debtor, enforceable against the Debtor in accordance with its terms subject only to bankruptcy, insolvency, reorganization, moratorium and other similar laws of general application affecting creditors' rights and the discretion exercisable by courts of competent jurisdiction in respect of the availability of equitable remedies;
  - (d) the Debtor is the sole registered, legal and beneficial owner of an estate in fee simple in the Lands with good and marketable title thereto, and the Debtor is the legal and beneficial owner of the remainder of the Collateral, in each case, free of any mortgages, charges, liens, pledges, security interests or other encumbrances or claims whatsoever except Permitted Encumbrances;
  - (e) the sole place of business and chief executive office of the Debtor is located at the address listed in Part I of Schedule "B" of this agreement; and
  - (f) the Debtor does not keep tangible Collateral at any location(s) except:
    - (i) the location listed in Part I of Schedule "B" hereto, and
    - (ii) any location(s) listed in Part II of Schedule "B" hereto,other than tangible Collateral in transit to or from such locations.

### **Covenants of the Debtor**

17. The Debtor agrees with the Secured Party that, until the Obligations have been satisfied and paid in full:
- (a) it will:
    - (i) make and maintain all filings, registrations and recordations necessary or desirable to protect its right, title and interest in the Collateral;
    - (ii) defend the Collateral against any actions, claims and demands of any Person (other than the Secured Party) claiming the Collateral (or any of it) or an interest therein;

- (iii) pay all taxes, rates, levies, assessments and other impositions and charges, of every nature and kind, which may now or hereafter be lawfully levied, assessed or imposed on or in respect of the Debtor or the Collateral (or any of it), including those which could result in the creation of a statutory lien or deemed trust affecting the Debtor or the Collateral, as and when the same become due and payable;
- (iv) notify the Secured Party of any loss or damage to the Collateral, any change in any information provided in this agreement (including the schedules hereto) or any actual or potential claim affecting the Debtor, the Collateral or the Security Interest;
- (v) hold the proceeds received from any direct or indirect dealing with the Collateral in trust for the Secured Party after either the Security Interest becomes enforceable or any of the Collateral is sold other than in the ordinary course of business of the Debtor and for the purpose of carrying on such business;
- (vi) strictly comply with every covenant and undertaking heretofore or hereafter given by it to the Secured Party, whether contained herein or not;
- (vii) permit the Secured Party at any time after the Security Interest shall have become enforceable, to require any account debtor of the Debtor to make payment to the Secured Party of any or all amounts owing by the account debtor to the Debtor and the Secured Party may take control of any proceeds referred to in subsection 11(g) hereof and may hold all amounts received from any account debtor and any proceeds as cash collateral as part of the Collateral and as security for the Obligations;
- (viii) prevent any Collateral constituting personal property from becoming an accession to any personal property not subject to the Security Interest, or becoming affixed to any real property other than the Lands;
- (ix) deliver to the Secured Party, at the Secured Party's request, duly endorsed and/or accompanied by such assignments, transfers, powers of attorney or other documents as the Secured Party may request, all items of the Collateral comprising chattel paper, instruments, securities and documents of title;
- (x) pay, on demand by the Secured Party, all costs and expenses (including all legal fees) incurred by the Secured Party in the preparation, perfection, administration and enforcement of this agreement (including expenses incurred in considering, protecting or improving the Secured Party's position, or attempting to do so, whether before or after default) and all such costs and expenses shall bear interest at the highest rate applicable to the Obligations, shall form part of the Obligations and shall be secured by the Security Interest;
- (xi) at all times, both before and after the occurrence of a default, do or cause to be done such further and additional acts and things and execute and deliver or cause to be executed and delivered all such further and additional documents



and agreements as the Secured Party may reasonably require to better pledge, assign, mortgage, charge and hypothecate the Collateral in favour of the Secured Party, to perfect the Security Interest and, without limiting the generality of the foregoing, to accomplish the intentions of this agreement.

- (b) it will not, without the prior written consent of the Secured Party:
  - (i) change its name;
  - (ii) merge or amalgamate with any other corporation;
  - (iii) change the location of its sole place of business and chief executive office from that set out in Part I of Schedule "B" hereto without providing the Secured Party with thirty (30) Business Days' prior written notice thereof; and
  - (iv) keep tangible Collateral at any location other than the location(s) listed in Parts I and II of Schedule "B" hereto without providing the Secured Party with thirty (30) Business Days' prior written notice thereof.

#### **Covenants of the Debtor regarding the Lands**

18. The Debtor agrees with the Secured Party that:

- (a) in accordance with subsection 7(3) of the *Land Registration Reform Act* (Ontario), the covenants deemed to be included in a charge by subsection 7(1) of such Act are expressly excluded from this agreement;
- (b) subject to section 41 hereof, the Debtor releases to the Secured Party all the Debtor's right, title and interest in and to the Collateral and every part thereof and the Debtor shall not at any time hereafter make any claim to the Collateral, challenge the Secured Party's rights thereto or make any demands upon the Secured Party with respect to the Collateral and that the Secured Party shall be exonerated and discharged of and from all claims and demands which the Debtor might or could have against the Secured Party with respect to the Collateral;
- (c) it will at all times fully perform and comply with all obligations imposed on, assumed by or agreed to by it pursuant to any prior encumbrance of the Lands or any part thereof or its interest therein and, if the Debtor shall fail so to do, the following shall apply:
  - (i) the Secured Party may (but shall not be obliged to) take any action the Secured Party deems necessary or desirable acting reasonably to cure any default by the Debtor in the performance of or compliance with any of the Debtor's obligations imposed on, assumed by or agreed to by the Debtor pursuant to any such prior encumbrance;
  - (ii) upon receipt by the Secured Party from any such prior encumbrancer of any written notice of default by the Debtor, the Secured Party may rely thereon and take any action as aforesaid to cure such default even though the existence of

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such default or the nature thereof may be questioned or denied by the Debtor or by any Person on behalf of the Debtor;

- (iii) the Debtor hereby expressly grants to the Secured Party, and agrees that the Secured Party shall have the absolute and immediate right to enter in and upon the Lands or any part thereof to such extent and as often as the Secured Party, in its sole discretion, acting reasonably, deems necessary or desirable, in order to cure any such default by the Debtor;
- (iv) the Secured Party may pay and expend such sums of money as the Secured Party in its sole discretion, acting reasonably, deems necessary for any such purpose, and the Debtor hereby agrees to pay to the Secured Party, immediately upon notification by the Secured Party and without demand, all such sums so paid and expended by the Secured Party, together with interest thereon at the rate aforesaid from the date of each such payment; and
- (v) all sums so paid and expended by the Secured Party and such interest thereon, shall be added to and form part of the Obligations and be secured by the Security Interest in priority to all other mortgages, charges and other encumbrances.

#### **Default**

19. Without prejudice to any right which the Secured Party may now or hereafter have to demand payment of any of the Obligations, the Obligations shall, at the option of the Secured Party, become payable and the Security Interest shall become enforceable if a Default occurs.

#### **Remedies of the Secured Party**

20. Whenever the Security Interest shall have become enforceable, and so long as it shall remain enforceable, the Secured Party may proceed to realize the Security Interest and the Collateral and to enforce its rights by doing any one or more of the following:
- (a) entering upon the Lands and any other lands and premises where any Collateral is or may be located;
  - (b) taking possession of Collateral by any method permitted by law;
  - (c) occupying the Lands and any other lands and premises occupied by the Debtor and using all or any part of the Lands and such other lands and premises and the equipment and other Collateral located thereon;
  - (d) leasing, selling, licensing or otherwise disposing of the whole or any part or parts of the Lands and other Collateral;
  - (e) collecting, selling or otherwise dealing with any accounts or other amounts receivable of the Debtor, including notifying any Person obligated to the Debtor in respect of an account, chattel paper or instrument to make payment to the Secured Party of all present and future amounts due thereon;



- (f) taking steps and expending such monies as it considers necessary or desirable in its sole discretion to maintain, preserve and protect the Collateral, including making payments on account of other security interests affecting the Collateral; provided that the Secured Party shall have no obligation to take any such actions or make any such expenditures; but any such amounts paid by the Secured Party shall be added to the Obligations and shall be secured by the Security Interest;
  - (g) collecting any rents, income, and profits received in connection with the business of the Debtor or the Collateral, without carrying on such business;
  - (h) carrying on the business of the Debtor or any portion thereof;
  - (i) exercising any and all of the rights and remedies granted pursuant to the PPSA and any other applicable legislation, or otherwise available at law or in equity;
  - (j) demanding, commencing, continuing or defending any judicial or administrative proceedings for the purpose of protecting, seizing, collecting, realizing or obtaining possession or payment of the Collateral, and giving valid and effectual receipts and discharges therefor and to compromise or give time for the payment or performance of all or any part of the accounts or other amounts receivable of the Debtor or any other obligation of any third party to the Debtor;
  - (k) borrowing money for the maintenance, preservation or protection of the Collateral or for the carrying on of the business of the Debtor, and charge and grant further security interests in the Collateral in priority to the Security Interest or otherwise, as security for the money so borrowed;
  - (l) accepting the Collateral in satisfaction of the Obligations (and in connection therewith, foreclosing on the Lands);
  - (m) appointing by instrument in writing a Receiver or Receivers of the Collateral or any part thereof;
  - (n) bringing proceedings in any court of competent jurisdiction for the appointment of a Receiver or Receivers or for the sale of the Collateral or any part thereof; and
  - (o) filing such proofs of claim and other documents as may be necessary or advisable in order to have its claim lodged in any bankruptcy, winding-up or other judicial proceedings relating to the Debtor or the Collateral.
21. Any Receiver appointed by the Secured Party may be any Person or Persons (including one or more officers or employees of the Secured Party), and the Secured Party may remove any Receiver so appointed and appoint another or others instead. Any such Receiver may exercise any and all of the rights, remedies and powers of the Secured Party provided in this agreement. The Secured Party shall not be responsible for the actions, errors or omissions of any Receiver it appoints and any such Receiver shall be deemed to act as agent for the Debtor for all purposes, including the occupation of the Lands and any other premises of the Debtor and in carrying on the Debtor's business, unless the Secured Party expressly specifies in writing that the Receiver shall be agent for the Secured Party for one or more purposes. Without limiting the generality

of the forgoing, for the purposes of realizing upon the Security Interest, any Receiver may sell, lease, or otherwise dispose of Collateral as agent for the Debtor or as agent for the Secured Party as the Secured Party may specify in writing in its sole discretion. The Debtor agrees to ratify and confirm all actions of any Receiver appointed by the Secured Party acting as agent for the Debtor, and to release and indemnify the Receiver in respect of all such actions.

22. Without limiting the ability of the Secured Party or any Receiver to dispose of Collateral in any other manner, the Debtor agrees that any sale, lease or other disposition of the Collateral hereunder may be completed by public auction, public tender or private contract, with or without notice, with or without advertising and with or without any other formality (except as required by law), all of which are hereby waived by the Debtor. Any such disposition of Collateral may involve all or part of the Collateral and may be on such terms and conditions as to credit or otherwise and as to upset or reserve bid or price as the Secured Party or any Receiver appointed by the Secured Party may, in its sole discretion, deem advantageous and may take place whether or not the Secured Party or any such Receiver has taken possession of such Collateral.
23. The Secured Party shall not be liable for any delay or failure to enforce any rights, powers or remedies available to it or to institute any proceedings for such purposes.
24. No right, power or remedy of the Secured Party (whether granted herein or otherwise) shall be exclusive of or dependent on or merge in any other right, power or remedy, but all such rights, powers and remedies may from time to time be exercised independently or in combination.
25. The Debtor agrees to pay to the Secured Party, forthwith on demand by the Secured Party, all costs and expenses incurred by the Secured Party in connection with the exercise by the Secured Party of its rights, powers and remedies hereunder, including:
  - (a) any costs and expenses incurred by the Secured Party in taking, holding, moving, storing, recovering, possessing, repairing, processing, preparing for disposition or disposing of Collateral;
  - (b) any legal fees and expenses incurred by the Secured Party in enforcing its rights, powers and remedies, including those incurred in connection with any proceedings taken for the purpose of enforcing its rights, powers and remedies hereunder or otherwise relating to the non-payment or non-performance of any Obligations;
  - (c) the cost of borrowing amounts as hereinbefore provided (for the purpose of carrying on the Debtor's business or otherwise), including, the principal amount or any such amount borrowed, all interest thereon and fees relating thereto; and
  - (d) all costs and expenses of or incurred by any Receiver, agent or consultant appointed by the Secured Party (including any legal fees and expenses incurred by any such Receiver, agent or consultant).

All such sums shall bear interest at the highest rate applicable to the Obligations, shall form part of the Obligations and shall be secured by the Security Interest.

26. Any and all payments made in respect of the Obligations from time to time and moneys realized from any Collateral (including moneys realized on any enforcement of this agreement) may be applied to such part or parts of the Obligations as the Secured Party may see fit, and the Secured Party shall at all times and from time to time have the right to change any appropriation as the Secured Party may see fit.
27. The Debtor shall remain liable for all Obligations that are outstanding following realization of all or any part of the Collateral.

### **Rights of the Secured Party**

28. The Secured Party may pay the whole or any part of any liens, taxes, rates, charges or encumbrances now or hereafter existing in respect of any Collateral and such payments together with all costs, charges and expenses which may be incurred in connection with making such payments shall form part of the Obligations, shall bear interest at the highest rate applicable to the Obligations, and shall be secured by the Security Interest. Whenever the Secured Party pays any such lien, tax, rate, charge or encumbrance, it shall be entitled to all the equities and securities of the Person or Persons so paid and is hereby authorized to obtain any discharge thereof and hold such discharge without registration for so long as it may deem advisable to do so.
29. If the Debtor fails to perform or comply with any covenant or other obligation of the Debtor under this agreement, the Secured Party may, but need not, perform or otherwise cause the performance or compliance of such covenant or other obligation, provided that any performance or compliance undertaken by the Secured Party will not constitute a waiver, remedy or satisfaction of such failure. The costs and expenses of the Secured Party incurred in connection with any such performance or compliance shall be payable by the Debtor to the Secured Party on demand, form part of the Obligations, bear interest at the highest rate applicable to the Obligations and be secured by the Security Interest.
30. The Secured Party, without exonerating in whole or in part the Debtor, may grant time, renewals, extensions, indulgences, releases and discharges to, may take securities from and give the same and any or all existing securities up to, may abstain from taking securities from or from perfecting securities of, may accept compositions from, and may otherwise deal with the Debtor and all other Persons and securities as the Secured Party may see fit.
31. Nothing herein shall obligate the Secured Party to extend or amend any credit to the Debtor or to any other Person.
32. The Secured Party may assign, transfer and deliver to any transferee any of the Obligations or any security or any documents or instruments held by the Secured Party in respect thereof. The Debtor shall not assign any of its rights or obligations hereunder without the prior written consent of the Secured Party.

### **Amalgamation of Debtor**

33. If the Debtor amalgamates with any other corporation or corporations, this agreement shall continue in full force and effect and shall be binding on the amalgamated corporation and, for greater certainty:



- (a) the Security Interest shall:
- (i) continue to secure payment of all obligations of the Debtor to the Secured Party;
  - (ii) secure payment of all obligations of each other amalgamating corporation to the Secured Party; and
  - (iii) secure payment of all obligations of the amalgamated corporation to the Secured Party arising on or after the amalgamation;

and the term "Obligations" shall include all such obligations of the Debtor, the other amalgamating corporations and the amalgamated corporation;

- (b) the Security Interest shall:
- (i) continue to charge all property and assets of the Debtor;
  - (ii) charge all property and assets of each other amalgamating corporation; and
  - (iii) charge all property and assets of the amalgamated corporation in existence at the time of the amalgamation and all property and assets acquired by the amalgamated corporation after the amalgamation;

and the term "Collateral" shall include all such property and assets of the Debtor, the other amalgamating corporations and the amalgamated corporation;

- (c) all defined terms and other provisions of this agreement shall be deemed to have been amended to reflect such amalgamation, to the extent required by the context; and
- (d) the parties agree to execute and deliver all such further documents and assurances as may be necessary or desirable in connection with the foregoing.

#### Notices

34. Any notice, demand or other communication permitted or required to be given hereunder shall be given in accordance with the Loan Agreement.

#### Continuing Security for Revolving and Other Obligations

35. This agreement shall be held by the Secured Party as continuing security to secure payment of all Obligations at any time and from time to time outstanding up to, at any time, a maximum total amount equivalent to the full principal amount specified in section 10, unpaid interest then accrued thereon pursuant to section 10, and all other amounts then owing or payable by the Debtor pursuant to this agreement. Accordingly, any payment from time to time of any of the Obligations shall not reduce such maximum total amount or the principal amount specified in section 10, and this agreement shall continue, after such payment, to secure payment of all Obligations at any time outstanding (including all Obligations relating to any future loan or other extension of credit made by the Secured Party to the Debtor) up to such maximum total

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amount. For greater certainty, until discharged pursuant to section 41, this agreement shall continue as general and continuing security for payment of all future Obligations whenever the then outstanding Obligations are at any time or from time to time fully satisfied and paid.

### **Claims under this Agreement**

36. The Secured Party shall not, at any time, claim payment from the Debtor under this agreement (whether for principal, interest or both) in an amount greater than the amount of the indebtedness forming part of the Obligations at such time.

### **Satisfaction of Interest Payment Obligations**

37. Despite any other provision of this agreement, payment by the Debtor to the Secured Party of interest on all indebtedness comprising or forming part of the Obligations at the then current rate at which such indebtedness bears interest for any period of time shall constitute satisfaction of interest payable pursuant to this agreement for the equivalent period of time.

### **Miscellaneous**

38. This agreement shall not result in the merger or any indebtedness or liability of the Debtor or any other Person or Persons to the Secured Party hereunder or under any negotiable instrument or other document by which the same may now or at any time hereafter be represented or evidenced. No judgment recovered by the Secured Party shall result in the merger of any such indebtedness or liability or in any way affect the Security Interest or the Secured Party's right to interest provided for herein.
39. In the event that any day, on or before which any action is required to be taken hereunder, is not a Business Day, then such action shall be required to be taken on or before the first Business Day thereafter.
40. Time shall be of the essence of this agreement.
41. Upon payment and fulfillment by the Debtor, its successors or permitted assigns, of all Obligations and provided that the Secured Party is then under no obligation (conditional or otherwise) to make any further loan or extend any other type of credit to the Debtor or to any other Person, the payment of which is secured, directly or indirectly, by this agreement, the Secured Party shall, upon request in writing by the Debtor, delivered to the Secured Party at the Secured Party's address as set out in section 34 hereof and at the Debtor's expense, discharge this agreement.
42. This agreement is in addition to and not in substitution for any other security now or hereafter held by the Secured Party and the terms and conditions of the Loan Documents will remain binding and effective and shall not merge in this Debenture or upon the registration thereof.
43. The Secured Party may in writing (and not otherwise) waive any default by the Debtor in the observance or performance of any provision of this agreement; provided that no waiver by the Secured Party shall extend to or be taken in any manner whatsoever to affect any subsequent default, whether of the same or a different nature, or the rights resulting therefrom.




44. This agreement shall enure to the benefit of the Secured Party, its successors and assigns, and shall be binding on the Debtor, its successors and permitted assigns.
45. The Debtor agrees that the Secured Party may from time to time provide information concerning this agreement (including a copy hereof), the Collateral and the Obligations to any Person the Secured Party in good faith believes is entitled thereto pursuant to applicable legislation.
46. This agreement may be executed and delivered by facsimile, in portable document format ("**pdf**") or other electronic means, and any such signature shall be deemed to be equivalent to an original signature for all purposes.
47. The Debtor acknowledges receipt of an executed copy of this agreement.
48. To the extent that there is any inconsistency between a provision of this Debenture and a provision of the Loan Agreement, the provision of the Loan Agreement shall govern. Notwithstanding that this Debenture is expressed to be payable on demand, the Secured Party shall not make a demand for payment hereunder unless an Event of Default has occurred and is continuing under the Loan Agreement. For greater certainty, a provision of this Debenture and a provision of the Loan Agreement shall be considered to be inconsistent if both relate to the same subject-matter and one provision imposes more onerous obligations or restrictions than the corresponding provision.

*[Remainder of page intentionally blank; signature page follows.]*



IN WITNESS WHEREOF the Debtor has executed and delivered this agreement as of December 21, 2021.

427 WHARNCLIFFE LTD.

By:   
Name: ABDUL MUJEEB  
Title: DIRECTOR

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

I/We have authority to bind the Debtor

SCHEDULE "A"

Lands

**Firstly**

PIN 08398-0360 (LT)

PART LOT 1 AND PART LOT 29, PTS 1 & 2, 33R5153 & PT 2, 33R5487 S/T 837774 IF ANY, S/T 583284 IF ANY; LONDON /WESTMINSTER



**SCHEDULE "B"**

Part I

Location of the Debtor's Chief Executive Office

**110 Herdwick Street, Brampton, Ontario L6S 0A5**

Part II

Other Location(s) of the Debtor's Tangible Collateral

4-1525 Dundas St., E., Whitby, ON  
965 Dundas St. W., Whitby, ON  
1571 Sandhurst Circle, #16D, Toronto, ON  
22 Stevenson Rd. S., Oshawa, ON  
9 Jim Kimmett Blvd., Napanee, On  
2 Douglas Rd., Uxbridge, ON  
72 Baldwin St. N., Whitby, ON  
165 E. Liberty Street, Toronto, ON  
900 Dufferin St., Toronto, ON  
674-676 Sheppard Ave. W., Toronto, ON  
8502 Woodbine Ave., Markham, ON  
1200 Brant St., Burlington, ON  
17725 Yonge St., Newmarket, ON  
195 Henry Street, Brantford, ON  
445 Rexdale Boulevard, Etobicoke, ON

**SCHEDULE "C"**

**Permitted Encumbrances**

**As to Firstly Property:**



## **AGREEMENT AMENDING CHARGE**

**THIS AGREEMENT** effective as of the 28<sup>th</sup> day of February, 2023.

**B E T W E E N:**

**421 WHARNCLIFFE LTD.**

(the "**Chargor**")

OF THE FIRST PART

- and -

**CANADIAN WESTERN BANK**

(the "**Chargee**")

OF THE SECOND PART

**WHEREAS** the Chargor is the registered owner of the lands and premises described in Schedule "A" hereto annexed hereto and municipally known by the parties as 421 Wharncliffe Road South, London, Ontario (the "**Property**");

**AND WHEREAS** by a charge/mortgage of land registered as Instrument No. ER1443829 on March 2, 2022 (the "**Charge**"), the Chargor granted, mortgaged and charged to the Chargee, upon the terms therein mentioned all of its right, title and interest in the Property as collateral security for the performance of the obligations of the Chargor in favour of the Chargee, pursuant to a Debenture dated December 21, 2021, as same may be amended from time to time;

**AND WHEREAS** the parties desire to amend the Charge upon the terms and conditions hereinafter set forth, and have agreed as hereinafter set out;

**WITNESSETH THEREFORE** that in consideration of the promises and covenants contained herein and other good and valuable consideration (the receipt and adequacy of which is hereby acknowledged) the parties hereby agree to amend the Charge as follows:

### **1. SIGNATURE PAGE – CLERICAL ERROR**

The words "427 WHARNCLIFFE LTD." on the signature page (page 16) of the Debenture attached as the Schedule to the Charge are hereby deleted and replaced with "421 WHARNCLIFFE LTD.".

**2. ENUREMENT**

The provisions of this document shall enure to and be binding upon the successors and permitted assigns of each party.

**3. CONTINUING EFFECT**

Except as specifically amended herein, the Chargor and the Chargee agree that the terms, conditions and provisions of the Charge shall continue in full force and effect.

**4. CONFLICT**

Provided that whenever the provisions of this Agreement Amending Charge conflict with the provisions of the Charge the provisions of this Agreement shall prevail.


**5. COUNTERPARTS**

This Agreement may be executed in one or more counterparts and by PDF or other form of electronic transmission reproducing an original, each of which will be deemed to be an original and which together will constitute one and the same instrument.

***[Signature Page Follows]***

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

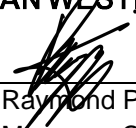
**421 WHARFCLIFFE LTD.**

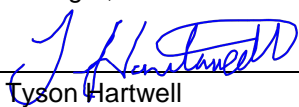
Per:   
Name: Abdul Muqet  
Title: President

Per: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

I/We have authority to bind the corporation.

**CANADIAN WESTERN BANK**

Per:   
Name: Raymond Pai  
Title: Manager, Credit SAMU

Per:   
Name: Tyson Hartwell  
Title: AVP, SAMU

I/We have authority to bind the corporation.

**SCHEDULE "A"**

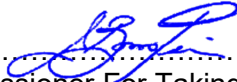
Municipal Address: 421 Wharnccliffe Road South, London, Ontario

Legal Description: PT LT 1, PL 29, PTS 1 & 2, 33R5153 & PT 2, 33R5487 S/T  
837774 IF ANY, S/T 583284 IF ANY ;  
LONDON/WESTMINSTER

PIN: 08398-0360 (LT)

Registry Office: Land Titles Division of Middlesex (No. 33)

This is **Exhibit "R"** referred to in the affidavit of Tyson Hartwell, sworn before me by videoconference on April 27, 2023 in accordance with O.Reg. 431/20: Administering Oath or Declaration Remotely. The deponent was located in the City of Calgary in the Province of Alberta and I was located in the City of Toronto in the Province of Ontario.



.....  
A Commissioner For Taking Affidavits

Jeremy Bornstein  
LSO#: 65425C



**GENERAL ASSIGNMENT OF RENTS AND CERTAIN LEASE RIGHTS**

THIS ASSIGNMENT MADE the 21 day of Dec 2021 BETWEEN:

**421 WHARNCLIFFE LTD.**, a corporation incorporated pursuant to the laws of the Province of Ontario (the "Assignor")

- and -

**CANADIAN WESTERN BANK**, a Canadian chartered bank with a branch office at 2000 Argentia Road, Plaza #1, Suite 300, Mississauga, Ontario, L5N 1P7 (the "Assignee")

WHEREAS the Assignor is registered, or entitled to become registered, as owner of an estate in fee simple in possession in all and singular those lands (hereinafter called the "Lands") situate in the Province of Ontario, more particularly described as:

**PT LT 1, PL 29, PTS 1 & 2, 33R5153 & PT 2, 33R5487 S/T 837774 IF ANY, S/T 583284 IF ANY;  
LONDON/WESTMINSTER**

AND WHEREAS the Assignor has executed and delivered to the Assignee a mortgage bearing even date hereof to secure the sum of **One Million One Hundred Thousand Dollars \$1,100,000**, loaned or to be loaned by the Assignee to the Assignor or others, with interest thereon at the rate provided therein (such mortgage as amended, replaced, extended, supplemented, substituted, altered or modified being hereinafter called the "Mortgage");

AND WHEREAS it was a condition of making the advance of the aforesaid sum, or any portion thereof, that this assignment should be executed and delivered to the Assignee by the Assignor as further and collateral security for the said loan and the Mortgage;

AND WHEREAS the Lands are or may hereafter in whole or in part be leased to tenant(s) or other rights of occupation in whole or in part of the Lands may from time to time be given (all such leases and other agreements providing for such rights of occupation, whether or not in writing, being hereinafter collectively referred to as the "Leases");

AND WHEREAS the Assignor has agreed to assign to the Assignee all rents payable and to become payable by the aforesaid tenant(s) and all the rents reserved and payable and to become payable under the Leases, or any renewal or renewals and replacements thereof, and all benefits and advantages to be derived therefrom to the Assignee as additional and collateral security for the payment of the monies due and to become due under the Mortgage.



NOW THEREFORE THIS ASSIGNMENT WITNESSETH that, in consideration of and pursuant to the foregoing, and in further consideration of the sum of ONE DOLLAR (\$1.00) now paid by the Assignee to the Assignor (the receipt and adequacy whereof is hereby conclusively acknowledged for any and all purposes whatsoever), the Assignor hereby covenants, agrees, warrants and represents to and with the Assignee as follows:

1. The Assignor does hereby assign to the Assignee, and grant to the Assignee a security interest in, all rents payable and to become payable by the aforesaid tenant(s) and all rents reserved and payable and to become payable under the Leases, or any of them, and all other issues, profits, benefits or advantages relating to all or any part of the Lands or any interest therein, or any renewal or renewals and replacements of the Leases, and grants the Assignee the right, at its option, to demand and receive the same at any time and apply amounts so received on principal, interest or other monies lawfully due and payable to the holder of the Mortgage, or upon taxes, insurance or repairs; PROVIDED HOWEVER that such rentals or other considerations shall be paid to the Assignor unless and until demand therefor in writing is made by the Assignee upon the aforesaid tenant(s), or upon such other holder of the aforesaid tenant(s)' estate and interest in the Lands, after which the same shall be paid to the Assignee at a place to be designated in such demand.
2. This assignment shall be effective only until such time as all monies at any time secured by the Mortgage have been fully paid and satisfied.
3. Nothing in this assignment shall be deemed to have the effect of making the Assignee responsible for the collection of the said rents or any part thereof, or for performance of any covenant, term or condition, either by lessor or lessee, contained in any of the Leases, and the Assignee shall not by virtue of this assignment be deemed to be a mortgagee in possession of the Lands.
4. This assignment is executed as collateral and additional security for the payment of monies secured by the Mortgage and none of the rights or remedies of the Assignee under or in respect of the Mortgage shall be merged in or in any way waived, affected, delayed or prejudiced hereby.
5. The rights assigned hereunder include all the Assignor's right and power to modify the Leases, or any of them, or to terminate the term or to accept a surrender thereof, or to waive or release any lessee thereunder from the performance or observance by the lessee of any obligation or condition thereof which in any way diminishes the rental value or receipts, issues, profits, benefits or advantages of or from the Lands.
6. The Assignor shall:
  - (a) fulfil and perform each and every condition and covenant of the Leases by the lessor or landlord to be fulfilled or performed;
  - (b) give prompt notice to the Assignee of any notice of default by the Assignor under the Leases, or any of them, received by the Assignor together with a complete copy of any such notice;
  - (c) at the sole cost and expense of the Assignor, enforce, short of termination of the Leases, the performance and observance of each and every covenant and condition of the Leases by the lessee to be performed or observed;

- (d) not modify or in any way alter the terms of the Leases, or any of them;
  - (e) not terminate the term of the Leases or accept a surrender thereof unless required to do so by the terms of the Leases; and
  - (f) not waive or release any lessee from any obligation or conditions by such lessee to be performed or observed.
7. (a) The Assignor has not executed any prior assignment of rents, issues, profits, benefits or advantages in respect of the Lands or of any interest therein, nor of any of its rights under the Leases, or any of them.
- (b) The Assignor has not done anything which might prevent the Assignee from, or limit the Assignee in, operating under any of the provisions hereof.
- (c) The Assignor has not accepted rent under the Leases, or any of them, more than thirty (30) days in advance of its due date.
- (d) So far as the Assignor knows, there is no present default by any lessee under the Leases, or any of them.
- (e) The Assignor represents and warrants that the Leases are in full force and effect, unmodified.
8. All of the monies owed by the Assignor to the Assignee and/or secured by the Mortgage shall become due:
- (a) upon the indebtedness pursuant to the provisions of the Mortgage or any other instrument which may be held by the Assignee as security for the indebtedness becoming due, whether pursuant to the provisions of the Mortgage or any other instrument which may be held by the Assignee or demand or otherwise, or
  - (b) at the option of the Assignee:
    - (i) after any attempt by the Assignor to exercise any of the rights described in paragraph 5 hereof, or
    - (ii) after any default by the Assignor hereunder and the continuance of such default for ten (10) days.
9. After any attempt by the Assignor to exercise any of the rights described in clause 5 hereof or after default by the Assignor in the payment of said indebtedness or in the performance of any obligation of the Assignor herein or in the Mortgage or any other instrument securing said indebtedness, the Assignee, at its option, without notice and without regard to the adequacy of security for the indebtedness hereby secured, either in person or by agent with or without bringing any action or proceeding, or by a receiver, may:
- (a) enter upon, take possession of, and operate the Lands;

- (b) make, enforce, modify and accept the surrender of the Leases, or any of them;
- (c) obtain and evict tenant(s);
- (d) fix or modify rents;
- (e) do any acts which the Assignee deems proper to protect the security hereof;

until all indebtedness secured hereby is paid in full, and either with or without taking possession of the premises in its own name, sue for or otherwise collect and receive all rents, issues and profits, including those past due and unpaid, and apply the same, less costs and expenses of operation and collection, including reasonable legal fees, upon any indebtedness secured hereby in such order as the Assignee may determine. The entering upon and taking possession of said property, the collection of such rents, issues and profits and the application thereof as aforesaid shall not cure or waive any default or waive, modify or affect any notice of default under the Mortgage or invalidate any act done pursuant to such notice.

10. The Assignee shall be liable to account to the Assignor for such monies only as shall actually come into its hands by virtue of this assignment.

11. The Assignee shall be entitled to exercise all of the rights and remedies of the Assignor reserved under the Leases, or any of them, or by law for the collection of the said rentals, issues, profits, benefits or advantages and all necessary costs incurred by the Assignee in the exercise of the said rights and remedies shall be charged to the Assignor and shall be secured hereby.

12. The Assignee shall not be deemed a mortgagee in possession of the Lands by reason of the execution of this assignment and shall not be liable to any lessee for the performance of any covenant, term or condition undertaken by the Assignor in any lease or for the performance of any covenant, term or condition for which the Assignor may be liable.

13. Default by the Assignor under any of its covenants herein undertaken shall constitute a default under the Mortgage.

14. Notwithstanding the execution of this assignment the rentals payable pursuant to or under any tenancies or reserved in any leases shall continue to be paid directly to the Assignor, whose receipt therefor shall be a lawful discharge to any tenant or lessee to whom it is forwarded, until the Assignee shall serve, by registered mail, written notice upon any such tenant or lessee to pay directly to the Assignee all rentals accruing due after the service of such notice, and the Assignor covenants not to accept in advance from any tenant or lessee, prior to service of such notice, more than thirty (30) days rental.

15. The Assignor covenants and agrees that, upon the assignment, transfer, sale or conveyance of the Lands, or any interest therein, to any party other than the Assignee (herein called the "purchaser"), the Assignor, at the request of the Assignee, shall cause the purchaser to execute and deliver to the Assignee, prior to the registration of any assignment, transfer or conveyance, an assignment by the purchaser in favour of the Assignee, similar in form and content to this instrument and/or an acknowledgment by the purchaser of the Assignor's obligations and undertakings as herein set forth in such form and of such content as the Assignee shall reasonably require.

16. The Assignor covenants and agrees with the Assignee to grant, at its expense, such further documents, assignments and assurances as may reasonably be necessary to give effect to the true intent



and meaning of these presents; and to, forthwith upon request by the Assignee, execute and deliver to the Assignee, specific assignments of the Leases (or such of them as the Assignee shall request) in such form as the Assignee shall request.

17. This assignment shall be binding upon the successors and assigns of the Assignor and enure to the benefit of the successors and assigns of the Assignee.

18. Wherever the singular number or the masculine gender is used in this assignment the same shall be construed as including the plural and feminine and neuter, respectively, where the fact or context so requires; and, in any case where this assignment is executed by more than one party, all covenants and agreements herein contained shall be construed and taken as against such executing parties as joint and several; and the heirs, executors, administrators, successors and assigns of any party executing this instrument are jointly and severally bound by the covenants, agreements, stipulations, and provisos herein contained; and the covenants, agreements, stipulations and provisions herein contained shall be in addition to those granted or implied by statute.

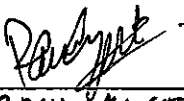
19. The Assignor hereby acknowledges receiving a copy of this assignment. The Assignor hereby waives its right to receive a copy of any financing statement, financing change statement or verification statement which may be filed by or issued to the Assignee pursuant to the *Personal Property Security Act* (Ontario).

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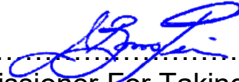
IN WITNESS WHEREOF the Assignor has executed this assignment as of the date and year first above written.

**421 WHARNCLIFFE LTD.**

Per:   
Name: ABDUL MUGEET  
Title: Director

Per: \_\_\_\_\_  
Name:  
Title:

This is **Exhibit "S"** referred to in the affidavit of Tyson Hartwell, sworn before me by videoconference on April 27, 2023 in accordance with O.Reg. 431/20: Administering Oath or Declaration Remotely. The deponent was located in the City of Calgary in the Province of Alberta and I was located in the City of Toronto in the Province of Ontario.



.....  
A Commissioner For Taking Affidavits

Jeremy Bornstein  
LSO#: 65425C



To: Canadian Western Bank (the "Lender")

From: INDEX HOLDING GROUP INC. (the "Client") and its successors and assigns

And From: INDEX GROUP OF COMPANIES INC., INDEX INTERNATIONAL INC., INDEX FOODS INC., 2640179 ONTARIO INC., 11030434 CANADA LTD., 2700774 ONTARIO INC., 2700767 ONTARIO INC., 2683960 ONTARIO LTD., 11030418 CANADA INC., 2723710 ONTARIO INC., 2718366 ONTARIO INC., 2737332 ONTARIO INC., 2737334 ONTARIO INC., 2723714 ONTARIO INC., 2723716 ONTARIO INC., 2737338 ONTARIO INC., 2790760 ONTARIO INC., 2775290 ONTARIO INC., 2775296 ONTARIO INC. and 421 WHARNCLIFFE LTD. (collectively, the "Corporate Guarantors", and each, a "Corporate Guarantor") and the successors and assigns of each

Date: DEC 21, 2021

**CROSS COLLATERALIZATION ACKNOWLEDGEMENT AND AGREEMENT**

**WHEREAS:**

- A. Pursuant to an equipment loan and security agreement dated as of the date hereof (as such equipment loan and security agreement may be amended, supplemented, restated, replaced or otherwise modified, from time to time, the "Loan Agreement") between the Client and the Lender, the Client is now indebted or liable and may hereafter become further indebted or liable to the Lender.
- B. The Lender requires the Client and the Corporate Guarantors to execute this cross collateralization acknowledgement and agreement as a prerequisite to the effectiveness of the Loan Agreement.

**NOW THEREFORE:**

For good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged by the Client and the Corporate Guarantors, the Client and the Corporate Guarantors hereby agree as follows:

1. **Definitions.** In this agreement, words and phrases used but not otherwise defined shall have the meanings given to those terms under the Loan Agreement.
2. **Cross-Default, Cross Guarantee and Cross Collateralize.** The Client and each Corporate Guarantor acknowledges and agrees that, in respect of any and all loans and extensions of credit made from time to time by the Lender to or for the benefit of the Client, and/or by the Lender to or for the benefit of the Corporate Guarantors (or any of them individually) other than in respect of or under the Loan Agreement (collectively, the "Other Indebtedness"), notwithstanding

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anything to the contrary contained in any documents, instruments or agreements relating to such Other Indebtedness, all such Other Indebtedness will be cross-defaulted, cross-guaranteed and cross-collateralized with the loans and extensions of credit made from time to time by the Lender to the Client under the Loan Agreement and, for such purpose: (i) the Client and each Corporate Guarantor hereby acknowledges and agrees that each guarantee given in connection with such Other Indebtedness shall serve as a continuing guarantee of the indebtedness, liabilities and obligations owing under the Loan Agreement; and (ii) all security given by each of them in favour of the Lender shall secure all indebtedness, liabilities and obligations owing by the Client and the Corporate Guarantors, including, without limitation, under or in connection with the Loan Agreement or such Other Indebtedness.

3. **Governing Law; Enurement.** This agreement shall be interpreted in accordance with the laws of the Province of Ontario. Without prejudice to the right of the parties to commence any proceedings with respect to this agreement in any other proper jurisdiction, the parties hereby attorn and submit to the jurisdiction of the courts of Ontario. This agreement shall be binding upon and shall enure to the benefit of the parties and their respective successors and permitted assigns; "successors" includes any corporation resulting from the amalgamation of any party with any other corporation.
4. **Execution.** This agreement may be executed and delivered by facsimile or in portable document format ("**pdf**"), and any signature contained hereon and delivered by facsimile or in pdf shall be deemed to be equivalent to an original signature for all purposes.

*(The remainder of this page has intentionally been left blank; signature pages follow.)*

IN WITNESS WHEREOF this agreement has been executed and delivered by the Client and the Corporate Guarantors as of the date indicated at the top of the first page hereof.

**INDEX HOLDING GROUP INC.**

By:                     *Randy Muqet*                      
Name: Abdul Muqet  
Title: Director

**INDEX GROUP OF COMPANIES INC.**

By:                     *Randy Muqet*                      
Name: Abdul Muqet  
Title: Director

**INDEX INTERNATIONAL INC.**

By:                     *Randy Muqet*                      
Name: Abdul Muqet  
Title: Director

**INDEX FOODS INC.**

By:                     *Randy Muqet*                      
Name: Abdul Muqet  
Title: Director

**2640179 ONTARIO INC.**

By:                     *Randy Muqet*                      
Name: Abdul Muqet  
Title: Director

**11030434 CANADA LTD.**

By:                     *Randy Muqet*                      
Name: Abdul Muqet  
Title: Director

**2700774 ONTARIO INC.**

By:                     *Randy Muqet*                      
Name: Abdul Muqet  
Title: Director

**2700767 ONTARIO INC.**

By:                     *Randy Muqet*                      
Name: Abdul Muqet  
Title: Director

**2683960 ONTARIO LTD.**

By:                     *Randy Muqet*                      
Name: Abdul Muqet  
Title: Director

**11030418 CANADA INC.**

By:                     *Randy Muqet*                      
Name: Abdul Muqet  
Title: Director

**2723710 ONTARIO INC.**

By:                     *Randy Muqet*                      
Name: Abdul Muqet  
Title: Director

**2718365 ONTARIO INC.**

By:                     *Randy Muqet*                      
Name: Abdul Muqet  
Title: Director

**2737332 ONTARIO INC.**

By:                     *Randy Muqet*                      
Name: Abdul Muqet  
Title: Director

**2737334 ONTARIO INC.**

By:                     *Randy Muqet*                      
Name: Abdul Muqet  
Title: Director

**2723714 ONTARIO INC.**

By:                     *Randy Muqet*                      
Name: Abdul Muqet  
Title: Director

2723716 ONTARIO INC.

By: Abdul Muqet

Name: Abdul Muqet

Title: Director

2737338 ONTARIO INC.

By: Abdul Muqet

Name: Abdul Muqet

Title: Director

2790760 ONTARIO INC.

By: Abdul Muqet

Name: Abdul Muqet

Title: Director

2775290 ONTARIO INC.

By: Abdul Muqet

Name: Abdul Muqet

Title: Director

2775296 ONTARIO INC.

By: Abdul Muqet

Name: Abdul Muqet

Title: Director

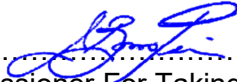
421 WHARNCLIFFE LTD.

By: Abdul Muqet

Name: Abdul Muqet

Title: Director

This is **Exhibit "T"** referred to in the affidavit of Tyson Hartwell, sworn before me by videoconference on April 27, 2023 in accordance with O.Reg. 431/20: Administering Oath or Declaration Remotely. The deponent was located in the City of Calgary in the Province of Alberta and I was located in the City of Toronto in the Province of Ontario.



.....  
A Commissioner For Taking Affidavits

Jeremy Bornstein  
LSO#: 65425C



## GUARANTEE AND INDEMNITY

TO: CANADIAN WESTERN BANK ("CWB")

In consideration of the premises and the covenants and agreements herein contained, the sum of \$1.00 now paid by CWB to **ABDUL MUQEET** (the "Guarantor") and other good and valuable consideration (the receipt and sufficiency of which are hereby acknowledged), the Guarantor covenants and agrees with CWB as follows:

1. **INTERPRETATION** — Wherever throughout this Guarantee, the Guarantor or CWB or **INDEX HOLDING GROUP INC.** (hereinafter called the "Obligor") are mentioned or referred to, such mention or reference shall extend to their respective successors and assigns, as the case may be. Reference to the term "Obligations" herein shall be to any and all obligations of the Obligor to CWB whether under a promissory note, leasing agreement, master leasing agreement, leasing schedule, conditional sale contract, security agreement, chattel mortgage, hypothec, pledge, debenture and any other instrument (hereinafter singularly or collectively called "Finance Instruments") between the Obligor and CWB and whether any such Finance Instrument was executed prior to the execution of this Agreement, is executed concurrently herewith or at any time in the future.
2. **GUARANTEE**
  - 2.1. **Guarantee** — The Guarantor hereby irrevocably and unconditionally guarantees and covenants with CWB as principal debtor of CWB and not merely as surety, that the Obligor will duly and punctually perform all of the Obligations, and pay or cause to be paid to CWB the rentals under and the principal of and interest on the Finance Instruments evidencing or securing the Obligations (including, in case of default, interest on the amount in default) as and when the same becomes due and payable, whether by lapse of time, by extension, or upon a declaration or otherwise according to the terms of the Finance Instruments and all other moneys owing on or under the Finance Instruments or in any way relating thereto including all expenses, including legal expenses and service charges. The total liability of the Guarantor hereunder for the Obligations shall be unlimited in amount, plus interest, fees, costs or expenses (including, without limitation, legal fees and expenses) which may now or hereafter accrue or be incurred with respect to such Obligations and any fees, costs or expenses (including without limitation, legal fees and expenses) that may be incurred by CWB by reason of Guarantor's default under this Guarantee.
  - 2.2. **Terms of the Finance Instruments** — The Guarantor hereby consents to and approves of the terms of the Finance Instruments; the guarantee and the agreements of the Guarantor herein contained shall take effect and shall be and are hereby declared to be binding upon the Guarantor notwithstanding any defect in or omission from the Finance Instruments or any non-registration or non-filing or defective registration or filing of any Finance Instruments or notice of the interest of CWB created thereby or by reason of any failure of the security intended to be created by the Finance Instruments or pursuant thereto.
  - 2.3. **Guarantee Absolute** — The liability of the Guarantor hereunder shall be absolute and unconditional and shall not be affected by:
    - (a) any lack of validity or enforceability of any agreements between the Obligor and CWB; any change in the time, manner or place of payment or in any other term of such agreements or the failure on the part of the Obligor to carry out any of its obligations under such agreements;
    - (b) any impossibility, impracticability, frustration of purpose, illegality, force majeure or act of government;
    - (c) the bankruptcy, winding-up, liquidation, dissolution or insolvency of the Obligor, CWB or any party to any agreement to which CWB is a party;
    - (d) any lack or limitation of power, incapacity or disability on the part of the Obligor or of the directors, partners or agents thereof or any other irregularity, defect or informality on the part of the Obligor in its obligations to CWB; or
    - (e) any other law, regulation or other circumstance which might otherwise constitute a defense available to, or a discharge of, the Obligor in respect of any or all of the Obligations.
    - (f) The Guarantor shall be held and bound to CWB as principal debtor, and not as surety, in respect of the payment of any or all of the Obligations. All amounts payable to CWB shall be paid to CWB forthwith after demand therefore as provided herein.
  - 2.4. **No Waiver** — The Guarantor hereby agrees that its obligations hereunder shall be unconditional and no waiver by CWB of any of its rights hereunder or under the Finance Instruments and no action by CWB to enforce any of its rights hereunder or under the Finance Instruments or failure to take, or delay in taking any such action shall affect any other obligation of the Guarantor hereunder.
3. **INDEMNITY** — The Guarantor also covenants and agrees with CWB that it will at all times and from time to time hereafter, indemnify and keep indemnified and save harmless CWB from any and all losses, costs, damages and expenses, including legal fees and disbursements and the costs of all distresses, actions, proceedings, claims and demands incurred or made by CWB if CWB does not receive payment of all amounts due and owing under the Finance Instruments or if the Obligor defaults in the payment of any instalment payable or in the performance of the Obligations under the Finance Instruments which, if the Finance Instruments were in full force and effect and good standing, would be payable or required to be performed under the Finance Instruments. In addition to the foregoing, the Guarantor agrees to pay CWB, as administrative costs, an amount equal to fifteen percent (15%) of all amounts payable hereunder in the event that court proceedings are instituted against the Guarantor because the Guarantor has failed to respect its obligations hereunder.
4. **DEALINGS WITH OBLIGOR AND OTHERS**
  - 4.1. **No Release** — The liability of the Guarantor hereunder shall not be released, discharged, limited or in any way affected by anything done, suffered or permitted by CWB in connection with any duties or liabilities of the Obligor to CWB of any security

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thereof including any loss of or in respect of any security received by CWB from the Obligor or others. CWB, without releasing, discharging, limiting or otherwise affecting in whole or in part the Guarantor's liability hereunder, may:

- (a) grant time, renewals, extensions, indulgences, releases, waivers and discharges to the Obligor;
- (b) grant substitutions for the Obligations or any part thereof or any agreement related thereto;
- (c) take or abstain from taking securities or collateral from the Obligor or from perfecting securities or collateral of the Obligor;
- (d) accept compromises from the Obligor;
- (e) apply all money at any time received from the Obligor or from securities upon such part of the Obligations as CWB may see fit or change any such application in whole or in part from time to time as CWB may see fit;
- (f) amend any of the Finance Instruments; or
- (g) otherwise deal with the Obligor and all other persons and securities as CWB may see fit.

4.2. **No Exhaustion of Remedies** — CWB shall not be bound or obligated to exhaust its recourse against the Obligor or other persons or any securities or collateral it may hold or take any other action (other than to make demand pursuant to Section 6) before being entitled to demand payment from the Guarantor hereunder. The obligations of the Guarantor hereunder are joint and several with those of the Obligor and any other guarantor, security or other person liable in any way for the Obligations. This Guarantee is in addition to and not in substitution for any other guarantee, by whomsoever given, at any time held by CWB, and without prejudice to any other security, by whomsoever given, at any time held by CWB, and CWB shall be under no obligation to marshal in favour of the Guarantor any such security or any of the funds or assets CWB may be entitled to receive or have a claim upon.

4.3. **Conclusive Statement** — Any account settled or stated in writing by or between CWB and the Obligor shall be *prima facie* evidence that the balance or amount thereof appearing due to CWB is so due.

4.4. **No Set-Off** — The Guarantor shall not claim any set-off or counterclaim against the Obligor in respect of any liability of the Obligor to the Guarantor.

## 5. CONTINUING GUARANTEE

5.1. **Continuing Guarantee** — This Guarantee shall be a continuing guarantee, notwithstanding any extensions, modifications, renewals or indulgences with respect to, or substitutions for, the Obligations or any part thereof, and shall remain in full force and effect until the Obligations are performed and paid in full. This Guarantee shall continue to be effective even if at any time any payment of any of the Obligations is rendered unenforceable or is rescinded or terminated or must otherwise be returned by CWB upon the occurrence of any action or event including the insolvency, bankruptcy or reorganization of the Obligor or otherwise, all as though such payment had not been made.

## 6. DEMAND FOR PAYMENT

6.1. **Demand for Payment** — CWB shall be entitled to make demand upon the Guarantor at any time upon a default in payment of any amount owing by the Obligor to CWB and upon such default CWB may treat all Obligations as due and payable and may forthwith collect from the Guarantor the total amount guaranteed hereunder. The Guarantor shall make payment to or performance in favour of CWB of the total amount guaranteed hereunder forthwith after demand thereof is made to the Guarantor.

6.2. **Interest** — The Guarantor shall pay interest to CWB at the rate of 24% per annum on the unpaid portion of all amounts payable by the Guarantor under this Guarantee, such interest to be calculated daily from the date of demand by CWB on the Guarantor.

## 7. ASSIGNMENT, POSTPONEMENT AND SUBROGATION

7.1. **Assignment and postponement** — All debts and liabilities, present and future, of the Obligor to the Guarantor are hereby assigned to CWB and postponed to the Obligations, and all money received by the Guarantor in respect thereof shall be received in trust for CWB and forthwith upon receipt shall be paid over to CWB, the whole without in any way lessening or limiting the liability of the Guarantor hereunder and this assignment and postponement is independent of the Guarantee and shall remain in full force and effect until, in the case of the assignment, the liability of the Guarantor under this Guarantee has been discharged or terminated and, in the case of the postponement, until payment in full to CWB of all obligations of the Guarantor under this Guarantee.

7.2. **Subrogation** — The Guarantor will not exercise any rights which it may acquire by way of subrogation under this Guarantee and Indemnity, by any payment made hereunder or otherwise, until all Obligations shall have been paid and performed in full. If any amount shall be paid to the Guarantor on account of such subrogation rights at any time when all the Obligations shall not have been paid in full, such amount shall be held in trust for the benefit of CWB and shall forthwith be paid to CWB to be credited and applied upon the Obligations. If (i) the Guarantor performs or makes payment to CWB of all amounts owing by the Guarantor to CWB under this Guarantee and (ii) the Obligations are performed and paid in full, CWB will, at the Guarantor's request and at the Guarantor's expense, execute and deliver to the Guarantor appropriate documents, without recourse and without representation and warranty, necessary to evidence the transfer by subrogation to the Guarantor of an interest in the Obligations and any security held therefor resulting from such performance or payment by the Guarantor.

## 8. COVENANTS OF THE GUARANTOR

The Guarantor hereby represents, covenants and warrants that:

- (a) if the Guarantor is a corporation, the making and performance of this Guarantee have been duly authorized by all necessary corporate actions on the part of the Guarantor, do not require any shareholders' approval, and will not violate any provisions of the Guarantor's incorporating documents or by-laws or result in the breach of, constitute a default under, contravene any provisions of or result in the creation of any lien, charge, encumbrance or security interest upon any property or assets of the Guarantor pursuant to any of the Guarantor's stocks, bonds, notes or debentures outstanding, or any agreement, indenture or other instrument to which the Guarantor is a party or by which the Guarantor or its property may be bound or affected;
- (b) this Guarantee constitutes a legal, valid and binding obligation of the Guarantor in accordance with the terms hereof;

- (c) there is no pending or, to the best of the knowledge of the Guarantor, threatened action or proceeding affecting the Guarantor or, if the Guarantor is a corporation, any of its subsidiaries before any court, governmental agency or arbitrator, which would materially adversely affect the legality, validity or enforceability of this Guarantee;
- (d) all Information as defined in Section 9.2 provided by Guarantor to CWB is accurate;
- (e) all payments to CWB are and will be derived from legal sources and CWB may decline any form of payment; and
- (f) the Guarantor is and shall continue to be in compliance with all laws and regulations relating to the prevention of money laundering and terrorism.

**9. GENERAL**

- 9.1. **Waivers** — The Guarantor waives notice of acceptance of this Guarantee and of the extension or continuation of the Obligations or any part thereof. The Guarantor further waives presentment, protest, notice, demand or action in respect of the Obligations or any part thereof, including any right to require CWB to sue the Obligor, any other Guarantor or any other person obligated with respect to the Obligations or any part thereof, or otherwise to enforce payment thereof against any collateral securing the Obligations or any part thereof. Without limiting the generality of the foregoing, the Guarantor is jointly and severally liable with the Obligor for the due and punctual payment and performance of the Obligations, the Guarantor hereby waiving the benefit of division and discussion. Guarantor waives its right to receive a copy of any financing statement or financing change statement registered by CWB and of any related verification statement.
- 9.2. **Information** — Guarantor hereby consents and authorizes CWB and its affiliates, agents, contractors and representatives, at any time, a) to collect, verify, use, communicate with and disclose to third parties (including credit reporting agencies, financial institutions, creditors, vendors and other persons) any credit, financial and other information, including personal information (as applicable) and information related to the credit rating, financial capacity and payment history, with respect to Guarantor ("**Information**"), as CWB deems necessary to process, complete, service and enforce the transactions hereby contemplated and any other existing or potential transactions, or as required or otherwise permitted by law; b) to respond to inquiries from, and exchange any Information with, third parties concerning Guarantor's credit rating, financial capacity and payment history; c) to provide Information to persons to whom CWB considers assigning, granting a participation or otherwise disposing of rights or obligations under the transactions hereby contemplated; and d) to provide to any person copies of this Guarantee. This consent is in addition to and does not replace any consent previously given.
- 9.3. **Benefit of the Guarantee** — This Guarantee shall enure to the benefit of and be binding upon the respective heirs, executors, administrators, successors and permitted assigns of the Guarantor and CWB.
- 9.4. **Entire Agreement** — This Guarantee constitutes the entire agreement between CWB, the Obligor and the Guarantor with respect to the subject matter hereof and cancels and supersedes any prior understandings and agreements between such parties with respect thereto. There are no representations, warranties, terms, conditions, undertakings or collateral agreements, expressed, implied or statutory, between such parties other than as expressly set forth in this Guarantee.
- 9.5. **No Waiver, Remedies** — No failure on the part of CWB to exercise, and no delay in exercising, any right hereunder shall operate as a waiver thereof, nor shall any single or partial exercise of any right hereunder preclude the other or further exercise thereof or the exercise of any other right. The remedies herein provided are cumulative and not exclusive of any remedies provided by law.
- 9.6. **Severability** — If any provision of this Guarantee is determined to be invalid or unenforceable in whole or in part, such invalidity or unenforceability shall attach only to such provision or part thereof and the remaining part of such provision and all other provisions hereof shall continue in full force and effect.
- 9.7. **Notices** — Any demand, notice or other communications (hereinafter in this Section 9.7 referred to as a "**Communication**") to be given in connection with this Guarantee shall be given in writing and may be given by personal delivery or by registered mail addressed to the recipient as follows:

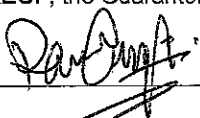
To CWB:	Canadian Western Bank 2000 Argentia Rd., Plaza #1, Ste. 300 Mississauga, Ontario L5N 2R7	To the Guarantor:	110 Herdwick St. Brampton, Ontario L6S 0A5
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or such other address as may be designated by notice by any party to the other. Any Communication given by personal delivery shall be conclusively deemed to have been given on the day of actual delivery thereof and, if given by registered mail, on the third day following the deposit thereof in the mail. If the party giving any Communication knows or ought reasonably to know of any difficulties with the postal system which might affect the delivery of mail, any such Communication shall not be mailed but shall be given by personal delivery.

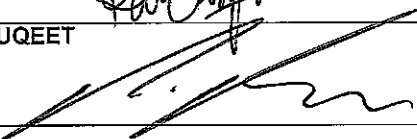
- 9.8. **Assignment** — The rights of CWB under this Guarantee may be assigned by CWB without the prior consent of the Obligor or the Guarantor. The Guarantor may not assign its obligations under this Guarantee.
- 9.9. **Governing Law** — This guarantee shall be governed by and construed in accordance with the laws of the Province of Ontario and the laws of Canada applicable therein.
- 9.10. **Language** — The parties hereby acknowledge that it is their express wish that this Guarantee and Indemnity be drawn in the English language; les parties reconnaissent qu'il est de leur volonté expresse que la présente caution soit rédigée en langue anglaise seulement.

*[Signature page follows]*

IN WITNESS WHEREOF, the Guarantor has executed this Guarantee this June 23, 2020.



\_\_\_\_\_  
ABDUL MUQEET

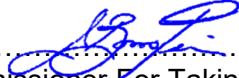


\_\_\_\_\_  
WITNESS

NAME: KUNWAR KOHLI



This is **Exhibit “U”** referred to in the affidavit of Tyson Hartwell, sworn before me by videoconference on April 27, 2023 in accordance with O.Reg. 431/20: Administering Oath or Declaration Remotely. The deponent was located in the City of Calgary in the Province of Alberta and I was located in the City of Toronto in the Province of Ontario.



.....  
A Commissioner For Taking Affidavits

Jeremy Bornstein  
LSO#: 65425C



To: Canadian Western Bank (the “**Secured Party**”)

Date: February 28, 2023

## GENERAL SECURITY AGREEMENT

For good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged by the Debtor, the Debtor hereby agrees as follows:

### Definitions and Interpretation

1. In this agreement, the following words shall, unless otherwise provided, have the meanings set out below:

“**Business Day**” means a day, other than a Saturday, Sunday or statutory holiday in the Province of Ontario.

“**Collateral**” means all present and future property, assets and undertaking of the Debtor pledged, assigned, mortgaged, charged, hypothecated or made subject to a security interest pursuant to this agreement.

“**Contractual Right**” means any agreement, right, franchise, royalty, licence, authorization, approval, privilege or permit (a) to which the Debtor is now or hereafter becomes a party, (b) in which the Debtor now or hereafter has any interest or (c) of which the Debtor is or hereafter becomes a beneficiary.

“**Debtors**” means the signatories to this agreement and “**Debtor**” means any one of them.

“**Guarantee**” means any guarantee by, among others, the Debtors in favour of the Secured Party, as may be amended, supplemented, otherwise modified, restated or replaced from time to time.

“**Intellectual Property**” means all patents, trademarks, trade names, business names, trade styles, logos and other business identifiers, copyrights, technology, inventions, industrial designs, know-how, trade secrets and other industrial and intellectual property in which the Debtor now or in the future has any right, title or interest.

“**Investment Collateral**” means all present and future Investment Property (as such term is defined in the PPSA) and Financial Assets (as such term is defined in the STA) of the Debtor, including all present and future options and warrants of the Debtor and all other rights and entitlements arising therefrom or related thereto, and the Debtor’s present and future interests in partnerships, limited partnerships, limited liability partnerships and limited liability companies, and including all substitutions for any of the foregoing and dividends and income derived therefrom or payable in connection therewith, including, for greater certainty, any Investment Collateral listed or described in Schedule “C” hereto.

“**Loan Agreement**” means any equipment loan and security agreement, any loan agreement and any credit agreement between the Debtors and the Secured Party, as may be amended, supplemented, otherwise modified, restated or replaced from time to time.

“**Obligations**” means all present and future indebtedness, liabilities and obligations, direct or indirect, absolute or contingent, matured or unmatured, joint or several, of the Debtors (collectively) to the Secured Party, including without limitation any such indebtedness, liabilities and obligations arising under any Loan Agreement, any Guarantee (including “Obligations” as defined therein) or any other guarantees given in respect thereof.

“**Other Collateral**” shall have the meaning ascribed to such term in subsection 11(b).

“**Permitted Encumbrances**” means any and all liens, charges, mortgages, security interests, hypothecs and other encumbrances which affect all or any portion of the Collateral and which have been permitted or consented to in writing by the Secured Party (including any such liens, charges, mortgages, security interests and encumbrances the particulars of which are listed in Schedule “B” hereto).

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

“**PPSA**” means the *Personal Property Security Act* (Ontario), as amended from time to time and any legislation substituted therefor and any amendments thereto.

“**Receiver**” means a receiver, receiver-manager and receiver and manager.

“**Security Interest**” means the pledges, assignments, mortgages, charges and hypothecations of and the security interests in the Collateral created in favour of the Secured Party hereunder.

“**STA**” means the *Securities Transfer Act* (Ontario), as amended from time to time and any legislation substituted therefor and any amendments thereto.

2. References such as “this agreement”, “hereof”, “herein”, “hereto” and like references refer to this agreement and any exhibits or schedules attached hereto (all of which exhibits and schedules, form a part of this agreement) and not to any particular section, subsection, paragraph or other subdivision of this agreement.
3. The division of this agreement into sections, subsections and paragraphs and the insertion of headings in this agreement are for convenience of reference only and shall not affect the construction or interpretation of this agreement.
4. Terms used herein which are defined in the PPSA shall have the same meanings herein as are ascribed to such terms in the PPSA, unless such terms are otherwise defined.
5. The word “Debtor”, 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. The term “successors” shall include, without limiting its meaning, any corporation resulting from the amalgamation of a corporation with another corporation. Where the context so requires, words used herein (including defined terms) importing the singular shall include the plural and vice versa and words used herein (including defined terms) importing gender shall include all genders (including the neuter).
6. This agreement shall be binding upon each Debtor as if each such Debtor had executed and delivered a separate agreement to the Secured Party in the same form as this agreement without any other signatories thereto; and each reference to “the Debtor” in this Agreement shall refer to each Debtor individually. The addition of any Debtors as parties to this agreement from time to time, and the release by the Secured Party of any Debtors from this agreement from time to time, shall not require the consent of any other Debtor; and for greater certainty the obligations of each Debtor hereunder shall remain in full force and effect until this agreement is released by the Secured Party in accordance with the terms hereof notwithstanding the said addition or release of any other Debtor. Any notice delivered to a Debtor hereunder shall be deemed to have been received by all Debtors concurrently. The Secured Party's rights hereunder may be enforced from time to time against any Debtor or its assets without the requirement on the part of the Secured Party to marshal any of its claims or to exercise any of its rights against or for the benefit of any Debtor or to exhaust any remedies available to it against any Debtor or to resort to any other source or means of obtaining payment of any of the Obligations or to elect any other remedy.
7. Nothing herein (including the definition and use of the term Permitted Encumbrances) is intended or shall be deemed to subordinate the Security Interest to any Permitted Encumbrance or any other lien, charge, mortgage, security interest, hypothec or encumbrance affecting all or any portion of the Collateral.
8. If one or more of the provisions contained herein shall be invalid, illegal or unenforceable in any respect, such provision or provisions shall be severed from this agreement only to the extent necessary, and the validity, legality and enforceability of the remaining provisions hereof, including the provision or provisions remaining after such severance, shall not in any way be affected or impaired thereby.
9. Unless otherwise expressly provided in this agreement, if any matter in this agreement is subject to the determination, consent or approval of the Secured Party or is to be acceptable to the Secured Party, such determination, consent, approval or determination of acceptability will be in the sole discretion of the Secured Party, which means the Secured Party shall have sole and unfettered discretion, without any obligation to act reasonably. If any provision in this agreement refers to any action taken or to be taken by the Debtor, or which the Debtor is prohibited from taking, such provision will be interpreted to include any and all means, direct or indirect, of taking, or not taking, such action. When used in the context of a general statement followed by a reference to one or more specific items or matters, the term “including” shall mean “including, without limitation” and the use of the term “includes” shall mean “includes, without limitation”.
10. This agreement shall be governed by and construed in accordance with the laws of the Province of Ontario and the federal laws of Canada applicable therein. The Debtor hereby irrevocably and unconditionally attorns and submits to the non-exclusive jurisdiction of the courts of the Province of Ontario, provided that nothing herein shall prevent the Secured Party from proceeding at its election against the Debtor in the courts of any other province, country or jurisdiction.

#### **Grant of Security Interest**

11. As continuing security for the payment and performance of all Obligations, the Debtor:
  - (a) hereby pledges, assigns, mortgages, charges and hypothecates to the Secured Party and grants to the Secured Party a security interest in the following:
    - (i) all present and future equipment of the Debtor, including all of its present and future machinery, fixtures, plant, tools, furniture, books, records, documents, vehicles of any nature, kind or description, and all accessions to any of the foregoing, including all spare parts and accessories installed in or affixed or attached to any of the foregoing, and all drawings, specifications, plans and manuals relating to the foregoing;
    - (ii) all present and future inventory of the Debtor, including all of its present and future raw materials, materials used or consumed in its business, work-in-progress, finished goods, goods used for packing and goods acquired or held for sale or lease or that have been leased or furnished or that are to be furnished under

contracts of rental or service, and all accessions to any of the foregoing, including all spare parts and accessories installed in or affixed or attached to any of the foregoing;

- (iii) all present and future Contractual Rights and all other intangibles of the Debtor, including all of its present and future accounts and other amounts receivable, book debts, goodwill, Intellectual Property, choses in action of every nature and kind and interests in partnerships;
  - (iv) all present and future documents of title, chattel paper, instruments and money of the Debtor;
  - (v) all present and future Investment Collateral; and
  - (vi) all proceeds arising from the property, assets and undertaking of the Debtor referred to in this section 11, including insurance proceeds and any other payment representing indemnity or compensation for loss of or damage thereto; and
- (b) hereby charges as and by way of a floating charge in favour of the Secured Party all present and future real property, personal property, assets, and undertaking of the Debtor of any nature or kind, including all real property, personal property, assets and undertaking at any time owned, leased or licenced by the Debtor or in which the Debtor at any time has any right or interest or to which the Debtor is or may at any time become entitled, other than the property, assets and undertaking of the Debtor validly pledged or assigned or subjected to a valid mortgage, charge, hypothec or security interest by subsection 11(a)(i), 11(a)(ii), 11(a)(iii), 11(a)(iv) and 11(a)(v) hereof and subject to the exceptions hereinafter contained (all of which property, assets, effects and undertakings so charged by this clause are herein collectively called the "Other Collateral") and the charge created by this subsection 11(b) shall be a floating charge such that the Debtor shall not have power without the prior written consent of the Secured Party to:
- (i) create or permit to exist any lien, encumbrance or security interest against any of the Other Collateral which ranks or could in any event rank in priority to or pari passu with the Security Interest, save for Permitted Encumbrances; or
  - (ii) grant, sell, exchange, transfer, assign, lease or otherwise dispose of the Other Collateral.

#### **Limited Exceptions to Grant of Security Interest**

12. Despite any other provision of this agreement, the last day of any term reserved by any lease of real property, oral or written, or any agreement therefor, now held or hereafter acquired by the Debtor, and whether falling within the general or particular description of the Collateral, is hereby and shall be excepted out of the Security Interest, but the Debtor shall stand possessed of the reversion of one day remaining in the Debtor in respect of any such term, for the time being demised, as aforesaid, upon trust to assign and dispose of the same as any purchaser of such term shall direct.
13. Despite any other provision of this agreement, the Security Interest shall not attach to any Contractual Right to the extent that the granting of the Security Interest therein would constitute a breach of, or permit any Person to terminate such Contractual Right, but the Debtor shall hold its interest in each such Contractual Right in trust for the Secured Party and shall, after the Security Interest shall have become enforceable, specifically assign each such Contractual Right to the Secured Party, or as the Secured Party may otherwise direct. The Debtor agrees that it shall, upon the request of the Secured Party, whether before or after the Security Interest has become enforceable, use all commercially reasonable efforts to obtain any consent required to permit any such Contractual Right to be subjected to the Security Interest, and the Security Interest shall attach to such Contractual Right following the receipt of such consent.
14. Despite any other provision of this agreement, the interests granted to the Secured Party pursuant to this agreement in the Debtor's existing and after-acquired trademarks shall be limited to the Secured Party's security interests therein.

#### **Attachment**

15. The Debtor confirms and agrees that:
- (a) value has been given by the Secured Party to the Debtor;
  - (b) the Debtor has rights in all existing Collateral and power to transfer rights in the Collateral to the Secured Party; and
  - (c) the Debtor and the Secured Party have not postponed the time for attachment of the Security Interest, and the Security Interest shall attach to existing Collateral upon the execution of this agreement and shall attach to Collateral in which the Debtor hereafter acquires rights at the time that the Debtor acquires rights in such Collateral.

#### **Provisions with respect to Investment Collateral**

16. Whenever any Investment Collateral is a certificated security, an uncertificated security or a security entitlement, the Debtor shall, or shall cause the issuer of such Investment Collateral to, or shall cause the securities intermediary that holds such Investment Collateral to, take all steps as are necessary to give exclusive control over such Investment Collateral to the Secured Party in a manner satisfactory to the Secured Party.

17. All certificates representing Investment Collateral may remain registered in the name of the Debtor, but the Debtor shall, promptly at the request of the Secured Party, duly endorse such certificates in blank for transfer or execute stock powers of attorney in respect thereof and deliver such certificates or powers of attorney to the Secured Party; in either case with signatures guaranteed and with all documentation being in form and substance satisfactory to the Secured Party. Upon the request of the Secured Party:
- (a) the Debtor shall promptly cause the Investment Collateral to be registered in the name of the Secured Party or its nominee, and the Secured Party is hereby appointed the irrevocable attorney (coupled with an interest) of the Debtor with full power of substitution to cause any or all of the Investment Collateral to be registered in the name of the Secured Party or its nominee;
  - (b) the Debtor shall promptly cause each securities intermediary that holds any Investment Collateral that is a security entitlement to record the Secured Party as the entitlement holder of such Investment Collateral; and
  - (c) the Debtor shall promptly:
    - (i) cause a security certificate to be issued for any Investment Collateral that is in the form of an uncertificated security or a security entitlement;
    - (ii) endorse such security certificate in blank;
    - (iii) deliver such security certificate to the Secured Party; and
    - (iv) take all other steps necessary to give exclusive control over such certificated security to the Secured Party, in a manner satisfactory to the Secured Party.
18. Until further notice is given by the Secured Party to the Debtor terminating such rights of the Debtor, the Debtor shall be entitled to exercise all voting rights attached to the Investment Collateral and give consents, waivers and ratifications in respect thereof; provided that no vote shall be cast or consent, waiver or ratification given or action taken which would be prejudicial to the interests of the Secured Party or which would have the effect of reducing the value of the Investment Collateral as security for the Obligations, or imposing any restriction on the transferability of any of the Investment Collateral. All such rights of the Debtor to vote and give consents, waivers and ratifications shall cease immediately upon receipt by the Debtor of such notice by the Secured Party.
19. All dividends, distributions, interest and other income in respect of Investment Collateral and all proceeds received by the Debtor in respect of Investment Collateral may be received by the Debtor in the ordinary course and distributed in the ordinary course to the Debtor's shareholder or shareholders until further notice by the Secured Party. Upon receipt by the Debtor of such notice, the Debtor shall not be entitled to retain or distribute to its shareholder or shareholders any such dividends, distributions, interest or other income or proceeds and, if any such amounts are received by the Debtor after the Debtor receives such notice by the Secured Party, the Debtor shall hold such amounts in trust, as trustee for the Secured Party, and the Debtor shall forthwith pay such amounts to the Secured Party, to be applied to reduce the Obligations or, at the option of the Secured Party, to be held as additional security for the Obligations.
20. The responsibility of the Secured Party in respect of any Investment Collateral held by the Secured Party shall be limited to exercising the same degree of care which it gives valuable property of the Secured Party at the Secured Party's office where such Investment Collateral is held. The Secured Party shall not be bound under any circumstances to realize on any Investment Collateral or allow any Investment Collateral to be sold, or exercise any option or right attaching thereto, or be responsible for any loss occasioned by any sale of Investment Collateral or by the retention or other refusal to sell the same; nor shall the Secured Party be obliged to collect or see to the payment of interest or dividends thereon but, subject to section 19, all such interest and dividends, if and when received by the Debtor, shall be held by the Debtor in trust for the Secured Party and shall be forthwith paid to the Secured Party.

#### **Representations and Warranties of the Debtor**

21. The Debtor hereby represents and warrants to the Secured Party that:
- (a) the Debtor has the capacity and authority to incur the Obligations, to create the Security Interest and to execute and deliver and perform its obligations under this agreement;
  - (b) the execution and delivery of this agreement and the performance by the Debtor of its obligations hereunder have been duly authorized by all necessary proceedings;
  - (c) this agreement constitutes a legal, valid and binding obligation of the Debtor, enforceable against the Debtor in accordance with its terms subject only to bankruptcy, insolvency, reorganization, moratorium and other similar laws of general application affecting creditors' rights and the discretion exercisable by courts of competent jurisdiction in respect of the availability of equitable remedies;
  - (d) except for the Security Interest and any Permitted Encumbrances, the Collateral is owned by the Debtor free from any mortgage, charge, lien, pledge, security interest or other encumbrance or claim whatsoever;

- (e) the chief executive office of the Debtor is located at the address listed in Part I of Schedule "A" of this agreement;
- (f) a description of each real property leased by the Debtor is listed in Part II of Schedule "A" of this agreement;
- (g) the Debtor does not keep tangible Collateral at any location(s) except:
  - (i) the location listed in Part I of Schedule "A" hereto, and
  - (ii) any location(s) listed in Part II of Schedule "A" hereto, other than tangible Collateral in transit to or from such locations;
- (h) the Collateral does not include any goods which are used or acquired by the Debtor primarily for personal, family or household purpose;
- (i) the Debtor has made all necessary filings, registrations and recordations to protect all of its right, title and interest in the Intellectual Property including all relevant renewals; and all such filings, registrations and recordations have been duly and properly made and are in full force and effect and are not subject to dispute by any governmental authority or agency;
- (j) all Contractual Rights relating to or affecting the Intellectual Property are in good standing;
- (k) the Debtor owns directly or is entitled to use by Contractual Right or otherwise all of the Intellectual Property; and
- (l) no litigation is pending or threatened which contains allegations respecting the validity, enforceability, infringement or ownership of any of the Intellectual Property, including any of right, title or interest of the Debtor in the Intellectual Property.

**Covenants of the Debtor**

22. The Debtor agrees with the Secured Party that, until the Obligations have been satisfied and paid in full, it will:

- (a) observe, perform and satisfy the Obligations when due;
- (b) maintain the tangible Collateral in good condition and repair and allow the Secured Party or its agent access to all premises of the Debtor to inspect any and all Collateral;
- (c) make and maintain all filings, registrations and recordations necessary or desirable to protect its right, title and interest in the Collateral, including all filings, registrations and recordations necessary or desirable in respect of patents, trademarks, copyrights and industrial designs included in the Intellectual Property;
- (d) defend the Collateral against any actions, claims and demands of any Person (other than the Secured Party) claiming the Collateral (or any of it) or an interest therein;
- (e) pay all taxes, rates, levies, assessments and other impositions and charges, of every nature and kind, which may now or hereafter be lawfully levied, assessed or imposed on or in respect of the Debtor or the Collateral (or any of it), including those which could result in the creation of a statutory lien or deemed trust affecting the Debtor or the Collateral, as and when the same become due and payable;
- (f) [reserved];
- (g) notify the Secured Party of any loss or damage to the Collateral, any change in any information provided in this agreement (including the schedules hereto) or any actual or potential claim affecting the Debtor, the Collateral or the Security Interest;
- (h) hold the proceeds received from any direct or indirect dealing with the Collateral in trust for the Secured Party after either the Security Interest becomes enforceable or any of the Collateral is sold other than in the ordinary course of business of the Debtor and for the purpose of carrying on such business;
- (i) comply with every covenant and undertaking herein and in any other agreement with the Secured Party;
- (j) permit the Secured Party at any time after the Security Interest shall have become enforceable, to require any account debtor of the Debtor to make payment to the Secured Party of any or all amounts owing by the account debtor to the Debtor and the Secured Party may take control of any proceeds referred to in subsection 11(a)(vi) hereof and may hold all amounts received from any account debtor and any proceeds as cash collateral as part of the Collateral and as security for the Obligations;
- (k) prevent any Collateral from becoming an accession to any personal property not subject to the Security Interest, or becoming affixed to any real property;

- (l) deliver to the Secured Party, at the Secured Party's request, duly endorsed and/or accompanied by such assignments, transfers, powers of attorney or other documents as the Secured Party may request, all items of the Collateral comprising chattel paper, instruments, Investment Collateral and documents of title;
- (m) deliver to the Secured Party, at the Secured Party's request, a written agreement from each landlord of the Debtor in favour of the Secured Party and in form and substance satisfactory to the Secured Party, whereby such landlord:
  - (i) agrees to give notice to the Secured Party of any default by the Debtor under the Debtor's lease and a reasonable opportunity to cure such default prior to the exercise of any remedies by the landlord; and
  - (ii) consents to the Security Interest and agrees that the Secured Party shall be entitled to enforce the Security Interest in priority to any right, interest or claim of the landlord in the Collateral;
- (n) pay, on demand by the Secured Party, all costs and expenses (including all legal fees) incurred by the Secured Party in the preparation, perfection, administration and enforcement of this agreement (including expenses incurred in considering, protecting or improving the Secured Party's position, or attempting to do so, whether before or after default) and all such costs and expenses shall bear interest at the highest rate applicable to the Obligations, shall form part of the Obligations and shall be secured by the Security Interest;
- (o) at all times, both before and after the occurrence of a default, do or cause to be done such further and additional acts and things and execute and deliver or cause to be executed and delivered all such further and additional documents and agreements as the Secured Party may reasonably require to better pledge, assign, mortgage, charge and hypothecate the Collateral in favour of the Secured Party, to perfect the Security Interest and, without limiting the generality of the foregoing, to accomplish the intentions of this agreement;
- (p) preserve the Debtor's rights, powers, licences, privileges, franchises and goodwill, comply with all applicable laws, regulations and orders (including environmental laws, regulations and orders) affecting the Debtor or the Collateral and conduct its business in a proper and efficient manner so as to protect the Collateral, the Security Interest and the business and undertaking of the Debtor; and
- (q) without limiting the generality of any of the foregoing, perform all covenants required of the Debtor under any Contractual Right relating to or affecting the Intellectual Property (or any of it), including promptly paying all required fees, royalties and taxes, to maintain each and every item of Intellectual Property in full force and effect, and vigorously protect, preserve and maintain all of the value of, and all of the right, title and interest of the Debtor in, all Intellectual Property, by way of the prosecution of or defence against suits concerning the validity, infringement, enforceability or ownership of the Intellectual Property (or any of it) or otherwise; and

23. The Debtor agrees with the Secured Party that, until the Obligations have been satisfied and paid in full, it will not, without the prior written consent of the Secured Party:

- (a) incur or create any further or additional indebtedness except to the Secured Party and except such normal indebtedness as may be incidental to the ordinary course of its business;
- (b) create any lien upon, assign or transfer as security, or pledge, hypothecate, charge, mortgage or grant a security interest in any Collateral except to the Secured Party and except for Permitted Encumbrances;
- (c) other than in the ordinary course of business and for the purpose of carrying on such business, sell, transfer, assign, or otherwise dispose of any Collateral or any group of property and assets forming part of the Collateral;
- (d) guarantee, endorse or otherwise become surety for or upon the obligations of others except to the Secured Party or by endorsement of negotiable instruments for deposit or collection in the ordinary course of the Debtor's business;
- (e) [reserved];
- (f) [reserved];
- (g) lend money to or invest money in any Person, by way of loan, acquisition of shares, acquisition of debt obligations or in any other way whatsoever;
- (h) change its name;
- (i) [reserved];
- (j) change the location of its primary residence from that set out in Part I of Schedule "A" hereto without providing the Secured Party with thirty (30) Business Days' prior written notice thereof;
- (k) keep tangible Collateral at any location other than the location(s) listed in Parts I and II of Schedule "A" hereto without providing the Secured Party with thirty (30) Business Days' prior written notice thereof; or
- (l) [reserved].

**Default**

24. Without prejudice to any right which the Secured Party may now or hereafter have to demand payment of any of the Obligations, the Obligations shall, at the option of the Secured Party, become payable and the Security Interest shall become enforceable in each and every of the following events:
- (a) if the Debtor defaults in the payment of any of the Obligations when due;
  - (b) if there occurs an event of default under any Loan Agreement, any Guarantee or if the Debtor defaults in the observance or performance of any other written agreement or undertaking heretofore or hereafter given by the Debtor to the Secured Party, whether contained herein or not;
  - (c) if an order is made or a resolution passed for the winding-up, liquidation or dissolution of the Debtor, or if a petition is presented or filed for the winding-up of the Debtor, whether pursuant to the *Winding-up and Restructuring Act* (Canada) or otherwise;
  - (d) if the Debtor ceases or threatens to cease to carry on business or makes a bulk sale of its assets, or if a Receiver or trustee for the Debtor or any of its property or assets is appointed (whether privately or by court order);
  - (e) if the Debtor becomes insolvent or commits or threatens to commit any act of bankruptcy or if the Debtor makes an assignment or proposal in bankruptcy or files a notice of intention to make a proposal in bankruptcy or if a bankruptcy petition is filed or presented against the Debtor or if the Debtor otherwise becomes subject to proceedings under the *Bankruptcy and Insolvency Act* (Canada) or any other bankruptcy, insolvency or analogous law in any jurisdiction;
  - (f) if any proceedings with respect to the Debtor are commenced under the *Companies' Creditors Arrangement Act* (Canada) or if the Debtor seeks relief or consents to the filing of a petition against it under any law which involves any compromise of any creditor's rights against the Debtor;
  - (g) if an execution or any other process of any court becomes enforceable against the Debtor or if a distress or analogous process is initiated or levied against or upon the property of the Debtor or any part thereof;
  - (h) if the Debtor permits any sum which has been admitted as due by the Debtor or is not disputed to be due by it and which forms or is capable of being made a charge on any Collateral in priority to the Security Interest to remain unpaid after proceedings have been taken to enforce such charge;
  - (i) if any representation or warranty made by the Debtor or any of its officers, employees or agents to the Secured Party shall be false or inaccurate in any material respect;
  - (j) if the Debtor defaults in the observance or performance of any provision relating to the indebtedness or liability of the Debtor to any Person other than the Secured Party; or
  - (k) if any licence, permit or approval required by any law, regulation or governmental policy or any governmental agency or commission for the operation by the Debtor of its business shall be withdrawn or cancelled.

**Remedies of the Secured Party**

25. Whenever the Security Interest shall have become enforceable, and so long as it shall remain enforceable, the Secured Party may proceed to realize the Security Interest and the Collateral and to enforce its rights by doing any one or more of the following:
- (a) entering upon the Collateral and any lands and premises where any Collateral is or may be located;
  - (b) taking possession of Collateral by any method permitted by law;
  - (c) occupying any lands and premises owned or occupied by the Debtor and using all or any part of such lands and premises and the equipment and other Collateral located thereon;
  - (d) leasing, selling, licensing or otherwise disposing of the whole or any part or parts of the Collateral;
  - (e) collecting, selling or otherwise dealing with any accounts or other amounts receivable by the Debtor, including notifying any Person obligated to the Debtor in respect of an account, chattel paper or instrument to make payment to the Secured Party of all present and future amounts due thereon;
  - (f) taking steps and expending such monies as it considers necessary or desirable in its sole discretion to maintain, preserve and protect the Collateral, including making payments on account of other security interests affecting the Collateral; provided that the Secured Party shall have no obligation to take any such actions or make any such expenditures; but any such amounts paid by the Secured Party shall be added to the Obligations and shall be secured by the Security Interest;
  - (g) collecting any rents, income, and profits received in connection with the business of the Debtor or the Collateral, without carrying on such business;



- (h) exercising all voting rights attached to any Collateral constituting Investment Collateral (whether or not registered in the name of the Secured Party or its nominee) and giving or withholding all consents, waivers and ratifications in respect thereof and otherwise acting with respect thereto as though it were the absolute owner thereof;
  - (i) exercising any and all rights of conversion, exchange, subscription or any other rights, privileges or options pertaining to any Collateral constituting Investment Collateral as if it were the absolute owner thereof including the right to exchange at its sole discretion any and all of such Investment Collateral upon the merger, consolidation, reorganization, recapitalization or other readjustment of any issuer thereof, or upon the exercise by any issuer of any right, privilege or option pertaining to any such Investment Collateral, and in connection therewith, to deposit and deliver any such Investment Collateral with any committee, depository, transfer agent, registrar or other designated agency upon such terms and conditions as it may determine in its sole discretion, all without liability except to account for property actually received by it;
  - (j) complying with any limitation or restriction in connection with any proposed sale or other disposition of Collateral constituting Investment Collateral as may be necessary in order to comply with applicable law or regulation or any policy imposed by any stock exchange, securities commission or other governmental or regulatory authority or official, and the Debtor agrees that such compliance shall not result in such sale being considered or deemed not to have been made in a commercially reasonable manner, and the Secured Party shall not be liable or accountable to the Debtor for any discount in the sale price of any such Investment Collateral which may be given by reason of the fact that such Investment Collateral are sold in compliance with any such limitation or restriction;
  - (k) carrying on the business of the Debtor or any portion thereof;
  - (l) exercising any and all of the rights and remedies granted pursuant to the PPSA and any other applicable legislation, or otherwise available at law or in equity;
  - (m) demanding, commencing, continuing or defending any judicial or administrative proceedings for the purpose of protecting, seizing, collecting, realizing or obtaining possession or payment of the Collateral, and giving valid and effectual receipts and discharges therefor and to compromise or give time for the payment or performance of all or any part of the accounts or other amounts receivable of the Debtor or any other obligation of any third party to the Debtor;
  - (n) borrowing money for the maintenance, preservation or protection of the Collateral or for the carrying on of the business of the Debtor, and charge and grant further security interests in the Collateral in priority to the Security Interest or otherwise, as security for the money so borrowed;
  - (o) accepting the Collateral in satisfaction of the Obligations;
  - (p) appointing by instrument in writing a Receiver or Receivers of the Collateral or any part thereof;
  - (q) bringing proceedings in any court of competent jurisdiction for the appointment of a Receiver or Receivers or for the sale of the Collateral or any part thereof; and
  - (r) filing such proofs of claim and other documents as may be necessary or advisable in order to have its claim lodged in any bankruptcy, winding-up or other judicial proceedings relating to the Debtor or the Collateral.
26. Any Receiver appointed by the Secured Party may be any Person or Persons (including one or more officers or employees of the Secured Party), and the Secured Party may remove any Receiver so appointed and appoint another or others instead. Any such Receiver may exercise any and all of the rights, remedies and powers of the Secured Party provided in this agreement. The Secured Party shall not be responsible for the actions, errors or omissions of any Receiver it appoints and any such Receiver shall be deemed to act as agent for the Debtor for all purposes, including the occupation of any lands and premises of the Debtor and in carrying on the Debtor's business, unless the Secured Party expressly specifies in writing that the Receiver shall be agent for the Secured Party for one or more purposes. Without limiting the generality of the foregoing, for the purposes of realizing upon the Security Interest, any Receiver may sell, lease, or otherwise dispose of Collateral as agent for the Debtor or as agent for the Secured Party as the Secured Party may specify in writing in its sole discretion. The Debtor agrees to ratify and confirm all actions of any Receiver appointed by the Secured Party acting as agent for the Debtor, and to release and indemnify the Receiver in respect of all such actions.
27. Without limiting the ability of the Secured Party or any Receiver to dispose of Collateral in any other manner, the Debtor agrees that any sale, lease or other disposition of the Collateral hereunder may be completed by public auction, public tender or private contract, with or without notice, with or without advertising and with or without any other formality (except as required by law), all of which are hereby waived by the Debtor. Any such disposition of Collateral may involve all or part of the Collateral and may be on such terms and conditions as to credit or otherwise and as to upset or reserve bid or price as the Secured Party or any Receiver appointed by the Secured Party may, in its sole discretion, deem advantageous and may take place whether or not the Secured Party or any such Receiver has taken possession of such Collateral. Any purchaser or lessee of Collateral may be a customer of the Secured Party.
28. The Secured Party shall not be liable for any delay or failure to enforce any rights, powers or remedies available to it or to institute any proceedings for such purposes.

29. No right, power or remedy of the Secured Party (whether granted herein or otherwise) shall be exclusive of or dependent on or merge in any other right, power or remedy, but all such rights, powers and remedies may from time to time be exercised independently or in combination.
30. The Debtor agrees to pay to the Secured Party, forthwith on demand by the Secured Party, all costs and expenses incurred by the Secured Party in connection with the exercise by the Secured Party of its rights, powers and remedies hereunder, including:
- (a) any costs and expenses incurred by the Secured Party in taking, holding, moving, storing, recovering, possessing, repairing, processing, preparing for disposition or disposing of Collateral;
  - (b) any legal fees and expenses incurred by the Secured Party in enforcing its rights, powers and remedies, including those incurred in connection with any proceedings taken for the purpose of enforcing its rights, powers and remedies hereunder or otherwise relating to the non-payment or non-performance of any Obligations;
  - (c) the cost of borrowing amounts as hereinbefore provided (for the purpose of carrying on the Debtor's business or otherwise), including, the principal amount or any such amount borrowed, all interest thereon and fees relating thereto; and
  - (d) all costs and expenses of or incurred by any Receiver, agent or consultant appointed by the Secured Party (including any legal fees and expenses incurred by any such Receiver, agent or consultant).

All such sums shall bear interest at the highest rate applicable to the Obligations, shall form part of the Obligations and shall be secured by the Security Interest.

31. Any and all payments made in respect of the Obligations from time to time and moneys realized from any Collateral (including moneys realized on any enforcement of this agreement) may be applied to such part or parts of the Obligations as the Secured Party may see fit, and the Secured Party shall at all times and from time to time have the right to change any appropriation as the Secured Party may see fit.
32. The Debtor shall remain liable for all Obligations that are outstanding following realization of all or any part of the Collateral.

#### **Rights of the Secured Party**

33. The Secured Party may pay the whole or any part of any liens, taxes, rates, charges or encumbrances now or hereafter existing in respect of any Collateral and such payments together with all costs, charges and expenses which may be incurred in connection with making such payments shall form part of the Obligations, shall bear interest at the highest rate applicable to the Obligations, and shall be secured by the Security Interest. Whenever the Secured Party pays any such lien, tax, rate, charge or encumbrance, it shall be entitled to all the equities and securities of the Person or Persons so paid and is hereby authorized to obtain any discharge thereof and hold such discharge without registration for so long as it may deem advisable to do so.
34. If the Debtor fails to perform or comply with any covenant or other obligation of the Debtor under this agreement, the Secured Party may, but need not, perform or otherwise cause the performance or compliance of such covenant or other obligation, provided that any performance or compliance undertaken by the Secured Party will not constitute a waiver, remedy or satisfaction of such failure. The costs and expenses of the Secured Party incurred in connection with any such performance or compliance shall be payable by the Debtor to the Secured Party on demand, form part of the Obligations, bear interest at the highest rate applicable to the Obligations and be secured by the Security Interest.
35. The Debtor grants to the Secured Party the right to set off against the Obligations (or any portion thereof) any amount owed by the Secured Party to the Debtor, including the amount of any and all accounts, credits or balances maintained by the Debtor with the Secured Party.
36. The Secured Party, without exonerating in whole or in part the Debtor, may grant time, renewals, extensions, indulgences, releases and discharges to, may take securities from and give the same and any or all existing securities up to, may abstain from taking securities from or from perfecting securities of, may accept compositions from, and may otherwise deal with the Debtor and all other Persons and securities as the Secured Party may see fit.
37. Nothing herein shall obligate the Secured Party to extend or amend any credit to the Debtor or to any other Person.
38. The Secured Party may assign, transfer and deliver to any transferee any of the Obligations or any security or any documents or instruments held by the Secured Party in respect thereof. The Debtor shall not assign any of its rights or obligations hereunder without the prior written consent of the Secured Party.

#### **Notices**

39. Any notice, demand or other communication permitted or required to be given hereunder shall be delivered to the Debtor in accordance with the notice provisions under the Guarantee.

**Miscellaneous**

40. In the event that any day, on or before which any action is required to be taken hereunder, is not a Business Day, then such action shall be required to be taken on or before the first Business Day thereafter.
41. Time shall be of the essence of this agreement.
42. Upon payment and fulfillment by the Debtor, its successors or permitted assigns, of all Obligations and provided that the Secured Party is then under no obligation (conditional or otherwise) to make any further loan or extend any other type of credit to the Debtor or to any of its affiliates the payment of which is secured, directly or indirectly, by this agreement, the Secured Party shall, upon request in writing by the Debtor, delivered to the Secured Party at the Secured Party's address as set out in the Loan Agreement and at the Debtor's expense, discharge this agreement.
43. This agreement is in addition to and not in substitution for any other security now or hereafter held by the Secured Party and shall be general and continuing security notwithstanding that the Obligations shall be at any time or from time to time fully satisfied or paid.
44. No provision of this agreement, or any other document or instrument in existence among the parties may be modified, waived or terminated except by an instrument in writing executed by the party against whom such modification, waiver or termination is sought to be enforced. Possession of an executed copy of this agreement by the Secured Party constitutes conclusive evidence that it was executed and delivered by the Debtor free of all conditions.
45. The Secured Party may in writing (and not otherwise) waive any default by the Debtor in the observance or performance of any provision of this agreement; provided that no waiver by the Secured Party shall extend to or be taken in any manner whatsoever to affect any subsequent default, whether of the same or a different nature, or the rights resulting therefrom.
46. In accordance with the *Conveyancing and Law of Property Act*, the doctrine of consolidation applies to this agreement.
47. This agreement shall enure to the benefit of the Secured Party, its successors and assigns, and shall be binding on the Debtor, its successors and permitted assigns.
48. The Debtor agrees that the Secured Party may from time to time provide information concerning this agreement (including a copy hereof), the Collateral and the Obligations to any Person the Secured Party in good faith believes is entitled thereto pursuant to applicable legislation.
49. The Debtor acknowledges receipt of an executed copy of this agreement and waives all rights to receive from the Secured Party a copy of any financing statement or financing change statement filed, or any verification statement received, at any time in respect of this agreement.

*(The remainder of the page has intentionally been left blank the signature page follows)*

**IN WITNESS WHEREOF**, the Debtors have executed this Agreement with effect as of the day and year first written above.

\_\_\_\_\_  
Witness signature

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

  
\_\_\_\_\_  
**ABDUL MUQEET**

**SCHEDULE "A"****Part I**Location of the Debtor's Principal Residence**110 Herdwick Street, Brampton, ON L6S 0A5****Part II**Locations of Leased Properties

<b>Ownership</b>	<b>Collateral Locations</b>
Index Holding Group Inc.	110 Herdwick Street, Brampton, ON L6S 0A5
Index International Inc.	4-1525 Dundas St. E., Whitby, ON (Popeyes)
Index Foods Inc.	965 Dundas St. W., Whitby, ON (Popeyes)
11030434 Canada Ltd.	1200 Brant St., Burlington, ON (Denny's)
2700774 Ontario Inc.	22 Stevenson Rd. S., Oshawa, ON (Popeyes)
2700767 Ontario Inc.	9 Jim Kimmett Blvd., Napanee, ON (Popeyes)
2683960 Ontario Ltd.	2 Douglas Rd., Uxbridge, ON (Popeyes)
11030418 Canada Inc.	72 Baldwin St. N. (Brooklin), Whitby, ON (Popeyes)
2723710 Ontario Inc.	165 E. Liberty Street, Toronto, ON (Popeyes)
2737332 Ontario Inc.	900 Dufferin St., Toronto, ON (Popeyes)
2737334 Ontario Inc.	674-676 Sheppard Ave. W., Toronto, ON (Popeyes)
2723716 Ontario Inc.	8502 Woodbine Ave., Markham, ON (Denny's)
2790760 Ontario Inc.	17725 Yonge St., Newmarket, ON (Denny's)
2775290 Ontario Inc.	195 Henry Street, Brantford, ON (Denny's)
2775296 Ontario Inc.	445 Rexdale Boulevard, Etobicoke ON (Denny's)

Locations of Owned Properties

<b>Ownership</b>	<b>Collateral Locations</b>
421 Wharnclyffe Ltd.	421 Wharnclyffe Road, London, ON
425 Wharnclyffe Road Inc.	425 Wharnclyffe Road South, London, ON

**SCHEDULE "B"**

**Permitted Encumbrances**

1. statutory liens which secure payment of amounts not then overdue;
2. statutory liens which secure payment of amounts which are then overdue but the validity of which is being contested in good faith and in respect of which reserves satisfactory to the Secured Party in its sole discretion have been established;
3. security given to a public utility, municipality, government or statutory or public authority to secure obligations incurred to such utility, municipality, government or other authority in the ordinary course of business and not then overdue;
4. liens and privileges arising out of judgments or awards in respect of which an appeal or proceeding for review has been commenced, provided a stay of execution pending such appeal or proceedings for review has been obtained and provided reserves satisfactory to the Secured Party in its sole discretion have been established;
5. liens or rights of distress reserved in or exercisable under any lease of real property for rent not then overdue or for compliance with the provisions of such lease not then in default;
6. security deposits given under leases of real property not in excess of an amount equivalent to six months' rent;
7. liens securing obligations or duties affecting real property due to any public utility, municipality, government, or statutory or public authority with respect to any franchise, grant, licence or permit in good standing and any minor irregularities in title to any real property, provided such obligations, duties and minor title irregularities do not materially impair the use, value or marketability of such real property;
8. liens incurred or deposits made in connection with contracts, bids or tenders made in the ordinary course of business or in connection with expropriation proceedings, surety or appeal bonds or costs of litigation to the extent required by law;
9. liens (including builders' liens) arising in connection with the construction or improvement of any real property or arising out of the furnishing of materials or supplies therefor, provided that such liens secure payment of amounts not then overdue (or if overdue, the validity of which is being contested in good faith and in respect of which reserves satisfactory to the Secured Party in its sole discretion have been established) and provided notice of such lien has not been given to the Secured Party and such lien has not been registered against title to such real property;
10. zoning and building by-laws affecting real property provided they are complied with;
11. garage keepers' liens securing amounts not then overdue; and
12. encumbrances in favour of the Secured Party.

**SCHEDULE "C"**

**Investment Collateral**

<b>Entity</b>	<b>Ownership Interest</b>
Index Holding Group Inc.	100%
2640179 Ontario Inc.	100%

This is **Exhibit "V"** referred to in the affidavit of Tyson Hartwell, sworn before me by videoconference on April 27, 2023 in accordance with O.Reg. 431/20: Administering Oath or Declaration Remotely. The deponent was located in the City of Calgary in the Province of Alberta and I was located in the City of Toronto in the Province of Ontario.



.....  
A Commissioner For Taking Affidavits

Jeremy Bornstein  
LSO#: 65425C



## DEBENTURE

TO: CANADIAN WESTERN BANK

DATE: February 28, 2023

For good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged by the Debtor, the Debtor hereby delivers this agreement to the Secured Party and agrees as follows:

### Definitions and Interpretation

1. In this agreement, the following words shall, unless otherwise provided, have the meanings set out below:

**"Borrower"** means Index Holding Group Inc., and its successors and permitted assigns.

**"Business Day"** means a day, other than a Saturday, Sunday or statutory holiday in the Province of Ontario.

**"Collateral"** means all present and future property, assets and undertaking of the Debtor pledged, assigned, mortgaged, charged, hypothecated or made subject to a security interest pursuant to this agreement.

**"Contractual Right"** means any agreement, right, franchise, licence, authorization, approval, privilege or permit (a) to which the Debtor is now or hereafter becomes a party, (b) in which the Debtor now or hereafter has any interest or (c) of which the Debtor is or hereafter becomes a beneficiary.

**"Debtor"** means Abdul Muqet, and his heirs, executors, administrators, permitted assigns and other legally appointed representatives.

**"Default"** has the meaning given to such term under the Loan Agreement.

**"Intellectual Property"** means all patents, trade-marks, trade names, business names, trade styles, logos and other business identifiers, copyrights, technology, inventions, industrial designs, know-how, trade secrets and other industrial and intellectual property in which the Debtor now or in the future has any right, title or interest.

**"Lands"** means the Collateral described in section 11(a) hereof.

**"Loan Agreement"** means, collectively, each and every commitment letter, letter loan agreement, equipment loan and security agreement, credit agreement or other financing instrument between the Borrower, as borrower, and the Secured Party, as lender, as same may be amended, supplemented, restated, amended and restated, replaced or otherwise modified from time to time.

**"Loan Documents"** means, collectively, all documents, instruments, agreements, any guarantee given by the Debtor in favour of the Secured Party in respect of the Obligations, and opinions

now or hereafter evidencing, securing, guaranteeing and/or relating to the loans made by the Secured Party and the Obligations or any part thereof, including the Loan Agreement and this Debenture.

**"Obligations"** means all present and future indebtedness, liabilities and obligations, direct and indirect, absolute or contingent, matured or unmatured, joint or several, of the Debtor to the Secured Party, including without limitation any such indebtedness, liabilities and obligations arising under any Loan Documents.

**"Permitted Encumbrances"** means those encumbrances approved by the Secured Party and attached hereto as Schedule "C".

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

**"PPSA"** means the *Personal Property Security Act* (Ontario), as amended from time to time and any legislation substituted therefor and any amendments thereto.

**"Receiver"** means a receiver, receiver-manager and receiver and manager.

**"Secured Party"** means Canadian Western Bank, and its successors and assigns.

**"Security Interest"** means the pledges, assignments, mortgages, charges and hypothecations of and the security interests in the Collateral created in favour of the Secured Party hereunder; and

**"Term"** means forty-six (46) months, commencing as of the date hereof.

2. References such as "this agreement", "hereof", "herein", "hereto" and like references refer to this agreement and any schedules, exhibits or appendices attached hereto (all of which schedules, exhibits and appendices form a part of this agreement) and not to any particular section, subsection, paragraph or other subdivision of this agreement.
3. The division of this agreement into sections, subsections and paragraphs and the insertion of headings in this agreement are for convenience of reference only and shall not affect the construction or interpretation of this agreement.
4. Terms used herein which are defined in the PPSA shall have the same meanings herein as are ascribed to such terms in the PPSA, unless such terms are otherwise defined.
5. The word "Debtor", 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. The term "successors" shall include, without limiting its meaning, any corporation resulting from the amalgamation of a corporation with another corporation. Where the context so requires, words used herein (including defined terms) importing the singular shall include the plural and vice versa and words used herein (including defined terms) importing gender shall include all genders (including the neuter).
6. Nothing herein (including the definition and use of the term Permitted Encumbrances) is intended or shall be deemed to subordinate the Security Interest to any Permitted Encumbrance

or any other lien, charge, mortgage, security interest, hypothec or encumbrance affecting all or any portion of the Collateral.

7. If one or more of the provisions contained herein shall be invalid, illegal or unenforceable in any respect, such provision or provisions shall be severed from this agreement only to the extent necessary, and the validity, legality and enforceability of the remaining provisions hereof, including the provision or provisions remaining after such severance, shall not in any way be affected or impaired thereby.
8. Unless otherwise expressly provided in this agreement, if any matter in this agreement is subject to the determination, consent or approval of the Secured Party or is to be acceptable to the Secured Party, such determination, consent, approval or determination of acceptability will be in the sole discretion of the Secured Party, which means the Secured Party shall have sole and unfettered discretion, without any obligation to act reasonably. If any provision in this agreement refers to any action taken or to be taken by the Debtor, or which the Debtor is prohibited from taking, such provision will be interpreted to include any and all means, direct or indirect, of taking, or not taking, such action. When used in the context of a general statement followed by a reference to one or more specific items or matters, the term "including" shall mean "including, without limitation" and the use of the term "includes" shall mean "includes, without limitation".
9. This agreement shall be governed by and construed in accordance with the laws of the Province of Ontario and the federal laws of Canada applicable therein. The Debtor hereby irrevocably and unconditionally attorns and submits to the non-exclusive jurisdiction of the courts of the Province of Ontario, provided that nothing herein shall prevent the Secured Party from proceeding at its election against the Debtor in the courts of any other province, country or jurisdiction.

#### **Promise To Pay**

10. For value received, the Debtor hereby acknowledges itself indebted to and agrees to pay to the Secured Party, on demand, the principal sum of \$8,000,000.00 of lawful money of Canada. The Debtor shall also pay to the Secured Party interest on such principal sum (and interest on overdue interest) at the rate of Prime plus 3.30% per annum calculated daily and payable monthly not in advance, both before and after demand, default, judgment and execution from the date hereof until payment in full of all amounts owing hereunder.

#### **Grant of Security Interest**

11. As continuing security for the payment and performance of all Obligations, the Debtor hereby pledges, assigns, mortgages, charges and hypothecates to the Secured Party and grants to the Secured Party a security interest in the following:
  - (a) by way of a fixed and specific mortgage and charge (but subject to the exceptions as to leaseholds hereinafter contained), all real and immoveable property (including, by way of sub-lease, leasehold lands) now or hereafter owned or acquired by the Debtor, all the Debtor's present and future interests and rights with respect thereto, all buildings, erections and improvements now or hereafter owned or acquired by the Debtor

(whether the same form part of the realty or not) and all appurtenances to any of the foregoing including the real property described in Schedule "A" hereto;

- (b) all present and future equipment of the Debtor, including all of its present and future machinery, fixtures, plant, tools, furniture, books, records, documents, vehicles of any nature, kind or description, and all accessions to any of the foregoing, including all spare parts and accessories installed in or affixed or attached to any of the foregoing, and all drawings, specifications, plans and manuals relating to the foregoing;
- (c) all present and future inventory of the Debtor, including all of its present and future raw materials, materials used or consumed in its business, work-in-progress, finished goods, goods used for packing and goods acquired or held for sale or lease or that have been leased or furnished or that are to be furnished under contracts of rental or service, and all accessions to any of the foregoing, including all spare parts and accessories installed in or affixed or attached to any of the foregoing;
- (d) all present and future intangibles of the Debtor, including all of its present and future accounts and other amounts receivable, book debts, goodwill, Intellectual Property and choses in action of every nature and kind;
- (e) all present and future documents of title, chattel paper, instruments, money and securities of the Debtor;
- (f) by way of a floating charge, all present and future real property, personal property, assets, and undertaking of the Debtor of any nature or kind, including all real property, personal property, assets and undertaking at any time owned, leased or licenced by the Debtor or in which the Debtor at any time has any right or interest or to which the Debtor is or may at any time become entitled (other than the property, assets and undertaking of the Debtor validly pledged or assigned or subjected to a valid mortgage, charge, hypothec or security interest by subsection 11(a), 11(b), 11(c), 11(d) or 11(e) hereof and subject to the exceptions hereinafter contained); and
- (g) all proceeds arising from the property, assets and undertaking of the Debtor referred to in this section 11, including insurance proceeds and any other payment representing indemnity or compensation for loss of or damage thereto.

### **Assignment of Leases and Rents**

12. As additional and separate security for payment and performance of the Obligations, the Debtor hereby assigns, transfers and sets over to the Secured Party, all the Debtor's rights and interests in all existing and future leases, tenancy agreements, offers to lease and other similar agreements with respect to all or part of the Lands, and all rents, incomes, profits and other amounts now or hereafter arising from or out of all or part of the Lands or any building, improvement, fixture or part thereof forming part of the Lands, and the following provisions shall apply with respect thereto:

- (a) The assignment of each of the foregoing and of each of the rents, incomes, profits and other amounts by the Debtor to the Secured Party herein contained in this Section 12 shall be deemed to be a separate assignment so that the Secured Party in its discretion

may exercise its rights in respect of any or all of such leases, offers to lease, tenancy agreements or other similar agreements or the rents, incomes, profits or other amounts paid or payable thereunder.

- (b) Until the the occurrence of a Default, the Debtor may collect, retain and apply all rents, incomes, profits and other amounts and deal with all leases, offers to lease, tenancy agreements and other similar agreements from time to time.
- (c) Nothing herein shall obligate the Secured Party to assume or perform (and nothing herein shall impose on the Secured Party) any liability or obligation of the Debtor to any tenant or other person pursuant to or in respect of any lease, offer to lease, tenancy agreement, other similar agreement or otherwise, and the Debtor hereby indemnifies and saves harmless the Secured Party from any and all claims with respect thereto (except to the extent arising from the gross negligence or wilful misconduct of the Secured Party), provided that the Secured Party may, at its sole option, assume or perform any such obligations as it considers necessary or desirable
- (d) The Secured Party may, at any time without further request or agreement by the Debtor, reassign to the Debtor or its successors or assigns, any or all of the collateral referred to in this Section 12.

#### **Limited Exceptions to Grant of Security Interest**

- 13. Despite any other provision of this agreement, the last day of any term reserved by any lease of real property, oral or written, or any agreement therefor, now held or hereafter acquired by the Debtor, and whether falling within the general or particular description of the Collateral, is hereby and shall be excepted out of the Security Interest, but the Debtor shall stand possessed of the reversion of one day remaining in the Debtor in respect of any such term, for the time being demised, as aforesaid, upon trust to assign and dispose of the same as any purchaser of such term shall direct.
- 14. Despite any other provision of this agreement, the Security Interest shall not attach to any Contractual Right to the extent that the granting of the Security Interest therein would constitute a breach of, or permit any Person to terminate such Contractual Right, but the Debtor shall hold its interest in each such Contractual Right in trust for the Secured Party and shall, after the Security Interest shall have become enforceable, specifically assign each such Contractual Right to the Secured Party, or as the Secured Party may otherwise direct. The Debtor agrees that it shall, upon the request of the Secured Party, whether before or after the Security Interest has become enforceable, use all commercially reasonable efforts to obtain any consent required to permit any such Contractual Right to be subjected to the Security Interest, and the Security Interest shall attach to such Contractual Right following the receipt of such consent.

#### **Attachment**

- 15. The Debtor confirms and agrees that value has been given by the Secured Party to the Debtor, that the Debtor has rights in all existing Collateral and that the Debtor and the Secured Party have not postponed the time for attachment of the Security Interest, such that the Security Interest shall attach to existing Collateral upon the execution of this agreement and shall attach

to Collateral in which the Debtor hereafter acquires rights at the time that the Debtor acquires rights in such Collateral.

**Representations and Warranties by the Debtor**

16. The Debtor hereby represents and warrants to the Secured Party that:
- (a) the Debtor has the capacity and authority to incur the Obligations, to create the Security Interest and to execute and deliver and perform its obligations under this agreement;
  - (b) the execution and delivery of this agreement and the performance by the Debtor of its obligations hereunder have been duly authorized by all necessary proceedings;
  - (c) this agreement constitutes a legal, valid and binding obligation of the Debtor, enforceable against the Debtor in accordance with its terms subject only to bankruptcy, insolvency, reorganization, moratorium and other similar laws of general application affecting creditors' rights and the discretion exercisable by courts of competent jurisdiction in respect of the availability of equitable remedies;
  - (d) the Debtor is the sole registered, legal and beneficial owner of an estate in fee simple in the Lands with good and marketable title thereto, and the Debtor is the legal and beneficial owner of the remainder of the Collateral, in each case, free of any mortgages, charges, liens, pledges, security interests or other encumbrances or claims whatsoever except Permitted Encumbrances;
  - (e) intentionally deleted; and
  - (f) the Debtor does not keep tangible Collateral at any location(s) except:
    - (i) intentionally deleted, and
    - (ii) any location(s) listed in Schedule "B" hereto,other than tangible Collateral in transit to or from such locations.

**Covenants of the Debtor**

17. The Debtor agrees with the Secured Party that, until the Obligations have been satisfied and paid in full:
- (a) it will:
    - (i) make and maintain all filings, registrations and recordations necessary or desirable to protect its right, title and interest in the Collateral;
    - (ii) defend the Collateral against any actions, claims and demands of any Person (other than the Secured Party) claiming the Collateral (or any of it) or an interest therein;

- (iii) pay all taxes, rates, levies, assessments and other impositions and charges, of every nature and kind, which may now or hereafter be lawfully levied, assessed or imposed on or in respect of the Debtor or the Collateral (or any of it), including those which could result in the creation of a statutory lien or deemed trust affecting the Debtor or the Collateral, as and when the same become due and payable;
- (iv) notify the Secured Party of any loss or damage to the Collateral, any change in any information provided in this agreement (including the schedules hereto) or any actual or potential claim affecting the Debtor, the Collateral or the Security Interest;
- (v) hold the proceeds received from any direct or indirect dealing with the Collateral in trust for the Secured Party after either the Security Interest becomes enforceable or any of the Collateral is sold other than in the ordinary course of business of the Debtor and for the purpose of carrying on such business;
- (vi) strictly comply with every covenant and undertaking heretofore or hereafter given by it to the Secured Party, whether contained herein or not;
- (vii) permit the Secured Party at any time after the Security Interest shall have become enforceable, to require any account debtor of the Debtor to make payment to the Secured Party of any or all amounts owing by the account debtor to the Debtor and the Secured Party may take control of any proceeds referred to in subsection 11(g) hereof and may hold all amounts received from any account debtor and any proceeds as cash collateral as part of the Collateral and as security for the Obligations;
- (viii) prevent any Collateral constituting personal property from becoming an accession to any personal property not subject to the Security Interest, or becoming affixed to any real property other than the Lands;
- (ix) deliver to the Secured Party, at the Secured Party's request, duly endorsed and/or accompanied by such assignments, transfers, powers of attorney or other documents as the Secured Party may request, all items of the Collateral comprising chattel paper, instruments, securities and documents of title;
- (x) pay, on demand by the Secured Party, all costs and expenses (including all legal fees) incurred by the Secured Party in the preparation, perfection, administration and enforcement of this agreement (including expenses incurred in considering, protecting or improving the Secured Party's position, or attempting to do so, whether before or after default) and all such costs and expenses shall bear interest at the highest rate applicable to the Obligations, shall form part of the Obligations and shall be secured by the Security Interest;
- (xi) at all times, both before and after the occurrence of a default, do or cause to be done such further and additional acts and things and execute and deliver or cause to be executed and delivered all such further and additional documents

and agreements as the Secured Party may reasonably require to better pledge, assign, mortgage, charge and hypothecate the Collateral in favour of the Secured Party, to perfect the Security Interest and, without limiting the generality of the forgoing, to accomplish the intentions of this agreement.

- (b) it will not, without the prior written consent of the Secured Party:
  - (i) intentionally deleted;
  - (ii) intentionally deleted;
  - (iii) intentionally deleted; and
  - (iv) keep tangible Collateral at any location other than the location(s) listed in Schedule "B" hereto without providing the Secured Party with thirty (30) Business Days' prior written notice thereof.

#### **Covenants of the Debtor regarding the Lands**

18. The Debtor agrees with the Secured Party that:

- (a) in accordance with subsection 7(3) of the *Land Registration Reform Act* (Ontario), the covenants deemed to be included in a charge by subsection 7(1) of such Act are expressly excluded from this agreement;
- (b) subject to section 41 hereof, the Debtor releases to the Secured Party all the Debtor's right, title and interest in and to the Collateral and every part thereof and the Debtor shall not at any time hereafter make any claim to the Collateral, challenge the Secured Party's rights thereto or make any demands upon the Secured Party with respect to the Collateral and that the Secured Party shall be exonerated and discharged of and from all claims and demands which the Debtor might or could have against the Secured Party with respect to the Collateral;
- (c) it will at all times fully perform and comply with all obligations imposed on, assumed by or agreed to by it pursuant to any prior encumbrance of the Lands or any part thereof or its interest therein and, if the Debtor shall fail so to do, the following shall apply:
  - (i) the Secured Party may (but shall not be obliged to) take any action the Secured Party deems necessary or desirable acting reasonably to cure any default by the Debtor in the performance of or compliance with any of the Debtor's obligations imposed on, assumed by or agreed to by the Debtor pursuant to any such prior encumbrance;
  - (ii) upon receipt by the Secured Party from any such prior encumbrancer of any written notice of default by the Debtor, the Secured Party may rely thereon and take any action as aforesaid to cure such default even though the existence of such default or the nature thereof may be questioned or denied by the Debtor or by any Person on behalf of the Debtor;



- (iii) the Debtor hereby expressly grants to the Secured Party, and agrees that the Secured Party shall have the absolute and immediate right to enter in and upon the Lands or any part thereof to such extent and as often as the Secured Party, in its sole discretion, acting reasonably, deems necessary or desirable, in order to cure any such default by the Debtor;
- (iv) the Secured Party may pay and expend such sums of money as the Secured Party in its sole discretion, acting reasonably, deems necessary for any such purpose, and the Debtor hereby agrees to pay to the Secured Party, immediately upon notification by the Secured Party and without demand, all such sums so paid and expended by the Secured Party, together with interest thereon at the rate aforesaid from the date of each such payment; and
- (v) all sums so paid and expended by the Secured Party and such interest thereon, shall be added to and form part of the Obligations and be secured by the Security Interest in priority to all other mortgages, charges and other encumbrances.

#### **Default**

19. Without prejudice to any right which the Secured Party may now or hereafter have to demand payment of any of the Obligations, the Obligations shall, at the option of the Secured Party, become payable and the Security Interest shall become enforceable if a Default occurs.

#### **Remedies of the Secured Party**

20. Whenever the Security Interest shall have become enforceable, and so long as it shall remain enforceable, the Secured Party may proceed to realize the Security Interest and the Collateral and to enforce its rights by doing any one or more of the following:
- (a) entering upon the Lands and any other lands and premises where any Collateral is or may be located;
  - (b) taking possession of Collateral by any method permitted by law;
  - (c) occupying the Lands and any other lands and premises occupied by the Debtor and using all or any part of the Lands and such other lands and premises and the equipment and other Collateral located thereon;
  - (d) leasing, selling, licensing or otherwise disposing of the whole or any part or parts of the Lands and other Collateral;
  - (e) collecting, selling or otherwise dealing with any accounts or other amounts receivable of the Debtor, including notifying any Person obligated to the Debtor in respect of an account, chattel paper or instrument to make payment to the Secured Party of all present and future amounts due thereon;
  - (f) taking steps and expending such monies as it considers necessary or desirable in its sole discretion to maintain, preserve and protect the Collateral, including making payments

on account of other security interests affecting the Collateral; provided that the Secured Party shall have no obligation to take any such actions or make any such expenditures; but any such amounts paid by the Secured Party shall be added to the Obligations and shall be secured by the Security Interest;

- (g) collecting any rents, income, and profits received in connection with the business of the Debtor or the Collateral, without carrying on such business;
  - (h) carrying on the business of the Debtor or any portion thereof;
  - (i) exercising any and all of the rights and remedies granted pursuant to the PPSA and any other applicable legislation, or otherwise available at law or in equity;
  - (j) demanding, commencing, continuing or defending any judicial or administrative proceedings for the purpose of protecting, seizing, collecting, realizing or obtaining possession or payment of the Collateral, and giving valid and effectual receipts and discharges therefor and to compromise or give time for the payment or performance of all or any part of the accounts or other amounts receivable of the Debtor or any other obligation of any third party to the Debtor;
  - (k) borrowing money for the maintenance, preservation or protection of the Collateral or for the carrying on of the business of the Debtor, and charge and grant further security interests in the Collateral in priority to the Security Interest or otherwise, as security for the money so borrowed;
  - (l) accepting the Collateral in satisfaction of the Obligations (and in connection therewith, foreclosing on the Lands);
  - (m) appointing by instrument in writing a Receiver or Receivers of the Collateral or any part thereof;
  - (n) bringing proceedings in any court of competent jurisdiction for the appointment of a Receiver or Receivers or for the sale of the Collateral or any part thereof; and
  - (o) filing such proofs of claim and other documents as may be necessary or advisable in order to have its claim lodged in any bankruptcy, winding-up or other judicial proceedings relating to the Debtor or the Collateral.
21. Any Receiver appointed by the Secured Party may be any Person or Persons (including one or more officers or employees of the Secured Party), and the Secured Party may remove any Receiver so appointed and appoint another or others instead. Any such Receiver may exercise any and all of the rights, remedies and powers of the Secured Party provided in this agreement. The Secured Party shall not be responsible for the actions, errors or omissions of any Receiver it appoints and any such Receiver shall be deemed to act as agent for the Debtor for all purposes, including the occupation of the Lands and any other premises of the Debtor and in carrying on the Debtor's business, unless the Secured Party expressly specifies in writing that the Receiver shall be agent for the Secured Party for one or more purposes. Without limiting the generality of the forgoing, for the purposes of realizing upon the Security Interest, any Receiver may sell, lease, or otherwise dispose of Collateral as agent for the Debtor or as agent for the Secured

Party as the Secured Party may specify in writing in its sole discretion. The Debtor agrees to ratify and confirm all actions of any Receiver appointed by the Secured Party acting as agent for the Debtor, and to release and indemnify the Receiver in respect of all such actions.

22. Without limiting the ability of the Secured Party or any Receiver to dispose of Collateral in any other manner, the Debtor agrees that any sale, lease or other disposition of the Collateral hereunder may be completed by public auction, public tender or private contract, with or without notice, with or without advertising and with or without any other formality (except as required by law), all of which are hereby waived by the Debtor. Any such disposition of Collateral may involve all or part of the Collateral and may be on such terms and conditions as to credit or otherwise and as to upset or reserve bid or price as the Secured Party or any Receiver appointed by the Secured Party may, in its sole discretion, deem advantageous and may take place whether or not the Secured Party or any such Receiver has taken possession of such Collateral.
23. The Secured Party shall not be liable for any delay or failure to enforce any rights, powers or remedies available to it or to institute any proceedings for such purposes.
24. No right, power or remedy of the Secured Party (whether granted herein or otherwise) shall be exclusive of or dependent on or merge in any other right, power or remedy, but all such rights, powers and remedies may from time to time be exercised independently or in combination.
25. The Debtor agrees to pay to the Secured Party, forthwith on demand by the Secured Party, all costs and expenses incurred by the Secured Party in connection with the exercise by the Secured Party of its rights, powers and remedies hereunder, including:
  - (a) any costs and expenses incurred by the Secured Party in taking, holding, moving, storing, recovering, possessing, repairing, processing, preparing for disposition or disposing of Collateral;
  - (b) any legal fees and expenses incurred by the Secured Party in enforcing its rights, powers and remedies, including those incurred in connection with any proceedings taken for the purpose of enforcing its rights, powers and remedies hereunder or otherwise relating to the non-payment or non-performance of any Obligations;
  - (c) the cost of borrowing amounts as hereinbefore provided (for the purpose of carrying on the Debtor's business or otherwise), including, the principal amount or any such amount borrowed, all interest thereon and fees relating thereto; and
  - (d) all costs and expenses of or incurred by any Receiver, agent or consultant appointed by the Secured Party (including any legal fees and expenses incurred by any such Receiver, agent or consultant).

All such sums shall bear interest at the highest rate applicable to the Obligations, shall form part of the Obligations and shall be secured by the Security Interest.

26. Any and all payments made in respect of the Obligations from time to time and moneys realized from any Collateral (including moneys realized on any enforcement of this agreement) may be applied to such part or parts of the Obligations as the Secured Party may see fit, and the Secured

Party shall at all times and from time to time have the right to change any appropriation as the Secured Party may see fit.

27. The Debtor shall remain liable for all Obligations that are outstanding following realization of all or any part of the Collateral.

### **Rights of the Secured Party**

28. The Secured Party may pay the whole or any part of any liens, taxes, rates, charges or encumbrances now or hereafter existing in respect of any Collateral and such payments together with all costs, charges and expenses which may be incurred in connection with making such payments shall form part of the Obligations, shall bear interest at the highest rate applicable to the Obligations, and shall be secured by the Security Interest. Whenever the Secured Party pays any such lien, tax, rate, charge or encumbrance, it shall be entitled to all the equities and securities of the Person or Persons so paid and is hereby authorized to obtain any discharge thereof and hold such discharge without registration for so long as it may deem advisable to do so.
29. If the Debtor fails to perform or comply with any covenant or other obligation of the Debtor under this agreement, the Secured Party may, but need not, perform or otherwise cause the performance or compliance of such covenant or other obligation, provided that any performance or compliance undertaken by the Secured Party will not constitute a waiver, remedy or satisfaction of such failure. The costs and expenses of the Secured Party incurred in connection with any such performance or compliance shall be payable by the Debtor to the Secured Party on demand, form part of the Obligations, bear interest at the highest rate applicable to the Obligations and be secured by the Security Interest.
30. The Secured Party, without exonerating in whole or in part the Debtor, may grant time, renewals, extensions, indulgences, releases and discharges to, may take securities from and give the same and any or all existing securities up to, may abstain from taking securities from or from perfecting securities of, may accept compositions from, and may otherwise deal with the Debtor and all other Persons and securities as the Secured Party may see fit.
31. Nothing herein shall obligate the Secured Party to extend or amend any credit to the Debtor or to any other Person.
32. The Secured Party may assign, transfer and deliver to any transferee any of the Obligations or any security or any documents or instruments held by the Secured Party in respect thereof. The Debtor shall not assign any of its rights or obligations hereunder without the prior written consent of the Secured Party.

### **Amalgamation of Debtor**

33. If the Debtor amalgamates with any other corporation or corporations, this agreement shall continue in full force and effect and shall be binding on the amalgamated corporation and, for greater certainty:
- (a) the Security Interest shall:

- (i) continue to secure payment of all obligations of the Debtor to the Secured Party;
- (ii) secure payment of all obligations of each other amalgamating corporation to the Secured Party; and
- (iii) secure payment of all obligations of the amalgamated corporation to the Secured Party arising on or after the amalgamation;

and the term "Obligations" shall include all such obligations of the Debtor, the other amalgamating corporations and the amalgamated corporation;

(b) the Security Interest shall:

- (i) continue to charge all property and assets of the Debtor;
- (ii) charge all property and assets of each other amalgamating corporation; and
- (iii) charge all property and assets of the amalgamated corporation in existence at the time of the amalgamation and all property and assets acquired by the amalgamated corporation after the amalgamation;

and the term "Collateral" shall include all such property and assets of the Debtor, the other amalgamating corporations and the amalgamated corporation;

- (c) all defined terms and other provisions of this agreement shall be deemed to have been amended to reflect such amalgamation, to the extent required by the context; and
- (d) the parties agree to execute and deliver all such further documents and assurances as may be necessary or desirable in connection with the foregoing.

#### **Notices**

34. Any notice, demand or other communication permitted or required to be given hereunder shall be given in accordance with the Loan Agreement.

#### **Continuing Security for Revolving and Other Obligations**

35. This agreement shall be held by the Secured Party as continuing security to secure payment of all Obligations at any time and from time to time outstanding up to, at any time, a maximum total amount equivalent to the full principal amount specified in section 10, unpaid interest then accrued thereon pursuant to section 10, and all other amounts then owing or payable by the Debtor pursuant to this agreement. Accordingly, any payment from time to time of any of the Obligations shall not reduce such maximum total amount or the principal amount specified in section 10, and this agreement shall continue, after such payment, to secure payment of all Obligations at any time outstanding (including all Obligations relating to any future loan or other extension of credit made by the Secured Party to the Debtor) up to such maximum total amount. For greater certainty, until discharged pursuant to section 41, this agreement shall

continue as general and continuing security for payment of all future Obligations whenever the then outstanding Obligations are at any time or from time to time fully satisfied and paid.

**Claims under this Agreement**

36. The Secured Party shall not, at any time, claim payment from the Debtor under this agreement (whether for principal, interest or both) in an amount greater than the amount of the indebtedness forming part of the Obligations at such time.

**Satisfaction of Interest Payment Obligations**

37. Despite any other provision of this agreement, payment by the Debtor to the Secured Party of interest on all indebtedness comprising or forming part of the Obligations at the then current rate at which such indebtedness bears interest for any period of time shall constitute satisfaction of interest payable pursuant to this agreement for the equivalent period of time.

**Miscellaneous**

38. This agreement shall not result in the merger or any indebtedness or liability of the Debtor or any other Person or Persons to the Secured Party hereunder or under any negotiable instrument or other document by which the same may now or at any time hereafter be represented or evidenced. No judgment recovered by the Secured Party shall result in the merger of any such indebtedness or liability or in any way affect the Security Interest or the Secured Party's right to interest provided for herein.
39. In the event that any day, on or before which any action is required to be taken hereunder, is not a Business Day, then such action shall be required to be taken on or before the first Business Day thereafter.
40. Time shall be of the essence of this agreement.
41. Upon payment and fulfillment by the Debtor, its successors or permitted assigns, of all Obligations and provided that the Secured Party is then under no obligation (conditional or otherwise) to make any further loan or extend any other type of credit to the Debtor or to any other Person, the payment of which is secured, directly or indirectly, by this agreement, the Secured Party shall, upon request in writing by the Debtor, delivered to the Secured Party at the Secured Party's address as set out in section 34 hereof and at the Debtor's expense, discharge this agreement.
42. This agreement is in addition to and not in substitution for any other security now or hereafter held by the Secured Party and the terms and conditions of the Loan Documents will remain binding and effective and shall not merge in this Debenture or upon the registration thereof.
43. The Secured Party may in writing (and not otherwise) waive any default by the Debtor in the observance or performance of any provision of this agreement; provided that no waiver by the Secured Party shall extend to or be taken in any manner whatsoever to affect any subsequent default, whether of the same or a different nature, or the rights resulting therefrom.


44. This agreement shall enure to the benefit of the Secured Party, its successors and assigns, and shall be binding on the Debtor, its successors and permitted assigns.
45. The Debtor agrees that the Secured Party may from time to time provide information concerning this agreement (including a copy hereof), the Collateral and the Obligations to any Person the Secured Party in good faith believes is entitled thereto pursuant to applicable legislation.
46. This agreement may be executed and delivered by facsimile, in portable document format (“**pdf**”) or other electronic means, and any such signature shall be deemed to be equivalent to an original signature for all purposes.
47. The Debtor acknowledges receipt of an executed copy of this agreement.
48. To the extent that there is any inconsistency between a provision of this Debenture and a provision of the Loan Agreement, the provision of the Loan Agreement shall govern. Notwithstanding that this Debenture is expressed to be payable on demand, the Secured Party shall not make a demand for payment hereunder unless an Event of Default has occurred and is continuing under the Loan Agreement. For greater certainty, a provision of this Debenture and a provision of the Loan Agreement shall be considered to be inconsistent if both relate to the same subject-matter and one provision imposes more onerous obligations or restrictions than the corresponding provision.
49. Prior to the execution of this agreement, the Debtor agrees that they have read and understand the terms of this Agreement and have had the opportunity to seek, and has either obtained or waived their right to obtain, independent legal advice with respect to the matters addressed in this Agreement. The Debtor fully understands and accepts the terms of this Agreement, and confirms that they are executing it freely, voluntarily and without duress, and agree that their failure to obtain independent legal advice shall not be used by the Debtor as a defence to the enforcement of this agreement.

***[Remainder of page intentionally blank; signature page follows.]***

IN WITNESS WHEREOF the Debtor has executed and delivered this agreement as of February 28, 2023.

\_\_\_\_\_  
Witness signature

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

}   
} **ABDUL MUQEET**



**SCHEDULE "A"**

Lands

**110 Herdwick Street, Brampton, Ontario**

REGISTERED OWNER: Abdul Muqet

LEGAL DESCRIPTION: LOT 158, PLAN 43M1681. T/W EASEMENT OVER PT LT 159 43M1681  
DES AS PT1, 43R30712, AS IN PR1055230. S/T EASEMENT FOR ENTRY AS  
IN PR1078663.; CITY OF BRAMPTON

PIN: 14209-0990 (LT)

LAND REGISTRY OFFICE: Land Titles Division of Peel (No. 43)

**SCHEDULE "B"**

**Other Location(s) of the Debtor's Tangible Collateral**

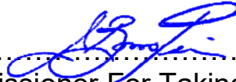
- 110 Herdwick Street, Brampton, Ontario, Canada

**SCHEDULE "C"**

**Permitted Encumbrances**

- 1) Instrument No. PR3454064 registered March 6, 2019, being a Charge in favour of Computershare Trust Company of Canada securing the principal sum of \$676,000.00 and Instrument No. PR3454144 registered on March 6, 2019, being a Notice of Assignment of Rents – General relating thereto;
- 2) Instrument No. PR3925087 registered October 12, 2021, being a Charge in favour of Jagmohan Hayer securing the principal sum of \$270,000.00;
- 3) liens for taxes or utility charges in either case only if same are not yet due or payable;
- 4) registered easements, rights of way, restrictive covenants and servitudes and other similar rights in land granted to, reserved or taken by any governmental authority or public utility, or any registered subdivision, development, servicing, site plan or other similar agreement with any governmental authority or public utility provided that they have been complied with;
- 5) all Federal, Provincial or Municipal by-laws, regulations, restrictions or guidelines;
- 6) minor title defects or irregularities;
- 7) any subsisting reservations contained in the original grant of the Lands from the Crown; or
- 8) leases of the Lands which are disclosed by the Debtor to the Secured Party prior to the date hereof in a rent roll or other document;
- 9) any encumbrances permitted under any of the loan or security documents delivered in connection with the Loan Agreement;
- 10) any instruments or encumbrances registered on title to the Lands as of the date hereof; and
- 11) such other encumbrances consented to in writing by the Secured Party in its sole discretion.

This is **Exhibit "W"** referred to in the affidavit of Tyson Hartwell, sworn before me by videoconference on April 27, 2023 in accordance with O.Reg. 431/20: Administering Oath or Declaration Remotely. The deponent was located in the City of Calgary in the Province of Alberta and I was located in the City of Toronto in the Province of Ontario.



.....  
A Commissioner For Taking Affidavits

Jeremy Bornstein  
LSO#: 65425C



## GUARANTEE AND INDEMNITY

TO: CANADIAN WESTERN BANK (“CWB”)

DATE: February 28, 2023

In consideration of the covenants and agreements herein contained, the sum of \$1.00 now paid by **CWB** to each of **INDEX HOLDING GROUP INC.**, and **425 WHARNCLIFFE ROAD INC.** (collectively, the “**Obligors**” and each individually, an “**Obligor**”) and other good and valuable consideration (the receipt and sufficiency of which are hereby acknowledged), the Obligors covenant and agree with **CWB** as follows:

**1 INTERPRETATION** — Wherever throughout this Guarantee and Indemnity (“**Guarantee**”), the Obligors or **CWB** are mentioned or referred to, such mention or reference shall extend to their respective successors and assigns, as the case may be. Reference to the term “**Obligations**” herein shall be to any and all obligations from time to time owing by each Obligor to **CWB** whether under a loan agreement, promissory note, leasing agreement, master leasing agreement, leasing schedule, conditional sale contract, security agreement, guarantee, chattel mortgage, hypothec, pledge, debenture or any other instrument (hereinafter singularly or collectively called “**Finance Instruments**”) between **CWB** and any of the Obligors and whether any such Finance Instrument was executed prior to the execution of this Agreement, is executed concurrently herewith or at any time in the future.

## **2 GUARANTEE**

**2.1 Guarantee** — Each Obligor hereby irrevocably and unconditionally guarantees and covenants with **CWB** as principal debtor of **CWB** and not merely as surety, that each of the other Obligors will duly and punctually perform all of the Obligations, and pay or cause to be paid to **CWB** the rentals under and the principal of and interest on the Finance Instruments evidencing or securing the Obligations (including, in case of default, interest on the amount in default) as and when the same becomes due and payable, whether by lapse of time, by extension, or upon a declaration or otherwise according to the terms of the Finance Instruments and all other moneys owing on or under the Finance Instruments or in any way relating thereto including all expenses, including legal expenses and service charges. The liability of each Obligor hereunder shall be irrevocable and unlimited and shall include all interest, fees, costs or expenses (including, without limitation, legal fees and expenses) which may now or hereafter accrue or be incurred with respect to such Obligations and any fees, costs or expenses (including without limitation, legal fees and expenses) that may be incurred by **CWB** by reason of any Obligors’ default under this Guarantee.

**2.2 Terms of the Finance Instruments** — The Obligors hereby consent to and approve of the terms of the Finance Instruments; the guarantee and the agreements of the Obligors herein contained shall take effect and shall be and are hereby declared to be binding upon the Obligors notwithstanding any defect in or omission from the Finance Instruments or any non-registration or non-filing or defective registration or filing of any Finance Instruments or notice of the interest of **CWB** created thereby or by reason of any failure of the security intended to be created by the Finance Instruments or pursuant thereto.

**2.3 Guarantee Absolute** — The liability of each Obligor hereunder shall be absolute and unconditional and shall not be affected by:

- (a) any lack of validity or enforceability of any agreements between any Obligor and **CWB**; any change in the time, manner or place of payment or in any other term of such agreements or the failure on the part of any Obligor to carry out any of its obligations under such agreements;
- (b) any impossibility, impracticability, frustration of purpose, illegality, force majeure or act of government;
- (c) the bankruptcy, winding-up, liquidation, dissolution or insolvency of any Obligor, **CWB** or any party to any agreement to which **CWB** is a party;
- (d) any lack or limitation of power, incapacity or disability on the part of any Obligor or of the directors, partners or agents thereof or any other irregularity, defect or informality on the part of any Obligor in its obligations to **CWB**; or
- (e) any other law, regulation or other circumstance which might otherwise constitute a defense available to, or a discharge of, any Obligor in respect of any or all of the Obligations.

The Obligors shall be held and bound to **CWB** as principal debtor, and not as surety, in respect of the payment of any or all of the Obligations. All amounts payable to **CWB** shall be paid to **CWB** forthwith after demand therefore as provided herein.

**2.4 No Waiver** — The Obligors hereby agree that their obligations hereunder shall be unconditional and no waiver by **CWB** of any of its rights hereunder or under the Finance Instruments and no action by **CWB** to enforce any of its rights hereunder or under the Finance Instruments or failure to take, or delay in taking any such action shall affect any other obligation of the Obligors hereunder.

**3 INDEMNITY** — Each Obligor also covenants and agrees with **CWB** that it will at all times and from time to time hereafter, indemnify (on a joint and several basis) and keep indemnified and save harmless **CWB** from any and all losses, costs, damages and expenses, including legal fees and disbursements and the costs of all distresses, actions, proceedings, claims and demands incurred or made by **CWB** if **CWB** does not receive payment of all amounts due and owing under the Finance Instruments or if any Obligor defaults in the payment of any instalment payable or in the performance of the Obligations under the Finance Instruments which, if the Finance Instruments were in full force and effect and good standing, would be payable or required to be performed under the Finance Instruments. In addition to the foregoing, the Obligors agree to pay **CWB**, as administrative costs, an amount equal to fifteen percent (15%) of all amounts payable hereunder in the event that court proceedings are instituted against any Obligor because such Obligor has failed to respect their obligations hereunder.

#### **4 DEALINGS WITH OBLIGOR AND OTHERS**

**4.1 No Release** — The liability of the Obligors hereunder shall not be released, discharged, limited or in any way affected by anything done, suffered or permitted by **CWB** in connection with any duties or liabilities of any Obligor to **CWB** of any security thereof including any loss of or in respect of any security received by **CWB** from any Obligor or others. **CWB**, without releasing, discharging, limiting or otherwise affecting in whole or in part the Obligors' liability hereunder, may:

- (a) grant time, renewals, extensions, indulgences, releases, waivers and discharges to any Obligor;
- (b) grant substitutions for the Obligations or any part thereof or any agreement related thereto;
- (c) take or abstain from taking securities or collateral from any Obligor or from perfecting securities or collateral of any Obligor;
- (d) accept compromises from any Obligor;
- (e) apply all money at any time received from any Obligor or from securities upon such part of the Obligations as **CWB** may see fit or change any such application in whole or in part from time to time as **CWB** may see fit;
- (f) amend any of the Finance Instruments; or
- (g) otherwise deal with any Obligor and all other persons and securities as **CWB** may see fit.

**4.2 No Exhaustion of Remedies** — **CWB** shall not be bound or obligated to exhaust its recourse against any Obligor or any other person or any securities or collateral it may hold or take any other action (other than to make demand pursuant to Section 6.1) before being entitled to demand payment from any Obligor hereunder. The obligations of each Obligor hereunder are joint and several with those of the other Obligors and any other guarantor, security or other person liable in any way for the Obligations. This Guarantee is in addition and not in substitution for any other guarantee, by whomsoever given, at any time held by **CWB**, and without prejudice to any other security, by whomsoever given, at any time held by **CWB**, and **CWB** shall be under no obligation to marshal in favour of any Obligor any such security or any of the funds or assets **CWB** may be entitled to receive or have a claim upon.

**4.3 Conclusive Statement** — Any account settled or stated in writing by or between **CWB** and an Obligor shall be prima facie evidence that the balance or amount thereof appearing due to **CWB** is so due.

**4.4 No Set-Off** — No Obligor shall claim any set-off or counterclaim against any other Obligor in respect of any liability of such other Obligor to it.

#### **5 CONTINUING GUARANTEE**

**5.1 Continuing Guarantee** — This Guarantee shall be a continuing guarantee, notwithstanding any extensions, modifications, renewals or indulgences with respect to, or substitutions for, the Obligations or any part thereof, and shall remain in full force and effect until the Obligations are performed and paid in full. This Guarantee shall continue to be effective even if at any time any payment of any of the Obligations is rendered unenforceable or is rescinded or terminated or must otherwise be returned by **CWB** upon the occurrence of any action or event including the insolvency, bankruptcy or reorganization of any Obligor or otherwise, all as though such payment had not been made.

#### **6 DEMAND FOR PAYMENT**

**6.1 Demand for Payment** — **CWB** shall be entitled to make demand upon any Obligor at any time upon a default in payment of any amount owing by any Obligor to **CWB** and, upon such default, **CWB** may treat all Obligations as due and payable and may forthwith collect from any Obligor the total amount guaranteed hereunder. Each Obligor shall make payment to or performance in favour of **CWB** of the total amount guaranteed hereunder forthwith after demand thereof is made to such Obligor.

**6.2 Interest** — The Obligors shall pay interest to **CWB** at the rate of 24% per annum on the unpaid portion of all amounts payable by the Obligors under this Guarantee, such interest to be calculated daily from the date of demand by **CWB** on the Obligors.

## **7 ASSIGNMENT, POSTPONEMENT AND SUBROGATION**

**7.1 Assignment and Postponement** — All debts and liabilities, present and future, of each Obligor to any other Obligor are hereby assigned to **CWB** and postponed to the Obligations, and all money received by any Obligor in respect thereof shall be received in trust for **CWB** and forthwith upon receipt shall be paid over to **CWB**, the whole without in any way lessening or limiting the liability of each of the Obligors hereunder and this assignment and postponement is independent of this Guarantee and shall remain in full force and effect until, in the case of the assignment, the liability of the Obligors under this Guarantee has been discharged or terminated and, in the case of the postponement, until payment in full to **CWB** of all obligations of the Obligors under this Guarantee.

**7.2 Subrogation** — The Obligors will not exercise any rights which it may acquire by way of subrogation under this Guarantee, by any payment made hereunder or otherwise, until all Obligations shall have been paid and performed in full. If any amount shall be paid to any Obligor on account of such subrogation rights at any time when all the Obligations shall not have been paid in full, such amount shall be held in trust for the benefit of **CWB** and shall forthwith be paid to **CWB** to be credited and applied upon the Obligations. If (i) the Obligors perform or make payment to **CWB** of all amounts owing by the Obligors to **CWB** under this Guarantee and (ii) the Obligations are performed and paid in full, **CWB** will, at the Obligors' request and at the Obligors' expense, execute and deliver to the Obligors appropriate documents, without recourse and without representation and warranty, necessary to evidence the transfer by subrogation to the Obligors of an interest in the Obligations and any security held therefor resulting from such performance or payment by the Obligors.

**8 COVENANTS OF THE OBLIGORS** — Each Obligor hereby represents, covenants and warrants that:

- (a) if the Obligor is a corporation, the making and performance of this Guarantee has been duly authorized by all necessary corporate actions on the part of such Obligor, do not require any shareholders' approval, and will not violate any provisions of such Obligor's incorporating documents or by-laws or result in the breach of, constitute a default under, contravene any provisions of or result in the creation of any lien, charge, encumbrance or security interest upon any property or assets of such Obligor pursuant to any of such Obligor's stocks, bonds, notes or debentures outstanding, or any agreement, indenture or other instrument to which such Obligor is a party or by which such Obligor or its property may be bound or affected;
- (b) this Guarantee constitutes a legal, valid and binding obligation of such Obligor in accordance with the terms hereof;
- (c) there is no pending or, to the best of the knowledge of such Obligor, threatened action or proceeding affecting such Obligor or, if the Obligor is a corporation, any of their subsidiaries before any court, governmental agency or arbitrator, which would materially adversely affect the legality, validity or enforceability of this Guarantee;
- (d) all Information as defined in Section 9.2 provided by such Obligor to **CWB** is accurate;
- (e) all payments to **CWB** are and will be derived from legal sources and **CWB** may decline any form of payment; and
- (f) it is and shall continue to be in compliance with all laws and regulations relating to the prevention of money laundering and terrorism.

## **9 GENERAL**

**9.1 Waivers** — The Obligors waive notice of acceptance of this Guarantee and of the extension or continuation of the Obligations or any part thereof. The Obligors further waive presentment, protest, notice, demand or action in respect of the Obligations or any part thereof, including any right to require **CWB** to sue any Obligor, or any other person obligated with respect to the Obligations or any part thereof, or otherwise to enforce payment thereof against any collateral securing the Obligations or any part thereof. Without limiting the generality of the foregoing, each Obligor is jointly and severally liable with each other Obligor for the due and punctual payment and performance of the Obligations, the Obligors each hereby waiving the benefit of division and discussion. The Obligors waive their right to receive a copy of any financing statement or financing change statement registered by **CWB** and of any related verification statement.

**9.2 Information** — The Obligors hereby consent and authorize **CWB** and its affiliates, agents, contractors and representatives, at any time, a) to collect, verify, use, communicate with and disclose to third parties (including credit reporting agencies, financial institutions, creditors, vendors and other persons) any credit, financial and other information, including personal information (as applicable) and information related to the credit rating, financial capacity and payment history, with respect to the Obligors ("**Information**"), as **CWB** deems necessary to process, complete, service and enforce the transactions hereby contemplated and any other existing or potential transactions, or as required or otherwise permitted by law; b) to respond to inquiries from, and exchange any Information with, third parties concerning any Obligor's credit rating, financial capacity and payment history; c) to provide Information to persons to whom **CWB** considers assigning, granting a participation or otherwise disposing of rights or obligations under the transactions hereby contemplated; and d) to provide to any person copies of this Guarantee. This consent is in addition to and does not replace any consent previously given.

**9.3 Benefit of the Guarantee** — This Guarantee shall enure to the benefit of and be binding upon the respective heirs, executors, administrators, successors and permitted assigns of the Obligors and **CWB**.

- 9.4 Entire Agreement** — This Guarantee constitutes the entire agreement between **CWB** and the Obligors with respect to the subject matter hereof and cancels and supersedes any prior understandings and agreements between such parties with respect thereto. There are no representations, warranties, terms, conditions, undertakings or collateral agreements, expressed, implied or statutory, between such parties other than as expressly set forth in this Guarantee.
- 9.5 No Waiver, Remedies** — No failure on the part of **CWB** to exercise, and no delay in exercising, any right hereunder shall operate as a waiver thereof, nor shall any single or partial exercise of any right hereunder preclude the other or further exercise thereof or the exercise of any other right. The remedies herein provided are cumulative and not exclusive of any remedies provided by law.
- 9.6 Severability** — If any provision of this Guarantee is determined to be invalid or unenforceable in whole or in part, such invalidity or unenforceability shall attach only to such provision or part thereof and the remaining part of such provision and all other provisions hereof shall continue in full force and effect.
- 9.7 Notices** — Any demand, notice or other communications (hereinafter in this Section 9.7 referred to as a “**Communication**”) to be given in connection with this Guarantee shall be given in writing and may be given by personal delivery or by registered mail addressed to the recipient at the address indicated on the signature page hereby or such other address as may be designated by notice by any party to the other. Any Communication given by personal delivery shall be conclusively deemed to have been given on the day of actual delivery thereof and, if given by registered mail, on the third day following the deposit thereof in the mail. If the party giving any Communication knows or ought reasonably to know of any difficulties with the postal system which might affect the delivery of mail, any such Communication shall not be mailed but shall be given by personal delivery.
- 9.8 Assignment** — The rights of **CWB** under this Guarantee may be assigned by **CWB** without the prior consent of the Obligors. No Obligor may assign its obligations under this Guarantee.
- 9.9 Governing Law** — This guarantee shall be governed by and construed in accordance with the laws of the Province of Ontario and the laws of Canada applicable therein.
- 9.10 Language** — The parties hereby acknowledge that it is their express wish that this Guarantee be drawn in the English language; les parties reconnaissent qu’il est de leur volonté expresse que la présente caution soit rédigée en langue anglaise seulement.

**[Signature page follows]**



**IN WITNESS WHEREOF**, the Obligors have executed this Guarantee as of the date first above written.

**INDEX HOLDING GROUP INC.**

By: \_\_\_\_\_  
Name: Abdul Muqheet  
Title: Director

Address 110 Herdwick Street  
for Brampton, ON L6S 0A5  
notice:

**425 WHARNCLIFFE ROAD INC.**

By: \_\_\_\_\_  
Name: Abdul Muqheet  
Title: Director

Address 110 Herdwick Street  
for Brampton, ON L6S 0A5  
notice:

This is **Exhibit "X"** referred to in the affidavit of Tyson Hartwell, sworn before me by videoconference on April 27, 2023 in accordance with O.Reg. 431/20: Administering Oath or Declaration Remotely. The deponent was located in the City of Calgary in the Province of Alberta and I was located in the City of Toronto in the Province of Ontario.



.....  
A Commissioner For Taking Affidavits

Jeremy Bornstein  
LSO#: 65425C



To: Canadian Western Bank (the “**Secured Party**”)

Date: February 28, 2023

## GENERAL SECURITY AGREEMENT

For good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged by the Debtor, the Debtor hereby agrees as follows:

### Definitions and Interpretation

1. In this agreement, the following words shall, unless otherwise provided, have the meanings set out below:

“**Business Day**” means a day, other than a Saturday, Sunday or statutory holiday in the Province of Ontario.

“**Collateral**” means all present and future property, assets and undertaking of the Debtor pledged, assigned, mortgaged, charged, hypothecated or made subject to a security interest pursuant to this agreement.

“**Contractual Right**” means any agreement, right, franchise, royalty, licence, authorization, approval, privilege or permit (a) to which the Debtor is now or hereafter becomes a party, (b) in which the Debtor now or hereafter has any interest or (c) of which the Debtor is or hereafter becomes a beneficiary.

“**Debtors**” means the signatories to this agreement and “**Debtor**” means any one of them.

“**Guarantee**” means any guarantee, including that certain guarantee and indemnity agreement dated as of the date hereof by, among others, the Debtors in favour of the Secured Party, as may be amended, supplemented, otherwise modified, restated or replaced from time to time.

“**Intellectual Property**” means all patents, trademarks, trade names, business names, trade styles, logos and other business identifiers, copyrights, technology, inventions, industrial designs, know-how, trade secrets and other industrial and intellectual property in which the Debtor now or in the future has any right, title or interest.

“**Investment Collateral**” means all present and future Investment Property (as such term is defined in the PPSA) and Financial Assets (as such term is defined in the STA) of the Debtor, including all present and future options and warrants of the Debtor and all other rights and entitlements arising therefrom or related thereto, and the Debtor’s present and future interests in partnerships, limited partnerships, limited liability partnerships and limited liability companies, and including all substitutions for any of the foregoing and dividends and income derived therefrom or payable in connection therewith, including, for greater certainty, any Investment Collateral listed or described in Schedule “C” hereto.

“**Loan Agreement**” means any equipment loan and security agreement, any loan agreement and any credit agreement between the Debtors and the Secured Party, as may be amended, supplemented, otherwise modified, restated or replaced from time to time.

“**Obligations**” means all present and future indebtedness, liabilities and obligations, direct or indirect, absolute or contingent, matured or unmatured, joint or several, of the Debtors (collectively) to the Secured Party, including without limitation any such indebtedness, liabilities and obligations arising under any Loan Agreement, any Guarantee (including “Obligations” as defined therein) or any other guarantees given in respect thereof.

“**Other Collateral**” shall have the meaning ascribed to such term in subsection 11(b).

“**Permitted Encumbrances**” means any and all liens, charges, mortgages, security interests, hypothecs and other encumbrances which affect all or any portion of the Collateral and which have been permitted or consented to in writing by the Secured Party (including any such liens, charges, mortgages, security interests and encumbrances the particulars of which are listed in Schedule “B” hereto).

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

“**PPSA**” means the *Personal Property Security Act* (Ontario), as amended from time to time and any legislation substituted therefor and any amendments thereto.

“**Receiver**” means a receiver, receiver-manager and receiver and manager.

“**Security Interest**” means the pledges, assignments, mortgages, charges and hypothecations of and the security interests in the Collateral created in favour of the Secured Party hereunder.

“**STA**” means the *Securities Transfer Act* (Ontario), as amended from time to time and any legislation substituted therefor and any amendments thereto.

2. References such as “this agreement”, “hereof”, “herein”, “hereto” and like references refer to this agreement and any exhibits or schedules attached hereto (all of which exhibits and schedules, form a part of this agreement) and not to any particular section, subsection, paragraph or other subdivision of this agreement.
3. The division of this agreement into sections, subsections and paragraphs and the insertion of headings in this agreement are for convenience of reference only and shall not affect the construction or interpretation of this agreement.
4. Terms used herein which are defined in the PPSA shall have the same meanings herein as are ascribed to such terms in the PPSA, unless such terms are otherwise defined.
5. The word “Debtor”, 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. The term “successors” shall include, without limiting its meaning, any corporation resulting from the amalgamation of a corporation with another corporation. Where the context so requires, words used herein (including defined terms) importing the singular shall include the plural and vice versa and words used herein (including defined terms) importing gender shall include all genders (including the neuter).
6. This agreement shall be binding upon each Debtor as if each such Debtor had executed and delivered a separate agreement to the Secured Party in the same form as this agreement without any other signatories thereto; and each reference to “the Debtor” in this Agreement shall refer to each Debtor individually. The addition of any Debtors as parties to this agreement from time to time, and the release by the Secured Party of any Debtors from this agreement from time to time, shall not require the consent of any other Debtor; and for greater certainty the obligations of each Debtor hereunder shall remain in full force and effect until this agreement is released by the Secured Party in accordance with the terms hereof notwithstanding the said addition or release of any other Debtor. Any notice delivered to a Debtor hereunder shall be deemed to have been received by all Debtors concurrently. The Secured Party's rights hereunder may be enforced from time to time against any Debtor or its assets without the requirement on the part of the Secured Party to marshal any of its claims or to exercise any of its rights against or for the benefit of any Debtor or to exhaust any remedies available to it against any Debtor or to resort to any other source or means of obtaining payment of any of the Obligations or to elect any other remedy.
7. Nothing herein (including the definition and use of the term Permitted Encumbrances) is intended or shall be deemed to subordinate the Security Interest to any Permitted Encumbrance or any other lien, charge, mortgage, security interest, hypothec or encumbrance affecting all or any portion of the Collateral.
8. If one or more of the provisions contained herein shall be invalid, illegal or unenforceable in any respect, such provision or provisions shall be severed from this agreement only to the extent necessary, and the validity, legality and enforceability of the remaining provisions hereof, including the provision or provisions remaining after such severance, shall not in any way be affected or impaired thereby.
9. Unless otherwise expressly provided in this agreement, if any matter in this agreement is subject to the determination, consent or approval of the Secured Party or is to be acceptable to the Secured Party, such determination, consent, approval or determination of acceptability will be in the sole discretion of the Secured Party, which means the Secured Party shall have sole and unfettered discretion, without any obligation to act reasonably. If any provision in this agreement refers to any action taken or to be taken by the Debtor, or which the Debtor is prohibited from taking, such provision will be interpreted to include any and all means, direct or indirect, of taking, or not taking, such action. When used in the context of a general statement followed by a reference to one or more specific items or matters, the term “including” shall mean “including, without limitation” and the use of the term “includes” shall mean “includes, without limitation”.
10. This agreement shall be governed by and construed in accordance with the laws of the Province of Ontario and the federal laws of Canada applicable therein. The Debtor hereby irrevocably and unconditionally attorns and submits to the non-exclusive jurisdiction of the courts of the Province of Ontario, provided that nothing herein shall prevent the Secured Party from proceeding at its election against the Debtor in the courts of any other province, country or jurisdiction.

#### **Grant of Security Interest**

11. As continuing security for the payment and performance of all Obligations, the Debtor:
  - (a) hereby pledges, assigns, mortgages, charges and hypothecates to the Secured Party and grants to the Secured Party a security interest in the following:
    - (i) all present and future equipment of the Debtor, including all of its present and future machinery, fixtures, plant, tools, furniture, books, records, documents, vehicles of any nature, kind or description, and all accessions to any of the foregoing, including all spare parts and accessories installed in or affixed or attached to any of the foregoing, and all drawings, specifications, plans and manuals relating to the foregoing;
    - (ii) all present and future inventory of the Debtor, including all of its present and future raw materials, materials used or consumed in its business, work-in-progress, finished goods, goods used for packing and goods acquired or held for sale or lease or that have been leased or furnished or that are to be furnished under

contracts of rental or service, and all accessions to any of the foregoing, including all spare parts and accessories installed in or affixed or attached to any of the foregoing;

- (iii) all present and future Contractual Rights and all other intangibles of the Debtor, including all of its present and future accounts and other amounts receivable, book debts, goodwill, Intellectual Property, choses in action of every nature and kind and interests in partnerships;
  - (iv) all present and future documents of title, chattel paper, instruments and money of the Debtor;
  - (v) all present and future Investment Collateral; and
  - (vi) all proceeds arising from the property, assets and undertaking of the Debtor referred to in this section 11, including insurance proceeds and any other payment representing indemnity or compensation for loss of or damage thereto; and
- (b) hereby charges as and by way of a floating charge in favour of the Secured Party all present and future real property, personal property, assets, and undertaking of the Debtor of any nature or kind, including all real property, personal property, assets and undertaking at any time owned, leased or licenced by the Debtor or in which the Debtor at any time has any right or interest or to which the Debtor is or may at any time become entitled, other than the property, assets and undertaking of the Debtor validly pledged or assigned or subjected to a valid mortgage, charge, hypothec or security interest by subsection 11(a)(i), 11(a)(ii), 11(a)(iii), 11(a)(iv) and 11(a)(v) hereof and subject to the exceptions hereinafter contained (all of which property, assets, effects and undertakings so charged by this clause are herein collectively called the "Other Collateral") and the charge created by this subsection 11(b) shall be a floating charge such that the Debtor shall not have power without the prior written consent of the Secured Party to:
- (i) create or permit to exist any lien, encumbrance or security interest against any of the Other Collateral which ranks or could in any event rank in priority to or pari passu with the Security Interest, save for Permitted Encumbrances; or
  - (ii) grant, sell, exchange, transfer, assign, lease or otherwise dispose of the Other Collateral.

#### **Limited Exceptions to Grant of Security Interest**

- 12. Despite any other provision of this agreement, the last day of any term reserved by any lease of real property, oral or written, or any agreement therefor, now held or hereafter acquired by the Debtor, and whether falling within the general or particular description of the Collateral, is hereby and shall be excepted out of the Security Interest, but the Debtor shall stand possessed of the reversion of one day remaining in the Debtor in respect of any such term, for the time being demised, as aforesaid, upon trust to assign and dispose of the same as any purchaser of such term shall direct.
- 13. Despite any other provision of this agreement, the Security Interest shall not attach to any Contractual Right to the extent that the granting of the Security Interest therein would constitute a breach of, or permit any Person to terminate such Contractual Right, but the Debtor shall hold its interest in each such Contractual Right in trust for the Secured Party and shall, after the Security Interest shall have become enforceable, specifically assign each such Contractual Right to the Secured Party, or as the Secured Party may otherwise direct. The Debtor agrees that it shall, upon the request of the Secured Party, whether before or after the Security Interest has become enforceable, use all commercially reasonable efforts to obtain any consent required to permit any such Contractual Right to be subjected to the Security Interest, and the Security Interest shall attach to such Contractual Right following the receipt of such consent.
- 14. Despite any other provision of this agreement, the interests granted to the Secured Party pursuant to this agreement in the Debtor's existing and after-acquired trademarks shall be limited to the Secured Party's security interests therein.

#### **Attachment**

- 15. The Debtor confirms and agrees that:
  - (a) value has been given by the Secured Party to the Debtor;
  - (b) the Debtor has rights in all existing Collateral and power to transfer rights in the Collateral to the Secured Party; and
  - (c) the Debtor and the Secured Party have not postponed the time for attachment of the Security Interest, and the Security Interest shall attach to existing Collateral upon the execution of this agreement and shall attach to Collateral in which the Debtor hereafter acquires rights at the time that the Debtor acquires rights in such Collateral.

#### **Provisions with respect to Investment Collateral**

- 16. Whenever any Investment Collateral is a certificated security, an uncertificated security or a security entitlement, the Debtor shall, or shall cause the issuer of such Investment Collateral to, or shall cause the securities intermediary that holds such Investment Collateral to, take all steps as are necessary to give exclusive control over such Investment Collateral to the Secured Party in a manner satisfactory to the Secured Party.

17. All certificates representing Investment Collateral may remain registered in the name of the Debtor, but the Debtor shall, promptly at the request of the Secured Party, duly endorse such certificates in blank for transfer or execute stock powers of attorney in respect thereof and deliver such certificates or powers of attorney to the Secured Party; in either case with signatures guaranteed and with all documentation being in form and substance satisfactory to the Secured Party. Upon the request of the Secured Party:
- (a) the Debtor shall promptly cause the Investment Collateral to be registered in the name of the Secured Party or its nominee, and the Secured Party is hereby appointed the irrevocable attorney (coupled with an interest) of the Debtor with full power of substitution to cause any or all of the Investment Collateral to be registered in the name of the Secured Party or its nominee;
  - (b) the Debtor shall promptly cause each securities intermediary that holds any Investment Collateral that is a security entitlement to record the Secured Party as the entitlement holder of such Investment Collateral; and
  - (c) the Debtor shall promptly:
    - (i) cause a security certificate to be issued for any Investment Collateral that is in the form of an uncertificated security or a security entitlement;
    - (ii) endorse such security certificate in blank;
    - (iii) deliver such security certificate to the Secured Party; and
    - (iv) take all other steps necessary to give exclusive control over such certificated security to the Secured Party, in a manner satisfactory to the Secured Party.
18. Until further notice is given by the Secured Party to the Debtor terminating such rights of the Debtor, the Debtor shall be entitled to exercise all voting rights attached to the Investment Collateral and give consents, waivers and ratifications in respect thereof; provided that no vote shall be cast or consent, waiver or ratification given or action taken which would be prejudicial to the interests of the Secured Party or which would have the effect of reducing the value of the Investment Collateral as security for the Obligations, or imposing any restriction on the transferability of any of the Investment Collateral. All such rights of the Debtor to vote and give consents, waivers and ratifications shall cease immediately upon receipt by the Debtor of such notice by the Secured Party.
19. All dividends, distributions, interest and other income in respect of Investment Collateral and all proceeds received by the Debtor in respect of Investment Collateral may be received by the Debtor in the ordinary course and distributed in the ordinary course to the Debtor's shareholder or shareholders until further notice by the Secured Party. Upon receipt by the Debtor of such notice, the Debtor shall not be entitled to retain or distribute to its shareholder or shareholders any such dividends, distributions, interest or other income or proceeds and, if any such amounts are received by the Debtor after the Debtor receives such notice by the Secured Party, the Debtor shall hold such amounts in trust, as trustee for the Secured Party, and the Debtor shall forthwith pay such amounts to the Secured Party, to be applied to reduce the Obligations or, at the option of the Secured Party, to be held as additional security for the Obligations.
20. The responsibility of the Secured Party in respect of any Investment Collateral held by the Secured Party shall be limited to exercising the same degree of care which it gives valuable property of the Secured Party at the Secured Party's office where such Investment Collateral is held. The Secured Party shall not be bound under any circumstances to realize on any Investment Collateral or allow any Investment Collateral to be sold, or exercise any option or right attaching thereto, or be responsible for any loss occasioned by any sale of Investment Collateral or by the retention or other refusal to sell the same; nor shall the Secured Party be obliged to collect or see to the payment of interest or dividends thereon but, subject to section 19, all such interest and dividends, if and when received by the Debtor, shall be held by the Debtor in trust for the Secured Party and shall be forthwith paid to the Secured Party.

#### **Representations and Warranties of the Debtor**

21. The Debtor hereby represents and warrants to the Secured Party that:
- (a) the Debtor has the capacity and authority to incur the Obligations, to create the Security Interest and to execute and deliver and perform its obligations under this agreement;
  - (b) the execution and delivery of this agreement and the performance by the Debtor of its obligations hereunder have been duly authorized by all necessary proceedings;
  - (c) this agreement constitutes a legal, valid and binding obligation of the Debtor, enforceable against the Debtor in accordance with its terms subject only to bankruptcy, insolvency, reorganization, moratorium and other similar laws of general application affecting creditors' rights and the discretion exercisable by courts of competent jurisdiction in respect of the availability of equitable remedies;
  - (d) except for the Security Interest and any Permitted Encumbrances, the Collateral is owned by the Debtor free from any mortgage, charge, lien, pledge, security interest or other encumbrance or claim whatsoever;

- (e) the chief executive office of the Debtor is located at the address listed in Part I of Schedule "A" of this agreement;
- (f) a description of each real property leased by the Debtor is listed in Part II of Schedule "A" of this agreement;
- (g) the Debtor does not keep tangible Collateral at any location(s) except:
  - (i) the location listed in Part I of Schedule "A" hereto, and
  - (ii) any location(s) listed in Part II of Schedule "A" hereto, other than tangible Collateral in transit to or from such locations;
- (h) the Collateral does not include any goods which are used or acquired by the Debtor primarily for personal, family or household purpose;
- (i) the Debtor has made all necessary filings, registrations and recordations to protect all of its right, title and interest in the Intellectual Property including all relevant renewals; and all such filings, registrations and recordations have been duly and properly made and are in full force and effect and are not subject to dispute by any governmental authority or agency;
- (j) all Contractual Rights relating to or affecting the Intellectual Property are in good standing;
- (k) the Debtor owns directly or is entitled to use by Contractual Right or otherwise all of the Intellectual Property; and
- (l) no litigation is pending or threatened which contains allegations respecting the validity, enforceability, infringement or ownership of any of the Intellectual Property, including any of right, title or interest of the Debtor in the Intellectual Property.

**Covenants of the Debtor**

22. The Debtor agrees with the Secured Party that, until the Obligations have been satisfied and paid in full, it will:

- (a) observe, perform and satisfy the Obligations when due;
- (b) maintain the tangible Collateral in good condition and repair and allow the Secured Party or its agent access to all premises of the Debtor to inspect any and all Collateral;
- (c) make and maintain all filings, registrations and recordations necessary or desirable to protect its right, title and interest in the Collateral, including all filings, registrations and recordations necessary or desirable in respect of patents, trademarks, copyrights and industrial designs included in the Intellectual Property;
- (d) defend the Collateral against any actions, claims and demands of any Person (other than the Secured Party) claiming the Collateral (or any of it) or an interest therein;
- (e) pay all taxes, rates, levies, assessments and other impositions and charges, of every nature and kind, which may now or hereafter be lawfully levied, assessed or imposed on or in respect of the Debtor or the Collateral (or any of it), including those which could result in the creation of a statutory lien or deemed trust affecting the Debtor or the Collateral, as and when the same become due and payable;
- (f) maintain its corporate existence and file or cause to be filed any returns, documents or other information necessary to preserve such corporate existence;
- (g) notify the Secured Party of any loss or damage to the Collateral, any change in any information provided in this agreement (including the schedules hereto) or any actual or potential claim affecting the Debtor, the Collateral or the Security Interest;
- (h) hold the proceeds received from any direct or indirect dealing with the Collateral in trust for the Secured Party after either the Security Interest becomes enforceable or any of the Collateral is sold other than in the ordinary course of business of the Debtor and for the purpose of carrying on such business;
- (i) comply with every covenant and undertaking herein and in any other agreement with the Secured Party;
- (j) permit the Secured Party at any time after the Security Interest shall have become enforceable, to require any account debtor of the Debtor to make payment to the Secured Party of any or all amounts owing by the account debtor to the Debtor and the Secured Party may take control of any proceeds referred to in subsection 11(a)(vi) hereof and may hold all amounts received from any account debtor and any proceeds as cash collateral as part of the Collateral and as security for the Obligations;
- (k) prevent any Collateral from becoming an accession to any personal property not subject to the Security Interest, or becoming affixed to any real property;

- (l) deliver to the Secured Party, at the Secured Party's request, duly endorsed and/or accompanied by such assignments, transfers, powers of attorney or other documents as the Secured Party may request, all items of the Collateral comprising chattel paper, instruments, Investment Collateral and documents of title;
- (m) deliver to the Secured Party, at the Secured Party's request, a written agreement from each landlord of the Debtor in favour of the Secured Party and in form and substance satisfactory to the Secured Party, whereby such landlord:
  - (i) agrees to give notice to the Secured Party of any default by the Debtor under the Debtor's lease and a reasonable opportunity to cure such default prior to the exercise of any remedies by the landlord; and
  - (ii) consents to the Security Interest and agrees that the Secured Party shall be entitled to enforce the Security Interest in priority to any right, interest or claim of the landlord in the Collateral;
- (n) pay, on demand by the Secured Party, all costs and expenses (including all legal fees) incurred by the Secured Party in the preparation, perfection, administration and enforcement of this agreement (including expenses incurred in considering, protecting or improving the Secured Party's position, or attempting to do so, whether before or after default) and all such costs and expenses shall bear interest at the highest rate applicable to the Obligations, shall form part of the Obligations and shall be secured by the Security Interest;
- (o) at all times, both before and after the occurrence of a default, do or cause to be done such further and additional acts and things and execute and deliver or cause to be executed and delivered all such further and additional documents and agreements as the Secured Party may reasonably require to better pledge, assign, mortgage, charge and hypothecate the Collateral in favour of the Secured Party, to perfect the Security Interest and, without limiting the generality of the foregoing, to accomplish the intentions of this agreement;
- (p) preserve the Debtor's rights, powers, licences, privileges, franchises and goodwill, comply with all applicable laws, regulations and orders (including environmental laws, regulations and orders) affecting the Debtor or the Collateral and conduct its business in a proper and efficient manner so as to protect the Collateral, the Security Interest and the business and undertaking of the Debtor; and
- (q) without limiting the generality of any of the foregoing, perform all covenants required of the Debtor under any Contractual Right relating to or affecting the Intellectual Property (or any of it), including promptly paying all required fees, royalties and taxes, to maintain each and every item of Intellectual Property in full force and effect, and vigorously protect, preserve and maintain all of the value of, and all of the right, title and interest of the Debtor in, all Intellectual Property, by way of the prosecution of or defence against suits concerning the validity, infringement, enforceability or ownership of the Intellectual Property (or any of it) or otherwise; and

23. The Debtor agrees with the Secured Party that, until the Obligations have been satisfied and paid in full, it will not, without the prior written consent of the Secured Party:

- (a) incur or create any further or additional indebtedness except to the Secured Party and except such normal indebtedness as may be incidental to the ordinary course of its business;
- (b) create any lien upon, assign or transfer as security, or pledge, hypothecate, charge, mortgage or grant a security interest in any Collateral except to the Secured Party and except for Permitted Encumbrances;
- (c) other than in the ordinary course of business and for the purpose of carrying on such business, sell, transfer, assign, or otherwise dispose of any Collateral or any group of property and assets forming part of the Collateral;
- (d) guarantee, endorse or otherwise become surety for or upon the obligations of others except to the Secured Party or by endorsement of negotiable instruments for deposit or collection in the ordinary course of the Debtor's business;
- (e) declare or pay any dividends on or make any other payment or distribution in respect of any shares of its capital stock or make any change in its issued or authorized capital stock either by way of redemption of stock or otherwise;
- (f) pay any amount to officers or directors of the Debtor in their capacities as officers or directors by way of salary, bonus, commission, directors' fees or otherwise in excess of the scale of such payments to such officers or directors now being made by the Debtor;
- (g) lend money to or invest money in any Person, by way of loan, acquisition of shares, acquisition of debt obligations or in any other way whatsoever;
- (h) change its name;
- (i) merge or amalgamate with any other corporation;
- (j) change the location of its chief executive office from that set out in Part I of Schedule "A" hereto without providing the Secured Party with thirty (30) Business Days' prior written notice thereof;



- (k) keep tangible Collateral at any location other than the location(s) listed in Parts I and II of Schedule "A" hereto without providing the Secured Party with thirty (30) Business Days' prior written notice thereof; or
- (l) make payments to any shareholders of the Debtor, or any Persons related to the Debtor or any of its shareholders within the meaning of the Income Tax Act (Canada), whether by way of loans, advances, repayment of indebtedness owing by the Debtor, interest on such indebtedness, salaries, dividends, guarantees, compensation or benefits of any kind whatsoever, other than as contemplated by subsection 23(f).

### **Default**

24. Without prejudice to any right which the Secured Party may now or hereafter have to demand payment of any of the Obligations, the Obligations shall, at the option of the Secured Party, become payable and the Security Interest shall become enforceable in each and every of the following events:
- (a) if the Debtor defaults in the payment of any of the Obligations when due;
  - (b) if there occurs an event of default under any Loan Agreement, any Guarantee or if the Debtor defaults in the observance or performance of any other written agreement or undertaking heretofore or hereafter given by the Debtor to the Secured Party, whether contained herein or not;
  - (c) if an order is made or a resolution passed for the winding-up, liquidation or dissolution of the Debtor, or if a petition is presented or filed for the winding-up of the Debtor, whether pursuant to the *Winding-up and Restructuring Act* (Canada) or otherwise;
  - (d) if the Debtor ceases or threatens to cease to carry on business or makes a bulk sale of its assets, or if a Receiver or trustee for the Debtor or any of its property or assets is appointed (whether privately or by court order);
  - (e) if the Debtor becomes insolvent or commits or threatens to commit any act of bankruptcy or if the Debtor makes an assignment or proposal in bankruptcy or files a notice of intention to make a proposal in bankruptcy or if a bankruptcy petition is filed or presented against the Debtor or if the Debtor otherwise becomes subject to proceedings under the *Bankruptcy and Insolvency Act* (Canada) or any other bankruptcy, insolvency or analogous law in any jurisdiction;
  - (f) if any proceedings with respect to the Debtor are commenced under the *Companies' Creditors Arrangement Act* (Canada) or if the Debtor seeks relief or consents to the filing of a petition against it under any law which involves any compromise of any creditor's rights against the Debtor;
  - (g) if an execution or any other process of any court becomes enforceable against the Debtor or if a distress or analogous process is initiated or levied against or upon the property of the Debtor or any part thereof;
  - (h) if the Debtor permits any sum which has been admitted as due by the Debtor or is not disputed to be due by it and which forms or is capable of being made a charge on any Collateral in priority to the Security Interest to remain unpaid after proceedings have been taken to enforce such charge;
  - (i) if any representation or warranty made by the Debtor or any of its officers, employees or agents to the Secured Party shall be false or inaccurate in any material respect;
  - (j) if the Debtor defaults in the observance or performance of any provision relating to the indebtedness or liability of the Debtor to any Person other than the Secured Party; or
  - (k) if any licence, permit or approval required by any law, regulation or governmental policy or any governmental agency or commission for the operation by the Debtor of its business shall be withdrawn or cancelled.

### **Remedies of the Secured Party**

25. Whenever the Security Interest shall have become enforceable, and so long as it shall remain enforceable, the Secured Party may proceed to realize the Security Interest and the Collateral and to enforce its rights by doing any one or more of the following:
- (a) entering upon the Collateral and any lands and premises where any Collateral is or may be located;
  - (b) taking possession of Collateral by any method permitted by law;
  - (c) occupying any lands and premises owned or occupied by the Debtor and using all or any part of such lands and premises and the equipment and other Collateral located thereon;
  - (d) leasing, selling, licensing or otherwise disposing of the whole or any part or parts of the Collateral;
  - (e) collecting, selling or otherwise dealing with any accounts or other amounts receivable by the Debtor, including notifying any Person obligated to the Debtor in respect of an account, chattel paper or instrument to make payment to the Secured Party of all present and future amounts due thereon;

- (f) taking steps and expending such monies as it considers necessary or desirable in its sole discretion to maintain, preserve and protect the Collateral, including making payments on account of other security interests affecting the Collateral; provided that the Secured Party shall have no obligation to take any such actions or make any such expenditures; but any such amounts paid by the Secured Party shall be added to the Obligations and shall be secured by the Security Interest;
  - (g) collecting any rents, income, and profits received in connection with the business of the Debtor or the Collateral, without carrying on such business;
  - (h) exercising all voting rights attached to any Collateral constituting Investment Collateral (whether or not registered in the name of the Secured Party or its nominee) and giving or withholding all consents, waivers and ratifications in respect thereof and otherwise acting with respect thereto as though it were the absolute owner thereof;
  - (i) exercising any and all rights of conversion, exchange, subscription or any other rights, privileges or options pertaining to any Collateral constituting Investment Collateral as if it were the absolute owner thereof including the right to exchange at its sole discretion any and all of such Investment Collateral upon the merger, consolidation, reorganization, recapitalization or other readjustment of any issuer thereof, or upon the exercise by any issuer of any right, privilege or option pertaining to any such Investment Collateral, and in connection therewith, to deposit and deliver any such Investment Collateral with any committee, depository, transfer agent, registrar or other designated agency upon such terms and conditions as it may determine in its sole discretion, all without liability except to account for property actually received by it;
  - (j) complying with any limitation or restriction in connection with any proposed sale or other disposition of Collateral constituting Investment Collateral as may be necessary in order to comply with applicable law or regulation or any policy imposed by any stock exchange, securities commission or other governmental or regulatory authority or official, and the Debtor agrees that such compliance shall not result in such sale being considered or deemed not to have been made in a commercially reasonable manner, and the Secured Party shall not be liable or accountable to the Debtor for any discount in the sale price of any such Investment Collateral which may be given by reason of the fact that such Investment Collateral are sold in compliance with any such limitation or restriction;
  - (k) carrying on the business of the Debtor or any portion thereof;
  - (l) exercising any and all of the rights and remedies granted pursuant to the PPSA and any other applicable legislation, or otherwise available at law or in equity;
  - (m) demanding, commencing, continuing or defending any judicial or administrative proceedings for the purpose of protecting, seizing, collecting, realizing or obtaining possession or payment of the Collateral, and giving valid and effectual receipts and discharges therefor and to compromise or give time for the payment or performance of all or any part of the accounts or other amounts receivable of the Debtor or any other obligation of any third party to the Debtor;
  - (n) borrowing money for the maintenance, preservation or protection of the Collateral or for the carrying on of the business of the Debtor, and charge and grant further security interests in the Collateral in priority to the Security Interest or otherwise, as security for the money so borrowed;
  - (o) accepting the Collateral in satisfaction of the Obligations;
  - (p) appointing by instrument in writing a Receiver or Receivers of the Collateral or any part thereof;
  - (q) bringing proceedings in any court of competent jurisdiction for the appointment of a Receiver or Receivers or for the sale of the Collateral or any part thereof; and
  - (r) filing such proofs of claim and other documents as may be necessary or advisable in order to have its claim lodged in any bankruptcy, winding-up or other judicial proceedings relating to the Debtor or the Collateral.
26. Any Receiver appointed by the Secured Party may be any Person or Persons (including one or more officers or employees of the Secured Party), and the Secured Party may remove any Receiver so appointed and appoint another or others instead. Any such Receiver may exercise any and all of the rights, remedies and powers of the Secured Party provided in this agreement. The Secured Party shall not be responsible for the actions, errors or omissions of any Receiver it appoints and any such Receiver shall be deemed to act as agent for the Debtor for all purposes, including the occupation of any lands and premises of the Debtor and in carrying on the Debtor's business, unless the Secured Party expressly specifies in writing that the Receiver shall be agent for the Secured Party for one or more purposes. Without limiting the generality of the foregoing, for the purposes of realizing upon the Security Interest, any Receiver may sell, lease, or otherwise dispose of Collateral as agent for the Debtor or as agent for the Secured Party as the Secured Party may specify in writing in its sole discretion. The Debtor agrees to ratify and confirm all actions of any Receiver appointed by the Secured Party acting as agent for the Debtor, and to release and indemnify the Receiver in respect of all such actions.
27. Without limiting the ability of the Secured Party or any Receiver to dispose of Collateral in any other manner, the Debtor agrees that any sale, lease or other disposition of the Collateral hereunder may be completed by public auction, public tender or private contract, with or without notice, with or without advertising and with or without any other formality (except as required by law),

all of which are hereby waived by the Debtor. Any such disposition of Collateral may involve all or part of the Collateral and may be on such terms and conditions as to credit or otherwise and as to upset or reserve bid or price as the Secured Party or any Receiver appointed by the Secured Party may, in its sole discretion, deem advantageous and may take place whether or not the Secured Party or any such Receiver has taken possession of such Collateral. Any purchaser or lessee of Collateral may be a customer of the Secured Party.

28. The Secured Party shall not be liable for any delay or failure to enforce any rights, powers or remedies available to it or to institute any proceedings for such purposes.
29. No right, power or remedy of the Secured Party (whether granted herein or otherwise) shall be exclusive of or dependent on or merge in any other right, power or remedy, but all such rights, powers and remedies may from time to time be exercised independently or in combination.
30. The Debtor agrees to pay to the Secured Party, forthwith on demand by the Secured Party, all costs and expenses incurred by the Secured Party in connection with the exercise by the Secured Party of its rights, powers and remedies hereunder, including:
  - (a) any costs and expenses incurred by the Secured Party in taking, holding, moving, storing, recovering, possessing, repairing, processing, preparing for disposition or disposing of Collateral;
  - (b) any legal fees and expenses incurred by the Secured Party in enforcing its rights, powers and remedies, including those incurred in connection with any proceedings taken for the purpose of enforcing its rights, powers and remedies hereunder or otherwise relating to the non-payment or non-performance of any Obligations;
  - (c) the cost of borrowing amounts as hereinbefore provided (for the purpose of carrying on the Debtor's business or otherwise), including, the principal amount or any such amount borrowed, all interest thereon and fees relating thereto; and
  - (d) all costs and expenses of or incurred by any Receiver, agent or consultant appointed by the Secured Party (including any legal fees and expenses incurred by any such Receiver, agent or consultant).

All such sums shall bear interest at the highest rate applicable to the Obligations, shall form part of the Obligations and shall be secured by the Security Interest.

31. Any and all payments made in respect of the Obligations from time to time and moneys realized from any Collateral (including moneys realized on any enforcement of this agreement) may be applied to such part or parts of the Obligations as the Secured Party may see fit, and the Secured Party shall at all times and from time to time have the right to change any appropriation as the Secured Party may see fit.
32. The Debtor shall remain liable for all Obligations that are outstanding following realization of all or any part of the Collateral.

**Rights of the Secured Party**

33. The Secured Party may pay the whole or any part of any liens, taxes, rates, charges or encumbrances now or hereafter existing in respect of any Collateral and such payments together with all costs, charges and expenses which may be incurred in connection with making such payments shall form part of the Obligations, shall bear interest at the highest rate applicable to the Obligations, and shall be secured by the Security Interest. Whenever the Secured Party pays any such lien, tax, rate, charge or encumbrance, it shall be entitled to all the equities and securities of the Person or Persons so paid and is hereby authorized to obtain any discharge thereof and hold such discharge without registration for so long as it may deem advisable to do so.
34. If the Debtor fails to perform or comply with any covenant or other obligation of the Debtor under this agreement, the Secured Party may, but need not, perform or otherwise cause the performance or compliance of such covenant or other obligation, provided that any performance or compliance undertaken by the Secured Party will not constitute a waiver, remedy or satisfaction of such failure. The costs and expenses of the Secured Party incurred in connection with any such performance or compliance shall be payable by the Debtor to the Secured Party on demand, form part of the Obligations, bear interest at the highest rate applicable to the Obligations and be secured by the Security Interest.
35. The Debtor grants to the Secured Party the right to set off against the Obligations (or any portion thereof) any amount owed by the Secured Party to the Debtor, including the amount of any and all accounts, credits or balances maintained by the Debtor with the Secured Party.
36. The Secured Party, without exonerating in whole or in part the Debtor, may grant time, renewals, extensions, indulgences, releases and discharges to, may take securities from and give the same and any or all existing securities up to, may abstain from taking securities from or from perfecting securities of, may accept compositions from, and may otherwise deal with the Debtor and all other Persons and securities as the Secured Party may see fit.
37. Nothing herein shall obligate the Secured Party to extend or amend any credit to the Debtor or to any other Person.

38. The Secured Party may assign, transfer and deliver to any transferee any of the Obligations or any security or any documents or instruments held by the Secured Party in respect thereof. The Debtor shall not assign any of its rights or obligations hereunder without the prior written consent of the Secured Party.

**Notices**

39. Any notice, demand or other communication permitted or required to be given hereunder shall be delivered to the Debtor in accordance with the notice provisions under the Guarantee.

**Miscellaneous**

40. In the event that any day, on or before which any action is required to be taken hereunder, is not a Business Day, then such action shall be required to be taken on or before the first Business Day thereafter.
41. Time shall be of the essence of this agreement.
42. Upon payment and fulfillment by the Debtor, its successors or permitted assigns, of all Obligations and provided that the Secured Party is then under no obligation (conditional or otherwise) to make any further loan or extend any other type of credit to the Debtor or to any of its affiliates the payment of which is secured, directly or indirectly, by this agreement, the Secured Party shall, upon request in writing by the Debtor, delivered to the Secured Party at the Secured Party's address as set out in the Loan Agreement and at the Debtor's expense, discharge this agreement.
43. This agreement is in addition to and not in substitution for any other security now or hereafter held by the Secured Party and shall be general and continuing security notwithstanding that the Obligations shall be at any time or from time to time fully satisfied or paid.
44. No provision of this agreement, or any other document or instrument in existence among the parties may be modified, waived or terminated except by an instrument in writing executed by the party against whom such modification, waiver or termination is sought to be enforced. Possession of an executed copy of this agreement by the Secured Party constitutes conclusive evidence that it was executed and delivered by the Debtor free of all conditions.
45. The Secured Party may in writing (and not otherwise) waive any default by the Debtor in the observance or performance of any provision of this agreement; provided that no waiver by the Secured Party shall extend to or be taken in any manner whatsoever to affect any subsequent default, whether of the same or a different nature, or the rights resulting therefrom.
46. In accordance with the *Conveyancing and Law of Property Act*, the doctrine of consolidation applies to this agreement.
47. This agreement shall enure to the benefit of the Secured Party, its successors and assigns, and shall be binding on the Debtor, its successors and permitted assigns.
48. The Debtor agrees that the Secured Party may from time to time provide information concerning this agreement (including a copy hereof), the Collateral and the Obligations to any Person the Secured Party in good faith believes is entitled thereto pursuant to applicable legislation.
49. The Debtor acknowledges receipt of an executed copy of this agreement and waives all rights to receive from the Secured Party a copy of any financing statement or financing change statement filed, or any verification statement received, at any time in respect of this agreement.

*(The remainder of the page has intentionally been left blank the signature page follows)*

**IN WITNESS WHEREOF**, the Debtors have executed this Agreement with effect as of the day and year first written above.

**425 WHARNCLIFFE ROAD INC.**

By: 

Name: Abdul Muqet

Title: Director

*I have authority to bind the Debtor.*

**SCHEDULE "A"**

**Part I**

Location of the Debtor's Chief Executive Office

**110 Herdwick Street, Brampton, ON L6S 0A5**

**Part II**

Locations of Properties

**425 Wharnccliffe Road South, London, Ontario N6J 2M6**

## SCHEDULE "B"

### Permitted Encumbrances

1. statutory liens which secure payment of amounts not then overdue;
2. statutory liens which secure payment of amounts which are then overdue but the validity of which is being contested in good faith and in respect of which reserves satisfactory to the Secured Party in its sole discretion have been established;
3. security given to a public utility, municipality, government or statutory or public authority to secure obligations incurred to such utility, municipality, government or other authority in the ordinary course of business and not then overdue;
4. liens and privileges arising out of judgments or awards in respect of which an appeal or proceeding for review has been commenced, provided a stay of execution pending such appeal or proceedings for review has been obtained and provided reserves satisfactory to the Secured Party in its sole discretion have been established;
5. liens or rights of distress reserved in or exercisable under any lease of real property for rent not then overdue or for compliance with the provisions of such lease not then in default;
6. security deposits given under leases of real property not in excess of an amount equivalent to six months' rent;
7. liens securing obligations or duties affecting real property due to any public utility, municipality, government, or statutory or public authority with respect to any franchise, grant, licence or permit in good standing and any minor irregularities in title to any real property, provided such obligations, duties and minor title irregularities do not materially impair the use, value or marketability of such real property;
8. liens incurred or deposits made in connection with contracts, bids or tenders made in the ordinary course of business or in connection with expropriation proceedings, surety or appeal bonds or costs of litigation to the extent required by law;
9. liens (including builders' liens) arising in connection with the construction or improvement of any real property or arising out of the furnishing of materials or supplies therefor, provided that such liens secure payment of amounts not then overdue (or if overdue, the validity of which is being contested in good faith and in respect of which reserves satisfactory to the Secured Party in its sole discretion have been established) and provided notice of such lien has not been given to the Secured Party and such lien has not been registered against title to such real property;
10. zoning and building by-laws affecting real property provided they are complied with;
11. garage keepers' liens securing amounts not then overdue; and
12. encumbrances in favour of the Secured Party.

**SCHEDULE "C"**

**Investment Collateral**

**None.**



This is **Exhibit “Y”** referred to in the affidavit of Tyson Hartwell, sworn before me by videoconference on April 27, 2023 in accordance with O.Reg. 431/20: Administering Oath or Declaration Remotely. The deponent was located in the City of Calgary in the Province of Alberta and I was located in the City of Toronto in the Province of Ontario.



.....  
A Commissioner For Taking Affidavits

Jeremy Bornstein  
LSO#: 65425C

**Properties**

*PIN* 08398 - 0362 LT *Interest/Estate* Fee Simple  
*Description* PT LTS 1 & 2, PL 29, PART 2, 33R2551, S/T 929439, IF ANY, S/T 837774, IF ANY, S/T 583284, IF ANY; LONDON/WESTMINSTER  
*Address* 425 WHARNCLIFFE RD S  
 LONDON

**Chargor(s)**

The chargor(s) hereby charges the land to the chargee(s). The chargor(s) acknowledges the receipt of the charge and the standard charge terms, if any.

*Name* 425 WHARNCLIFFE ROAD INC.  
*Address for Service* 110 Herdwick Street  
 Brampton, Ontario  
 L6S 0A5

A person or persons with authority to bind the corporation has/have consented to the registration of this document.

This document is not authorized under Power of Attorney by this party.

**Chargee(s)***Capacity**Share*

*Name* CANADIAN WESTERN BANK  
*Address for Service* 2000 Argentia Road  
 Plaza #1, Suite 300  
 Mississauga, Ontario  
 L5N 1P7

**Statements**

Schedule: See Schedules

**Provisions**

*Principal* \$8,000,000.00 *Currency* CDN  
*Calculation Period*  
*Balance Due Date* On Demand  
*Interest Rate* See Schedule  
*Payments*  
*Interest Adjustment Date*  
*Payment Date* On Demand  
*First Payment Date*  
*Last Payment Date*  
*Standard Charge Terms* N/A  
*Insurance Amount* Full insurable value  
*Guarantor*

**Additional Provisions**

See Schedule.

**Signed By**

Lucas Samson Clement Blair 40 King Street West, Suite 2100 acting for Signed 2023 02 28  
 Toronto  
 M5H 3C2  
 Chargor(s)

Tel 416-869-5300

Fax 416-360-8877

I have the authority to sign and register the document on behalf of the Chargor(s).

**Submitted By**

CASELS BROCK & BLACKWELL LLP 40 King Street West, Suite 2100 2023 02 28  
 Toronto  
 M5H 3C2

Tel 416-869-5300

**Submitted By**

Fax 416-360-8877

**Fees/Taxes/Payment**

Statutory Registration Fee	\$69.00
Total Paid	\$69.00

**File Number**

Chargee Client File Number : 50098-113 (KT/LB)

## DEBENTURE

TO: CANADIAN WESTERN BANK

DATE: February 28, 2023

For good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged by the Debtor, the Debtor hereby delivers this agreement to the Secured Party and agrees as follows:

### Definitions and Interpretation

1. In this agreement, the following words shall, unless otherwise provided, have the meanings set out below:

"**Borrower**" means Index Holding Group Inc., and its successors and permitted assigns.

"**Business Day**" means a day, other than a Saturday, Sunday or statutory holiday in the Province of Ontario.

"**Collateral**" means all present and future property, assets and undertaking of the Debtor pledged, assigned, mortgaged, charged, hypothecated or made subject to a security interest pursuant to this agreement.

"**Contractual Right**" means any agreement, right, franchise, licence, authorization, approval, privilege or permit (a) to which the Debtor is now or hereafter becomes a party, (b) in which the Debtor now or hereafter has any interest or (c) of which the Debtor is or hereafter becomes a beneficiary.

"**Debtor**" means 425 Wharnccliffe Road Inc., and its successors and permitted assigns.

"**Default**" has the meaning given to such term under the Loan Agreement.

"**Intellectual Property**" means all patents, trade-marks, trade names, business names, trade styles, logos and other business identifiers, copyrights, technology, inventions, industrial designs, know-how, trade secrets and other industrial and intellectual property in which the Debtor now or in the future has any right, title or interest.

"**Lands**" means the Collateral described in section 11(a) hereof.

"**Loan Agreement**" means, collectively, each and every commitment letter, letter loan agreement, equipment loan and security agreement, credit agreement or other financing instrument between the Borrower, as borrower, and the Secured Party, as lender, as same may be amended, supplemented, restated, amended and restated, replaced or otherwise modified from time to time.

"**Loan Documents**" means, collectively, all documents, instruments, agreements, any guarantee given by the Debtor in favour of the Secured Party in respect of the Obligations, and opinions now or hereafter evidencing, securing, guaranteeing and/or relating to the loans made by the

Secured Party and the Obligations or any part thereof, including the Loan Agreement and this Debenture.

**"Obligations"** means all present and future indebtedness, liabilities and obligations, direct and indirect, absolute or contingent, matured or unmatured, joint or several, of the Debtor to the Secured Party, including without limitation any such indebtedness, liabilities and obligations arising under any Loan Documents.

**"Permitted Encumbrances"** means those encumbrances approved by the Secured Party and attached hereto as Schedule "C".

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

**"PPSA"** means the *Personal Property Security Act (Ontario)*, as amended from time to time and any legislation substituted therefor and any amendments thereto.

**"Receiver"** means a receiver, receiver-manager and receiver and manager.

**"Secured Party"** means Canadian Western Bank, and its successors and assigns.

**"Security Interest"** means the pledges, assignments, mortgages, charges and hypothecations of and the security interests in the Collateral created in favour of the Secured Party hereunder; and

**"Term"** means forty-six (46) months, commencing as of the date hereof.

2. References such as "this agreement", "hereof", "herein", "hereto" and like references refer to this agreement and any schedules, exhibits or appendices attached hereto (all of which schedules, exhibits and appendices form a part of this agreement) and not to any particular section, subsection, paragraph or other subdivision of this agreement.
3. The division of this agreement into sections, subsections and paragraphs and the insertion of headings in this agreement are for convenience of reference only and shall not affect the construction or interpretation of this agreement.
4. Terms used herein which are defined in the PPSA shall have the same meanings herein as are ascribed to such terms in the PPSA, unless such terms are otherwise defined.
5. The word "Debtor", 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. The term "successors" shall include, without limiting its meaning, any corporation resulting from the amalgamation of a corporation with another corporation. Where the context so requires, words used herein (including defined terms) importing the singular shall include the plural and vice versa and words used herein (including defined terms) importing gender shall include all genders (including the neuter).
6. Nothing herein (including the definition and use of the term Permitted Encumbrances) is intended or shall be deemed to subordinate the Security Interest to any Permitted Encumbrance

or any other lien, charge, mortgage, security interest, hypothec or encumbrance affecting all or any portion of the Collateral.

7. If one or more of the provisions contained herein shall be invalid, illegal or unenforceable in any respect, such provision or provisions shall be severed from this agreement only to the extent necessary, and the validity, legality and enforceability of the remaining provisions hereof, including the provision or provisions remaining after such severance, shall not in any way be affected or impaired thereby.
8. Unless otherwise expressly provided in this agreement, if any matter in this agreement is subject to the determination, consent or approval of the Secured Party or is to be acceptable to the Secured Party, such determination, consent, approval or determination of acceptability will be in the sole discretion of the Secured Party, which means the Secured Party shall have sole and unfettered discretion, without any obligation to act reasonably. If any provision in this agreement refers to any action taken or to be taken by the Debtor, or which the Debtor is prohibited from taking, such provision will be interpreted to include any and all means, direct or indirect, of taking, or not taking, such action. When used in the context of a general statement followed by a reference to one or more specific items or matters, the term "including" shall mean "including, without limitation" and the use of the term "includes" shall mean "includes, without limitation".
9. This agreement shall be governed by and construed in accordance with the laws of the Province of Ontario and the federal laws of Canada applicable therein. The Debtor hereby irrevocably and unconditionally attorns and submits to the non-exclusive jurisdiction of the courts of the Province of Ontario, provided that nothing herein shall prevent the Secured Party from proceeding at its election against the Debtor in the courts of any other province, country or jurisdiction.

#### **Promise To Pay**

10. For value received, the Debtor hereby acknowledges itself indebted to and agrees to pay to the Secured Party, on demand, the principal sum of \$8,000,000.00 of lawful money of Canada. The Debtor shall also pay to the Secured Party interest on such principal sum (and interest on overdue interest) at the rate of Prime plus 3.30% per annum calculated daily and payable monthly not in advance, both before and after demand, default, judgment and execution from the date hereof until payment in full of all amounts owing hereunder.

#### **Grant of Security Interest**

11. As continuing security for the payment and performance of all Obligations, the Debtor hereby pledges, assigns, mortgages, charges and hypothecates to the Secured Party and grants to the Secured Party a security interest in the following:
  - (a) by way of a fixed and specific mortgage and charge (but subject to the exceptions as to leaseholds hereinafter contained), all real and immoveable property (including, by way of sub-lease, leasehold lands) now or hereafter owned or acquired by the Debtor, all the Debtor's present and future interests and rights with respect thereto, all buildings, erections and improvements now or hereafter owned or acquired by the Debtor

(whether the same form part of the realty or not) and all appurtenances to any of the foregoing including the real property described in Schedule "A" hereto;

- (b) all present and future equipment of the Debtor, including all of its present and future machinery, fixtures, plant, tools, furniture, books, records, documents, vehicles of any nature, kind or description, and all accessions to any of the foregoing, including all spare parts and accessories installed in or affixed or attached to any of the foregoing, and all drawings, specifications, plans and manuals relating to the foregoing;
- (c) all present and future inventory of the Debtor, including all of its present and future raw materials, materials used or consumed in its business, work-in-progress, finished goods, goods used for packing and goods acquired or held for sale or lease or that have been leased or furnished or that are to be furnished under contracts of rental or service, and all accessions to any of the foregoing, including all spare parts and accessories installed in or affixed or attached to any of the foregoing;
- (d) all present and future intangibles of the Debtor, including all of its present and future accounts and other amounts receivable, book debts, goodwill, Intellectual Property and choses in action of every nature and kind;
- (e) all present and future documents of title, chattel paper, instruments, money and securities of the Debtor;
- (f) by way of a floating charge, all present and future real property, personal property, assets, and undertaking of the Debtor of any nature or kind, including all real property, personal property, assets and undertaking at any time owned, leased or licenced by the Debtor or in which the Debtor at any time has any right or interest or to which the Debtor is or may at any time become entitled (other than the property, assets and undertaking of the Debtor validly pledged or assigned or subjected to a valid mortgage, charge, hypothec or security interest by subsection 11(a), 11(b), 11(c), 11(d) or 11(e) hereof and subject to the exceptions hereinafter contained); and
- (g) all proceeds arising from the property, assets and undertaking of the Debtor referred to in this section 11, including insurance proceeds and any other payment representing indemnity or compensation for loss of or damage thereto.

### **Assignment of Leases and Rents**

12. As additional and separate security for payment and performance of the Obligations, the Debtor hereby assigns, transfers and sets over to the Secured Party, all the Debtor's rights and interests in all existing and future leases, tenancy agreements, offers to lease and other similar agreements with respect to all or part of the Lands, and all rents, incomes, profits and other amounts now or hereafter arising from or out of all or part of the Lands or any building, improvement, fixture or part thereof forming part of the Lands, and the following provisions shall apply with respect thereto:

- (a) The assignment of each of the foregoing and of each of the rents, incomes, profits and other amounts by the Debtor to the Secured Party herein contained in this Section 12 shall be deemed to be a separate assignment so that the Secured Party in its discretion

may exercise its rights in respect of any or all of such leases, offers to lease, tenancy agreements or other similar agreements or the rents, incomes, profits or other amounts paid or payable thereunder.

- (b) Until the the occurrence of a Default, the Debtor may collect, retain and apply all rents, incomes, profits and other amounts and deal with all leases, offers to lease, tenancy agreements and other similar agreements from time to time.
- (c) Nothing herein shall obligate the Secured Party to assume or perform (and nothing herein shall impose on the Secured Party) any liability or obligation of the Debtor to any tenant or other person pursuant to or in respect of any lease, offer to lease, tenancy agreement, other similar agreement or otherwise, and the Debtor hereby indemnifies and saves harmless the Secured Party from any and all claims with respect thereto (except to the extent arising from the gross negligence or wilful misconduct of the Secured Party), provided that the Secured Party may, at its sole option, assume or perform any such obligations as it considers necessary or desirable
- (d) The Secured Party may, at any time without further request or agreement by the Debtor, reassign to the Debtor or its successors or assigns, any or all of the collateral referred to in this Section 12.

#### **Limited Exceptions to Grant of Security Interest**

- 13. Despite any other provision of this agreement, the last day of any term reserved by any lease of real property, oral or written, or any agreement therefor, now held or hereafter acquired by the Debtor, and whether falling within the general or particular description of the Collateral, is hereby and shall be excepted out of the Security Interest, but the Debtor shall stand possessed of the reversion of one day remaining in the Debtor in respect of any such term, for the time being demised, as aforesaid, upon trust to assign and dispose of the same as any purchaser of such term shall direct.
- 14. Despite any other provision of this agreement, the Security Interest shall not attach to any Contractual Right to the extent that the granting of the Security Interest therein would constitute a breach of, or permit any Person to terminate such Contractual Right, but the Debtor shall hold its interest in each such Contractual Right in trust for the Secured Party and shall, after the Security Interest shall have become enforceable, specifically assign each such Contractual Right to the Secured Party, or as the Secured Party may otherwise direct. The Debtor agrees that it shall, upon the request of the Secured Party, whether before or after the Security Interest has become enforceable, use all commercially reasonable efforts to obtain any consent required to permit any such Contractual Right to be subjected to the Security Interest, and the Security Interest shall attach to such Contractual Right following the receipt of such consent.

#### **Attachment**

- 15. The Debtor confirms and agrees that value has been given by the Secured Party to the Debtor, that the Debtor has rights in all existing Collateral and that the Debtor and the Secured Party have not postponed the time for attachment of the Security Interest, such that the Security Interest shall attach to existing Collateral upon the execution of this agreement and shall attach



to Collateral in which the Debtor hereafter acquires rights at the time that the Debtor acquires rights in such Collateral.

**Representations and Warranties by the Debtor**

16. The Debtor hereby represents and warrants to the Secured Party that:
- (a) the Debtor has the capacity and authority to incur the Obligations, to create the Security Interest and to execute and deliver and perform its obligations under this agreement;
  - (b) the execution and delivery of this agreement and the performance by the Debtor of its obligations hereunder have been duly authorized by all necessary proceedings;
  - (c) this agreement constitutes a legal, valid and binding obligation of the Debtor, enforceable against the Debtor in accordance with its terms subject only to bankruptcy, insolvency, reorganization, moratorium and other similar laws of general application affecting creditors' rights and the discretion exercisable by courts of competent jurisdiction in respect of the availability of equitable remedies;
  - (d) the Debtor is the sole registered, legal and beneficial owner of an estate in fee simple in the Lands with good and marketable title thereto, and the Debtor is the legal and beneficial owner of the remainder of the Collateral, in each case, free of any mortgages, charges, liens, pledges, security interests or other encumbrances or claims whatsoever except Permitted Encumbrances;
  - (e) the sole place of business and chief executive office of the Debtor is located at the address listed in Part I of Schedule "B" of this agreement; and
  - (f) the Debtor does not keep tangible Collateral at any location(s) except:
    - (i) the location listed in Part I of Schedule "B" hereto, and
    - (ii) any location(s) listed in Part II of Schedule "B" hereto,other than tangible Collateral in transit to or from such locations.

**Covenants of the Debtor**

17. The Debtor agrees with the Secured Party that, until the Obligations have been satisfied and paid in full:
- (a) it will:
    - (i) make and maintain all filings, registrations and recordations necessary or desirable to protect its right, title and interest in the Collateral;
    - (ii) defend the Collateral against any actions, claims and demands of any Person (other than the Secured Party) claiming the Collateral (or any of it) or an interest therein;

- (iii) pay all taxes, rates, levies, assessments and other impositions and charges, of every nature and kind, which may now or hereafter be lawfully levied, assessed or imposed on or in respect of the Debtor or the Collateral (or any of it), including those which could result in the creation of a statutory lien or deemed trust affecting the Debtor or the Collateral, as and when the same become due and payable;
- (iv) notify the Secured Party of any loss or damage to the Collateral, any change in any information provided in this agreement (including the schedules hereto) or any actual or potential claim affecting the Debtor, the Collateral or the Security Interest;
- (v) hold the proceeds received from any direct or indirect dealing with the Collateral in trust for the Secured Party after either the Security Interest becomes enforceable or any of the Collateral is sold other than in the ordinary course of business of the Debtor and for the purpose of carrying on such business;
- (vi) strictly comply with every covenant and undertaking heretofore or hereafter given by it to the Secured Party, whether contained herein or not;
- (vii) permit the Secured Party at any time after the Security Interest shall have become enforceable, to require any account debtor of the Debtor to make payment to the Secured Party of any or all amounts owing by the account debtor to the Debtor and the Secured Party may take control of any proceeds referred to in subsection 11(g) hereof and may hold all amounts received from any account debtor and any proceeds as cash collateral as part of the Collateral and as security for the Obligations;
- (viii) prevent any Collateral constituting personal property from becoming an accession to any personal property not subject to the Security Interest, or becoming affixed to any real property other than the Lands;
- (ix) deliver to the Secured Party, at the Secured Party's request, duly endorsed and/or accompanied by such assignments, transfers, powers of attorney or other documents as the Secured Party may request, all items of the Collateral comprising chattel paper, instruments, securities and documents of title;
- (x) pay, on demand by the Secured Party, all costs and expenses (including all legal fees) incurred by the Secured Party in the preparation, perfection, administration and enforcement of this agreement (including expenses incurred in considering, protecting or improving the Secured Party's position, or attempting to do so, whether before or after default) and all such costs and expenses shall bear interest at the highest rate applicable to the Obligations, shall form part of the Obligations and shall be secured by the Security Interest;
- (xi) at all times, both before and after the occurrence of a default, do or cause to be done such further and additional acts and things and execute and deliver or cause to be executed and delivered all such further and additional documents

and agreements as the Secured Party may reasonably require to better pledge, assign, mortgage, charge and hypothecate the Collateral in favour of the Secured Party, to perfect the Security Interest and, without limiting the generality of the forgoing, to accomplish the intentions of this agreement.

- (b) it will not, without the prior written consent of the Secured Party:
  - (i) change its name;
  - (ii) merge or amalgamate with any other corporation;
  - (iii) change the location of its sole place of business and chief executive office from that set out in Part I of Schedule "B" hereto without providing the Secured Party with thirty (30) Business Days' prior written notice thereof; and
  - (iv) keep tangible Collateral at any location other than the location(s) listed in Parts I and II of Schedule "B" hereto without providing the Secured Party with thirty (30) Business Days' prior written notice thereof.

#### **Covenants of the Debtor regarding the Lands**

18. The Debtor agrees with the Secured Party that:

- (a) in accordance with subsection 7(3) of the *Land Registration Reform Act* (Ontario), the covenants deemed to be included in a charge by subsection 7(1) of such Act are expressly excluded from this agreement;
- (b) subject to section 41 hereof, the Debtor releases to the Secured Party all the Debtor's right, title and interest in and to the Collateral and every part thereof and the Debtor shall not at any time hereafter make any claim to the Collateral, challenge the Secured Party's rights thereto or make any demands upon the Secured Party with respect to the Collateral and that the Secured Party shall be exonerated and discharged of and from all claims and demands which the Debtor might or could have against the Secured Party with respect to the Collateral;
- (c) it will at all times fully perform and comply with all obligations imposed on, assumed by or agreed to by it pursuant to any prior encumbrance of the Lands or any part thereof or its interest therein and, if the Debtor shall fail so to do, the following shall apply:
  - (i) the Secured Party may (but shall not be obliged to) take any action the Secured Party deems necessary or desirable acting reasonably to cure any default by the Debtor in the performance of or compliance with any of the Debtor's obligations imposed on, assumed by or agreed to by the Debtor pursuant to any such prior encumbrance;
  - (ii) upon receipt by the Secured Party from any such prior encumbrancer of any written notice of default by the Debtor, the Secured Party may rely thereon and take any action as aforesaid to cure such default even though the existence of

such default or the nature thereof may be questioned or denied by the Debtor or by any Person on behalf of the Debtor;

- (iii) the Debtor hereby expressly grants to the Secured Party, and agrees that the Secured Party shall have the absolute and immediate right to enter in and upon the Lands or any part thereof to such extent and as often as the Secured Party, in its sole discretion, acting reasonably, deems necessary or desirable, in order to cure any such default by the Debtor;
- (iv) the Secured Party may pay and expend such sums of money as the Secured Party in its sole discretion, acting reasonably, deems necessary for any such purpose, and the Debtor hereby agrees to pay to the Secured Party, immediately upon notification by the Secured Party and without demand, all such sums so paid and expended by the Secured Party, together with interest thereon at the rate aforesaid from the date of each such payment; and
- (v) all sums so paid and expended by the Secured Party and such interest thereon, shall be added to and form part of the Obligations and be secured by the Security Interest in priority to all other mortgages, charges and other encumbrances.

#### **Default**

19. Without prejudice to any right which the Secured Party may now or hereafter have to demand payment of any of the Obligations, the Obligations shall, at the option of the Secured Party, become payable and the Security Interest shall become enforceable if a Default occurs.

#### **Remedies of the Secured Party**

20. Whenever the Security Interest shall have become enforceable, and so long as it shall remain enforceable, the Secured Party may proceed to realize the Security Interest and the Collateral and to enforce its rights by doing any one or more of the following:
- (a) entering upon the Lands and any other lands and premises where any Collateral is or may be located;
  - (b) taking possession of Collateral by any method permitted by law;
  - (c) occupying the Lands and any other lands and premises occupied by the Debtor and using all or any part of the Lands and such other lands and premises and the equipment and other Collateral located thereon;
  - (d) leasing, selling, licensing or otherwise disposing of the whole or any part or parts of the Lands and other Collateral;
  - (e) collecting, selling or otherwise dealing with any accounts or other amounts receivable of the Debtor, including notifying any Person obligated to the Debtor in respect of an account, chattel paper or instrument to make payment to the Secured Party of all present and future amounts due thereon;

- (f) taking steps and expending such monies as it considers necessary or desirable in its sole discretion to maintain, preserve and protect the Collateral, including making payments on account of other security interests affecting the Collateral; provided that the Secured Party shall have no obligation to take any such actions or make any such expenditures; but any such amounts paid by the Secured Party shall be added to the Obligations and shall be secured by the Security Interest;
  - (g) collecting any rents, income, and profits received in connection with the business of the Debtor or the Collateral, without carrying on such business;
  - (h) carrying on the business of the Debtor or any portion thereof;
  - (i) exercising any and all of the rights and remedies granted pursuant to the PPSA and any other applicable legislation, or otherwise available at law or in equity;
  - (j) demanding, commencing, continuing or defending any judicial or administrative proceedings for the purpose of protecting, seizing, collecting, realizing or obtaining possession or payment of the Collateral, and giving valid and effectual receipts and discharges therefor and to compromise or give time for the payment or performance of all or any part of the accounts or other amounts receivable of the Debtor or any other obligation of any third party to the Debtor;
  - (k) borrowing money for the maintenance, preservation or protection of the Collateral or for the carrying on of the business of the Debtor, and charge and grant further security interests in the Collateral in priority to the Security Interest or otherwise, as security for the money so borrowed;
  - (l) accepting the Collateral in satisfaction of the Obligations (and in connection therewith, foreclosing on the Lands);
  - (m) appointing by instrument in writing a Receiver or Receivers of the Collateral or any part thereof;
  - (n) bringing proceedings in any court of competent jurisdiction for the appointment of a Receiver or Receivers or for the sale of the Collateral or any part thereof; and
  - (o) filing such proofs of claim and other documents as may be necessary or advisable in order to have its claim lodged in any bankruptcy, winding-up or other judicial proceedings relating to the Debtor or the Collateral.
21. Any Receiver appointed by the Secured Party may be any Person or Persons (including one or more officers or employees of the Secured Party), and the Secured Party may remove any Receiver so appointed and appoint another or others instead. Any such Receiver may exercise any and all of the rights, remedies and powers of the Secured Party provided in this agreement. The Secured Party shall not be responsible for the actions, errors or omissions of any Receiver it appoints and any such Receiver shall be deemed to act as agent for the Debtor for all purposes, including the occupation of the Lands and any other premises of the Debtor and in carrying on the Debtor's business, unless the Secured Party expressly specifies in writing that the Receiver shall be agent for the Secured Party for one or more purposes. Without limiting the generality

of the forgoing, for the purposes of realizing upon the Security Interest, any Receiver may sell, lease, or otherwise dispose of Collateral as agent for the Debtor or as agent for the Secured Party as the Secured Party may specify in writing in its sole discretion. The Debtor agrees to ratify and confirm all actions of any Receiver appointed by the Secured Party acting as agent for the Debtor, and to release and indemnify the Receiver in respect of all such actions.

22. Without limiting the ability of the Secured Party or any Receiver to dispose of Collateral in any other manner, the Debtor agrees that any sale, lease or other disposition of the Collateral hereunder may be completed by public auction, public tender or private contract, with or without notice, with or without advertising and with or without any other formality (except as required by law), all of which are hereby waived by the Debtor. Any such disposition of Collateral may involve all or part of the Collateral and may be on such terms and conditions as to credit or otherwise and as to upset or reserve bid or price as the Secured Party or any Receiver appointed by the Secured Party may, in its sole discretion, deem advantageous and may take place whether or not the Secured Party or any such Receiver has taken possession of such Collateral.
23. The Secured Party shall not be liable for any delay or failure to enforce any rights, powers or remedies available to it or to institute any proceedings for such purposes.
24. No right, power or remedy of the Secured Party (whether granted herein or otherwise) shall be exclusive of or dependent on or merge in any other right, power or remedy, but all such rights, powers and remedies may from time to time be exercised independently or in combination.
25. The Debtor agrees to pay to the Secured Party, forthwith on demand by the Secured Party, all costs and expenses incurred by the Secured Party in connection with the exercise by the Secured Party of its rights, powers and remedies hereunder, including:
  - (a) any costs and expenses incurred by the Secured Party in taking, holding, moving, storing, recovering, possessing, repairing, processing, preparing for disposition or disposing of Collateral;
  - (b) any legal fees and expenses incurred by the Secured Party in enforcing its rights, powers and remedies, including those incurred in connection with any proceedings taken for the purpose of enforcing its rights, powers and remedies hereunder or otherwise relating to the non-payment or non-performance of any Obligations;
  - (c) the cost of borrowing amounts as hereinbefore provided (for the purpose of carrying on the Debtor's business or otherwise), including, the principal amount or any such amount borrowed, all interest thereon and fees relating thereto; and
  - (d) all costs and expenses of or incurred by any Receiver, agent or consultant appointed by the Secured Party (including any legal fees and expenses incurred by any such Receiver, agent or consultant).

All such sums shall bear interest at the highest rate applicable to the Obligations, shall form part of the Obligations and shall be secured by the Security Interest.

26. Any and all payments made in respect of the Obligations from time to time and moneys realized from any Collateral (including moneys realized on any enforcement of this agreement) may be applied to such part or parts of the Obligations as the Secured Party may see fit, and the Secured Party shall at all times and from time to time have the right to change any appropriation as the Secured Party may see fit.
27. The Debtor shall remain liable for all Obligations that are outstanding following realization of all or any part of the Collateral.

### **Rights of the Secured Party**

28. The Secured Party may pay the whole or any part of any liens, taxes, rates, charges or encumbrances now or hereafter existing in respect of any Collateral and such payments together with all costs, charges and expenses which may be incurred in connection with making such payments shall form part of the Obligations, shall bear interest at the highest rate applicable to the Obligations, and shall be secured by the Security Interest. Whenever the Secured Party pays any such lien, tax, rate, charge or encumbrance, it shall be entitled to all the equities and securities of the Person or Persons so paid and is hereby authorized to obtain any discharge thereof and hold such discharge without registration for so long as it may deem advisable to do so.
29. If the Debtor fails to perform or comply with any covenant or other obligation of the Debtor under this agreement, the Secured Party may, but need not, perform or otherwise cause the performance or compliance of such covenant or other obligation, provided that any performance or compliance undertaken by the Secured Party will not constitute a waiver, remedy or satisfaction of such failure. The costs and expenses of the Secured Party incurred in connection with any such performance or compliance shall be payable by the Debtor to the Secured Party on demand, form part of the Obligations, bear interest at the highest rate applicable to the Obligations and be secured by the Security Interest.
30. The Secured Party, without exonerating in whole or in part the Debtor, may grant time, renewals, extensions, indulgences, releases and discharges to, may take securities from and give the same and any or all existing securities up to, may abstain from taking securities from or from perfecting securities of, may accept compositions from, and may otherwise deal with the Debtor and all other Persons and securities as the Secured Party may see fit.
31. Nothing herein shall obligate the Secured Party to extend or amend any credit to the Debtor or to any other Person.
32. The Secured Party may assign, transfer and deliver to any transferee any of the Obligations or any security or any documents or instruments held by the Secured Party in respect thereof. The Debtor shall not assign any of its rights or obligations hereunder without the prior written consent of the Secured Party.

### **Amalgamation of Debtor**

33. If the Debtor amalgamates with any other corporation or corporations, this agreement shall continue in full force and effect and shall be binding on the amalgamated corporation and, for greater certainty:

- (a) the Security Interest shall:
- (i) continue to secure payment of all obligations of the Debtor to the Secured Party;
  - (ii) secure payment of all obligations of each other amalgamating corporation to the Secured Party; and
  - (iii) secure payment of all obligations of the amalgamated corporation to the Secured Party arising on or after the amalgamation;

and the term "Obligations" shall include all such obligations of the Debtor, the other amalgamating corporations and the amalgamated corporation;

- (b) the Security Interest shall:
- (i) continue to charge all property and assets of the Debtor;
  - (ii) charge all property and assets of each other amalgamating corporation; and
  - (iii) charge all property and assets of the amalgamated corporation in existence at the time of the amalgamation and all property and assets acquired by the amalgamated corporation after the amalgamation;

and the term "Collateral" shall include all such property and assets of the Debtor, the other amalgamating corporations and the amalgamated corporation;

- (c) all defined terms and other provisions of this agreement shall be deemed to have been amended to reflect such amalgamation, to the extent required by the context; and
- (d) the parties agree to execute and deliver all such further documents and assurances as may be necessary or desirable in connection with the foregoing.

### **Notices**

34. Any notice, demand or other communication permitted or required to be given hereunder shall be given in accordance with the Loan Agreement.

### **Continuing Security for Revolving and Other Obligations**

35. This agreement shall be held by the Secured Party as continuing security to secure payment of all Obligations at any time and from time to time outstanding up to, at any time, a maximum total amount equivalent to the full principal amount specified in section 10, unpaid interest then accrued thereon pursuant to section 10, and all other amounts then owing or payable by the Debtor pursuant to this agreement. Accordingly, any payment from time to time of any of the Obligations shall not reduce such maximum total amount or the principal amount specified in section 10, and this agreement shall continue, after such payment, to secure payment of all Obligations at any time outstanding (including all Obligations relating to any future loan or other extension of credit made by the Secured Party to the Debtor) up to such maximum total



amount. For greater certainty, until discharged pursuant to section 41, this agreement shall continue as general and continuing security for payment of all future Obligations whenever the then outstanding Obligations are at any time or from time to time fully satisfied and paid.

### **Claims under this Agreement**

36. The Secured Party shall not, at any time, claim payment from the Debtor under this agreement (whether for principal, interest or both) in an amount greater than the amount of the indebtedness forming part of the Obligations at such time.

### **Satisfaction of Interest Payment Obligations**

37. Despite any other provision of this agreement, payment by the Debtor to the Secured Party of interest on all indebtedness comprising or forming part of the Obligations at the then current rate at which such indebtedness bears interest for any period of time shall constitute satisfaction of interest payable pursuant to this agreement for the equivalent period of time.

### **Miscellaneous**

38. This agreement shall not result in the merger or any indebtedness or liability of the Debtor or any other Person or Persons to the Secured Party hereunder or under any negotiable instrument or other document by which the same may now or at any time hereafter be represented or evidenced. No judgment recovered by the Secured Party shall result in the merger of any such indebtedness or liability or in any way affect the Security Interest or the Secured Party's right to interest provided for herein.
39. In the event that any day, on or before which any action is required to be taken hereunder, is not a Business Day, then such action shall be required to be taken on or before the first Business Day thereafter.
40. Time shall be of the essence of this agreement.
41. Upon payment and fulfillment by the Debtor, its successors or permitted assigns, of all Obligations and provided that the Secured Party is then under no obligation (conditional or otherwise) to make any further loan or extend any other type of credit to the Debtor or to any other Person, the payment of which is secured, directly or indirectly, by this agreement, the Secured Party shall, upon request in writing by the Debtor, delivered to the Secured Party at the Secured Party's address as set out in section 34 hereof and at the Debtor's expense, discharge this agreement.
42. This agreement is in addition to and not in substitution for any other security now or hereafter held by the Secured Party and the terms and conditions of the Loan Documents will remain binding and effective and shall not merge in this Debenture or upon the registration thereof.
43. The Secured Party may in writing (and not otherwise) waive any default by the Debtor in the observance or performance of any provision of this agreement; provided that no waiver by the Secured Party shall extend to or be taken in any manner whatsoever to affect any subsequent default, whether of the same or a different nature, or the rights resulting therefrom.

44. This agreement shall enure to the benefit of the Secured Party, its successors and assigns, and shall be binding on the Debtor, its successors and permitted assigns.
45. The Debtor agrees that the Secured Party may from time to time provide information concerning this agreement (including a copy hereof), the Collateral and the Obligations to any Person the Secured Party in good faith believes is entitled thereto pursuant to applicable legislation.
46. This agreement may be executed and delivered by facsimile, in portable document format (“pdf”) or other electronic means, and any such signature shall be deemed to be equivalent to an original signature for all purposes.
47. The Debtor acknowledges receipt of an executed copy of this agreement.
48. To the extent that there is any inconsistency between a provision of this Debenture and a provision of the Loan Agreement, the provision of the Loan Agreement shall govern. Notwithstanding that this Debenture is expressed to be payable on demand, the Secured Party shall not make a demand for payment hereunder unless an Event of Default has occurred and is continuing under the Loan Agreement. For greater certainty, a provision of this Debenture and a provision of the Loan Agreement shall be considered to be inconsistent if both relate to the same subject-matter and one provision imposes more onerous obligations or restrictions than the corresponding provision.
49. Prior to the execution of this agreement, the Debtor agree that it has read and understands the terms of this agreement and has had the opportunity to seek, and has either obtained or waived its right to obtain, independent legal advice with respect to the matters addressed in this agreement. The Debtor fully understands and accepts the terms of this agreement, and confirms that it is executing it freely, voluntarily and without duress, and agree that its failure to obtain independent legal advice shall not be used by the Debtor as a defence to the enforcement of this agreement.

***[Remainder of page intentionally blank; signature page follows.]***

IN WITNESS WHEREOF the Debtor has executed and delivered this agreement as of February 28, 2023.

**425 WHARNCLIFFE ROAD INC.**

By: 

Name: Abdul Muqeeet  
Title: Director

I have authority to bind the corporation.

**SCHEDULE "A"**

Lands

**425 Wharncliffe Road South, London, Ontario**

REGISTERED OWNER:	425 Wharncliffe Road Inc.
LEGAL DESCRIPTION:	PT LTS 1 & 2, PL 29, PART 2, 33R2551, S/T 929439, IF ANY, S/T 837774, IF ANY, S/T 583284, IF ANY; LONDON/WESTMINSTER
PIN:	08398-0362 (LT)
LAND REGISTRY OFFICE:	Land Titles Division of Middlesex (No. 33)

**SCHEDULE "B"**

Part I

Location of the Debtor's Chief Executive Office

- 110 Herdwick Street, Brampton, Ontario, Canada

Part II

Other Location(s) of the Debtor's Tangible Collateral

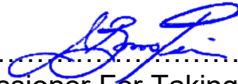
- 110 Herdwick Street, Brampton, Ontario, Canada

**SCHEDULE "C"**

**Permitted Encumbrances**

- 1) Instrument No. ER1379600 registered June 3, 2021, being a Charge in favour of 1778130 Ontario Inc. securing the principal sum of \$720,000.00 and Instrument No. PR3454144 registered on June 4, 2021, being a Notice of Assignment of Rents – General relating thereto;
- 2) Instrument No. ER1454366 registered April 19, 2022, being a Charge in favour of 1778130 Ontario Inc. securing the principal sum of \$400,000.00;
- 3) liens for taxes or utility charges in either case only if same are not yet due or payable;
- 4) registered easements, rights of way, restrictive covenants and servitudes and other similar rights in land granted to, reserved or taken by any governmental authority or public utility, or any registered subdivision, development, servicing, site plan or other similar agreement with any governmental authority or public utility provided that they have been complied with;
- 5) all Federal, Provincial or Municipal by-laws, regulations, restrictions or guidelines;
- 6) minor title defects or irregularities;
- 7) any subsisting reservations contained in the original grant of the Lands from the Crown;
- 8) leases of the Lands which are either (i) disclosed by the Debtor to the Secured Party prior to the date hereof in a rent roll or other document, or (ii) entered into after the date hereof in accordance with the loan documents;
- 9) any encumbrances permitted under any of the loan or security documents delivered in connection with the Loan Agreement;
- 10) any instruments or encumbrances registered on title to the Lands as of the date hereof; and
- 11) such other encumbrances consented to in writing by the Secured Party in its sole discretion.

This is **Exhibit "Z"** referred to in the affidavit of Tyson Hartwell, sworn before me by videoconference on April 27, 2023 in accordance with O.Reg. 431/20: Administering Oath or Declaration Remotely. The deponent was located in the City of Calgary in the Province of Alberta and I was located in the City of Toronto in the Province of Ontario.



.....  
A Commissioner For Taking Affidavits

Jeremy Bornstein  
LSO#: 65425C

## DEBENTURE

TO: CANADIAN WESTERN BANK

DATE: February 28, 2023

For good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged by the Debtor, the Debtor hereby delivers this agreement to the Secured Party and agrees as follows:

### Definitions and Interpretation

1. In this agreement, the following words shall, unless otherwise provided, have the meanings set out below:

"**Borrower**" means Index Holding Group Inc., and its successors and permitted assigns.

"**Business Day**" means a day, other than a Saturday, Sunday or statutory holiday in the Province of Ontario.

"**Collateral**" means all present and future property, assets and undertaking of the Debtor pledged, assigned, mortgaged, charged, hypothecated or made subject to a security interest pursuant to this agreement.

"**Contractual Right**" means any agreement, right, franchise, licence, authorization, approval, privilege or permit (a) to which the Debtor is now or hereafter becomes a party, (b) in which the Debtor now or hereafter has any interest or (c) of which the Debtor is or hereafter becomes a beneficiary.

"**Debtor**" means 425 Wharnccliffe Road Inc., and its successors and permitted assigns.

"**Default**" has the meaning given to such term under the Loan Agreement.

"**Intellectual Property**" means all patents, trade-marks, trade names, business names, trade styles, logos and other business identifiers, copyrights, technology, inventions, industrial designs, know-how, trade secrets and other industrial and intellectual property in which the Debtor now or in the future has any right, title or interest.

"**Lands**" means the Collateral described in section 11(a) hereof.

"**Loan Agreement**" means, collectively, each and every commitment letter, letter loan agreement, equipment loan and security agreement, credit agreement or other financing instrument between the Borrower, as borrower, and the Secured Party, as lender, as same may be amended, supplemented, restated, amended and restated, replaced or otherwise modified from time to time.

"**Loan Documents**" means, collectively, all documents, instruments, agreements, any guarantee given by the Debtor in favour of the Secured Party in respect of the Obligations, and opinions now or hereafter evidencing, securing, guaranteeing and/or relating to the loans made by the



Secured Party and the Obligations or any part thereof, including the Loan Agreement and this Debenture.

**"Obligations"** means all present and future indebtedness, liabilities and obligations, direct and indirect, absolute or contingent, matured or unmatured, joint or several, of the Debtor to the Secured Party, including without limitation any such indebtedness, liabilities and obligations arising under any Loan Documents.

**"Permitted Encumbrances"** means those encumbrances approved by the Secured Party and attached hereto as Schedule "C".

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

**"PPSA"** means the *Personal Property Security Act (Ontario)*, as amended from time to time and any legislation substituted therefor and any amendments thereto.

**"Receiver"** means a receiver, receiver-manager and receiver and manager.

**"Secured Party"** means Canadian Western Bank, and its successors and assigns.

**"Security Interest"** means the pledges, assignments, mortgages, charges and hypothecations of and the security interests in the Collateral created in favour of the Secured Party hereunder; and

**"Term"** means forty-six (46) months, commencing as of the date hereof.

2. References such as "this agreement", "hereof", "herein", "hereto" and like references refer to this agreement and any schedules, exhibits or appendices attached hereto (all of which schedules, exhibits and appendices form a part of this agreement) and not to any particular section, subsection, paragraph or other subdivision of this agreement.
3. The division of this agreement into sections, subsections and paragraphs and the insertion of headings in this agreement are for convenience of reference only and shall not affect the construction or interpretation of this agreement.
4. Terms used herein which are defined in the PPSA shall have the same meanings herein as are ascribed to such terms in the PPSA, unless such terms are otherwise defined.
5. The word "Debtor", 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. The term "successors" shall include, without limiting its meaning, any corporation resulting from the amalgamation of a corporation with another corporation. Where the context so requires, words used herein (including defined terms) importing the singular shall include the plural and vice versa and words used herein (including defined terms) importing gender shall include all genders (including the neuter).
6. Nothing herein (including the definition and use of the term Permitted Encumbrances) is intended or shall be deemed to subordinate the Security Interest to any Permitted Encumbrance

or any other lien, charge, mortgage, security interest, hypothec or encumbrance affecting all or any portion of the Collateral.

7. If one or more of the provisions contained herein shall be invalid, illegal or unenforceable in any respect, such provision or provisions shall be severed from this agreement only to the extent necessary, and the validity, legality and enforceability of the remaining provisions hereof, including the provision or provisions remaining after such severance, shall not in any way be affected or impaired thereby.
8. Unless otherwise expressly provided in this agreement, if any matter in this agreement is subject to the determination, consent or approval of the Secured Party or is to be acceptable to the Secured Party, such determination, consent, approval or determination of acceptability will be in the sole discretion of the Secured Party, which means the Secured Party shall have sole and unfettered discretion, without any obligation to act reasonably. If any provision in this agreement refers to any action taken or to be taken by the Debtor, or which the Debtor is prohibited from taking, such provision will be interpreted to include any and all means, direct or indirect, of taking, or not taking, such action. When used in the context of a general statement followed by a reference to one or more specific items or matters, the term "including" shall mean "including, without limitation" and the use of the term "includes" shall mean "includes, without limitation".
9. This agreement shall be governed by and construed in accordance with the laws of the Province of Ontario and the federal laws of Canada applicable therein. The Debtor hereby irrevocably and unconditionally attorns and submits to the non-exclusive jurisdiction of the courts of the Province of Ontario, provided that nothing herein shall prevent the Secured Party from proceeding at its election against the Debtor in the courts of any other province, country or jurisdiction.

#### **Promise To Pay**

10. For value received, the Debtor hereby acknowledges itself indebted to and agrees to pay to the Secured Party, on demand, the principal sum of \$8,000,000.00 of lawful money of Canada. The Debtor shall also pay to the Secured Party interest on such principal sum (and interest on overdue interest) at the rate of Prime plus 3.30% per annum calculated daily and payable monthly not in advance, both before and after demand, default, judgment and execution from the date hereof until payment in full of all amounts owing hereunder.

#### **Grant of Security Interest**

11. As continuing security for the payment and performance of all Obligations, the Debtor hereby pledges, assigns, mortgages, charges and hypothecates to the Secured Party and grants to the Secured Party a security interest in the following:
  - (a) by way of a fixed and specific mortgage and charge (but subject to the exceptions as to leaseholds hereinafter contained), all real and immoveable property (including, by way of sub-lease, leasehold lands) now or hereafter owned or acquired by the Debtor, all the Debtor's present and future interests and rights with respect thereto, all buildings, erections and improvements now or hereafter owned or acquired by the Debtor

(whether the same form part of the realty or not) and all appurtenances to any of the foregoing including the real property described in Schedule "A" hereto;

- (b) all present and future equipment of the Debtor, including all of its present and future machinery, fixtures, plant, tools, furniture, books, records, documents, vehicles of any nature, kind or description, and all accessions to any of the foregoing, including all spare parts and accessories installed in or affixed or attached to any of the foregoing, and all drawings, specifications, plans and manuals relating to the foregoing;
- (c) all present and future inventory of the Debtor, including all of its present and future raw materials, materials used or consumed in its business, work-in-progress, finished goods, goods used for packing and goods acquired or held for sale or lease or that have been leased or furnished or that are to be furnished under contracts of rental or service, and all accessions to any of the foregoing, including all spare parts and accessories installed in or affixed or attached to any of the foregoing;
- (d) all present and future intangibles of the Debtor, including all of its present and future accounts and other amounts receivable, book debts, goodwill, Intellectual Property and choses in action of every nature and kind;
- (e) all present and future documents of title, chattel paper, instruments, money and securities of the Debtor;
- (f) by way of a floating charge, all present and future real property, personal property, assets, and undertaking of the Debtor of any nature or kind, including all real property, personal property, assets and undertaking at any time owned, leased or licenced by the Debtor or in which the Debtor at any time has any right or interest or to which the Debtor is or may at any time become entitled (other than the property, assets and undertaking of the Debtor validly pledged or assigned or subjected to a valid mortgage, charge, hypothec or security interest by subsection 11(a), 11(b), 11(c), 11(d) or 11(e) hereof and subject to the exceptions hereinafter contained); and
- (g) all proceeds arising from the property, assets and undertaking of the Debtor referred to in this section 11, including insurance proceeds and any other payment representing indemnity or compensation for loss of or damage thereto.

### **Assignment of Leases and Rents**

12. As additional and separate security for payment and performance of the Obligations, the Debtor hereby assigns, transfers and sets over to the Secured Party, all the Debtor's rights and interests in all existing and future leases, tenancy agreements, offers to lease and other similar agreements with respect to all or part of the Lands, and all rents, incomes, profits and other amounts now or hereafter arising from or out of all or part of the Lands or any building, improvement, fixture or part thereof forming part of the Lands, and the following provisions shall apply with respect thereto:

- (a) The assignment of each of the foregoing and of each of the rents, incomes, profits and other amounts by the Debtor to the Secured Party herein contained in this Section 12 shall be deemed to be a separate assignment so that the Secured Party in its discretion

may exercise its rights in respect of any or all of such leases, offers to lease, tenancy agreements or other similar agreements or the rents, incomes, profits or other amounts paid or payable thereunder.

- (b) Until the the occurrence of a Default, the Debtor may collect, retain and apply all rents, incomes, profits and other amounts and deal with all leases, offers to lease, tenancy agreements and other similar agreements from time to time.
- (c) Nothing herein shall obligate the Secured Party to assume or perform (and nothing herein shall impose on the Secured Party) any liability or obligation of the Debtor to any tenant or other person pursuant to or in respect of any lease, offer to lease, tenancy agreement, other similar agreement or otherwise, and the Debtor hereby indemnifies and saves harmless the Secured Party from any and all claims with respect thereto (except to the extent arising from the gross negligence or wilful misconduct of the Secured Party), provided that the Secured Party may, at its sole option, assume or perform any such obligations as it considers necessary or desirable
- (d) The Secured Party may, at any time without further request or agreement by the Debtor, reassign to the Debtor or its successors or assigns, any or all of the collateral referred to in this Section 12.

#### **Limited Exceptions to Grant of Security Interest**

- 13. Despite any other provision of this agreement, the last day of any term reserved by any lease of real property, oral or written, or any agreement therefor, now held or hereafter acquired by the Debtor, and whether falling within the general or particular description of the Collateral, is hereby and shall be excepted out of the Security Interest, but the Debtor shall stand possessed of the reversion of one day remaining in the Debtor in respect of any such term, for the time being demised, as aforesaid, upon trust to assign and dispose of the same as any purchaser of such term shall direct.
- 14. Despite any other provision of this agreement, the Security Interest shall not attach to any Contractual Right to the extent that the granting of the Security Interest therein would constitute a breach of, or permit any Person to terminate such Contractual Right, but the Debtor shall hold its interest in each such Contractual Right in trust for the Secured Party and shall, after the Security Interest shall have become enforceable, specifically assign each such Contractual Right to the Secured Party, or as the Secured Party may otherwise direct. The Debtor agrees that it shall, upon the request of the Secured Party, whether before or after the Security Interest has become enforceable, use all commercially reasonable efforts to obtain any consent required to permit any such Contractual Right to be subjected to the Security Interest, and the Security Interest shall attach to such Contractual Right following the receipt of such consent.

#### **Attachment**

- 15. The Debtor confirms and agrees that value has been given by the Secured Party to the Debtor, that the Debtor has rights in all existing Collateral and that the Debtor and the Secured Party have not postponed the time for attachment of the Security Interest, such that the Security Interest shall attach to existing Collateral upon the execution of this agreement and shall attach

to Collateral in which the Debtor hereafter acquires rights at the time that the Debtor acquires rights in such Collateral.

**Representations and Warranties by the Debtor**

16. The Debtor hereby represents and warrants to the Secured Party that:
- (a) the Debtor has the capacity and authority to incur the Obligations, to create the Security Interest and to execute and deliver and perform its obligations under this agreement;
  - (b) the execution and delivery of this agreement and the performance by the Debtor of its obligations hereunder have been duly authorized by all necessary proceedings;
  - (c) this agreement constitutes a legal, valid and binding obligation of the Debtor, enforceable against the Debtor in accordance with its terms subject only to bankruptcy, insolvency, reorganization, moratorium and other similar laws of general application affecting creditors' rights and the discretion exercisable by courts of competent jurisdiction in respect of the availability of equitable remedies;
  - (d) the Debtor is the sole registered, legal and beneficial owner of an estate in fee simple in the Lands with good and marketable title thereto, and the Debtor is the legal and beneficial owner of the remainder of the Collateral, in each case, free of any mortgages, charges, liens, pledges, security interests or other encumbrances or claims whatsoever except Permitted Encumbrances;
  - (e) the sole place of business and chief executive office of the Debtor is located at the address listed in Part I of Schedule "B" of this agreement; and
  - (f) the Debtor does not keep tangible Collateral at any location(s) except:
    - (i) the location listed in Part I of Schedule "B" hereto, and
    - (ii) any location(s) listed in Part II of Schedule "B" hereto,other than tangible Collateral in transit to or from such locations.

**Covenants of the Debtor**

17. The Debtor agrees with the Secured Party that, until the Obligations have been satisfied and paid in full:
- (a) it will:
    - (i) make and maintain all filings, registrations and recordations necessary or desirable to protect its right, title and interest in the Collateral;
    - (ii) defend the Collateral against any actions, claims and demands of any Person (other than the Secured Party) claiming the Collateral (or any of it) or an interest therein;

- (iii) pay all taxes, rates, levies, assessments and other impositions and charges, of every nature and kind, which may now or hereafter be lawfully levied, assessed or imposed on or in respect of the Debtor or the Collateral (or any of it), including those which could result in the creation of a statutory lien or deemed trust affecting the Debtor or the Collateral, as and when the same become due and payable;
- (iv) notify the Secured Party of any loss or damage to the Collateral, any change in any information provided in this agreement (including the schedules hereto) or any actual or potential claim affecting the Debtor, the Collateral or the Security Interest;
- (v) hold the proceeds received from any direct or indirect dealing with the Collateral in trust for the Secured Party after either the Security Interest becomes enforceable or any of the Collateral is sold other than in the ordinary course of business of the Debtor and for the purpose of carrying on such business;
- (vi) strictly comply with every covenant and undertaking heretofore or hereafter given by it to the Secured Party, whether contained herein or not;
- (vii) permit the Secured Party at any time after the Security Interest shall have become enforceable, to require any account debtor of the Debtor to make payment to the Secured Party of any or all amounts owing by the account debtor to the Debtor and the Secured Party may take control of any proceeds referred to in subsection 11(g) hereof and may hold all amounts received from any account debtor and any proceeds as cash collateral as part of the Collateral and as security for the Obligations;
- (viii) prevent any Collateral constituting personal property from becoming an accession to any personal property not subject to the Security Interest, or becoming affixed to any real property other than the Lands;
- (ix) deliver to the Secured Party, at the Secured Party's request, duly endorsed and/or accompanied by such assignments, transfers, powers of attorney or other documents as the Secured Party may request, all items of the Collateral comprising chattel paper, instruments, securities and documents of title;
- (x) pay, on demand by the Secured Party, all costs and expenses (including all legal fees) incurred by the Secured Party in the preparation, perfection, administration and enforcement of this agreement (including expenses incurred in considering, protecting or improving the Secured Party's position, or attempting to do so, whether before or after default) and all such costs and expenses shall bear interest at the highest rate applicable to the Obligations, shall form part of the Obligations and shall be secured by the Security Interest;
- (xi) at all times, both before and after the occurrence of a default, do or cause to be done such further and additional acts and things and execute and deliver or cause to be executed and delivered all such further and additional documents

and agreements as the Secured Party may reasonably require to better pledge, assign, mortgage, charge and hypothecate the Collateral in favour of the Secured Party, to perfect the Security Interest and, without limiting the generality of the forgoing, to accomplish the intentions of this agreement.

- (b) it will not, without the prior written consent of the Secured Party:
  - (i) change its name;
  - (ii) merge or amalgamate with any other corporation;
  - (iii) change the location of its sole place of business and chief executive office from that set out in Part I of Schedule "B" hereto without providing the Secured Party with thirty (30) Business Days' prior written notice thereof; and
  - (iv) keep tangible Collateral at any location other than the location(s) listed in Parts I and II of Schedule "B" hereto without providing the Secured Party with thirty (30) Business Days' prior written notice thereof.

#### **Covenants of the Debtor regarding the Lands**

18. The Debtor agrees with the Secured Party that:

- (a) in accordance with subsection 7(3) of the *Land Registration Reform Act* (Ontario), the covenants deemed to be included in a charge by subsection 7(1) of such Act are expressly excluded from this agreement;
- (b) subject to section 41 hereof, the Debtor releases to the Secured Party all the Debtor's right, title and interest in and to the Collateral and every part thereof and the Debtor shall not at any time hereafter make any claim to the Collateral, challenge the Secured Party's rights thereto or make any demands upon the Secured Party with respect to the Collateral and that the Secured Party shall be exonerated and discharged of and from all claims and demands which the Debtor might or could have against the Secured Party with respect to the Collateral;
- (c) it will at all times fully perform and comply with all obligations imposed on, assumed by or agreed to by it pursuant to any prior encumbrance of the Lands or any part thereof or its interest therein and, if the Debtor shall fail so to do, the following shall apply:
  - (i) the Secured Party may (but shall not be obliged to) take any action the Secured Party deems necessary or desirable acting reasonably to cure any default by the Debtor in the performance of or compliance with any of the Debtor's obligations imposed on, assumed by or agreed to by the Debtor pursuant to any such prior encumbrance;
  - (ii) upon receipt by the Secured Party from any such prior encumbrancer of any written notice of default by the Debtor, the Secured Party may rely thereon and take any action as aforesaid to cure such default even though the existence of

such default or the nature thereof may be questioned or denied by the Debtor or by any Person on behalf of the Debtor;

- (iii) the Debtor hereby expressly grants to the Secured Party, and agrees that the Secured Party shall have the absolute and immediate right to enter in and upon the Lands or any part thereof to such extent and as often as the Secured Party, in its sole discretion, acting reasonably, deems necessary or desirable, in order to cure any such default by the Debtor;
- (iv) the Secured Party may pay and expend such sums of money as the Secured Party in its sole discretion, acting reasonably, deems necessary for any such purpose, and the Debtor hereby agrees to pay to the Secured Party, immediately upon notification by the Secured Party and without demand, all such sums so paid and expended by the Secured Party, together with interest thereon at the rate aforesaid from the date of each such payment; and
- (v) all sums so paid and expended by the Secured Party and such interest thereon, shall be added to and form part of the Obligations and be secured by the Security Interest in priority to all other mortgages, charges and other encumbrances.

### **Default**

19. Without prejudice to any right which the Secured Party may now or hereafter have to demand payment of any of the Obligations, the Obligations shall, at the option of the Secured Party, become payable and the Security Interest shall become enforceable if a Default occurs.

### **Remedies of the Secured Party**

20. Whenever the Security Interest shall have become enforceable, and so long as it shall remain enforceable, the Secured Party may proceed to realize the Security Interest and the Collateral and to enforce its rights by doing any one or more of the following:
- (a) entering upon the Lands and any other lands and premises where any Collateral is or may be located;
  - (b) taking possession of Collateral by any method permitted by law;
  - (c) occupying the Lands and any other lands and premises occupied by the Debtor and using all or any part of the Lands and such other lands and premises and the equipment and other Collateral located thereon;
  - (d) leasing, selling, licensing or otherwise disposing of the whole or any part or parts of the Lands and other Collateral;
  - (e) collecting, selling or otherwise dealing with any accounts or other amounts receivable of the Debtor, including notifying any Person obligated to the Debtor in respect of an account, chattel paper or instrument to make payment to the Secured Party of all present and future amounts due thereon;



- (f) taking steps and expending such monies as it considers necessary or desirable in its sole discretion to maintain, preserve and protect the Collateral, including making payments on account of other security interests affecting the Collateral; provided that the Secured Party shall have no obligation to take any such actions or make any such expenditures; but any such amounts paid by the Secured Party shall be added to the Obligations and shall be secured by the Security Interest;
  - (g) collecting any rents, income, and profits received in connection with the business of the Debtor or the Collateral, without carrying on such business;
  - (h) carrying on the business of the Debtor or any portion thereof;
  - (i) exercising any and all of the rights and remedies granted pursuant to the PPSA and any other applicable legislation, or otherwise available at law or in equity;
  - (j) demanding, commencing, continuing or defending any judicial or administrative proceedings for the purpose of protecting, seizing, collecting, realizing or obtaining possession or payment of the Collateral, and giving valid and effectual receipts and discharges therefor and to compromise or give time for the payment or performance of all or any part of the accounts or other amounts receivable of the Debtor or any other obligation of any third party to the Debtor;
  - (k) borrowing money for the maintenance, preservation or protection of the Collateral or for the carrying on of the business of the Debtor, and charge and grant further security interests in the Collateral in priority to the Security Interest or otherwise, as security for the money so borrowed;
  - (l) accepting the Collateral in satisfaction of the Obligations (and in connection therewith, foreclosing on the Lands);
  - (m) appointing by instrument in writing a Receiver or Receivers of the Collateral or any part thereof;
  - (n) bringing proceedings in any court of competent jurisdiction for the appointment of a Receiver or Receivers or for the sale of the Collateral or any part thereof; and
  - (o) filing such proofs of claim and other documents as may be necessary or advisable in order to have its claim lodged in any bankruptcy, winding-up or other judicial proceedings relating to the Debtor or the Collateral.
21. Any Receiver appointed by the Secured Party may be any Person or Persons (including one or more officers or employees of the Secured Party), and the Secured Party may remove any Receiver so appointed and appoint another or others instead. Any such Receiver may exercise any and all of the rights, remedies and powers of the Secured Party provided in this agreement. The Secured Party shall not be responsible for the actions, errors or omissions of any Receiver it appoints and any such Receiver shall be deemed to act as agent for the Debtor for all purposes, including the occupation of the Lands and any other premises of the Debtor and in carrying on the Debtor's business, unless the Secured Party expressly specifies in writing that the Receiver shall be agent for the Secured Party for one or more purposes. Without limiting the generality

of the forgoing, for the purposes of realizing upon the Security Interest, any Receiver may sell, lease, or otherwise dispose of Collateral as agent for the Debtor or as agent for the Secured Party as the Secured Party may specify in writing in its sole discretion. The Debtor agrees to ratify and confirm all actions of any Receiver appointed by the Secured Party acting as agent for the Debtor, and to release and indemnify the Receiver in respect of all such actions.

22. Without limiting the ability of the Secured Party or any Receiver to dispose of Collateral in any other manner, the Debtor agrees that any sale, lease or other disposition of the Collateral hereunder may be completed by public auction, public tender or private contract, with or without notice, with or without advertising and with or without any other formality (except as required by law), all of which are hereby waived by the Debtor. Any such disposition of Collateral may involve all or part of the Collateral and may be on such terms and conditions as to credit or otherwise and as to upset or reserve bid or price as the Secured Party or any Receiver appointed by the Secured Party may, in its sole discretion, deem advantageous and may take place whether or not the Secured Party or any such Receiver has taken possession of such Collateral.
23. The Secured Party shall not be liable for any delay or failure to enforce any rights, powers or remedies available to it or to institute any proceedings for such purposes.
24. No right, power or remedy of the Secured Party (whether granted herein or otherwise) shall be exclusive of or dependent on or merge in any other right, power or remedy, but all such rights, powers and remedies may from time to time be exercised independently or in combination.
25. The Debtor agrees to pay to the Secured Party, forthwith on demand by the Secured Party, all costs and expenses incurred by the Secured Party in connection with the exercise by the Secured Party of its rights, powers and remedies hereunder, including:
  - (a) any costs and expenses incurred by the Secured Party in taking, holding, moving, storing, recovering, possessing, repairing, processing, preparing for disposition or disposing of Collateral;
  - (b) any legal fees and expenses incurred by the Secured Party in enforcing its rights, powers and remedies, including those incurred in connection with any proceedings taken for the purpose of enforcing its rights, powers and remedies hereunder or otherwise relating to the non-payment or non-performance of any Obligations;
  - (c) the cost of borrowing amounts as hereinbefore provided (for the purpose of carrying on the Debtor's business or otherwise), including, the principal amount or any such amount borrowed, all interest thereon and fees relating thereto; and
  - (d) all costs and expenses of or incurred by any Receiver, agent or consultant appointed by the Secured Party (including any legal fees and expenses incurred by any such Receiver, agent or consultant).

All such sums shall bear interest at the highest rate applicable to the Obligations, shall form part of the Obligations and shall be secured by the Security Interest.

26. Any and all payments made in respect of the Obligations from time to time and moneys realized from any Collateral (including moneys realized on any enforcement of this agreement) may be applied to such part or parts of the Obligations as the Secured Party may see fit, and the Secured Party shall at all times and from time to time have the right to change any appropriation as the Secured Party may see fit.
27. The Debtor shall remain liable for all Obligations that are outstanding following realization of all or any part of the Collateral.

### **Rights of the Secured Party**

28. The Secured Party may pay the whole or any part of any liens, taxes, rates, charges or encumbrances now or hereafter existing in respect of any Collateral and such payments together with all costs, charges and expenses which may be incurred in connection with making such payments shall form part of the Obligations, shall bear interest at the highest rate applicable to the Obligations, and shall be secured by the Security Interest. Whenever the Secured Party pays any such lien, tax, rate, charge or encumbrance, it shall be entitled to all the equities and securities of the Person or Persons so paid and is hereby authorized to obtain any discharge thereof and hold such discharge without registration for so long as it may deem advisable to do so.
29. If the Debtor fails to perform or comply with any covenant or other obligation of the Debtor under this agreement, the Secured Party may, but need not, perform or otherwise cause the performance or compliance of such covenant or other obligation, provided that any performance or compliance undertaken by the Secured Party will not constitute a waiver, remedy or satisfaction of such failure. The costs and expenses of the Secured Party incurred in connection with any such performance or compliance shall be payable by the Debtor to the Secured Party on demand, form part of the Obligations, bear interest at the highest rate applicable to the Obligations and be secured by the Security Interest.
30. The Secured Party, without exonerating in whole or in part the Debtor, may grant time, renewals, extensions, indulgences, releases and discharges to, may take securities from and give the same and any or all existing securities up to, may abstain from taking securities from or from perfecting securities of, may accept compositions from, and may otherwise deal with the Debtor and all other Persons and securities as the Secured Party may see fit.
31. Nothing herein shall obligate the Secured Party to extend or amend any credit to the Debtor or to any other Person.
32. The Secured Party may assign, transfer and deliver to any transferee any of the Obligations or any security or any documents or instruments held by the Secured Party in respect thereof. The Debtor shall not assign any of its rights or obligations hereunder without the prior written consent of the Secured Party.

### **Amalgamation of Debtor**

33. If the Debtor amalgamates with any other corporation or corporations, this agreement shall continue in full force and effect and shall be binding on the amalgamated corporation and, for greater certainty:

- (a) the Security Interest shall:
- (i) continue to secure payment of all obligations of the Debtor to the Secured Party;
  - (ii) secure payment of all obligations of each other amalgamating corporation to the Secured Party; and
  - (iii) secure payment of all obligations of the amalgamated corporation to the Secured Party arising on or after the amalgamation;

and the term "Obligations" shall include all such obligations of the Debtor, the other amalgamating corporations and the amalgamated corporation;

- (b) the Security Interest shall:
- (i) continue to charge all property and assets of the Debtor;
  - (ii) charge all property and assets of each other amalgamating corporation; and
  - (iii) charge all property and assets of the amalgamated corporation in existence at the time of the amalgamation and all property and assets acquired by the amalgamated corporation after the amalgamation;

and the term "Collateral" shall include all such property and assets of the Debtor, the other amalgamating corporations and the amalgamated corporation;

- (c) all defined terms and other provisions of this agreement shall be deemed to have been amended to reflect such amalgamation, to the extent required by the context; and
- (d) the parties agree to execute and deliver all such further documents and assurances as may be necessary or desirable in connection with the foregoing.

### **Notices**

34. Any notice, demand or other communication permitted or required to be given hereunder shall be given in accordance with the Loan Agreement.

### **Continuing Security for Revolving and Other Obligations**

35. This agreement shall be held by the Secured Party as continuing security to secure payment of all Obligations at any time and from time to time outstanding up to, at any time, a maximum total amount equivalent to the full principal amount specified in section 10, unpaid interest then accrued thereon pursuant to section 10, and all other amounts then owing or payable by the Debtor pursuant to this agreement. Accordingly, any payment from time to time of any of the Obligations shall not reduce such maximum total amount or the principal amount specified in section 10, and this agreement shall continue, after such payment, to secure payment of all Obligations at any time outstanding (including all Obligations relating to any future loan or other extension of credit made by the Secured Party to the Debtor) up to such maximum total

amount. For greater certainty, until discharged pursuant to section 41, this agreement shall continue as general and continuing security for payment of all future Obligations whenever the then outstanding Obligations are at any time or from time to time fully satisfied and paid.

### **Claims under this Agreement**

36. The Secured Party shall not, at any time, claim payment from the Debtor under this agreement (whether for principal, interest or both) in an amount greater than the amount of the indebtedness forming part of the Obligations at such time.

### **Satisfaction of Interest Payment Obligations**

37. Despite any other provision of this agreement, payment by the Debtor to the Secured Party of interest on all indebtedness comprising or forming part of the Obligations at the then current rate at which such indebtedness bears interest for any period of time shall constitute satisfaction of interest payable pursuant to this agreement for the equivalent period of time.

### **Miscellaneous**

38. This agreement shall not result in the merger or any indebtedness or liability of the Debtor or any other Person or Persons to the Secured Party hereunder or under any negotiable instrument or other document by which the same may now or at any time hereafter be represented or evidenced. No judgment recovered by the Secured Party shall result in the merger of any such indebtedness or liability or in any way affect the Security Interest or the Secured Party's right to interest provided for herein.
39. In the event that any day, on or before which any action is required to be taken hereunder, is not a Business Day, then such action shall be required to be taken on or before the first Business Day thereafter.
40. Time shall be of the essence of this agreement.
41. Upon payment and fulfillment by the Debtor, its successors or permitted assigns, of all Obligations and provided that the Secured Party is then under no obligation (conditional or otherwise) to make any further loan or extend any other type of credit to the Debtor or to any other Person, the payment of which is secured, directly or indirectly, by this agreement, the Secured Party shall, upon request in writing by the Debtor, delivered to the Secured Party at the Secured Party's address as set out in section 34 hereof and at the Debtor's expense, discharge this agreement.
42. This agreement is in addition to and not in substitution for any other security now or hereafter held by the Secured Party and the terms and conditions of the Loan Documents will remain binding and effective and shall not merge in this Debenture or upon the registration thereof.
43. The Secured Party may in writing (and not otherwise) waive any default by the Debtor in the observance or performance of any provision of this agreement; provided that no waiver by the Secured Party shall extend to or be taken in any manner whatsoever to affect any subsequent default, whether of the same or a different nature, or the rights resulting therefrom.

44. This agreement shall enure to the benefit of the Secured Party, its successors and assigns, and shall be binding on the Debtor, its successors and permitted assigns.
45. The Debtor agrees that the Secured Party may from time to time provide information concerning this agreement (including a copy hereof), the Collateral and the Obligations to any Person the Secured Party in good faith believes is entitled thereto pursuant to applicable legislation.
46. This agreement may be executed and delivered by facsimile, in portable document format ("**pdf**") or other electronic means, and any such signature shall be deemed to be equivalent to an original signature for all purposes.
47. The Debtor acknowledges receipt of an executed copy of this agreement.
48. To the extent that there is any inconsistency between a provision of this Debenture and a provision of the Loan Agreement, the provision of the Loan Agreement shall govern. Notwithstanding that this Debenture is expressed to be payable on demand, the Secured Party shall not make a demand for payment hereunder unless an Event of Default has occurred and is continuing under the Loan Agreement. For greater certainty, a provision of this Debenture and a provision of the Loan Agreement shall be considered to be inconsistent if both relate to the same subject-matter and one provision imposes more onerous obligations or restrictions than the corresponding provision.
49. Prior to the execution of this agreement, the Debtor agree that it has read and understands the terms of this agreement and has had the opportunity to seek, and has either obtained or waived its right to obtain, independent legal advice with respect to the matters addressed in this agreement. The Debtor fully understands and accepts the terms of this agreement, and confirms that it is executing it freely, voluntarily and without duress, and agree that its failure to obtain independent legal advice shall not be used by the Debtor as a defence to the enforcement of this agreement.

***[Remainder of page intentionally blank; signature page follows.]***

IN WITNESS WHEREOF the Debtor has executed and delivered this agreement as of February 28, 2023.

**425 WHARNCLIFFE ROAD INC.**

By: 

Name: Abdul Muqeeet  
Title: Director

I have authority to bind the corporation.

**SCHEDULE "A"**

Lands

**425 Wharncliffe Road South, London, Ontario**

REGISTERED OWNER:	425 Wharncliffe Road Inc.
LEGAL DESCRIPTION:	PT LTS 1 & 2, PL 29, PART 2, 33R2551, S/T 929439, IF ANY, S/T 837774, IF ANY, S/T 583284, IF ANY; LONDON/WESTMINSTER
PIN:	08398-0362 (LT)
LAND REGISTRY OFFICE:	Land Titles Division of Middlesex (No. 33)



**SCHEDULE "B"**

Part I

Location of the Debtor's Chief Executive Office

- 110 Herdwick Street, Brampton, Ontario, Canada

Part II

Other Location(s) of the Debtor's Tangible Collateral

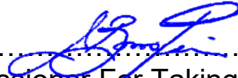
- 110 Herdwick Street, Brampton, Ontario, Canada

**SCHEDULE "C"**

**Permitted Encumbrances**

- 1) Instrument No. ER1379600 registered June 3, 2021, being a Charge in favour of 1778130 Ontario Inc. securing the principal sum of \$720,000.00 and Instrument No. PR3454144 registered on June 4, 2021, being a Notice of Assignment of Rents – General relating thereto;
- 2) Instrument No. ER1454366 registered April 19, 2022, being a Charge in favour of 1778130 Ontario Inc. securing the principal sum of \$400,000.00;
- 3) liens for taxes or utility charges in either case only if same are not yet due or payable;
- 4) registered easements, rights of way, restrictive covenants and servitudes and other similar rights in land granted to, reserved or taken by any governmental authority or public utility, or any registered subdivision, development, servicing, site plan or other similar agreement with any governmental authority or public utility provided that they have been complied with;
- 5) all Federal, Provincial or Municipal by-laws, regulations, restrictions or guidelines;
- 6) minor title defects or irregularities;
- 7) any subsisting reservations contained in the original grant of the Lands from the Crown;
- 8) leases of the Lands which are either (i) disclosed by the Debtor to the Secured Party prior to the date hereof in a rent roll or other document, or (ii) entered into after the date hereof in accordance with the loan documents;
- 9) any encumbrances permitted under any of the loan or security documents delivered in connection with the Loan Agreement;
- 10) any instruments or encumbrances registered on title to the Lands as of the date hereof; and
- 11) such other encumbrances consented to in writing by the Secured Party in its sole discretion.

This is **Exhibit "AA"** referred to in the affidavit of Tyson Hartwell, sworn before me by videoconference on April 27, 2023 in accordance with O.Reg. 431/20: Administering Oath or Declaration Remotely. The deponent was located in the City of Calgary in the Province of Alberta and I was located in the City of Toronto in the Province of Ontario.



.....  
A Commissioner For Taking Affidavits

Jeremy Bornstein  
LSO#: 65425C

**GENERAL ASSIGNMENT OF RENTS AND CERTAIN LEASE RIGHTS**

THIS ASSIGNMENT MADE the 28th day of February, 2023 BETWEEN:

**425 WHARNCLIFFE ROAD INC.**, a corporation incorporated pursuant to the laws of the Province of Ontario (the “**Assignor**”)

-and –

**CANADIAN WESTERN BANK**, a Canadian chartered bank with a branch office at 2000 Argentia Road, Plaza #1, Suite 300, Mississauga, Ontario, L5N 1P7 (the “**Assignee**”)

**WHEREAS** the Assignor is registered, or entitled to become registered, as owner of an estate in fee simple in possession in all and singular those lands (hereinafter called the “**Lands**”) situate in the Province of Ontario, more particularly described as:

**PT LTS 1 & 2, PL 29, PART 2, 33R2551, S/T 929439, IF ANY, S/T 837774, IF ANY, S/T 583284, IF ANY; LONDON/WESTMINSTER being all of PIN 08398-0362 (LT)**

**AND WHEREAS** the Assignor has executed and delivered to the Assignee a mortgage bearing even date hereof to secure the sum of **Eight Million Dollars (\$8,000,000)**, loaned or to be loaned by the Assignee to the Assignor or others, with interest thereon at the rate provided therein (such mortgage as amended, replaced, extended, supplemented, substituted, altered or modified being hereinafter called the “**Mortgage**”);

**AND WHEREAS** it was a condition of making the advance of the aforesaid sum, or any portion thereof, that this assignment should be executed and delivered to the Assignee by the Assignor as further and collateral security for the said loan and the Mortgage;

**AND WHEREAS** the Lands are or may hereafter in whole or in part be leased to tenant(s) or other rights of occupation in whole or in part of the Lands may from time to time be given (all such leases and other agreements providing for such rights of occupation, whether or not in writing, being hereinafter collectively referred to as the “**Leases**”);

**AND WHEREAS** the Assignor has agreed to assign to the Assignee all rents payable and to become payable by the aforesaid tenant(s) and all the rents reserved and payable and to become payable under the Leases, or any renewal or renewals and replacements thereof, and all benefits and advantages to be derived therefrom to the Assignee as additional and collateral security for the payment of the monies due and to become due under the Mortgage.

**NOW THEREFORE THIS ASSIGNMENT WITNESSETH** that, in consideration of and pursuant to the foregoing, and in further consideration of the sum of ONE DOLLAR (\$1.00) now paid by the Assignee to the Assignor (the receipt and adequacy whereof is hereby conclusively acknowledged for any and all purposes whatsoever), the Assignor hereby covenants, agrees, warrants and represents to and with the Assignee as follows:

1. The Assignor does hereby assign to the Assignee, and grant to the Assignee a security interest in, all rents payable and to become payable by the aforesaid tenant(s) and all rents reserved and payable and to become payable under the Leases, or any of them, and all other issues, profits, benefits or advantages relating to all or any part of the Lands or any interest therein, or any renewal or renewals and replacements of the Leases, and grants the Assignee the right, at its option, to demand and receive the same at any time and apply amounts so received on principal, interest or other monies lawfully due and payable to the holder of the Mortgage, or upon taxes, insurance or repairs; PROVIDED HOWEVER that such rentals or other considerations shall be paid to the Assignor unless and until demand therefor in writing is made by the Assignee upon the aforesaid tenant(s), or upon such other holder of the aforesaid tenant(s)' estate and interest in the Lands, after which the same shall be paid to the Assignee at a place to be designated in such demand.
2. This assignment shall be effective only until such time as all monies at any time secured by the Mortgage have been fully paid and satisfied.
3. Nothing in this assignment shall be deemed to have the effect of making the Assignee responsible for the collection of the said rents or any part thereof, or for performance of any covenant, term or condition, either by lessor or lessee, contained in any of the Leases, and the Assignee shall not by virtue of this assignment be deemed to be a mortgagee in possession of the Lands.
4. This assignment is executed as collateral and additional security for the payment of monies secured by the Mortgage and none of the rights or remedies of the Assignee under or in respect of the Mortgage shall be merged in or in any way waived, affected, delayed or prejudiced hereby.
5. The rights assigned hereunder include all the Assignor's right and power to modify the Leases, or any of them, or to terminate the term or to accept a surrender thereof, or to waive or release any lessee thereunder from the performance or observance by the lessee of any obligation or condition thereof which in any way diminishes the rental value or receipts, issues, profits, benefits or advantages of or from the Lands.
6. The Assignor shall:
  - (a) fulfil and perform each and every condition and covenant of the Leases by the lessor or landlord to be fulfilled or performed;
  - (b) give prompt notice to the Assignee of any notice of default by the Assignor under the Leases, or any of them, received by the Assignor together with a complete copy of any such notice;
  - (c) at the sole cost and expense of the Assignor, enforce, short of termination of the Leases, the performance and observance of each and every covenant and condition of the Leases by the lessee to be performed or observed;
  - (d) not modify or in any way alter the terms of the Leases, or any of them;
  - (e) not terminate the term of the Leases or accept a surrender thereof unless required to do so by the terms of the Leases; and
  - (f) not waive or release any lessee from any obligation or conditions by such lessee to be performed or observed.

7.
  - (a) The Assignor has not executed any prior assignment of rents, issues, profits, benefits or advantages in respect of the Lands or of any interest therein, nor of any of its rights under the Leases, or any of them.
  - (b) The Assignor has not done anything which might prevent the Assignee from, or limit the Assignee in, operating under any of the provisions hereof.
  - (c) The Assignor has not accepted rent under the Leases, or any of them, more than thirty (30) days in advance of its due date.
  - (d) So far as the Assignor knows, there is no present default by any lessee under the Leases, or any of them.
  - (e) The Assignor represents and warrants that the Leases are in full force and effect, unmodified.
8. All of the monies owed by the Assignor to the Assignee and/or secured by the Mortgage shall become due:
  - (a) upon the indebtedness pursuant to the provisions of the Mortgage or any other instrument which may be held by the Assignee as security for the indebtedness becoming due, whether pursuant to the provisions of the Mortgage or any other instrument which may be held by the Assignee or demand or otherwise, or
  - (b) at the option of the Assignee:
    - (i) after any attempt by the Assignor to exercise any of the rights described in paragraph 5 hereof, or
    - (ii) after any default by the Assignor hereunder and the continuance of such default for ten (10) days.
9. After any attempt by the Assignor to exercise any of the rights described in clause 5 hereof or after default by the Assignor in the payment of said indebtedness or in the performance of any obligation of the Assignor herein or in the Mortgage or any other instrument securing said indebtedness, the Assignee, at its option, without notice and without regard to the adequacy of security for the indebtedness hereby secured, either in person or by agent with or without bringing any action or proceeding, or by a receiver, may:
  - (a) enter upon, take possession of, and operate the Lands;
  - (b) make, enforce, modify and accept the surrender of the Leases, or any of them;
  - (c) obtain and evict tenant(s);
  - (d) fix or modify rents;
  - (e) do any acts which the Assignee deems proper to protect the security hereof;

until all indebtedness secured hereby is paid in full, and either with or without taking possession of the premises in its own name, sue for or otherwise collect and receive all rents, issues and profits, including those past due and unpaid, and apply the same, less costs and expenses of operation and collection, including reasonable legal fees, upon any indebtedness secured hereby in such order as the Assignee may determine. The entering upon and taking possession of said property, the collection of such rents, issues and

profits and the application thereof as aforesaid shall not cure or waive any default or waive, modify or affect any notice of default under the Mortgage or invalidate any act done pursuant to such notice.

10. The Assignee shall be liable to account to the Assignor for such monies only as shall actually come into its hands by virtue of this assignment.
11. The Assignee shall be entitled to exercise all of the rights and remedies of the Assignor reserved under the Leases, or any of them, or by law for the collection of the said rentals, issues, profits, benefits or advantages and all necessary costs incurred by the Assignee in the exercise of the said rights and remedies shall be charged to the Assignor and shall be secured hereby.
12. The Assignee shall not be deemed a mortgagee in possession of the Lands by reason of the execution of this assignment and shall not be liable to any lessee for the performance of any covenant, term or condition undertaken by the Assignor in any lease or for the performance of any covenant, term or condition for which the Assignor may be liable.
13. Default by the Assignor under any of its covenants herein undertaken shall constitute a default under the Mortgage.
14. Notwithstanding the execution of this assignment the rentals payable pursuant to or under any tenancies or reserved in any leases shall continue to be paid directly to the Assignor, whose receipt therefor shall be a lawful discharge to any tenant or lessee to whom it is forwarded, until the Assignee shall serve, by registered mail, written notice upon any such tenant or lessee to pay directly to the Assignee all rentals accruing due after the service of such notice, and the Assignor covenants not to accept in advance from any tenant or lessee, prior to service of such notice, more than thirty (30) days rental.
15. The Assignor covenants and agrees that, upon the assignment, transfer, sale or conveyance of the Lands, or any interest therein, to any party other than the Assignee (herein called the "**purchaser**"), the Assignor, at the request of the Assignee, shall cause the purchaser to execute and deliver to the Assignee, prior to the registration of any assignment, transfer or conveyance, an assignment by the purchaser in favour of the Assignee, similar in form and content to this instrument and/or an acknowledgment by the purchaser of the Assignor's obligations and undertakings as herein set forth in such form and of such content as the Assignee shall reasonably require.
16. The Assignor covenants and agrees with the Assignee to grant, at its expense, such further documents, assignments and assurances as may reasonably be necessary to give effect to the true intent and meaning of these presents; and to, forthwith upon request by the Assignee, execute and deliver to the Assignee, specific assignments of the Leases (or such of them as the Assignee shall request) in such form as the Assignee shall request.
17. This assignment shall be binding upon the successors and assigns of the Assignor and enure to the benefit of the successors and assigns of the Assignee.
18. Wherever the singular number or the masculine gender is used in this assignment the same shall be construed as including the plural and feminine and neuter, respectively, where the fact or context so requires; and, in any case where this assignment is executed by more than one party, all covenants and agreements herein contained shall be construed and taken as against such executing parties as joint and several: and the heirs, executors, administrators, successors and assigns of any party executing this instrument

are jointly and severally bound by the covenants, agreements, stipulations, and provisos herein contained; and the covenants, agreements, stipulations and provisions herein contained shall be in addition to those granted or implied by statute.

19. The Assignor hereby acknowledges receiving a copy of this assignment. The Assignor hereby waives its right to receive a copy of any financing statement, financing change statement or verification statement which may be filed by or issued to the Assignee pursuant to the *Personal Property Security Act* (Ontario).
20. Prior to the execution of this assignment, the Assignor agree that it has read and understands the terms of this assignment and has had the opportunity to seek, and has either obtained or waived its right to obtain, independent legal advice with respect to the matters addressed in this assignment. The Assignor fully understands and accepts the terms of this assignment, and confirms that it is executing it freely, voluntarily and without duress, and agree that its failure to obtain independent legal advice shall not be used by the Assignor as a defence to the enforcement of this assignment.

***[Remainder of page intentionally blank; signature page follows.]***



**IN WITNESS WHEREOF** the Assignor has executed this assignment as of the date and year first above written.

**425 WHARNCLIFFE ROAD INC.**

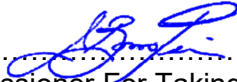
By: 

Name: Abdul Muqet

Title: Director

I have authority to bind the corporation.

This is **Exhibit “BB”** referred to in the affidavit of Tyson Hartwell, sworn before me by videoconference on April 27, 2023 in accordance with O.Reg. 431/20: Administering Oath or Declaration Remotely. The deponent was located in the City of Calgary in the Province of Alberta and I was located in the City of Toronto in the Province of Ontario.



.....  
A Commissioner For Taking Affidavits

Jeremy Bornstein  
LSO#: 65425C



To: **Canadian Western Bank** (the “Lender”)

From: **INDEX HOLDING GROUP INC.** (the “Client”) and its successors and assigns

And From: **INDEX GROUP OF COMPANIES INC., INDEX INTERNATIONAL INC., INDEX FOODS INC., 2640179 ONTARIO INC., 11030434 CANADA LTD., 2700774 ONTARIO INC., 2700767 ONTARIO INC., 2683960 ONTARIO LTD., 11030418 CANADA INC., 2723710 ONTARIO INC., 2718366 ONTARIO INC., 2737332 ONTARIO INC., 2737334 ONTARIO INC., 2723714 ONTARIO INC., 2723716 ONTARIO INC., 2737338 ONTARIO INC., 2790760 ONTARIO INC., 2775290 ONTARIO INC., 2775296 ONTARIO INC., and 421 WHARNCLIFFE LTD.** (collectively, the “**Index Corporate Guarantors**”, and each, an “**Index Corporate Guarantor**”) and the successors and assigns of each

And From: **425 WHARNCLIFFE ROAD INC.** (“**425**”) and its successors and assigns

And From: **ABDUL MUQEET** (the “**Personal Guarantor**” and together with the Index Corporate Guarantors and 425, collectively, the “**Obligors**”)

Date: February \_\_\_\_, 2023

**CROSS COLLATERALIZATION ACKNOWLEDGEMENT AND AGREEMENT**

**WHEREAS:**

- A. The Client is now indebted or liable and may hereafter become further indebted or liable to the Lender pursuant to that certain: (i) equipment loan and security agreement dated June 23, 2020 (as it may be amended, restated or supplemented from time to time, the “**2020 ELSA**”); (ii) equipment loan and security agreement dated November 16, 2021 (as it may be amended, restated or supplemented from time to time, the “**2021 ELSA**”); (iii) commitment letter dated November 23, 2021 (as it may be amended, restated or supplemented from time to time, the “**Commitment Letter**”); (iv) revolving credit agreement dated November 24, 2021 (as it may be amended, restated or supplemented from time to time, the “**Revolving Credit Agreement**”); and (v) equipment loan and security agreement (real estate) dated December 21, 2021 (the “**2021 Real Estate ELSA**”, and together with the 2020 ELSA, the 2021 ELSA, the Commitment Letter and the Revolving Credit Agreement, collectively, the “**Loan Agreements**” and each, a “**Loan Agreement**”).
- B. The Obligors guaranteed payment of the Client’s obligations pursuant to certain guarantees (collectively, and together with such other guarantee (or similar) agreements entered into between the Obligors, or any one of them, and the Lender from time to time, in each case, as amended, amended and restated, renewed, extended, supplemented, replaced or otherwise modified from time to time in accordance with their provisions, collectively, the “**Guarantees**”).

- C. The Client and the Obligors granted certain security to the Lender to secure the obligations arising under the Loan Agreements and the Guarantees (collectively, and together with such other security (or similar) agreements entered into between the Obligors, or any one of them, and the Lender from time to time, in each case, as amended, amended and restated, renewed, extended, supplemented, replaced or otherwise modified from time to time in accordance with their provisions, collectively, the “**Security**”).
- D. Various events of default known to the Lender as of the date hereof have occurred in respect of the Loan Agreements, the Guarantees and the Security (collectively, the “**Loan Documents**”).
- E. The Client has requested and the Lender has agreed to forbear from taking enforcement actions under the Loan Documents solely on the terms and conditions and subject to the limitations contained in the forbearance agreement dated as of February 15, 2023 among the Client, the Obligors and the Lender (the “**Forbearance Agreement**”).
- F. The Lender requires the Client and the Obligors to execute this cross collateralization acknowledgement and agreement as a prerequisite to the effectiveness of the Forbearance Agreement.

**NOW THEREFORE:**

For good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged by the Client and the Obligors, the Client and the Obligors hereby agree as follows:

1. **Definitions.** In this agreement, words and phrases used but not otherwise defined shall have the meanings given to those terms under the Loan Agreement.
2. **Cross-Default, Cross Guarantee and Cross Collateralize.**
  - (a) The Client and each Obligor acknowledges and agrees that, in respect of any and all loans and extensions of credit made from time to time by the Lender to or for the benefit of the Client, and/or by the Lender to or for the benefit of the Obligors (or any of them individually) under any one Loan Agreement (collectively, the “**Loan Agreement Indebtedness**”), notwithstanding anything to the contrary contained in any documents, instruments or agreements relating to such Loan Agreement Indebtedness, all such Loan Agreement Indebtedness will be cross-defaulted, cross-guaranteed and cross-collateralized with the loans and extensions of credit made from time to time by the Lender to the Client under any other Loan Agreement and, for such purpose: (i) the Client and each Obligor hereby acknowledges and agrees that each guarantee, including the Guarantees, given in connection with such Loan Agreement Indebtedness shall serve as a continuing guarantee of the indebtedness, liabilities and obligations owing under all of the Loan Agreements; and (ii) all security, including the Security, given by each of them in favour of the Lender shall secure all indebtedness, liabilities and obligations owing by the Client and the Obligors, including, without limitation, under or in connection with all of the Loan Agreements.

- (b) The Client and each Obligor acknowledges and agrees that, in respect of any and all loans and extensions of credit made from time to time by the Lender to or for the benefit of the Client, and/or by the Lender to or for the benefit of the Obligors (or any of them individually) other than in respect of or under the Loan Agreements (collectively, the “**Other Indebtedness**”), notwithstanding anything to the contrary contained in any documents, instruments or agreements relating to such Other Indebtedness, all such Other Indebtedness will be cross-defaulted, cross-guaranteed and cross-collateralized with the loans and extensions of credit made from time to time by the Lender to the Client under the Loan Agreements and, for such purpose: (i) the Client and each Obligor hereby acknowledges and agrees that each guarantee, including the Guarantees, given in connection with such Other Indebtedness shall serve as a continuing guarantee of the indebtedness, liabilities and obligations owing under the Loan Agreements; and (ii) all security, including the Security, given by each of them in favour of the Lender shall secure all indebtedness, liabilities and obligations owing by the Client and the Obligors, including, without limitation, under or in connection with the Loan Agreements or such Other Indebtedness.
3. **Governing Law; Enurement.** This agreement shall be interpreted in accordance with the laws of the Province of Ontario. Without prejudice to the right of the parties to commence any proceedings with respect to this agreement in any other proper jurisdiction, the parties hereby attorn and submit to the jurisdiction of the courts of Ontario. This agreement shall be binding upon and shall enure to the benefit of the parties and their respective successors and permitted assigns; “successors” includes any corporation resulting from the amalgamation of any party with any other corporation.
4. **Execution.** This agreement may be executed and delivered by facsimile or in portable document format (“**pdf**”), and any signature contained hereon and delivered by facsimile or in pdf shall be deemed to be equivalent to an original signature for all purposes.

*(The remainder of this page has intentionally been left blank; signature pages follow.)*

**IN WITNESS WHEREOF** this agreement has been executed and delivered by the Client and the Corporate Guarantors as of the date indicated at the top of the first page hereof.

**INDEX HOLDING GROUP INC.**

By: \_\_\_\_\_  
Name: Abdul Muqet  
Title: Director

**INDEX GROUP OF COMPANIES INC.**

By: \_\_\_\_\_  
Name: Abdul Muqet  
Title: Director

**INDEX INTERNATIONAL INC.**

By: \_\_\_\_\_  
Name: Abdul Muqet  
Title: Director

**INDEX FOODS INC.**

By: \_\_\_\_\_  
Name: Abdul Muqet  
Title: Director

**2640179 ONTARIO INC.**

By: \_\_\_\_\_  
Name: Abdul Muqet  
Title: Director

**11030434 CANADA LTD.**

By: \_\_\_\_\_  
Name: Abdul Muqet  
Title: Director

**2700774 ONTARIO INC.**

By: \_\_\_\_\_  
Name: Abdul Muqet  
Title: Director

**2700767 ONTARIO INC.**

By: \_\_\_\_\_  
Name: Abdul Muqet  
Title: Director

**2683960 ONTARIO LTD.**

By: \_\_\_\_\_  
Name: Abdul Muqet  
Title: Director

**11030418 CANADA INC.**

By: \_\_\_\_\_  
Name: Abdul Muqet  
Title: Director

**2723710 ONTARIO INC.**

By: \_\_\_\_\_  
Name: Abdul Muqet  
Title: Director

**2718366 ONTARIO INC.**

By: \_\_\_\_\_  
Name: Abdul Muqet  
Title: Director

**2737332 ONTARIO INC.**

By: \_\_\_\_\_  
Name: Abdul Muqet  
Title: Director

**2737334 ONTARIO INC.**

By: \_\_\_\_\_  
Name: Abdul Muqet  
Title: Director

**2723714 ONTARIO INC.**

By: \_\_\_\_\_  
Name: Abdul Muqet  
Title: Director

2723716 [REDACTED] ONTARIO INC.

By: [REDACTED]  
Name: Abdul Muqet  
Title: Director

2737338 [REDACTED] ONTARIO INC.

By: [REDACTED]  
Name: Abdul Muqet  
Title: Director

DocuSigned by:  
2790760 [REDACTED] ONTARIO INC.

By: [REDACTED]  
Name: Abdul Muqet  
Title: Director

2775290 [REDACTED] ONTARIO INC.

By: [REDACTED]  
Name: Abdul Muqet  
Title: Director

2775296 [REDACTED] ONTARIO INC.

By: [REDACTED]  
Name: Abdul Muqet  
Title: Director

421 WHARNCLIFFE LTD.

By: [REDACTED]  
Name: Abdul Muqet  
Title: Director

425 WHARNCLIFFE ROAD INC.

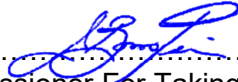
By: [REDACTED]  
Name: Abdul Muqet  
Title: Director

Witness signature

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

[REDACTED]  
ABDUL MUQEET

This is **Exhibit "CC"** referred to in the affidavit of Tyson Hartwell, sworn before me by videoconference on April 27, 2023 in accordance with O.Reg. 431/20: Administering Oath or Declaration Remotely. The deponent was located in the City of Calgary in the Province of Alberta and I was located in the City of Toronto in the Province of Ontario.



.....  
A Commissioner For Taking Affidavits

Jeremy Bornstein  
LSO#: 65425C





January 17, 2023

**By Courier and Email**

Index Holding Group Inc.  
110 Herdwick Street  
Brampton, Ontario L6S 0A5

jbornstein@cassels.com  
tel: +1 416-869-5386  
file # 50098-113

Index Holding Group Inc.  
10 Herdwick Street  
Brampton, Ontario L6R 0N7

**Attention: Abdul Muqet**

Dear Sir:

**Re: Loans made available by Canadian Western Bank (the “Lender”) to Index Holding Group Inc. (the “Borrower”) and guaranteed by Index Group of Companies Inc., Index International Inc., Index Foods Inc., 2640179 Ontario Inc., 11030434 Canada Ltd., 2700774 Ontario Inc., 2700767 Ontario Inc., 2683960 Ontario Ltd., 11030418 Canada Inc., 2723710 Ontario Inc., 2718366 Ontario Inc., 2737332 Ontario Inc., 2737334 Ontario Inc., 2723714 Ontario Inc., 2723716 Ontario Inc., 2737338 Ontario Inc. (collectively, the “2020 ELSA Guarantors”), 2790760 Ontario Inc., 2775290 Ontario Inc., 2775296 Ontario Inc., 421 Wharnccliffe Ltd. (the “Real Property Owner” and collectively, the “Additional 2021 ELSA Guarantors”, and collectively the Additional 2021 ELSA Guarantors with the 2020 ELSA Guarantors, the “Corporate Guarantors”) and Abdul Muqet (collectively with the Corporate Guarantors, the “Guarantors”)**

We are counsel to the Lender. We refer you to

- (a) an equipment loan and security agreement between the Lender and the Borrower dated June 23, 2020;
- (b) an equipment loan and security agreement between the Lender and the Borrower dated November 16, 2021;
- (c) a commitment letter between the Lender and the Borrower dated November 23, 2021;
- (d) a revolving credit agreement by the Borrower in favour of the Lender dated November 24, 2021 (the “**Revolving Credit Agreement**”); and

- (e) an equipment loan and security agreement (real estate) between the Lender and the Borrower dated December 21, 2021.

(collectively, and together with such other loan (or similar) agreements entered into between the Borrower and the Lender from time to time, in each case, as amended, amended and restated, renewed, extended, supplemented, replaced or otherwise modified from time to time in accordance with their provisions, collectively, the “**Facility Agreements**”).

We also refer you to:

- (a) a general security agreement by the Borrower and the 2020 ELSA Guarantors in favour of the Lender dated June 2020;
- (b) an assignment and postponement of creditor’s claims by the Borrower and the 2020 ELSA Guarantors in favour of the Lender dated June 23, 2020;
- (c) a guarantee and indemnity by the Borrower and the 2020 ELSA Guarantors in favour of the Lender dated June 23, 2020 (the “**2020 ELSA Guarantee**”);
- (d) a guarantee and indemnity by Mr. Abdul Muqet in favour of the Lender dated June 23, 2020;
- (e) a general security agreement by the Borrower and the Corporate Guarantors in favour of the Lender dated November 16, 2021;
- (f) an assignment and postponement of creditor’s claims by the Borrower and the Additional 2021 ELSA Guarantors in favour of the Lender dated November 16, 2021;
- (g) a guarantee and indemnity by the Borrower and the Additional 2021 ELSA Guarantors in favour of the Lender dated November 16, 2021 (collectively with the 2020 ELSA Guarantee, the “**Corporate Guarantees**”);
- (h) a cross collateralization acknowledgement and agreement by the Borrower and the Corporate Guarantors in favour of the Lender dated November 16, 2021 (the “**2021 ELSA Cross Collateralization Agreement**”);
- (i) a cross collateralization acknowledgement and agreement by the Borrower and the Corporate Guarantors in favour of the Lender dated December 21, 2021 (collectively with the 2021 ELSA Cross Collateralization Agreement, the “**Cross Collateralization Agreements**”);
- (j) a debenture in the principal amount of \$3,975,000 by the Real Property Owner in favour of the Lender dated December 21, 2021 (the “**Debenture**”); and

- (k) a mortgage in the principal amount of \$1,100,000 granted by the Real Property Owner in favour of Lender in respect of the lands legally described as PT LT 1, PL29, PTS 1&2, 33R5153 & PT2, 33R5487 S/T 837774 IF ANY, S/T 583284 IF ANY; LONDON/WESTMINSTER registered in the land registry office for Middlesex in the Province of Ontario as Instrument No. ER1443829 on March 2, 2022.

(collectively, and together with such other security agreements entered into between the Borrower and the Lender from time to time, in each case, as amended, amended and restated, renewed, extended, supplemented, replaced or otherwise modified from time to time in accordance with their provisions, collectively, the “**Security**”, and together with the Facility Agreement, collectively, the “**Facility and Security Documents**”).

Pursuant to the Facility Agreements, the Lender established in favour of the Borrower certain facilities (the “**Facilities**”). The Facilities are in default because of, among other things, the Borrower’s failure to make certain payments when due as contemplated under the Facility Agreements. Specifically, the Borrower has failed to pay to the Lender the amounts that were due on September 29, 2022, December 26, 2022, December 30, 2022, January 1, 2023, January 5, 2023 and January 9, 2023.

Other defaults that have occurred under the Facility Agreements include without limitation (a) failure by the Borrower to pay all amounts due and owing in respect of certain advances made by the Lender under the Facilities within 6 months from the date of the initial advance, (b) termination of certain real property leases in respect of which certain Corporate Guarantors were counterparties, (c) failure by the Borrower and Corporate Guarantors to satisfy certain financial reporting covenants in accordance with the terms of certain Facility Agreements, (d) the Borrower exceeding the maximum borrowings permitted by the Lender under the Revolving Credit Agreement, and (e) the registration of subordinate liens against the Borrower and certain Corporate Guarantors without the Lender’s consent. Pursuant to the terms of the Cross Collateralization Agreements, any default under any of the Facility and Security Documents causes a default in respect of all of the Facilities.

The Borrower has also guaranteed the repayment of the Debenture. The Debenture is a demand debenture pursuant to which the Lender is entitled to demand repayment at any time after an event of default has occurred under any of the Facility Agreements. The Lender has demanded payment of all amounts due and owing in respect of the Debenture from the Real Property Owner and such amounts are now properly due and owing. Enclosed is a copy of the demand letter and Notice of Intention to Enforce Security under the *Bankruptcy and Insolvency Act* (Canada) that we have sent on behalf of the Lender to the Real Property Owner.

Pursuant to the terms of the Corporate Guarantees, payment under the Corporate Guarantees is due on demand. The Lender hereby demands payment in full of the Debenture Indebtedness by the Borrower in accordance with the terms of the Corporate Guarantees.

As a result of the defaults in respect of the Facilities and the demands under the Debenture and Corporate Guarantees, all amounts due and owing by the Borrower to the Lender in respect of the Facilities and Corporate Guarantees are immediately due and payable in accordance with the terms of the Facility and Security Documents including, specifically, the outstanding principal amount of the Facilities and the Debenture, all applicable interest thereon and all fees and expenses incurred by the Lender (including, without limitation, all legal fees and disbursements) to the date of repayment in full (collectively, the “**Outstanding Indebtedness**”).

The Lender hereby demands payment in full of all of the Outstanding Indebtedness. For certainty, the amount of the Outstanding Indebtedness as at January 13, 2023 is \$8,981,717.89, which sum includes principal and interest properly due and owing as at January 13, 2023, but excludes other fees, charges and expenses (including legal fees).

All applicable interest continues to accrue under the Facility Agreements in accordance with their terms, and the Lender is entitled to payment of all fees and expenses incurred by the Lender (including, without limitation, all legal fees and disbursements) to the date of payment in full. The exact amount owing by the Borrower may be obtained at any time by the Borrower contacting the Lender.

Failure by the Borrower to pay in full all of the Outstanding Indebtedness within 10 days of the date of this letter will result in the Lender taking whatever steps it deems necessary to recover the Outstanding Indebtedness, including without limitation enforcement action by the Lender pursuant to the Security entered into or delivered by the Borrower or the Guarantors, including Mr. Abdul Muqet, who has executed a guarantee in respect of the Facilities and all other obligations under the Facility and Security Documents.

Enclosed is a Notice of Intention to Enforce Security addressed to the Borrower and issued pursuant to subsection 244(1) of the *Bankruptcy and Insolvency Act* (Canada). Should the Borrower wish to consent to the immediate enforcement by the Lender of its Security, please sign the consent and waiver attached to the Notice of Intention to Enforce Security and return it to the attention of the undersigned at your earliest convenience.

The Lender expressly reserves all rights, remedies and claims with respect to the Facilities, the Facility and Security Documents and the transactions contemplated thereby, any of which rights, remedies and claims may be exercised or pursued at any time and from time to time and without further notice, in the sole discretion of the Lender.

Yours truly,  
Cassels Brock & Blackwell LLP

A handwritten signature in black ink, appearing to read "J. Bornstein".

Jeremy Bornstein  
JB/am

Encl.

**NOTICE OF INTENTION TO ENFORCE SECURITY UNDER SECTION 244(1) OF  
THE BANKRUPTCY AND INSOLVENCY ACT (CANADA)**

**TO:**                    **Index Holding Group Inc.**, an insolvent person (the “**Debtor**”)

Take notice that:

1. Under section 244(1) of the *Bankruptcy and Insolvency Act* (Canada), Canadian Western Bank (the “**Secured Party**”) intends to enforce its security on the property of the Debtor, including without limitation as described below:

All of the Debtor’s present and future real property, personal property, assets and undertaking of any nature or kind (collectively, the “**Collateral**”), including, without limiting the generality of the foregoing, all real property, personal property, assets and undertaking at any time owned, leased or licensed by the Debtor or in which the Debtor at any time has any right or interest or to which the Debtor is or may at any time become entitled, subject to certain limited exclusions, in all property of the following kinds:

- (a) all present and future equipment, including all of its present and future machinery, fixtures, plant, tools, furniture, books, records, documents, vehicles of any nature, kind or description, and all accessions to any of the foregoing, including all spare parts and accessories installed in or affixed or attached to any of the foregoing, and all drawings, specifications, plans and manuals relating to the foregoing;
- (b) all present and future inventory, including all of its present and future raw materials, materials used or consumed in its business, work-in-progress, finished goods, goods used for packing and goods acquired or held for sale or lease or that have been leased or furnished or that are to be furnished under contracts of rental or service, and all accessions to any of the foregoing, including all spare parts and accessories installed in or affixed or attached to any of the foregoing;
- (c) all present and future agreement, right, franchise, royalty, licence, authorization, approval, privilege or permit (a) to which the Debtor is now or hereafter becomes a party, (b) in which the Debtor now or hereafter has any interest or (c) of which the Debtor is or hereafter becomes a beneficiary and all other intangibles, including all of its present and future accounts and other amounts receivable, book debts, goodwill, patents, trademarks, trade names, business names, trade styles, logos and other business identifiers, copyrights, technology, inventions, industrial designs, know-how, trade secrets and other industrial and intellectual property in which the Debtor now or in the future has any right, title or interest, choses in action of every nature and kind and interests in partnerships;
- (d) all present and future documents of title, chattel paper, instruments and money;
- (e) all present and future Investment Property (as such term is defined in the *Personal Property Security Act* (Ontario)) and Financial Assets (as such term is defined in the *Securities Transfer Act* (Ontario)), including all present and future options and warrants of the Debtor and all other rights and entitlements arising

therefrom or related thereto, and the Debtor's present and future interests in partnerships, limited partnerships, limited liability partnerships and limited liability companies, and including all substitutions for any of the foregoing and dividends and income derived therefrom or payable in connection therewith; and

- (f) all proceeds arising from the property, assets and undertaking referred to above, including insurance proceeds and any other payment representing indemnity or compensation for loss of or damage thereto.

2. The security that is to be enforced is in the form of:

- (a) a general security agreement by the Debtor, Index Group of Companies Inc., Index International Inc., Index Foods Inc., 2640179 Ontario Inc., 11030434 Canada Ltd., 2700774 Ontario Inc., 2700767 Ontario Inc., 2683960 Ontario Ltd., 11030418 Canada Inc., 2723710 Ontario Inc., 2718366 Ontario Inc., 2737332 Ontario Inc., 2737334 Ontario Inc., 2723714 Ontario Inc., 2723716 Ontario Inc., and 2737338 Ontario Inc. (collectively, the "**2020 ELSA Guarantors**") in favour of the Secured Party dated June 2020;
- (b) a guarantee and indemnity by the Debtor and the 2020 ELSA Guarantors in favour of the Secured Party dated June 23, 2020, which contains an assignment to the Secured Party of all present and future amounts owing by the 2020 ELSA Guarantors to the Debtor;
- (c) a general security agreement by the Debtor, the 2020 ELSA Guarantors, 2790760 Ontario Inc., 2775290 Ontario Inc., 2775296 Ontario Inc., and 421 Wharnclyffe Ltd. (collectively, the "**Additional 2021 ELSA Guarantors**", and together with the 2020 ELSA Guarantors, the "**Corporate Guarantors**") in favour of the Secured Party dated November 16, 2021;
- (d) a guarantee and indemnity by the Debtor and the Additional 2021 ELSA Guarantors in favour of the Secured Party dated November 16, 2021, which contains an assignment to the Secured Party of all present and future amounts owing by the Additional 2021 ELSA Guarantors to the Debtor;
- (e) a cross collateralization acknowledgement and agreement by the Debtor and the Corporate Guarantors in favour of the Secured Party dated November 16, 2021; and
- (f) a cross collateralization acknowledgement and agreement by the Debtor and the Corporate Guarantors in favour of the Secured Party dated December 21, 2021,

in each case as amended, confirmed or supplemented from time to time, and any other security delivered from time to time by the Debtor to the Secured Party (collectively, the "**Security**").

3. As of January 13, 2023, the amount of indebtedness secured by the Security is \$8,981,717.89 (which amount include all applicable interest up to January 13, 2023). All applicable interest continues to accrue under the Security in accordance with its terms, and the Secured Party is entitled to payment of all fees and expenses incurred by the Secured Party (including, without limitation, all legal fees and disbursements) to the date of payment in full.

4. The Secured Party will not have the right to enforce the Security until after the expiry of the 10-day period following the sending of this notice unless the insolvent person consents to an earlier enforcement by returning to the Secured Party an executed copy of the enclosed consent.

Date January 17, 2023.

**CANADIAN WESTERN BANK**

by its lawyers,

**CASSELS BROCK & BLACKWELL LLP**

Suite 2100, Scotia Plaza

40 King Street West

Toronto, Ontario M5H 3C2

By:



---

Jeremy Bornstein



**CONSENT TO EARLIER ENFORCEMENT OF SECURITY UNDER SECTION 244(2) OF  
THE BANKRUPTCY AND INSOLVENCY ACT (CANADA)**

**TO:** Canadian Western Bank (the “**Secured Party**”)

**RE:** Notice of Intention to Enforce Security under Section 244(1) of the *Bankruptcy and Insolvency Act* (Canada) (the “**Act**”), dated January 17, 2023 from the Secured Party (the “**Notice**”)

---

Capitalized terms used in this consent and waiver and not otherwise defined have meanings given to them in the Notice.

The undersigned hereby acknowledges that it has received the Notice and, in accordance with section 244(2) of the Act, it consents to earlier enforcement by the Secured Party of its Security on the Collateral.

Dated January \_\_, 2023.

**INDEX HOLDING GROUP INC.**

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

This is **Exhibit “DD”** referred to in the affidavit of Tyson Hartwell, sworn before me by videoconference on April 27, 2023 in accordance with O.Reg. 431/20: Administering Oath or Declaration Remotely. The deponent was located in the City of Calgary in the Province of Alberta and I was located in the City of Toronto in the Province of Ontario.



.....  
A Commissioner For Taking Affidavits

Jeremy Bornstein  
LSO#: 65425C



January 17, 2023

**By Courier and Email**

2640179 Ontario Inc.  
110 Herdwick Street  
Brampton, Ontario L6S 0A5

jbornstein@cassels.com  
tel: +1 416-869-5386  
file # 50098-113

**Attention: Abdul Muqet**

10 Herdwick Street  
Brampton, ON, L6R 0N7

**Attention: Abdul Muqet**

201-7045 Edwards Blvd  
Mississauga, ON, L5S 1X2

**Attention: Abdul Muqet**

Dear Sir:

**Re: Loans made available by Canadian Western Bank (the “Lender”) to Index Holding Group Inc. (the “Borrower”) and guaranteed by Index Group of Companies Inc., Index International Inc., Index Foods Inc., 2640179 Ontario Inc. (“2640179 Ontario”), 11030434 Canada Ltd., 2700774 Ontario Inc., 2700767 Ontario Inc., 2683960 Ontario Ltd., 11030418 Canada Inc., 2723710 Ontario Inc., 2718366 Ontario Inc., 2737332 Ontario Inc., 2737334 Ontario Inc., 2723714 Ontario Inc., 2723716 Ontario Inc., 2737338 Ontario Inc. (collectively, the “2020 ELSA Guarantors”), 2790760 Ontario Inc., 2775290 Ontario Inc., 2775296 Ontario Inc., 421 Wharncliffe Ltd. (the “Real Property Owner” and collectively, the “Additional 2021 ELSA Guarantors”, and collectively the Additional 2021 ELSA Guarantors with the 2020 ELSA Guarantors, the “Corporate Guarantors”) and Abdul Muqet (collectively with the Corporate Guarantors, the “Guarantors”)**

We are counsel to the Lender. We refer you to:

- (a) an equipment loan and security agreement between the Lender and the Borrower dated June 23, 2020;
- (b) an equipment loan and security agreement between the Lender and the Borrower dated November 16, 2021;

- (c) a commitment letter between the Lender and the Borrower dated November 23, 2021;
- (d) a revolving credit agreement by the Borrower in favour of the Lender dated November 24, 2021 (the “**Revolving Credit Agreement**”); and
- (e) an equipment loan and security agreement (real estate) between the Lender and the Borrower dated December 21, 2021.

(collectively, and together with such other loan (or similar) agreements entered into between the Borrower and the Lender from time to time, in each case, as amended, amended and restated, renewed, extended, supplemented, replaced or otherwise modified from time to time in accordance with their provisions, collectively, the “**Facility Agreements**”).

We also refer you to:

- (a) a general security agreement by the Borrower and the 2020 ELSA Guarantors in favour of the Lender dated June 2020;
- (b) a guarantee and indemnity by the Borrower and the 2020 ELSA Guarantors in favour of the Lender dated June 23, 2020 (the “**2020 ELSA Guarantee**”);
- (c) an assignment and postponement of creditor’s claims by the Borrower and the 2020 ELSA Guarantors in favour of the Lender dated June 23, 2020;
- (d) a general security agreement by the Borrower and the Corporate Guarantors in favour of the Lender dated November 16, 2021;
- (e) an assignment and postponement of creditor’s claims by the Borrower and the Additional 2021 ELSA Guarantors in favour of the Lender dated November 16, 2021;
- (f) a guarantee and indemnity by the Borrower and the Additional 2021 ELSA Guarantors in favour of the Lender dated November 16, 2021 (collectively with the 2020 ELSA Guarantee, the “**Corporate Guarantees**”);
- (g) a cross collateralization acknowledgement and agreement by the Borrower and the Corporate Guarantors in favour of the Lender dated November 16, 2021 (the “**2021 ELSA Cross Collateralization Agreement**”);
- (h) a cross collateralization acknowledgement and agreement by the Borrower and the Corporate Guarantors in favour of the Lender dated December 21, 2021 (collectively with the 2021 ELSA Cross Collateralization Agreement, the “**Cross Collateralization Agreements**”);

- (i) a debenture in the principal amount of \$3,975,000 by the Real Property Owner in favour of the Lender dated December 21, 2021 (the “**Debenture**”); and
- (j) a mortgage in the principal amount of \$1,100,000 granted by the Real Property Owner in favour of Lender in respect of the lands legally described as PT LT 1, PL29, PTS 1&2, 33R5153 & PT2, 33R5487 S/T 837774 IF ANY, S/T 583284 IF ANY; LONDON/WESTMINSTER registered in the land registry office for Middlesex in the Province of Ontario as Instrument No. ER1443829 on March 2, 2022.

(collectively, and together with such other security agreements entered into between the Borrower and the Lender from time to time, in each case, as amended, amended and restated, renewed, extended, supplemented, replaced or otherwise modified from time to time in accordance with their provisions, collectively, the “**Security**”, and together with the Facility Agreement, collectively, the “**Facility and Security Documents**”).

Pursuant to the Facility Agreements, the Lender established in favour of the Borrower certain facilities (the “**Facilities**”). The Facilities are in default because of, among other things, the Borrower’s failure to make certain payments when due as contemplated under the Facility Agreements. Specifically, the Borrower has failed to pay to the Lender the amounts that were due on September 29, 2022, December 26, 2022, December 30, 2022, January 1, 2023, January 5, 2023 and January 9, 2023.

Other defaults that have occurred under the Facility Agreements include without limitation (a) failure by the Borrower to pay all amounts due and owing in respect of certain advances made by the Lender under the Facilities within 6 months from the date of the initial advance, (b) termination of certain real property leases in respect of which certain Corporate Guarantors were counterparties, (c) failure by the Borrower and Corporate Guarantors to satisfy certain financial reporting covenants in accordance with the terms of certain Facility Agreements, (d) the Borrower exceeding the maximum borrowings permitted by the Lender under the Revolving Credit Agreement, and (e) the registration of subordinate liens against the Borrower and certain Corporate Guarantors without the Lender’s consent. Pursuant to the terms of the Cross Collateralization Agreements, any default under any of the Facility and Security Documents causes a default in respect of all of the Facilities.

In addition, the Debenture is a demand debenture pursuant to which the Lender is entitled to demand repayment at any time after an event of default has occurred under any of the Facility Agreements. The Lender has demanded payment of all amounts due and owing in respect of the Debenture from the Real Property Owner and such amounts are immediately payable.

Enclosed is a copy of the demand letter and Notice of Intention to Enforce Security under the *Bankruptcy and Insolvency Act* (Canada) that we have sent on behalf of the Lender to the Borrower. We refer to (a) the 2020 ELSA Guarantee and (b) the Cross Collateralization Agreements, pursuant to which 2640179 Ontario guaranteed the full and punctual payment when due of all Obligations (as defined in the 2020 ELSA Guarantee) and all Other

Indebtedness (as defined under the Cross Collateralization Agreements, as applicable), which, for certainty, collectively includes without limitation all obligations of the Borrower and Corporate Guarantors in respect of the Facility and Security Documents to the Lender.

As a result of the defaults in respect of the Facilities and the demands under the Debenture and Corporate Guarantees, all amounts due and owing by 2640179 Ontario to the Lender in respect of the Facilities, Debenture and Corporate Guarantees are immediately due and payable in accordance with the terms of the Facility and Security Documents including, specifically, the outstanding principal amount of the Facilities and the Debenture, all applicable interest thereon and all fees and expenses incurred by the Lender (including, without limitation, all legal fees and disbursements) to the date of repayment in full (collectively, the “**Outstanding Indebtedness**”).

Pursuant to the terms of the Corporate Guarantees, payment under the Corporate Guarantees is due on demand. The Lender hereby demands payment in full of all of the Outstanding Indebtedness. For certainty, the amount of the Outstanding Indebtedness as at January 13, 2023 is \$8,981,717.89, which sum includes principal and interest properly due and owing as at January 13, 2023, but excludes other fees, charges and expenses (including legal fees).

Failure by 2640179 Ontario to pay in full all of the Outstanding Indebtedness within 10 days of the date of this letter will result in the Lender taking whatever steps it deems necessary to recover the Outstanding Indebtedness, including without limitation enforcement action by the Lender pursuant to the 2020 ELSA Guarantee, the Cross Collateralization Agreements, and the Security.

Enclosed is a Notice of Intention to Enforce Security addressed to 2640179 Ontario and issued pursuant to subsection 244(1) of the *Bankruptcy and Insolvency Act* (Canada). Should 2640179 Ontario wish to consent to the immediate enforcement by the Lender of its Security, please sign the consent and waiver attached to the Notice of Intention to Enforce Security and return it to the attention of the undersigned at your earliest convenience.

The Lender expressly reserves all rights, remedies and claims with respect to the Facilities, the Facility and Security Documents and the transactions contemplated thereby, any of which rights, remedies and claims may be exercised or pursued at any time and from time to time and without further notice, in the sole discretion of the Lender.

Yours truly,  
Cassels Brock & Blackwell LLP

A handwritten signature in black ink, appearing to read "J. Bornstein".

Jeremy Bornstein  
JB/am

Encl.

**NOTICE OF INTENTION TO ENFORCE SECURITY UNDER SECTION 244(1) OF  
THE BANKRUPTCY AND INSOLVENCY ACT (CANADA)**

**TO:**                    **2640179 Ontario Inc.**, an insolvent person (the “**Debtor**”)

Take notice that:

1. Under section 244(1) of the *Bankruptcy and Insolvency Act* (Canada), Canadian Western Bank (the “**Secured Party**”) intends to enforce its security on the property of the Debtor, including without limitation as described below:

All of the Debtor’s present and future real property, personal property, assets and undertaking of any nature or kind (collectively, the “**Collateral**”), including, without limiting the generality of the foregoing, all real property, personal property, assets and undertaking at any time owned, leased or licensed by the Debtor or in which the Debtor at any time has any right or interest or to which the Debtor is or may at any time become entitled, subject to certain limited exclusions, in all property of the following kinds:

- (a) all present and future equipment, including all of its present and future machinery, fixtures, plant, tools, furniture, books, records, documents, vehicles of any nature, kind or description, and all accessions to any of the foregoing, including all spare parts and accessories installed in or affixed or attached to any of the foregoing, and all drawings, specifications, plans and manuals relating to the foregoing;
- (b) all present and future inventory, including all of its present and future raw materials, materials used or consumed in its business, work-in-progress, finished goods, goods used for packing and goods acquired or held for sale or lease or that have been leased or furnished or that are to be furnished under contracts of rental or service, and all accessions to any of the foregoing, including all spare parts and accessories installed in or affixed or attached to any of the foregoing;
- (c) all present and future agreement, right, franchise, royalty, licence, authorization, approval, privilege or permit (a) to which the Debtor is now or hereafter becomes a party, (b) in which the Debtor now or hereafter has any interest or (c) of which the Debtor is or hereafter becomes a beneficiary and all other intangibles, including all of its present and future accounts and other amounts receivable, book debts, goodwill, patents, trademarks, trade names, business names, trade styles, logos and other business identifiers, copyrights, technology, inventions, industrial designs, know-how, trade secrets and other industrial and intellectual property in which the Debtor now or in the future has any right, title or interest, choses in action of every nature and kind and interests in partnerships;
- (d) all present and future documents of title, chattel paper, instruments and money;
- (e) all present and future Investment Property (as such term is defined in the *Personal Property Security Act* (Ontario)) and Financial Assets (as such term is defined in the *Securities Transfer Act* (Ontario)), including all present and future options and warrants of the Debtor and all other rights and entitlements arising



therefrom or related thereto, and the Debtor's present and future interests in partnerships, limited partnerships, limited liability partnerships and limited liability companies, and including all substitutions for any of the foregoing and dividends and income derived therefrom or payable in connection therewith; and

- (f) all proceeds arising from the property, assets and undertaking referred to above, including insurance proceeds and any other payment representing indemnity or compensation for loss of or damage thereto.

2. The security that is to be enforced is in the form of:

- (a) a general security agreement by Index Holding Group Inc. ("**IHG**"), Index Group of Companies Inc., Index International Inc., Index Foods Inc., the Debtor, 11030434 Canada Ltd., 2700774 Ontario Inc., 2700767 Ontario Inc., 2683960 Ontario Ltd., 11030418 Canada Inc., 2723710 Ontario Inc., 2718366 Ontario Inc., 2737332 Ontario Inc., 2737334 Ontario Inc., 2723714 Ontario Inc., 2723716 Ontario Inc., and 2737338 Ontario Inc. (collectively, the "**2020 ELSA Guarantors**") in favour of the Secured Party dated June 2020;
- (b) an assignment and postponement of creditor's claims by IHG and the 2020 ELSA Guarantors (including the Debtor) in favour of the Secured Party dated June 23, 2020;
- (c) a guarantee and indemnity by IHG and the 2020 ELSA Guarantors (including the Debtor) in favour of the Secured Party dated June 23, 2020, which contains an assignment to the Secured Party of all present and future amounts owing by the other 2020 ELSA Guarantors to the Debtor;
- (d) a general security agreement by IHG, the 2020 ELSA Guarantors (including the Debtor), 2790760 Ontario Inc., 2775290 Ontario Inc., 2775296 Ontario Inc., and 421 Wharnccliffe Ltd. (collectively, together with the 2020 ELSA Guarantors, the "**Corporate Guarantors**") in favour of the Secured Party dated November 16, 2021;
- (e) a cross collateralization acknowledgement and agreement by IHG and the Corporate Guarantors (including the Debtor) in favour of the Secured Party dated November 16, 2021; and
- (f) a cross collateralization acknowledgement and agreement by IHG and the Corporate Guarantors (including the Debtor) in favour of the Secured Party dated December 21, 2021,

in each case as amended, confirmed or supplemented from time to time, and any other security delivered from time to time by the Debtor to the Secured Party (collectively, the "**Security**").

3. As of January 13, 2023, the amount of indebtedness secured by the Security is \$8,981,717.89 (which amount include all applicable interest up to January 13, 2023). All applicable interest continues to accrue under the Security in accordance with its terms, and the Secured Party is entitled to payment of all fees and expenses incurred by the Secured Party (including, without limitation, all legal fees and disbursements) to the date of payment in full.

4. The Secured Party will not have the right to enforce the Security until after the expiry of the 10-day period following the sending of this notice unless the insolvent person consents to an earlier enforcement by returning to the Secured Party an executed copy of the enclosed consent.

Date January 17, 2023.

**CANADIAN WESTERN BANK**

by its lawyers,

**CASSELS BROCK & BLACKWELL LLP**

Suite 2100, Scotia Plaza

40 King Street West

Toronto, Ontario M5H 3C2

By:



---

Jeremy Bornstein

**CONSENT TO EARLIER ENFORCEMENT OF SECURITY UNDER SECTION 244(2) OF  
THE BANKRUPTCY AND INSOLVENCY ACT (CANADA)**

**TO:** Canadian Western Bank (the “**Secured Party**”)

**RE:** Notice of Intention to Enforce Security under Section 244(1) of the *Bankruptcy and Insolvency Act* (Canada) (the “**Act**”), dated January 17, 2023 from the Secured Party (the “**Notice**”)

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Capitalized terms used in this consent and waiver and not otherwise defined have meanings given to them in the Notice.

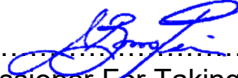
The undersigned hereby acknowledges that it has received the Notice and, in accordance with section 244(2) of the Act, it consents to earlier enforcement by the Secured Party of its Security on the Collateral.

Dated January \_\_, 2023.

**2640179 ONTARIO INC.**

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

This is **Exhibit "EE"** referred to in the affidavit of Tyson Hartwell, sworn before me by videoconference on April 27, 2023 in accordance with O.Reg. 431/20: Administering Oath or Declaration Remotely. The deponent was located in the City of Calgary in the Province of Alberta and I was located in the City of Toronto in the Province of Ontario.



.....  
A Commissioner For Taking Affidavits

Jeremy Bornstein  
LSO#: 65425C

**FORBEARANCE AGREEMENT**

**THIS FORBEARANCE AGREEMENT** (as amended, restated, supplemented or replaced from time to time, this “**Agreement**”) is made as of this 15 day of February, 2023.

**A M O N G:**

**CANADIAN WESTERN BANK**  
(the “**Lender**”)

-and-

**INDEX HOLDING GROUP INC.**  
(the “**Borrower**”)

-and-

**INDEX GROUP OF COMPANIES INC., INDEX INTERNATIONAL INC., INDEX FOODS INC., 2640179 ONTARIO INC., 11030434 CANADA LTD., 2700774 ONTARIO INC., 2700767 ONTARIO INC., 2683960 ONTARIO LTD., 11030418 CANADA INC., 2723710 ONTARIO INC., 2718366 ONTARIO INC., 2737332 ONTARIO INC., 2737334 ONTARIO INC., 2723714 ONTARIO INC., 2723716 ONTARIO INC., 2737338 ONTARIO INC. (collectively, the “2020 ELSA Guarantors”), 2790760 ONTARIO INC., 2775290 ONTARIO INC., 2775296 ONTARIO INC., 421 WHARNCLIFFE LTD. (collectively, the “2021 ELSA Guarantors”) (the 2020 ELSA Guarantors together with the 2021 ELSA Guarantors, the “**Corporate Guarantors**”)**

-and-

**425 WHARNCLIFFE ROAD INC.**  
(“**425**”)

-and-

**ABDUL MUQEET**  
(“**Muqeet**” and together with the Corporate Guarantors, the “**Guarantors**”)

**RECITALS:**

**WHEREAS** the Lender and the Borrower entered into an equipment loan and security agreement dated June 23, 2020 (as may be amended, restated or supplemented from time to time, the “**2020 ELSA**”);

**AND WHEREAS** the Lender and the Borrower entered into an equipment loan and security agreement dated November 16, 2021 (as may be amended, restated or supplemented from time to time, the “**2021 ELSA**”);

**AND WHEREAS** the Lender and the Borrower entered into a commitment letter dated November 23, 2021 (as may be amended, restated or supplemented from time to time, the “**Commitment Letter**”);

**AND WHEREAS** the Lender and the Borrower entered into a revolving credit agreement dated November 24, 2021 (as may be amended, restated or supplemented from time to time, the “**Revolving Credit Agreement**”);

**AND WHEREAS** the Lender and the Borrower entered into an equipment loan and security agreement (real estate) dated December 21, 2021 (the “**2021 Real Estate ELSA**”, and together with the

2020 ELSA, the 2021 ELSA, the Commitment Letter and the Revolving Credit Agreement, the “**Facility Agreements**”);

**AND WHEREAS** the Guarantors guaranteed payment of the Obligations pursuant to the Guarantees listed and defined in Schedule A hereto;

**AND WHEREAS** the Borrower and the Guarantors delivered the security listed on Schedule A hereto (collectively, and together with the Guarantees, the “**Security**”);

**AND WHEREAS** various events of default known to the Lender as of the date hereof have occurred in respect of the Loan and Security Documents (collectively, the “**Existing Defaults**”) including without limitation (i) failure by the Borrower to make certain payments when due as contemplated under the Facility Agreements, including on September 29 and December 26 and 30, 2022 and January 1, 5 and 9, 2023, (ii) failure by the Borrower to pay all amounts due and owing in respect of certain advances made by the Lender under the Facilities within 6 months from the date of the initial advance including in respect of loan numbers 101013844403 and 101013961299, (iii) termination of certain real property leases in respect of which certain Corporate Guarantors were counterparties including in respect of the leases for the premises located at 2 Douglas Road Unit A25, Uxbridge Ontario and 17725 Yonge Street, Newmarket Ontario, (iv) failure by the Borrower and Corporate Guarantors to satisfy certain financial reporting covenants in accordance with the terms of certain Facility Agreements including for the trailing 12 month period that ended September 30, 2022, (v) the Borrower exceeding the maximum borrowings permitted by the Lender under the Revolving Credit Agreement, (vi) the registration of subordinate liens against the Borrower and certain Corporate Guarantors without the Lender’s consent, including the following PPSA registrations in respect of: (a) the Borrower by 2851604 Ontario Inc., (b) Index International Inc. by 1000017398 Ontario Inc., (c) Index Foods Inc. by 1000017398 Ontario Inc., (d) 2700774 Ontario Inc. by 2851605 Ontario Inc., (e) 2723710 Ontario Inc. by 2851606 Ontario Inc. and (f) 2737334 Ontario Inc. by Merchant Opportunities Fund LP and 2851604 Ontario Inc., and the registration on title to the 421 Real Property by the Corporation of the City of London of a property standards order, (vii) failure to pay when due of real property taxes owing in respect of the 421 Real Property in the amount of \$14,600.11 as of January 19, 2023, and (viii) the occurrence of the above events, among others, which the Lender expects have had a material adverse effect on the condition of the business, operations, assets, liabilities or prospects of the Borrower and the Guarantors;

**AND WHEREAS** on January 18, 2023, the Lender issued demand letters to the Borrower and Guarantors, as applicable, demanding repayment of all amounts owing to the Lender pursuant to the Facility Agreements and Security (the “**Demand Letters**”);

**AND WHEREAS** on January 18, 2023, in connection with the Demand Letters, the Lender issued Notices of Intention to Enforce Security pursuant to section 244 of the BIA, as defined below (collectively, the “**NITES**”), to each Loan Party;

**AND WHEREAS** the Borrower and Guarantors have requested and the Lender has agreed to forbear from taking enforcement actions under the Loan and Security Documents solely on the terms and conditions and subject to the limitations contained in this Agreement;

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

## ARTICLE 1 INTERPRETATION

### 1.1 Definitions

All monetary amounts referred to in this Agreement shall refer to Canadian currency. In addition to the terms defined in the above preamble and recitals of this Agreement and Schedule A of this Agreement, the following capitalized terms used in this Agreement have the meanings set out below:

- (a) **"421 Real Property"** means the property municipally known as 421 Wharnccliffe Road South, London, Ontario N6J 2M6 and legally described as PT LT 1, PL29, PTS 1&2, 33R5153 & PT2, 33R5487 S/T 837774 IF ANY, S/T 583284 IF ANY; LONDON/WESTMINSTER;
- (b) **"425 Real Property"** means the property municipally known as 425 Wharnccliffe Road South, London, Ontario N6J 2M6 and legally described as PT LTS 1 & 2, PL 29, PART 2, 33R2551, S/T 929439, IF ANY, S/T 837774, IF ANY, S/T 583284, IF ANY; LONDON/WESTMINSTER;
- (c) **"BIA"** means the *Bankruptcy and Insolvency Act* (Canada) and all regulations made thereunder, as amended from time to time;
- (d) **"Existing Defaults"** has the meaning given to such term in the recitals hereto;
- (e) **"Financial Advisor"** has the meaning given to such term in Section 4.4 hereof;
- (f) **"Financing Transaction"** has the meaning given to such term in Section 4.7 hereof;
- (g) **"Forbearance Fees"** has the meaning given to such term in Section 4.3 hereof;
- (h) **"Forbearance Period"** has the meaning given to such term in Section 4.1 hereof;
- (i) **"Forbearance Termination Event"** has the meaning given to such term in Section 6.1 hereof;
- (j) **"Governmental Authority"** means any government, regulatory authority, governmental department, agency, commission, bureau, official, minister, Crown corporation, court, board, tribunal or dispute settlement panel or other law, rule or regulation-making organization or entity (i) having or purporting to have jurisdiction on behalf of any nation, province, territory or state or any other geographic or political subdivision of any of them, or (ii) exercising, or entitled or purporting to exercise any administrative, executive, judicial, legislative, policy, regulatory or taxing authority or power;
- (k) **"Guarantors"** has the meaning given to such term in the recitals hereto;
- (l) **"Loan and Security Documents"** means, collectively, the Facility Agreements, the Guarantees and other Security and all documents, instruments or other agreements executed or delivered in connection with any of the foregoing by any one or more of the Loan Parties;
- (m) **"Loan Parties"** means collectively the Borrower, the Guarantors and 425, and each individually a **"Loan Party"**;

- (n) **“Mortgages Act”** means the *Mortgages Act* (Ontario) and all regulations made thereunder, as amended from time to time;
- (o) **“Obligations”** means all amounts owing to the Lender by the Borrower and the other Loan Parties pursuant to the Loan and Security Documents listed in Schedule A hereto and this Agreement, including all principal, all interest due and accruing due, and all fees and expenses incurred by the Lender (including without limitation all legal fees and disbursements);
- (p) **“PPSA”** means the *Personal Property Security Act* (Ontario) and all regulations made thereunder, as amended from time to time, and any other applicable legislation governing security interests in personal property;
- (q) **“Priority Payables”** means all obligations owing to any creditor which would be entitled to claim priority over, or pari passu with, the security interest of the Lender in the assets and undertakings of the Borrower or any of the Guarantors, including wages and remittances required to be made for taxes and other liabilities owed to federal, provincial and municipal governments, including, without limitation, property taxes and money owed in respect of employee source deductions pursuant to the *Canada Pension Plan Act* (Canada), *Employment Insurance Act* (Canada) and *Income Tax Act* (Canada), and in respect of Harmonized Sales Tax;
- (r) **“Professional Expenses”** has the meaning given to such term in Section 5.2 hereof;
- (s) **“Real Property”** means collectively the 421 Real Property and the 425 Real Property;
- (t) **“Releasees”** has the meaning given to such term in Section 7.7 hereof; and
- (u) **“Sale Transaction”** has the meaning given to such term in Section 4.7 hereof.

## 1.2 Extended Meanings

Terms defined in the singular have the same meaning when used in the plural, and *vice-versa*. When used in the context of a general statement followed by a reference to one or more specific items or matters, the term “including” shall mean “including, without limitation”, and the term “includes” shall mean “includes, without limitation”. Any reference herein to the exercise of discretion by the Lender (including phrases such as “in the discretion of”, “in the opinion of”, “to the satisfaction of” and similar phrases) shall mean that such discretion is absolute and unfettered and shall not imply any obligation to act reasonably, unless otherwise expressly stated herein. Each representation, warranty, covenant, agreement or obligation hereunder given, made or incurred by a Loan Party shall be given, made or incurred by the Loan Parties jointly and severally and this Agreement shall be effective upon each of the Loan Parties who have executed it notwithstanding that it may not have been executed by all of the Loan Parties.

## 1.3 Severability

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



#### **1.4 Headings**

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

#### **1.5 Entire Agreement**

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

#### **1.6 Governing Law**

This Agreement shall be governed by and construed in accordance with the laws of the Province of Ontario and the federal laws of Canada applicable therein, without regard to any conflicts of law or principles of comity.

#### **1.7 Attornment**

Each party hereto irrevocably attorns to the exclusive jurisdiction of the Superior Court of Justice (Commercial List) of the Province of Ontario in the City of Toronto for all matters arising out of or in connection with this Agreement and the Loan and Security Documents.

#### **1.8 Conflicts**

If there is any inconsistency or conflict between the terms of this Agreement and the terms of the Loan and Security Documents, the provisions of this Agreement shall prevail to the extent of the inconsistency, but the foregoing shall not apply to limit or restrict in any way the rights and remedies of the Lender under the Loan and Security Documents or this Agreement other than as may be specifically contemplated herein.

### **ARTICLE 2 ACKNOWLEDGEMENT AND CONFIRMATION**

#### **2.1 Acknowledgement of Obligations**

- (a) Each of the Loan Parties hereby acknowledges, confirms and agrees that the Obligations are due and owing and the Borrower is indebted to the Lender under the Loan and Security Documents as more specifically set out below:

Facility Agreements

Principal (excluding credit card balance):	\$8,863,725.04
Interest to and including February 13, 2023 (excluding interest on credit card balance), interest continuing to accrue thereafter:	\$125,813.50

Credit Card Balance: <sup>1</sup>	\$175,000.00
Legal Fees and Disbursements and Applicable Taxes up to and including February 12, 2023:	\$139,845.02
Forbearance Fee (for period from and including the date hereof to and including June 30, 2023):	\$50,000.00
Total:	\$9,354,383.56

- (b) Each of the Loan Parties hereby acknowledges, confirms and agrees that the Obligations are unconditionally owing by the Borrower, as applicable, to the Lender as of the date hereof, without any right of setoff, defense, counterclaim or reduction of any kind, nature or description whatsoever, and the Loan Parties are estopped from disputing such Obligations.
- (c) The Lender's accounts and records constitute, in the absence of manifest error, conclusive evidence of the Obligations of the Borrower to the Lender pursuant to the Loan and Security Documents.

## **2.2 Acknowledgements Regarding Loan and Security Documents**

- (a) Each Loan Party hereby acknowledges, confirms and agrees that each Loan and Security Document to which such Loan Party is a party or delivered by such Loan Party is and shall continue to be in full force and effect and is legal, valid, binding and enforceable against such Loan Party and that neither the execution of this Agreement nor any change to the Obligations occasioned hereby, or any other matter arising herefrom, shall in any way affect the continuing effectiveness and validity of the Loan and Security Documents.
- (b) Each of the Loan Parties hereby acknowledges, confirms and agrees that the Security, as applicable, has not been discharged, waived or varied, that it is binding upon each of the Loan Parties and that the Security, as applicable, is enforceable in accordance with its written terms and each constitutes a legal, valid and binding mortgage, charge, lien and/or security interest, as applicable, over the real and/or personal property mortgaged or charged thereby until the Obligations then due have been indefeasibly paid and satisfied in full.
- (c) Each of the Loan Parties hereby acknowledges, confirms and agrees that (a) the GSAs are governed by the laws of the Province of Ontario and the federal laws of Canada applicable therein and (b) the Loan Parties irrevocably and unconditionally attorn and submit to the non-exclusive jurisdiction of the courts of the Province of Ontario, subject to the terms of the applicable GSA.
- (d) 421 hereby acknowledges, agrees and confirms that it is the correct counterparty to the Debenture. The Debenture is hereby amended to replace in all places in the Debenture the name "427 Wharnccliffe Ltd." with "421 Wharnccliffe Ltd." (including in the names of the parties listed in the introduction and in the signature blocks, as applicable). 421 agrees

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<sup>1</sup> This is an estimate based on the current credit card limit. The actual amount due in respect of credit card balance principal and interest can be obtained by contacting the Lender.

that all of the terms of this Agreement (including Section 2.2(a) and Section 2.2(b) and the definition of "Obligations" in Section 1.1 of this Agreement) apply to the Debenture as amended herein in respect of 421 as the correct counterparty to the Debenture. Except as expressly stated in this Agreement, the terms of the Debenture remain unamended and in full force and effect.

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

- (a) Each of the Loan Parties hereby acknowledges, confirms and agrees that the Existing Defaults have occurred and are continuing and that same constitute "Events of Default" under and pursuant to the provisions of the Loan and Security Documents.
- (b) Each of the Loan Parties further acknowledges, confirms and agrees that, as of the date hereof, the Lender has made no promises and has not waived, and does not intend to waive such Existing Defaults or any other present or future default under any of the Loan and Security Documents, and nothing contained herein or the transactions contemplated hereby shall be deemed to constitute any such waiver.
- (c) Each of the Loan Parties further acknowledges, confirms and agrees that the Demand Letters and the NITEs were issued in compliance with the Loan and Security Documents, the BIA and all applicable law, that the notice period provided in the BIA is hereby waived, and that the Lender shall not be required to issue any further notices under the BIA, or otherwise, before taking any steps to enforce the Lender's security interests in respect of any of the Borrower or Guarantors.

### **2.4 Additional Acknowledgements**

Each of the Loan Parties hereby acknowledges, confirms and agrees that:

- (a) the facts set out in the recitals to this Agreement are true and accurate, in substance and in fact;
- (b) except as hereby amended, the Loan and Security Documents do and shall remain in full force and effect, unamended;
- (c) except as provided for in this Agreement, the Lender (either by itself or through its employees or agents) has made no promises, nor has it taken any action or omitted to take any action, that would constitute a waiver of its rights to enforce the Loan and Security Documents and pursue its remedies in respect of the obligations of the Loan Parties to the Lender, or that would stop it from doing so;
- (d) to the date hereof, the Lender has acted in a commercially reasonable manner and the Loan Parties are estopped from disputing same;
- (e) the Loan Parties are not aware of any fact, event, circumstance or condition that, in their understanding, may cause the Lender, as a reasonable and prudent lender, not to enter into or accept any of the covenants, agreements, undertakings or conditions provided for in this Agreement;
- (f) all corporate, partnership or other action necessary for the authorization, execution, delivery and performance of this Agreement by the Loan Parties has been duly authorized and taken;

- (g) the Lender has (i) fully and timely performed all of its covenants and obligations under the Loan and Security Documents and applicable law and has acted reasonably and (ii) no obligation whatsoever to advance or loan any additional amounts to any of the Borrower or any of the other Loan Parties, and, in each case, the Loan Parties are estopped from disputing same;
- (h) the Loan Parties have made any and all required payments on account of Priority Payables and no such amounts are owed by or due from the Loan Parties as of the date of this Agreement; and
- (i) this Agreement constitutes a Loan and Security Document.

### **ARTICLE 3 CONDITIONS PRECEDENT**

#### **3.1 Conditions Precedent**

The obligations of the Lender to forbear under this Agreement shall not be effective unless the Lender shall have received:

- (a) a copy of this Agreement fully executed by all of the Loan Parties;
- (b) a consent to receivership executed by each of the Loan Parties substantially in the form set out in Schedule B hereto, as applicable, which shall be held by the Lender and used only in the event that a Forbearance Termination Event occurs and/or the Forbearance Period terminates for any reason whatsoever;
- (c) if requested by the Lender in its sole discretion, an executed acknowledgement and direction to register a correcting instrument on title to the 421 Real Property;
- (d) the following additional security in form and substance acceptable to the Lender and executed by the applicable Loan Parties:
  - (i) a general security agreement by Muqet in favour of the Lender;
  - (ii) a cross-collateralization acknowledgement and agreement in respect of the Loan and Security Documents and Obligations by the Loan Parties in favour of the Lender;
  - (iii) a mortgage in respect of each real property owned Muqet including without limitation the real property municipally known as 110 Herdwick Street, Brampton, Ontario, in each case, by Muqet in favour of the Lender;
  - (iv) a mortgage in respect of the real property owned by 425 including without limitation the 425 Real Property;
  - (v) a general security agreement by 425 in favour of the Lender; and
  - (vi) such additional security instruments as the Lender may deem necessary or advisable for the purpose of obtaining and perfecting the forgoing security; and
- (e) the Lender or its counsel has confirmed in writing (including by email) to the Loan Parties or their counsel that such conditions precedent have been satisfied.

## ARTICLE 4

### FORBEARANCE CONDITIONS

#### 4.1 Forbearance

In reliance upon the acknowledgements, representations, warranties and covenants of the Loan Parties contained in this Agreement and subject to the terms and conditions of this Agreement and any documents executed in connection herewith, the Lender agrees to forbear from exercising its rights and remedies under the Loan and Security Documents, the PPSA, the Mortgages Act and other applicable law from and including the date on which all conditions precedent in Section 3.1 are satisfied to the satisfaction of the Lender in its sole discretion (the **"Forbearance Effective Date"**) until the earlier of the following dates (the period from and including the Forbearance Effective Date to such earlier date is called the **"Forbearance Period"**):

- (a) June 30, 2023 (the **"Forbearance Expiry Date"**); and
- (b) the occurrence of a Forbearance Termination Event.

#### 4.2 Termination of the Forbearance Period

The Loan Parties agree that upon the occurrence of the earlier to occur of a Forbearance Termination Event and the Forbearance Expiry Date, the Lender shall be entitled to exercise any of its rights and remedies under the Loan and Security Documents, this Agreement and any other agreement executed in connection herewith, the PPSA, the Mortgages Act and other applicable law or in equity in the Lender's sole and absolute discretion. The Loan Parties hereby acknowledge and agree that such rights and remedies include, without limitation: (i) the exercise of all remedies available pursuant to the Loan and Security Documents; and (ii) the requirement of the Loan Parties to pay to the Lender all of the Obligations (which the Loan Parties have confirmed and agreed are due and owing in full as of the date of this Agreement) and the issuance of notices of intention to enforce security pursuant to Section 244 of the BIA without any further notice, passage of time or forbearance of any kind.

#### 4.3 Forbearance Fee and Interest Rate

In consideration of the Lender entering into this Agreement, the Borrower irrevocably covenants and agrees that (i) the Lender will earn and the Borrower will be required to pay a forbearance fee to the Lender pursuant to the terms set out below (the **"Forbearance Fee"**) and (ii) the interest rate which shall be applicable to and accrue on the Obligations shall be as set out below in Section 4.3(b):

- (a) A forbearance fee in the amount of \$50,000 (for certainty, being the Forbearance Fee as defined above);
- (b) Effective as of the date hereof to and including the expiry of the Forbearance Period for any reason (for certainty, upon its expiry pursuant to Section 4.1(a) or upon the occurrence of a Forbearance Termination Event), the interest rate applicable to and payable on the variable rate Obligations is and shall be the Prime Rate plus 3.3% per annum calculated and payable monthly on the first day of each and every calendar month provided that the interest rate required to be paid by the Borrower shall not be less than 8% per annum in any event. "Prime Rate" means the floating annual rate of interest established from time to time by the Lender as the base rate it will use to determine the

rates of interest which it will charge of Canadian dollar loans made in Canada and designated as its "Prime Rate".

The Forbearance Fee is and shall be fully earned upon execution of this Agreement by the Loan Parties (whether or not the Forbearance Effective Date occurs and whether or not all the Loan Parties execute this Agreement), and is in addition to all other fees, interest, costs and expenses payable in connection with or pursuant to the Loan and Security Documents or this Agreement and shall automatically be added to the principal amount secured by the Security (and constitute Obligations) without any further action or documents required whatsoever, interest shall accrue thereon, and shall be secured by the Security. For certainty, in the event that the Forbearance Period is terminated as a result of the occurrence of a Forbearance Termination Event, the Borrower are not and shall not be entitled to a payment, repayment, credit, or set-off for any portion of the Forbearance Fee. Similarly, in the event that the Borrower repay all of the Obligations to the Lender, as applicable, the Borrower are not and shall not be entitled to a payment, repayment, credit, or set-off for any portion of the Forbearance Fee. Each of the Guarantors acknowledges and consents to the foregoing and confirms and agrees that all of such amounts constitute Obligations as defined herein and as defined in the Guarantees, as applicable.

#### **4.4 Monitoring**

Each of the Loan Parties acknowledges and agrees that the Lender, in its sole and absolute discretion, may appoint a financial consultant (the "**Financial Advisor**") for the purposes of, among other things, reviewing and assessing the financial information and condition of each of the Loan Parties' business operations including their financial performance during the Forbearance Period. Each of the Loan Parties shall provide the Financial Advisor (a) prompt access to the property, books and records of its respective business operations and (b) regular financial reporting consistent with the strictest reporting obligations required by the Loan and Security Documents as determined by the Lender. Further, each of the Loan Parties (a) shall co-operate fully with the Financial Advisor and (b) consent to the Financial Advisor contacting any of the Loan Parties' employees, agents, contractors, suppliers, franchisors, landlords, tenants, accountants, bookkeepers, legal counsel and any other third party that the Financial Advisor considers necessary or appropriate, in each case, in order that the Financial Advisor may fulfill the terms of its appointment. Each of the Loan Parties acknowledge that the engagement of the Financial Advisor by the Lender shall not and does not in any way constitute the Lender to be in control of the assets or business operations of the Borrower or Guarantors or any one or more of them. By execution of this Agreement, the Loan Parties confirm their agreement and consent to the appointment of a Financial Advisor when such appointment is considered necessary by the Lender.

#### **4.5 Consent Judgments**

The Loan Parties acknowledge, the Lender may in its sole discretion commence one or more actions against Muqet to enforce the Lender's rights in respect of the Guarantees executed by Muqet in favour of the Lender. Muqet consents to forego personal service of any statement of claim in connection with any such actions and agrees to accept service by email of the applicable action at [muqet.rana@hotmail.com](mailto:muqet.rana@hotmail.com) and such email service shall constitute good and valid service to Muqet. Muqet shall within two days of service return a copy of the applicable statement of claim acknowledging and consenting to such service with his signature and the date underneath that statement of acknowledgement. Immediately upon service of any such issued statement of claim, Muqet agrees that the Lender shall file a statement of defence on behalf of Muqet and Muqet shall (a) execute a consent for Lender's counsel as agent solely for the purposes of such filing (b) execute a consent order consenting to judgment (in form and substance acceptable to the Lender) against Muqet in respect of the

Obligations (as defined in the applicable Guarantee) and any Obligations which Muqet has agreed are cross collateralized (or otherwise secured) by his Guarantees, as applicable, or any other Security he has provided or delivered to the Lender. Upon execution of the consent order, the Lender shall hold any action commenced in respect thereof in abeyance. The Lender agrees that any such consent order shall be held by the Lender and used only if a Forbearance Termination Event occurs and/or the Forbearance Period terminates for any reason whatsoever. Upon the occurrence of a Forbearance Termination Event and/or the termination of the Forbearance Period, the Lender may release each consent order from escrow and move, without notice, for judgment in accordance with the applicable consent order, giving credit for any payments of the Obligations paid after execution of this Agreement by Muqet, and the Lender may execute upon the applicable judgment to the full extent of the law. The Lender agrees that upon payment in full of the Obligations, any such action commenced in respect of which a consent order was executed will be dismissed without cost and any consent order executed pursuant to the terms of this Section 4.5 will be timely returned to Muqet.

#### **4.6 Franchisor Consents**

Within such time as the Lender determines, the Lender shall have received:

- (a) a consent by Dencan Franchise Systems, Limited Partnership and DFO LLC (collectively, "**Dencan**") who is a franchisor to certain Corporate Guarantors, being 11030434 Canada Ltd., 2723716 Ontario Inc., 2790760 Ontario Inc., 2775290 Ontario Inc. and 2775296 Ontario Inc., pursuant to the terms of those certain franchise agreements among Dencan, the applicable Corporate Guarantor franchisees and Muqet (as same may have been amended, restated or supplemented), consenting to the terms of this Agreement and agreeing to such other matters as the Lender may require acting reasonably; and
- (b) a consent by Popeyes Louisiana Kitchen, Inc. ("**Popeyes**") who is a franchisor to certain Corporate Guarantors, being Index International Inc., Index Foods Inc., 2700774 Ontario Inc., 2700767 Ontario Inc., 2683960 Ontario Ltd., 11030418 Canada Inc., 2723710 Ontario Inc., 2737332 Ontario Inc., and 2718366 Ontario Inc. pursuant to the terms of those certain franchise agreements between Popeyes and the applicable Corporate Guarantor franchisees (as same may have been amended, restated or supplemented), consenting to the terms of this Agreement and agreeing to such other matters as the Lender may require acting reasonably.

#### **4.7 Sale or Refinancing Transaction**

The Loan Parties, as applicable, shall by no later than the Forbearance Expiry Date, deliver to the Lender (in each case in form and substance satisfactory to the Lender):

- (a) an unconditional binding commitment letter for take-out financing (the "**Financing Transaction**") in an amount not less than an amount necessary to satisfy the Obligations (or in an amount, together with the net proceeds from one or more Sale Transactions (as defined below), necessary to satisfy the Obligations); or
- (b) an unconditional binding agreement of purchase and sale for the sale of any one or more of the franchises operated by the Corporate Guarantors or the Real Property (each such transaction, a "**Sale Transaction**") with a net cash payment on closing which, on its own or together with the proceeds of other Sale Transactions and the Financing Transaction,

will be sufficient to satisfy the Obligations in full on the date of the closing of the sale transaction.

The Borrower shall use the proceeds of any Sale Transaction and any Refinancing Transaction first to indefeasibly repay all Obligations then owing.

#### **4.8 No Other Waivers; Reservation of Rights**

The Lender reserves the right, in its sole and absolute discretion, to exercise any or all of its rights or remedies under any one or more of the Loan and Security Documents, PPSA, the Mortgages Act or other applicable law, and the Lender has not waived any such rights or remedies, and nothing in this Agreement nor any delay on the part of the Lender in exercising any such rights or remedies, shall be construed as a waiver of any such rights or remedies. The rights and remedies of the Lender under this Agreement and the Loan and Security Documents are cumulative and not in substitution for any other rights or remedies available by law, in equity or otherwise.

### **ARTICLE 5 OBLIGATIONS OF THE LOAN PARTIES DURING THE FORBEARANCE PERIOD**

#### **5.1 Full Co-Operation**

Each of the Loan Parties shall cooperate fully with the Lender and the Lender's agents (including without limitation the Financial Advisor) and employees by providing all reasonably requested information, and by providing the Lender with full access to the books, records, property, assets and personnel of any of the Loan Parties and their respective agents (including without limitation their accountants and legal counsel) wherever they may be situated in whatever medium they may be recorded, at the request of and at times convenient to any such party, acting reasonably, which right of access shall include the right to inspect and appraise such property and assets, at the Lender's sole and absolute discretion. Without limiting the generality of the foregoing, the Loan Parties covenant and agree to provide the Lender with (a) "view access" over each bank account maintained by the Loan Parties, (b) written authorization, in form and substance acceptable to the Lender, to communicate with Governmental Authorities from time to time in respect of the Priority Payables, (c) certificates of insurance in form and substance satisfactory to the Lender in respect of all insurance coverage required to be maintained by the Loan Parties pursuant to the Loan and Security Documents, (d) a summary in form and substance acceptable to the Lender setting out the status of each lease and leased premises in respect of all leases entered by the Borrower or any one or more of the Corporate Guarantors, including without limitation in respect of the Denny's Newmarket location (the franchisee of such location being 2790760 Ontario Inc.), (e) a summary in form and substance acceptable to the Lender setting out the location and status of any equipment, construction materials or other personal property allegedly purchased by the Borrower or the Corporate Guarantors in respect of which financing was advanced by the Lender (as determined by the Lender), including without limitation in respect of financing advanced by the Lender which certain Loan Parties represented was to be used in respect of the Denny's Rexdale and Denny's Woodbine locations (the franchisees of such locations being 2775296 Ontario Inc. and 2723716 Ontario Inc., respectively), and (f) bank or other records proving, as determined by the Lender, that the deposits paid in respect of the purchase by 2560838 Ontario Ltd. (or any of its affiliates) of the assets relating to the Popeye's franchises located at 674 Sheppard Avenue W, Toronto, Ontario and 900 Dufferin Street, Toronto, Ontario (operated by 2737334 Ontario Inc. and 2737332 Ontario Inc., respectively) were used for working capital purposes in respect of the operations of the Borrower or



Corporate Guarantors (other than amounts used to pay reasonable real estate broker's fees), in the case of each of (a)-(f) above, on or before March 6, 2023.

## 5.2 Payment of Professional Expenses

Each of the Loan Parties covenants and agrees to pay the Lender the outstanding professional fees it has incurred to the date of this Agreement as such fees are set out in Section 2.1(a).

Each of the Loan Parties hereby covenants and agrees with the Lender to reimburse the Lender for all costs and expenses incurred in connection with this Agreement, including, without limitation, legal fees and other professional expenses that the Lender has incurred or will incur arising out of its dealings with the Loan Parties and in the protection, preservation and enforcement of the Loan and Security Documents, including without limitation, the fees and expenses of the Lender's solicitors, Cassels Brock & Blackwell LLP, and the fees and expenses of the Financial Advisor (collectively, the "**Professional Expenses**"), and that the Professional Expenses shall be for the account of the Loan Parties, on a joint and several basis, and all such amounts shall constitute Obligations, interest shall accrue thereon shall constitute Obligations, and shall be secured by the Security. Nothing in this Agreement, shall derogate from the Loan Parties' obligation to pay for all of the Professional Expenses or shall constitute a cap on Professional Expenses. Notwithstanding the foregoing, the Lender shall add all of the Professional Expenses to the Obligations if the same are not paid when due.

## 5.3 Operational Obligations

- (a) For the duration of the Forbearance Period each of the Loan Parties, as applicable, hereby covenants and agrees with the Lender as follows:
  - (i) the Loan Parties, as applicable, shall maintain their respective existence as a valid and subsisting entities and shall not merge, amalgamate or consolidate with any other corporation(s), except with the Lender's prior consent in its sole discretion;
  - (ii) except as specifically provided for herein, each of the Loan Parties shall comply in all respects with all terms and provisions of the Loan and Security Documents and this Agreement;
  - (iii) each of the Loan Parties shall cooperate with the Lender and its solicitors in rectifying any deficiencies in the Loan and Security Documents, as applicable;
  - (iv) the Loan Parties shall not, without the prior written consent of the Lender, make any distribution or payment to (i) any person, corporation or other entity who does not deal with the Borrower at arm's length (as such term is defined in the Income Tax Act (Canada)), as applicable, or (ii) the Guarantors;
  - (v) the Loan Parties shall not encumber, mortgage, hypothec, pledge or otherwise cause any form of lien or charge on any of their property or assets, including without limitation any of the Real Property or any intangible or contingent assets, without the prior written consent of the Lender;
  - (vi) the Loan Parties shall maintain and preserve all of their respective property, assets and undertaking (including without limitation the Real Property) in good condition and repair, including continuing to operate its business in the ordinary course of business consistent with past practice and in a commercially reasonable

manner and maintain in good standing all of its insurance policies as required by the Loan Parties under the Loan and Security Documents and otherwise from time to time;

- (vii) the Loan Parties (as applicable) shall not, without the prior consent of the Lender in its sole discretion, make any distribution (whether by dividend or otherwise) or effect any return of capital on any investment made by any shareholder, or any party related to any shareholder or Loan Party;
  - (viii) the Loan Parties shall pay by the due date therefor all Priority Payables;
  - (ix) each of the Loan Parties shall give to the Lender immediate notice of any Forbearance Termination Event; and
  - (x) unless otherwise agreed to herein, the Loan Parties shall not do any act or thing which may have the effect of defeating or delaying the enforcement of the Lender's rights and remedies under the Loan and Security Documents;
- (b) the Loan Parties represents and warrants to the Lender that, as of the date of this Agreement, the obligations of the Loan Parties with respect to employee wages and vacation pay have been paid by the due date therefor and shall continue to be paid on the dates they become due throughout the Forbearance Period; and
- (c) in addition to the Loan Parties delivering or causing to be delivered to the Lender all financial and additional reporting as required by the terms of the Loan and Security Documents and this Agreement as and when same are required to be delivered to the Lender, the Borrower shall deliver to the Lender a weekly detailed written report on Tuesday of each calendar week for the immediately preceding week (ending on the Sunday immediately prior to the applicable Tuesday) confirming all efforts to effect the Sale Transaction or Financing Transaction including without limitation copies of correspondence with and from potential purchasers and/or lenders and any and all letters of intent, term sheets, commitments or other forms of agreements or expressions of interest in respect of a proposed Sale Transaction or Financing Transaction.

## ARTICLE 6

### FORBEARANCE TERMINATION EVENTS

#### 6.1 Forbearance Termination Events

The Forbearance Period shall forthwith terminate, at the option of the Lender, upon the happening of any one of the following events (each a "**Forbearance Termination Event**"):

- (a) any representation, warranty or statement made by the Loan Parties in this Agreement was untrue or incorrect when made or becomes untrue or incorrect;
- (b) any of the Loan Parties fails to perform or comply with any of its respective covenants or obligations contained in this Agreement when required to be performed;
- (c) except for the Existing Defaults, any default under any of the Loan and Security Documents (i) has occurred prior to the date of this Agreement or (ii) occurs on or after the date of this Agreement;

- (d) the Loan Parties, or any one or more of them, fails to maintain and keep current payments of Priority Payables, which may result in any claim ranking in priority to or *pari passu* with the Obligations;
- (e) the Security (or any of it) ceases to constitute a first-ranking, valid and perfected security interest against the collateral subject to such Security;
- (f) the occurrence of any other event which has or could reasonably be expected to materially and adversely impact the priority or enforceability of the Security granted by the Loan Parties, or the realizable value of the collateral subject to such Security;
- (g) the loss, damage, destruction, deterioration or confiscation of any of the Loan Parties' property or assets or any part thereof, unless, upon such event, the Loan Parties pay to the Lender forthwith such amount as the Lender, in its sole and absolute discretion, determines is satisfactory (whether under an insurance policy or otherwise);
- (h) any person takes possession of any property of any of the Loan Parties by way of or in contemplation of enforcement of security, or a distress or execution or similar process levied or enforced against any material property of any of the Loan Parties;
- (i) any change of ownership, control or management of any of the Loan Parties, as applicable, without the Lender's prior written consent;
- (j) a material adverse change occurs in the business, affairs, financial condition or operations of any of the Borrower or any other Loan Party or the value of the collateral secured by the Security, for any reason whatsoever;
- (k) the Loan Parties, or any one or more of them, fails to maintain insurance coverages or other material contracts, in each case as required by the terms of the Loan and Security Documents;
- (l) without the Lender's prior written consent, any of the Loan Parties ceases to carry on business in the normal course in the same manner as such business has previously been carried on;
- (m) without limiting the generality of Section 6.1(c) above, (i) any of the Loan Parties commits any act of bankruptcy or (ii) any Loan Party takes any action or commences any proceeding or any action or proceeding is taken or commenced by another person or persons against any one or more of the Loan Parties (A) relating to or in respect of the collateral secured by the Security, (B) for the appointment of a receiver, interim receiver, or receiver and manager of any one or more of the Loan Parties or any of their respective property and assets, (C) for the reorganization, compromise or settlement of the debts owed by any one or more of the Loan Parties to their creditors including without limitation under the BIA (including filing of a proposal or notice of intention to file a proposal thereunder), the *Companies' Creditors Arrangement Act* (Canada), the *Winding-Up and Restructuring Act* (Canada) or the debt reorganization provisions of any federal or provincial corporate legislation, or (D) under any similar legislation by any person other than the Lender; or

- (n) any mortgage, charge, lien, notice of lien or other encumbrance is registered against any of the collateral subject to the Security after the date hereof without the consent of the Lender in its sole discretion; or
- (o) the filing or commencement by any Person of any claim, action, application or other form of court process seeking any order or relief that would or could reasonably be expected to (i) adversely affect, impact or impair, directly or indirectly, the Lender's rights, remedies and/or entitlements under this Agreement or the Loan and Security Documents, or (ii) adversely affect, impact or impair, directly or indirectly, the rights and/or entitlements of the Loan Parties to sell or otherwise deal with the collateral subject to the Security, or (iii) interfere or impair in any manner, directly or indirectly, with the actions, efforts, strategies or processes of the Loan Parties or the Lender or any court appointed receiver to sell any of the collateral subject to the Security.

## **ARTICLE 7 GENERAL PROVISIONS**

### **7.1 Independent Legal Advice**

Prior to the execution of this Agreement, the Loan Parties that have executed this Agreement agree that they have read and understand the terms of this Agreement and have had the opportunity to seek, and has either obtained or waived their right to obtain, independent legal advice with respect to the matters addressed in this Agreement. The Loan Parties fully understand and accept the terms of this Agreement, and confirm that they are executing it freely, voluntarily and without duress, and agree that their failure to obtain independent legal advice shall not be used by any of the Loan Parties as a defence to the enforcement of this Agreement.

### **7.2 Effect of this Agreement**

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

### **7.3 Further Assurances**

Each of the Loan Parties shall execute and deliver such supplemental documents and take such supplemental action as may be necessary or desirable to give effect to the provisions and purposes of this Agreement, as may be requested by the Lender from time to time, all at the sole expense of the Loan Parties.

### **7.4 Binding Effect**

This Agreement shall be binding upon each of the Loan Parties and their respective successors and permitted assigns, and shall enure to the benefit of the Lender and its successors and its permitted assigns in accordance with the terms of the Loan and Security Documents. No Loan Party can assign any of its rights or obligations hereunder without the prior written consent of the Lender. No person or entity which is not a party to this Agreement has any rights under this Agreement or the right to any benefits of this Agreement, except for the Releasees each of which is entitled to rely on this Agreement and the releases and indemnities delivered by the Loan Parties hereunder.

## **7.5 Survival of Representations and Warranties**

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

## **7.6 Disclosure of Information to Third Parties**

The Lender and its professional advisors shall be at liberty, in their sole and absolute discretion, to disclose any information obtained from any of the Loan Parties or any information maintained by the Lender (whether or not obtained from the Loan Parties) to any party or parties (including any franchisor or potential franchisee) in order to recover amounts owed to the Lender by the Loan Parties.

## **7.7 Release and Indemnity**

In consideration of the agreements of the Lender contained herein and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, each of the Loan Parties hereby absolutely, unconditionally and irrevocably waives, releases, remises and forever discharges the Lender and its respective successors and assigns, participants, affiliates, subsidiaries, branches, divisions, predecessors, directors, officers, attorneys, employees, lenders, investors in the Obligations and other representatives and advisors (the Lender and all such other persons being hereinafter referred to collectively as the “**Releasees**” and individually as a “**Releasee**”), of and from all demands, actions, causes of action, suits, damages, covenants, contracts, controversies, agreements, promises, sums of money, accounts, bills, reckonings, damages and any and all other claims, counterclaims, defenses, rights of set-off, demands and liabilities whatsoever (individually, a “**Claim**” and collectively, “**Claims**”) of every name and nature, whether known or unknown, suspected or unsuspected, both arising at law and in equity, which any of the Loan Parties or any of their successors, heirs, executors, administrators, permitted assigns and legal representatives, as applicable, may now own, hold, have or claim to have against the Releasees or any of them for, upon, or by reason of any circumstance, action, cause or thing whatsoever which arises at any time on or prior to the day and date of this Agreement, including, without limitation, for or on account of, or in relation to, or in any way in connection with, any of the Loan and Security Documents, the transactions thereunder or related thereto or the disclosure of information by the Lender in accordance with Section 7.6 of this Agreement.

In consideration of the agreements of the Lender contained herein and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, each of the Loan Parties hereby agrees to indemnify and hold harmless (absolutely, unconditionally and irrevocably) the Releasees from and against any and all Claims of every name and nature, whether known or unknown, both arising at law and in equity, suffered or incurred by any of the Loan Parties by reason of any matter or thing whatsoever incurred by or asserted against the Lender as a result of or in connection with any matter, thing, action, inaction, or transaction whatsoever contemplated by this Agreement or any of the Loan and Security Documents, except in the event that any such Claim is caused directly by the gross negligence or willful misconduct of the Lender as proven by a court of competent jurisdiction pursuant to an order non-appealable order in respect which the period for any permitted appeal has expired.

The releases and indemnities contained herein do and shall survive the expiry or other termination of the Forbearance Period and/or this Agreement and the repayment of the Obligations to the Lender.

## 7.8 No Novation

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

## 7.9 Notice

Without prejudice to any other method of giving notice, any notice, request, demand or other communication hereunder required or permitted to be given to a party pursuant to this Agreement will be conclusively deemed to have been received by such party on the day of the sending of the notice by prepaid private courier to such party at its, his or her address noted below or by email at its, his or her email address noted below. Any party may change its, his or her address for service or address by notice given in the foregoing manner. Any notice, request, demand or other communication hereunder delivered or sent by email after 5 p.m. ET on any Business Day or on any day which is not a Business Day shall be deemed to be received by the recipient on the next following Business Day. For the purposes of this Section 7.9, "**Business Day**" means any day other than a Saturday, Sunday or statutory holiday in the Province of Ontario.

Notices to the Loan Parties shall be sent to:

Index Holding Group Inc.  
110 Herdwick Street  
Brampton, ON L6S 0A5

Attention: Abdul Muqet  
Email: [muqet.rana@hotmail.com](mailto:muqet.rana@hotmail.com)

Notices to the Lender shall be sent to:

Canadian Western Bank  
606 4<sup>th</sup> Street SW  
Calgary, Alberta T2P 1T1

Attention: Tyson Hartwell  
Email: [tyson.hartwell@cwbank.com](mailto:tyson.hartwell@cwbank.com)

with a copy to:

Cassels Brock & Blackwell LLP  
40 King St. W., Suite 2100  
Scotia Plaza  
Toronto, ON M5H 3C2

Attention: Jeremy Bornstein and Kori Williams  
Email: [jbornstein@cassels.com](mailto:jbornstein@cassels.com) and [kwilliams@cassels.com](mailto:kwilliams@cassels.com)


#### **7.10 Execution in Counterparts and by Electronic Transmission**

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

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

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

**CANADIAN WESTERN BANK**

By:   
per \_\_\_\_\_  
Name: Dean Chan  
Title: Senior AVP, Special Asset  
Management

By:   
Name: Tyson Hartwell  
Title: AVP, Special Asset Management



**INDEX HOLDING GROUP INC.**

By: 

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Name: Abdul Muqet  
Title: Director


**INDEX GROUP OF COMPANIES INC.**

By: 

---

Name: Abdul Muqet  
Title: Director

**INDEX INTERNATIONAL INC.**

By: 

---

Name: Abdul Muqet  
Title: Director

**INDEX FOODS INC.**

By: 

---

Name: Abdul Muqet  
Title: Director

**2640179 ONTARIO INC.**

By: 

---

Name: Abdul Muqet  
Title: Director

**11030434 CANADA LTD.**

By: 

---

Name: Abdul Muqet  
Title: Director

**2700774 ONTARIO INC.**

By: 

---

Name: Abdul Muqet

Title: Director

**2700767 ONTARIO INC.**

By: 

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Name: Abdul Muqet

Title: Director

**2683960 ONTARIO LTD.**

By: 

---

Name: Abdul Muqet

Title: Director

**11030418 CANADA INC.**

By: 

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Name: Abdul Muqet

Title: Director

**2723710 ONTARIO INC.**

By: 

---

Name: Abdul Muqet

Title: Director

**2718366 ONTARIO INC.**

By: 

---

Name: Abdul Muqet

Title: Director

**2737332 ONTARIO INC.**

By: 

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Name: Abdul Muqet

Title: Director

**2737334 ONTARIO INC.**

By: 

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Name: Abdul Muqet

Title: Director

**2723714 ONTARIO INC.**

By: 

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Name: Abdul Muqet

Title: Director

**2723716 ONTARIO INC.**

By: 

---

Name: Abdul Muqet

Title: Director

**2737338 ONTARIO INC.**

By: 

---

Name: Abdul Muqet

Title: Director

**2790760 ONTARIO INC.**

By: 

---

Name: Abdul Muqet

Title: Director

**2775290 ONTARIO INC.**

By: 

\_\_\_\_\_  
Name: Abdul Muqet

Title: Director

**2775296 ONTARIO INC.**

By: 

\_\_\_\_\_  
Name: Abdul Muqet

Title: Director

**421 WHARNCLIFFE LTD.**

By: 

\_\_\_\_\_  
Name: Abdul Muqet

Title: Director

**425 WHARNCLIFFE ROAD INC.**

By: 

\_\_\_\_\_  
Name: Abdul Muqet

Title: Director



\_\_\_\_\_  
Witness signature

Name: Kaleem Muhammad



\_\_\_\_\_  
**ABDUL MUQET**

**SCHEDULE A**  
**LOAN AND SECURITY DOCUMENTS**

**Facility Agreements**

1. equipment loan and security agreement between the Lender and the Borrower dated June 23, 2020;
2. equipment loan and security agreement between the Lender and the Borrower dated November 16, 2021;
3. commitment letter between the Lender and the Borrower dated November 23, 2021;
4. revolving credit agreement by the Borrower in favour of the Lender dated November 24, 2021 (the “**Revolving Credit Agreement**”); and
5. equipment loan and security agreement (real estate) between the Lender and the Borrower dated December 21, 2021.

**Guarantees**

1. guarantee and indemnity by the Borrower and the 2020 ELSA Guarantors in favour of the Lender dated June 23, 2020 (the “**2020 ELSA Guarantee**”);
2. guarantee and indemnity by Mr. Abdul Muqet in favour of the Lender dated June 23, 2020, which contains an assignment to the Lender of all present and future amounts owing by the Borrower to Muqet; and
3. guarantee and indemnity by the Borrower and the 2021 ELSA Guarantors in favour of the Lender dated November 16, 2021 (together with the 2020 ELSA Guarantee, the “**Guarantees**”).

**Security Entered into in Connection with the Facility Agreements**

1. general security agreement by the Borrower and the 2020 ELSA Guarantors in favour of the Lender dated June 2020 (the “**2020 GSA**”);
2. assignment and postponement of creditor’s claims by the Borrower and the 2020 ELSA Guarantors in favour of the Lender dated June 23, 2020;
3. assignment and postponement of creditor’s claims by the Borrower and Muqet in favour of the Lender dated June 23, 2020;
4. general security agreement by the Borrower and the Corporate Guarantors in favour of the Lender dated November 16, 2021 (the “**2021 GSA**”, together with the 2020 GSA, the “**GSA**s”);
5. assignment and postponement of creditor’s claims by the Borrower and the 2021 ELSA Guarantors in favour of the Lender dated November 16, 2021;
6. cross collateralization acknowledgement and agreement by the Borrower and the Corporate Guarantors in favour of the Lender dated November 16, 2021;
7. cross collateralization acknowledgement and agreement by the Borrower and the Corporate Guarantors in favour of the Lender dated December 21, 2021;

8. debenture in the principal amount of \$3,975,000 by 421 Wharnccliffe Ltd. ("**421**") in favour of the Lender dated December 21, 2021 (the "**Debenture**");
9. mortgage in the principal amount of \$1,100,000 granted by 421 in favour of Lender in respect of the 421 Real Property (the "**Mortgage**");
10. environmental indemnity agreement granted by 421 and the Borrower in favour of the Lender dated December 21, 2021; and
11. assignment of material agreements by 421 and the Borrower in favour of the Lender dated December 21, 2021.

**Security Entered into in Connection with this Agreement**

1. general security agreement by Muqet in favour of the Lender dated as of the date of this Agreement;
2. cross collateralization acknowledgement and agreement in respect of the Loan and Security Documents and Obligations by the Loan Parties in favour of the Lender dated as of the date of this Agreement;
3. mortgage in respect of each real property owned Muqet including without limitation the real property municipally known as 110 Herdwick Street, Brampton, Ontario, in each case, by Muqet in favour of the Lender dated as of the date of this Agreement;
4. mortgage in respect of the real property owned by 425 including without limitation the 425 Real Property dated as of the date of this Agreement; and
5. general security agreement by 425 in favour of the Lender dated as of the date of this Agreement.

**SCHEDULE B  
CONSENT TO RECEIVERSHIP ORDER**

Attached.

**ONTARIO  
SUPERIOR COURT OF JUSTICE  
(Commercial List)**

B E T W E E N:

CANADIAN WESTERN BANK

Applicant

- and -

INDEX HOLDING GROUP INC., INDEX GROUP OF COMPANIES INC., INDEX INTERNATIONAL INC., INDEX FOODS INC., 2640179 ONTARIO INC., 11030434 CANADA LTD., 2700774 ONTARIO INC., 2700767 ONTARIO INC., 2683960 ONTARIO LTD., 11030418 CANADA INC., 2723710 ONTARIO INC., 2718366 ONTARIO INC., 2737332 ONTARIO INC., 2737334 ONTARIO INC., 2723714 ONTARIO INC., 2723716 ONTARIO INC., 2737338 ONTARIO INC., 2790760 ONTARIO INC., 2775290 ONTARIO INC., 2775296 ONTARIO INC., 421 WHARNCLIFFE LTD. AND 425 WHARNCLIFFE ROAD INC.

Respondents

APPLICATION UNDER Section 243(1) of the *Bankruptcy and Insolvency Act*, R.S.C. 1985, c. B-3, and Section 101 of the *Courts of Justice Act*, R.S.O. 1990, c. C.43

CONSENT TO ORDER

By the respondents and counsel for the applicant, the parties, none of whom are under disability, irrevocably consent to the Order attached hereto being granted against the respondents Index Holding Group Inc., Index Group of Companies Inc., Index International Inc., Index Foods Inc., 2640179 Ontario Inc., 11030434 Canada Ltd., 2700774 Ontario Inc., 2700767 Ontario Inc., 2683960 Ontario Ltd., 11030418 Canada Inc., 2723710 Ontario Inc., 2718366 Ontario Inc., 2737332 Ontario Inc., 2737334 Ontario Inc., 2723714 Ontario Inc., 2723716 Ontario Inc., 2737338 Ontario Inc., 2790760 Ontario Inc., 2775290 Ontario Inc., 2775296 Ontario Inc., 421 Wharncliffe Ltd. and 425 Wharncliffe Road Inc.

Prior to the execution of this consent, the respondents have read and understand the terms of this consent and have had the opportunity to seek, and has either obtained or waived their right to obtain,



independent legal advice with respect to the matters addressed in this consent and the Order attached hereto. The respondents fully understand and accept the terms of this consent and the Order, and confirms that they are executing this consent freely, voluntarily and without duress, and agree that their failure to obtain independent legal advice shall not be used by any of the respondents as a defence to the enforcement of this consent.

DATED AT TORONTO, ONTARIO, this 15th  
day of February, 2023

CASSELS BROCK & BLACKWELL LLP

By:



Jeremy Bornstein

DATED AT  
BRAMPTON, ONTARIO, this 15 day of  
February, 2023

INDEX HOLDING GROUP INC.

By:



Name: Abdul Muqet

Title: Director

DATED AT  
BRAMPTON, ONTARIO, this 15 day of  
February, 2023

INDEX GROUP OF COMPANIES INC.

By:



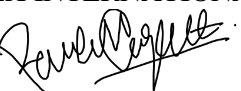
Name: Abdul Muqet

Title: Director

DATED AT  
BRAMPTON, ONTARIO, this 15 day of  
February, 2023

INDEX INTERNATIONAL INC.

By:



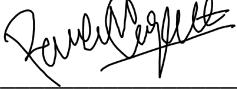
Name: Abdul Muqet

Title: Director

DATED AT

BRAMPTON, ONTARIO, this 15 day of  
February, 2023

INDEX FOODS INC.

By: 

Name: Abdul Muqet  
Title: Director

DATED AT

BRAMPTON, ONTARIO, this 15 day of  
February, 2023

2640179 ONTARIO INC.

By: 

Name: Abdul Muqet  
Title: Director

DATED AT

BRAMPTON, ONTARIO, this 15 day of  
February, 2023

11030434 CANADA LTD.

By: 

Name: Abdul Muqet  
Title: Director

DATED AT

BRAMPTON, ONTARIO, this 15 day of  
February, 2023

2700774 ONTARIO INC.

By: 

Name: Abdul Muqet  
Title: Director

DATED AT

BRAMPTON, ONTARIO, this 15 day of  
February, 2023

2700767 ONTARIO INC.

By: 

Name: Abdul Muqet  
Title: Director

DATED AT

BRAMPTON, ONTARIO, this 15 day of  
February, 2023

2683960 ONTARIO LTD.

By: 

\_\_\_\_\_  
Name: Abdul Muqet  
Title: Director

DATED AT

BRAMPTON, ONTARIO, this 15 day of  
February, 2023

11030418 CANADA INC.

By: 

\_\_\_\_\_  
Name: Abdul Muqet  
Title: Director

DATED AT

BRAMPTON, ONTARIO, this 15 day of  
February, 2023

2723710 ONTARIO INC.

By: 

\_\_\_\_\_  
Name: Abdul Muqet  
Title: Director

DATED AT

BRAMPTON, ONTARIO, this 15 day of  
February, 2023

2718366 ONTARIO INC.

By: 

\_\_\_\_\_  
Name: Abdul Muqet  
Title: Director

DATED AT

BRAMPTON, ONTARIO, this 15 day of  
February, 2023

2737332 ONTARIO INC.

By: 

\_\_\_\_\_  
Name: Abdul Muqet  
Title: Director

DATED AT

BRAMPTON, ONTARIO, this 15 day of  
February, 2023

2737334 ONTARIO INC.

By: 

Name: Abdul Muqet  
Title: Director

DATED AT

BRAMPTON, ONTARIO, this 15 day of  
February, 2023

2723714 ONTARIO INC.

By: 

Name: Abdul Muqet  
Title: Director

DATED AT

BRAMPTON, ONTARIO, this 15 day of  
February, 2023

2723716 ONTARIO INC.

By: 

Name: Abdul Muqet  
Title: Director

DATED AT

BRAMPTON, ONTARIO, this 15 day of  
February, 2023

2737338 ONTARIO INC.

By: 

Name: Abdul Muqet  
Title: Director

DATED AT

BRAMPTON, ONTARIO, this 15 day of  
February, 2023

2790760 ONTARIO INC.

By: 

Name: Abdul Muqet  
Title: Director

DATED AT

BRAMPTON, ONTARIO, this 15 day of  
February \_\_\_\_\_, 2023

2775290 ONTARIO INC.

By: 

\_\_\_\_\_  
Name: Abdul Muqet  
Title: Director

DATED AT

BRAMPTON, ONTARIO, this 15 day of  
February \_\_\_\_\_, 2023

2775296 ONTARIO INC.

By: 

\_\_\_\_\_  
Name: Abdul Muqet  
Title: Director

DATED AT

BRAMPTON, ONTARIO, this 15 day of  
February \_\_\_\_\_, 2023

421 WHARNCLIFFE LTD.

By: 

\_\_\_\_\_  
Name: Abdul Muqet  
Title: Director

DATED AT

BRAMPTON, ONTARIO, this 15 day of  
February \_\_\_\_\_, 2023

425 WHARNCLIFFE ROAD INC.

By: 

\_\_\_\_\_  
Name: Abdul Muqet  
Title: Director

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

THE HONOURABLE )  
 )  
JUSTICE ● )  
 )  
 ) DAY OF ●, 2023

**CANADIAN WESTERN BANK**

Applicant

- and -

**INDEX HOLDING GROUP INC., INDEX GROUP OF COMPANIES INC., INDEX INTERNATIONAL INC., INDEX FOODS INC., 2640179 ONTARIO INC., 11030434 CANADA LTD., 2700774 ONTARIO INC., 2700767 ONTARIO INC., 2683960 ONTARIO LTD., 11030418 CANADA INC., 2723710 ONTARIO INC., 2718366 ONTARIO INC., 2737332 ONTARIO INC., 2737334 ONTARIO INC., 2723714 ONTARIO INC., 2723716 ONTARIO INC., 2737338 ONTARIO INC., 2790760 ONTARIO INC., 2775290 ONTARIO INC., 2775296 ONTARIO INC., 421 WHARNCLIFFE LTD. AND 425 WHARNCLIFFE ROAD INC.**

Respondents

**IN THE MATTER OF AN APPLICATION UNDER SECTION 243(1) OF THE *BANKRUPTCY AND INSOLVENCY ACT*, R.S.C. 1985, c. B-3, AS AMENDED; AND SECTION 101 OF THE *COURTS OF JUSTICE ACT*, R.S.O. 1990, c. C.43, AS AMENDED**

**ORDER**  
**(Appointing Receiver)**

THIS APPLICATION made by the Applicant for an Order pursuant to section 243(1) of the *Bankruptcy and Insolvency Act*, R.S.C. 1985, c. B-3, as amended (the “BIA”) and section 101 of the *Courts of Justice Act*, R.S.O. 1990, c. C.43, as amended (the “CJA”) appointing MNP Ltd. (“MNP”) as receiver (in such capacities, the “Receiver”) without security, of: (a) all of the properties, assets and undertaking (collectively, the “Personal Property”) of Index Holding Group Inc., Index Group of Companies Inc., Index International Inc., Index Foods Inc., 2640179 Ontario Inc., 11030434 Canada Ltd., 2700774 Ontario Inc., 2700767 Ontario Inc., 2683960 Ontario Ltd., 11030418 Canada Inc., 2723710 Ontario Inc., 2718366 Ontario Inc., 2737332 Ontario Inc., 2737334 Ontario Inc., 2723714 Ontario Inc.,

2723716 Ontario Inc., 2737338 Ontario Inc., 2790760 Ontario Inc., 2775290 Ontario Inc., 2775296 Ontario Inc., 421 Wharncliffe Ltd. and 425 Wharncliffe Road Inc. (collectively, the “Debtors”), or any one or more of them, and in all proceeds arising therefrom; and (b)(i) the real property municipally known as 421 Wharncliffe Road South, London, Ontario, and as legally described as PT LT 1, PL29, PTS 1&2, 33R5153 & PT2, 33R5487 S/T 837774 IF ANY, S/T 583284 IF ANY; LONDON/WESTMINSTER (the “421 Real Property”) and (ii) the real property municipally known as 425 Wharncliffe Road South, London, Ontario, and as legally described as PT LTS 1 & 2, PL 29, PART 2, 33R2551, S/T 929439, IF ANY, S/T 837774, IF ANY, S/T 583284, IF ANY; LONDON/WESTMINSTER (the “425 Real Property”, and together with the 421 Real Property, the “Real Property” and together with the Personal Property, the “Property”), was heard this day by judicial teleconference via Zoom at Toronto, Ontario.

ON READING the affidavit of ● sworn ●, 2023 and the Exhibits thereto and on hearing the submissions of counsel for the Applicant and such other parties listed on the Counsel Slip, no one appearing although duly served as appears from the affidavits of service of ● sworn ●, 2023 and on reading the consent of ● to act as the Receiver,

### **SERVICE**

1. THIS COURT ORDERS that the time for service of the Notice of Application and the Application is hereby abridged and validated so that this application is properly returnable today and hereby dispenses with further service thereof.

### **APPOINTMENT**

2. THIS COURT ORDERS that pursuant to section 243(1) of the BIA and section 101 of the CJA, MNP is hereby appointed Receiver, without security, of the Property of the Debtors.

### **RECEIVER’S POWERS**

3. THIS COURT ORDERS that the Receiver is hereby empowered and authorized, but not obligated, to act at once in respect of the Property and, without in any way limiting the generality of the foregoing, the Receiver is hereby expressly empowered and authorized to do any of the following where the Receiver considers it necessary or desirable:

- (a) to take possession of and exercise control over the Property and any and all proceeds, receipts and disbursements arising out of or from the Property, including without limitation the Debtors' bank accounts related to the Property wherever located;
- (b) to receive, preserve, and protect the Property, or any part or parts thereof, including, but not limited to, the changing of locks and security codes, the relocating of Property to safeguard it, the engaging of independent security personnel, the taking of physical inventories and the placement of such insurance coverage as may be necessary or desirable;
- (c) to manage, operate, and carry on the business of the Debtors, or any one or more of them, including the powers to enter into any agreements, incur any obligations in the ordinary course of business, cease to carry on all or any part of the business, or cease to perform or disclaim any contracts of the Debtors, or any one or more of them, in respect of the Property;
- (d) to engage consultants, appraisers, agents, real estate brokers, experts, auditors, accountants, managers, counsel and such other persons from time to time and on whatever basis, including on a temporary basis, to assist with the exercise of the Receiver's powers and duties, including without limitation those conferred by this Order;
- (e) to purchase or lease such machinery, equipment, inventories, supplies, premises or other assets to continue the business of the Debtors, or any one or more of them, with respect to the Property or any part or parts thereof;
- (f) to receive and collect all monies and accounts now owed or hereafter owing to the Debtors, or any one or more of them, with respect to the Property and to exercise all remedies of the Debtors, or any one or more of them, in collecting such monies, including, without limitation, to enforce any security held by the Debtors, or any one or more of them;
- (g) to settle, extend or compromise any indebtedness owing to the Debtors, or any one or more of them, with respect to the Property;



- (h) to execute, assign, issue and endorse documents of whatever nature in respect of any of the Property, whether in the Receiver's name or in the name and on behalf of the Debtors, or any one or more of them, for any purpose pursuant to this Order;
- (i) to initiate, prosecute and continue the prosecution of any and all proceedings and to defend all proceedings now pending or hereafter instituted with respect to the Debtors, or any one or more of them, the Property or the Receiver, and to settle or compromise any such proceedings. The authority hereby conveyed shall extend to such appeals or applications for judicial review in respect of any order or judgment pronounced in any such proceeding;
- (j) to market any or all of the Property, including advertising and soliciting offers in respect of the Property or any part or parts thereof and negotiating such terms and conditions of sale as the Receiver in its discretion may deem appropriate;
- (k) to sell, convey, transfer, lease or assign the Property or any part or parts thereof out of the ordinary course of business,
  - (i) without the approval of this Court in respect of any transaction not exceeding \$100,000, provided that the aggregate consideration for all such transactions does not exceed \$500,000; and
  - (ii) with the approval of this Court in respect of any transaction in which the purchase price or the aggregate purchase price exceeds the applicable amount set out in the preceding clause;

and in each such case notice under subsection 63(4) of the Ontario *Personal Property Security Act*, or section 31 of the Ontario *Mortgages Act*, as the case may be, shall not be required.

- (l) to apply for any vesting order or other orders necessary to convey the Property or any part or parts thereof to a purchaser or purchasers thereof, free and clear of any liens or encumbrances affecting such Property;
- (m) to report to, meet with and discuss with such affected Persons (as defined below) as the Receiver deems appropriate on all matters relating to the Property and the

receivership, and to share information, subject to such terms as to confidentiality as the Receiver deems advisable;

- (n) to consult with the Applicant on all matters relating to the Property and the receivership, subject to such terms as to confidentiality as the Receiver deems advisable;
- (o) to register a copy of this Order and any other Orders in respect of the Property against title to any of the Property;
- (p) to apply for any permits, licences, approvals or permissions with respect to the Property as may be required by any governmental authority and any renewals thereof for and on behalf of and, if thought desirable by the Receiver, in the name of the Debtors, or any one or more of them;
- (q) to enter into agreements with any trustee in bankruptcy appointed in respect of the Debtors, or any one or more of them, including, without limiting the generality of the foregoing, the ability to enter into occupation agreements for any property owned or leased by the Debtors, or any one or more of them;
- (r) to exercise any shareholder, partnership, joint venture or other rights which the Debtors, or any one or more of them, may have; and
- (s) to take any steps reasonably incidental to the exercise of these powers or the performance of any statutory obligations.

and in each case where the Receiver takes any such actions or steps, it shall be exclusively authorized and empowered to do so, to the exclusion of all other Persons (as defined below), including the Debtors, or any one or more of them, and without interference from any other Person.

#### **DUTY TO PROVIDE ACCESS AND CO-OPERATION TO THE RECEIVER**

4. THIS COURT ORDERS that (i) the Debtors, (ii) all of their current and former directors, officers, employees, agents, accountants, legal counsel, shareholders, and all other persons acting on their instructions or behalf, and (iii) all other individuals, firms, corporations, governmental bodies or agencies, or other entities having notice of this Order (all of the foregoing, collectively, being “Persons” and each being a “Person”) shall forthwith advise the Receiver of the existence

of any Property in such Person's possession or control, shall grant immediate and continued access to the Property to the Receiver, and shall deliver all such Property to the Receiver upon the Receiver's request.

5. THIS COURT ORDERS that all Persons shall forthwith advise the Receiver of the existence of any books, documents, securities, contracts, orders, corporate and accounting records, and any other papers, records and information of any kind related to the business or affairs of the Debtors, or any one or more of them, and any computer programs, computer tapes, computer disks, or other data storage media containing any such information (the foregoing, collectively, the "Records") in that Person's possession or control, and shall provide to the Receiver or permit the Receiver to make, retain and take away copies thereof and grant to the Receiver unfettered access to and use of accounting, computer, software and physical facilities relating thereto, provided however that nothing in this paragraph 5 or in paragraph 6 of this Order shall require the delivery of Records, or the granting of access to Records, which may not be disclosed or provided to the Receiver due to the privilege attaching to solicitor-client communication or due to statutory provisions prohibiting such disclosure.

6. THIS COURT ORDERS that if any Records are stored or otherwise contained on a computer or other electronic system of information storage, whether by independent service provider or otherwise, all Persons in possession or control of such Records shall forthwith give unfettered access to the Receiver for the purpose of allowing the Receiver to recover and fully copy all of the information contained therein whether by way of printing the information onto paper or making copies of computer disks or such other manner of retrieving and copying the information as the Receiver in its discretion deems expedient, and shall not alter, erase or destroy any Records without the prior written consent of the Receiver. Further, for the purposes of this paragraph, all Persons shall provide the Receiver with all such assistance in gaining immediate access to the information in the Records as the Receiver may in its discretion require including providing the Receiver with instructions on the use of any computer or other system and providing the Receiver with any and all access codes, account names and account numbers that may be required to gain access to the information.

7. THIS COURT ORDERS that the Receiver shall provide each of the relevant landlords with notice of the Receiver's intention to remove any fixtures from any leased premises at least seven (7) days prior to the date of the intended removal. The relevant landlord shall be entitled to have a representative present in the leased premises to observe such removal and, if the landlord disputes the Receiver's entitlement to remove any such fixture under the provisions of the lease, such fixture shall remain on the premises and shall be dealt with as agreed between any applicable secured creditors, such landlord and the Receiver, or by further Order of this Court upon application by the Receiver on at least two (2) days notice to such landlord and any such secured creditors.

8. THIS COURT ORDERS that all Persons, including without limitation, the Debtors and all entities affiliated (as such term is defined in the *Business Corporations Act* (Ontario)) with Index Holding Group Inc. (collectively, the "Index Group"), and each of them, shall be required to cooperate, and share information, with the Receiver, in connection with all books and records, contracts, agreements, permits, licenses and insurance policies and other documents in respect of the Debtors, or any one or more of them, and the Property. In addition to the foregoing, general cooperation and information sharing requirements, the Index Group, or any of them, shall be required to do the following: (a) in respect of any and all such contracts, agreements, permits, licenses and insurance policies and other documents: (1) maintain them in good standing and provide immediate notice and copies to the Receiver of any communications received from regulators, providers, lessors or franchisors in respect thereof; (2) provide immediate notice to the Receiver of any material change and/or pending material change to the status quo in respect thereof; and (3) provide thirty (30) days' written notice to the Receiver of any renewal date, termination date, election date or similar date in respect thereof; and (b) assist, and cooperate with, the Receiver in obtaining any further permits and licenses that may be required in the Receiver's discretion, acting reasonably, in consultation with the Applicant.

#### NO PROCEEDINGS AGAINST THE RECEIVER

9. THIS COURT ORDERS that no proceeding or enforcement process in any court or tribunal (each, a "Proceeding"), shall be commenced or continued against the Receiver except with the written consent of the Receiver or with leave of this Court.

**NO PROCEEDINGS AGAINST THE DEBTORS OR THE PROPERTY**

10. THIS COURT ORDERS that no Proceeding against or in respect of the Debtors, or any one or more of them, or the Property shall be commenced or continued except with the written consent of the Receiver or with leave of this Court and any and all Proceedings currently under way against or in respect of the Debtors, or any one or more of them, or the Property are hereby stayed and suspended pending further Order of this Court.

**NO EXERCISE OF RIGHTS OR REMEDIES**

11. THIS COURT ORDERS that all rights and remedies against the Debtors, or any one or more of them, the Receiver, or affecting the Property, including, without limitation, licenses and permits, are hereby stayed and suspended except with the written consent of the Receiver or leave of this Court, provided however that this stay and suspension does not apply in respect of any “eligible financial contract” as defined in the BIA, and further provided that nothing in this paragraph shall (i) empower the Receiver or the Debtors, or any one or more of them, to carry on any business which the Debtors, or any one or more of them, is not lawfully entitled to carry on, (ii) exempt the Receiver or the Debtors, or any one or more of them, from compliance with statutory or regulatory provisions relating to health, safety or the environment, (iii) prevent the filing of any registration to preserve or perfect a security interest, or (iv) prevent the registration of a claim for lien.

**NO INTERFERENCE WITH THE RECEIVER**

12. THIS COURT ORDERS that no Person shall discontinue, fail to honour, alter, interfere with, repudiate, terminate or cease to perform any right, renewal right, contract, agreement, licence or permit in favour of or held by the Debtors, or any one or more of them, in respect of the Property without written consent of the Receiver or leave of this Court.

**CONTINUATION OF SERVICES**

13. THIS COURT ORDERS that all Persons, including, without limitation, the Index Group, having oral or written agreements with the Debtors, or any one or more of them, in connection with or relating to the Property or statutory or regulatory mandates for the supply of goods and/or services, including without limitation, all computer software, communication and other data services, centralized banking services, payroll services, insurance, transportation services, utility

or other services to the Debtors, or any one or more of them, in connection with or relating to the Property are hereby restrained until further Order of this Court from discontinuing, altering, interfering with or terminating the supply of such goods or services as may be required by the Receiver, and that the Receiver shall be entitled to the continued use of the Debtors', or any one or more of their, current telephone numbers, facsimile numbers, internet addresses and domain names, provided in each case that the normal prices or charges for all such goods or services received after the date of this Order are paid by the Receiver in accordance with normal payment practices of the Debtors, or any one or more of their, or such other practices as may be agreed upon by the supplier or service provider and the Receiver, or as may be ordered by this Court.

#### **RECEIVER TO HOLD FUNDS**

14. THIS COURT ORDERS that all funds, monies, cheques, instruments, and other forms of payments received or collected by the Receiver from and after the making of this Order from any source whatsoever, including without limitation the sale of all or any of the Property and the collection of any accounts receivable in whole or in part in connection with or relating to the Property, whether in existence on the date of this Order or hereafter coming into existence, shall be deposited into one or more new accounts to be opened by the Receiver (the "Post Receivership Accounts") and the monies standing to the credit of such Post Receivership Accounts from time to time, net of any disbursements provided for herein, shall be held by the Receiver to be paid in accordance with the terms of this Order or any further Order of this Court.

#### **EMPLOYEES**

15. THIS COURT ORDERS that all employees of the Debtors, or any one or more of them, shall remain the employees of such Debtor until such time as the Receiver, on behalf of the Debtors, or any one or more of them, may terminate the employment of such employees. The Receiver shall not be liable for any employee-related liabilities, including any successor employer liabilities as provided for in section 14.06(1.2) of the BIA, other than such amounts as the Receiver may specifically agree in writing to pay, or in respect of its obligations under sections 81.4(5) or 81.6(3) of the BIA or under the *Wage Earner Protection Program Act*.

**PIPEDA**

16. THIS COURT ORDERS that, pursuant to clause 7(3)(c) of the Canada *Personal Information Protection and Electronic Documents Act*, the Receiver shall disclose personal information of identifiable individuals to prospective purchasers or bidders for the Property and to their advisors, but only to the extent desirable or required to negotiate and attempt to complete one or more sales of the Property (each, a “Sale”). Each prospective purchaser or bidder to whom such personal information is disclosed shall maintain and protect the privacy of such information and limit the use of such information to its evaluation of the Sale, and if it does not complete a Sale, shall return all such information to the Receiver, or in the alternative destroy all such information. The purchaser of any Property shall be entitled to continue to use the personal information provided to it, and related to the Property purchased, in a manner which is in all material respects identical to the prior use of such information by the Debtors, or any one or more of them, and shall return all other personal information to the Receiver, or ensure that all other personal information is destroyed.

**LIMITATION ON ENVIRONMENTAL LIABILITIES**

17. THIS COURT ORDERS that nothing herein contained shall require the Receiver to occupy or to take control, care, charge, possession or management (separately and/or collectively, “Possession”) of any of the Property that might be environmentally contaminated, might be a pollutant or a contaminant, or might cause or contribute to a spill, discharge, release or deposit of a substance contrary to any federal, provincial or other law respecting the protection, conservation, enhancement, remediation or rehabilitation of the environment or relating to the disposal of waste or other contamination including, without limitation, the *Canadian Environmental Protection Act*, the *Ontario Environmental Protection Act*, the *Ontario Water Resources Act*, or the *Ontario Occupational Health and Safety Act* and regulations thereunder (the “Environmental Legislation”), provided however that nothing herein shall exempt the Receiver from any duty to report or make disclosure imposed by applicable Environmental Legislation. The Receiver shall not, as a result of this Order or anything done in pursuance of the Receiver’s duties and powers under this Order, be deemed to be in Possession of any of the Property within the meaning of any Environmental Legislation, unless it is actually in possession.

### **LIMITATION ON THE RECEIVER'S LIABILITY**

18. THIS COURT ORDERS that the Receiver shall incur no liability or obligation as a result of its appointment or the carrying out the provisions of this Order, save and except for any gross negligence or wilful misconduct on its part, or in respect of its obligations under sections 81.4(5) or 81.6(3) of the BIA or under the *Wage Earner Protection Program Act*. Nothing in this Order shall derogate from the protections afforded the Receiver by section 14.06 of the BIA or by any other applicable legislation.

### **RECEIVER'S ACCOUNTS**

19. THIS COURT ORDERS that the Receiver and counsel to the Receiver shall be paid their reasonable fees and disbursements, in each case at their standard rates and charges unless otherwise ordered by the Court on the passing of accounts, and that the Receiver and counsel to the Receiver shall be entitled to and are hereby granted a charge (the "Receiver's Charge") on the Property, as security for such fees and disbursements, both before and after the making of this Order in respect of these proceedings, and that the Receiver's Charge shall form a first charge on the Property in priority to all security interests, trusts, liens, charges and encumbrances, statutory or otherwise, in favour of any Person, but subject to sections 14.06(7), 81.4(4), and 81.6(2) of the BIA.

20. THIS COURT ORDERS that the Receiver and its legal counsel shall pass their accounts from time to time, and for this purpose the accounts of the Receiver and its legal counsel are hereby referred to a judge of the Commercial List of the Ontario Superior Court of Justice.

21. THIS COURT ORDERS that prior to the passing of its accounts, the Receiver shall be at liberty from time to time to apply reasonable amounts, out of the monies in its hands, against its fees and disbursements, including legal fees and disbursements, incurred at the standard rates and charges of the Receiver or its counsel, and such amounts shall constitute advances against its remuneration and disbursements when and as approved by this Court.

### **FUNDING OF THE RECEIVERSHIP**

22. THIS COURT ORDERS that the Receiver be at liberty and it is hereby empowered to borrow by way of a revolving credit or otherwise, such monies from time to time as it may



consider necessary or desirable, provided that the outstanding principal amount does not exceed \$250,000 (or such greater amount as this Court may by further Order authorize) at any time, at such rate or rates of interest as it deems advisable for such period or periods of time as it may arrange, for the purpose of funding the exercise of the powers and duties conferred upon the Receiver by this Order, including interim expenditures. The whole of the Property shall be and is hereby charged by way of a fixed and specific charge (the “Receiver’s Borrowings Charge”) as security for the payment of the monies borrowed, together with interest and charges thereon, in priority to all security interests, fees, trusts, liens, charges and encumbrances, statutory or otherwise, in favour of any Person, but subordinate in priority to the Receiver’s Charge and the charges as set out in sections 14.06(7), 81.4(4), and 81.6(2) of the BIA.

23. THIS COURT ORDERS that neither the Receiver’s Borrowings Charge nor any other security granted by the Receiver in connection with its borrowings under this Order shall be enforced without leave of this Court.

24. THIS COURT ORDERS that the Receiver is at liberty and authorized to issue certificates substantially in the form annexed as Schedule “A” hereto (the “Receiver’s Certificates”) for any amount borrowed by it pursuant to this Order.

25. THIS COURT ORDERS that the monies from time to time borrowed by the Receiver pursuant to this Order or any further order of this Court and any and all Receiver’s Certificates evidencing the same or any part thereof shall rank on a *pari passu* basis, unless otherwise agreed to by the holders of any prior issued Receiver’s Certificates.

#### **SERVICE AND NOTICE**

26. THIS COURT ORDERS that The Guide Concerning Commercial List E-Service (the “**Protocol**”) is approved and adopted by reference herein and, in this proceeding, the service of documents made in accordance with the Protocol (which can be found on the Commercial List website at <https://www.ontariocourts.ca/scj/practice/practice-directions/toronto/eservice-commercial/>) shall be valid and effective service. Subject to Rule 17.05 this Order shall constitute an order for substituted service pursuant to Rule 16.04 of the Rules of Civil Procedure. Subject to Rule 3.01(d) of the Rules of Civil Procedure and paragraph 21 of the Protocol, service of documents in accordance with the Protocol will be effective on transmission. This Court further orders that

a Case Website shall be established in accordance with the Protocol with the following URL <@>.

27. THIS COURT ORDERS that if the service or distribution of documents in accordance with the Protocol is not practicable, the Receiver is at liberty to serve or distribute this Order, any other materials and orders in these proceedings, any notices or other correspondence, by forwarding true copies thereof by prepaid ordinary mail, courier, personal delivery or facsimile transmission to the Debtors', or any one or more of their, creditors or other interested parties at their respective addresses as last shown on the records of the Debtors, or any one or more of them, and that any such service or distribution by courier, personal delivery or facsimile transmission shall be deemed to be received on the next business day following the date of forwarding thereof, or if sent by ordinary mail, on the third business day after mailing.

**GENERAL**

28. THIS COURT ORDERS that the Receiver may from time to time apply to this Court for advice and directions in the discharge of its powers and duties hereunder.

29. THIS COURT ORDERS that nothing in this Order shall prevent the Receiver from acting as a trustee in bankruptcy of the Debtors, or any one or more of them. For greater certainty, the Property shall remain subject to the terms of this Order including without limitation paragraph 3 hereof and, subject to further Court Order, shall not vest in MNP as trustee in bankruptcy of the Debtors, or any one or more of them.

30. THIS COURT HEREBY REQUESTS the aid and recognition of any court, tribunal, regulatory or administrative body having jurisdiction in Canada or in the United States to give effect to this Order and to assist the Receiver and its agents in carrying out the terms of this Order. All courts, tribunals, regulatory and administrative bodies are hereby respectfully requested to make such orders and to provide such assistance to the Receiver, as an officer of this Court, as may be necessary or desirable to give effect to this Order or to assist the Receiver and its agents in carrying out the terms of this Order.

31. THIS COURT ORDERS that the Receiver be at liberty and is hereby authorized and empowered to apply to any court, tribunal, regulatory or administrative body, wherever located,

for the recognition of this Order and for assistance in carrying out the terms of this Order, and that the Receiver is authorized and empowered to act as a representative in respect of the within proceedings for the purpose of having these proceedings recognized in a jurisdiction outside Canada.

32. THIS COURT ORDERS that the Applicant shall have its costs of this Application, up to and including entry and service of this Order, provided for by the terms of the Applicant's security or, if not so provided by the Applicant's security, then on a substantial indemnity basis to be paid by the Receiver from the Debtors, or any one or more of their estates, with such priority and at such time as this Court may determine.

33. THIS COURT ORDERS that any interested party may apply to this Court to vary or amend this Order on not less than seven (7) days' notice to the Receiver and to any other party likely to be affected by the order sought or upon such other notice, if any, as this Court may order.

34. THIS COURT ORDERS that this Order is effective from today's date and it is not required to be entered.

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**SCHEDULE "A"**

**RECEIVER CERTIFICATE**

CERTIFICATE NO. \_\_\_\_\_

AMOUNT \$ \_\_\_\_\_

1. THIS IS TO CERTIFY that MNP Ltd., the receiver (the "Receiver") of (a) all of the properties, assets and undertaking (collectively, the "Personal Property") of Index Holding Group Inc., Index Group of Companies Inc., Index International Inc., Index Foods Inc., 2640179 Ontario Inc., 11030434 Canada Ltd., 2700774 Ontario Inc., 2700767 Ontario Inc., 2683960 Ontario Ltd., 11030418 Canada Inc., 2723710 Ontario Inc., 2718366 Ontario Inc., 2737332 Ontario Inc., 2737334 Ontario Inc., 2723714 Ontario Inc., 2723716 Ontario Inc., 2737338 Ontario Inc., 2790760 Ontario Inc., 2775290 Ontario Inc., 2775296 Ontario Inc., 421 Wharnccliffe Ltd. and 425 Wharnccliffe Road Inc. (collectively, the "Debtors"), or any one or more of them, and in all proceeds arising therefrom; and (b)(i) the real property municipally known as 421 Wharnccliffe Road South, London, Ontario, and as legally described as PT LT 1, PL29, PTS 1&2, 33R5153 & PT2, 33R5487 S/T 837774 IF ANY, S/T 583284 IF ANY; LONDON/WESTMINSTER (the "421 Real Property") and (ii) the real property municipally known as 425 Wharnccliffe Road South, London, Ontario, and as legally described as PT LTS 1 & 2, PL 29, PART 2, 33R2551, S/T 929439, IF ANY, S/T 837774, IF ANY, S/T 583284, IF ANY; LONDON/WESTMINSTER (the "425 Real Property", and together with the 421 Real Property, the "Real Property" and together with the Personal Property, the "Property") appointed by Order of the Ontario Superior Court of Justice (Commercial List) (the "Court") dated the \_\_\_\_ day of \_\_\_\_\_, 20\_\_ (the "Order") made in an application having Court file number CV-●, has received as such Receiver from the holder of this certificate (the "Lender") the principal sum of \$ \_\_\_\_\_, being part of the total principal sum of \$ \_\_\_\_\_ which the Receiver is authorized to borrow under and pursuant to the Order.

2. The principal sum evidenced by this certificate is payable on demand by the Lender with interest thereon calculated and compounded [daily][monthly not in advance on the \_\_\_\_\_ day of each month] after the date hereof at a notional rate per annum equal to the rate of \_\_\_\_\_ per cent above the prime commercial lending rate of Bank of \_\_\_\_\_ from time to time.

3. Such principal sum with interest thereon is, by the terms of the Order, together with the principal sums and interest thereon of all other certificates issued by the Receiver pursuant to the Order or to any further order of the Court, a charge upon the whole of the Property, in priority to the security interests of any other person, but subject to the priority of the charges set out in the Order and in the *Bankruptcy and Insolvency Act*, and the right of the Receiver to indemnify itself out of such Property in respect of its remuneration and expenses.

4. All sums payable in respect of principal and interest under this certificate are payable at the main office of the Lender at Toronto, Ontario.

5. Until all liability in respect of this certificate has been terminated, no certificates creating charges ranking or purporting to rank in priority to this certificate shall be issued by the Receiver to any person other than the holder of this certificate without the prior written consent of the holder of this certificate.

6. The charge securing this certificate shall operate so as to permit the Receiver to deal with the Property as authorized by the Order and as authorized by any further or other order of the Court.

7. The Receiver does not undertake, and it is not under any personal liability, to pay any sum in respect of which it may issue certificates under the terms of the Order.

DATED the \_\_\_\_ day of \_\_\_\_\_, 20\_\_.

MNP Ltd., solely in its capacity  
as Receiver of the Property, and not in its personal  
capacity

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

Name:

Title:

CANADIAN WESTERN BANK

and INDEX HOLDING GROUP INC., et al.

Applicant

Respondents

Court File No. CV-●

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**ONTARIO  
SUPERIOR COURT OF JUSTICE  
(COMMERCIAL LIST)  
PROCEEDING COMMENCED AT  
TORONTO**

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**ORDER  
(APPOINTING RECEIVER)**

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**Cassels Brock & Blackwell LLP**

2100 Scotia Plaza  
40 King Street West  
Toronto, ON M5H 3C2

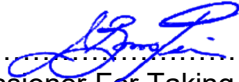
Jeremy Bornstein LSO #: 65425C  
Tel: 416.869.5386  
jbornstein@cassels.com

Kori Williams LSO #: 55716N  
Tel: 416.860.2990  
kwilliams@cassels.com

Stephanie Fernandes LSO #: 85819M  
Tel: 416.860.6481  
sfernandes@cassels.com

Lawyers for the Applicant

This is **Exhibit “FF”** referred to in the affidavit of Tyson Hartwell, sworn before me by videoconference on April 27, 2023 in accordance with O.Reg. 431/20: Administering Oath or Declaration Remotely. The deponent was located in the City of Calgary in the Province of Alberta and I was located in the City of Toronto in the Province of Ontario.



.....  
A Commissioner For Taking Affidavits

Jeremy Bornstein  
LSO#: 65425C



Canadian Western Bank (RTP)  
c/o Third Party Demands  
Suite 3000  
10303 Jasper Ave  
Edmonton ON T5J 3X6

## Notice details

Date	<b>MAR 28 2023</b>
Contact name	R. Dabbour (1213)
Telephone number	(647) 395-3149
Toll free number	
Account number	786904730RT0001

## Requirement to pay

The following taxpayer(s) owe(s) **\$270,234.38** for the account 786904730RT0001.

2700774 ONTARIO INC.  
110 HERDWICK STREET,  
BRAMPTON ON L6S 0A5  
BN: 786904730RT0001

This requirement to pay from the Minister of National Revenue requires you to send us any money you would otherwise pay to the taxpayer; but do not send more than \$270,234.38, at the rate of 100% of all payments. For requirements to pay, money includes amounts from any assets of the taxpayer that can be converted into cash.

You are required to pay under subsections 317(1), (2), and/or (6) of the Excise Tax Act, subsections 289(1), (2), and/or (4) of the Excise Act, 2001, subsections 75(1), (2), and/or (5) of the Air Travellers Security Charge Act, or subsections 89(1), (2), and/or (4) of the Softwood Lumber Products Export Charge Act, 2006, or subsections 153(1), (2) and/or (4) of the Greenhouse Gas Pollution Pricing Act.

## Money you owe or are paying to the taxpayer

You may owe money to the taxpayer now or you may have to pay the taxpayer later. Either way, you must send this money instead of paying the taxpayer.

1. If you owe money to the taxpayer now, you must send us this amount right away.
2. If you owe money to the taxpayer within the next year, you must send this amount to us as soon as this money becomes due.
3. If you owe money to the taxpayer within or after one year, such as interest, rent, salary or wages, dividends, annuities, or any other periodic payments, you must send this money to us as soon as it becomes due.
4. Within the next 90 days, if you are:
  - a bank, a credit union, a trust company, or another similar person, and you loan or advance money to the taxpayer, make a payment for the taxpayer, or pay a negotiable instrument issued by the taxpayer, and you hold security for the amounts you loan or advance, you must send this money to us.
  - a person, other than an institution, and you lend or advance money to or pay an amount for the taxpayer, and the taxpayer is, was, or will become your employee, or you engaged or will engage the taxpayer to provide services or property within this period of time, you must send this money to us.
  - a corporation and will lend or advance money to or make a payment for the taxpayer and you are not dealing at arm's length with the taxpayer, you must send this money to us.

**Please make your payment payable to the Receiver General.**



Canadian Western Bank (RTP)  
c/o Third Party Demands  
Suite 3000  
10303 Jasper Ave  
Edmonton ON T5J 3X6

## Notice details

Date **MAR 28 2023**

### Your legal obligation

You are required to send this money to us even if you were planning to or have been directed to send money that would otherwise be payable to the taxpayer, to a creditor of the taxpayer, the taxpayer's representative, or to any other person.

### Your liability

If you do not pay the money that is required according to the terms of this requirement, you will become liable for the payment of this money.

### Keep records

Keep a copy of this requirement to pay for at least **one year**. Also keep a detailed record of all payments you send us for at least six years from the date of this requirement.

For more information regarding requirements to pay, go to [canada.ca/cra-requirement-to-pay](https://canada.ca/cra-requirement-to-pay).



Team Leader, Revenue Collections

**(THIRD PARTY)**



### Response - requirement to pay

**If no money is due or payable to the taxpayer**

Please provide us with the details by returning this form to the address shown below or by calling the contact on the requirement to pay.

<b>Account number</b> 786904730RT0001	<b>Return address</b> Toronto TSO 1 Front Street West - Ste 100 2nd Fl Toronto ON M5J 2X6 ATTN: R. Dabbour (1213)
<b>Taxpayer name</b> 2700774 ONTARIO INC.	
<b>Third party</b> Canadian Western Bank (RTP)	<b>Reference number</b> 006903226

Reason no money is due or payable:

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<b>Name (print)</b>	<b>Telephone number</b>	
	<b>Date</b>	<b>Position</b>

**Note**

Returning this form does not relieve you of your obligation to comply with the requirement to pay.

Vous NE POUVEZ PAS effectuer votre versement à un établissement financier. Veuillez retourner votre versement à un bureau de l'Agence du revenu du Canada.

The payment of this remittance CANNOT be made at a financial institution and must be forwarded to a Canada Revenue Agency office.

203000020000900786904730RT0001000000000270234382030006

Amount paid - Montant du paiement

Tax Debtor - Débiteur fiscal  
2700774 ONTARIO INC.

Contact  
R. Dabbour (1213)  
Tel. - Tél. (647) 395-3149  
Ext. - Poste

c/o Third Party Demands  
Suite 3000  
10303 Jasper Ave  
Edmonton  
ON T5J 3X6

Reference number - Numéro de référence

Canadian Western Bank (RTP)

Account number - Numéro de compte  
786904730RT0001

Third Party Remittance Voucher  
Pièce de versement pour le tiers  
Remitting Third Party - Tiers payeur

9 20 9891

Canada Revenue Agency  
Agence du revenu du Canada

Canada Revenue Agency  
Agence du revenu du Canada

RC103 (17)

Canadian Western Bank (RTP)

2700774 ONTARIO INC.

c/o Third Party Demands  
Suite 3000  
10303 Jasper Ave  
Edmonton  
ON T5J 3X6

110 HERDWICK STREET,  
BRAMPTON

ON L6S 0A5

National Sub-ledger/Ontario Regional  
Collection Centre  
Contact R. Dabbour (1213) Tel. - Tél. (647) 395-3149 Ext. - Poste

Account number - Numéro de compte 786904730RT0001	Date	Amount paid - Montant du paiement
Reference number - Numéro de référence	Date	Amount paid - Montant du paiement

Canada Revenue Agency  
Agence du revenu du Canada

Third Party Remittance Voucher  
Pièce de versement pour le tiers  
Remitting Third Party - Tiers payeur

9891 20 9 RC103 (17)X

Account number - Numéro de compte  
786904730RT0001

Reference number - Numéro de référence

Contact R. Dabbour (1213) Tel. - Tél. (647) 395-3149 Ext. - Poste

Canadian Western Bank (RTP)

c/o Third Party Demands  
Suite 3000  
10303 Jasper Ave  
Edmonton  
ON T5J 3X6

Tax Debtor - Débiteur fiscal  
2700774 ONTARIO INC.

Amount paid - Montant du paiement

203000020000900786904730RT0001000000000270234382030006

The payment of this remittance CANNOT be made at a financial institution and must be forwarded to a Canada Revenue Agency office.

Vous NE POUVEZ PAS effectuer votre versement à un établissement financier. Veuillez retourner votre versement à un bureau de l'Agence du revenu du Canada.

Canada Revenue  
Agency  
PO BOX 3800 STN A  
SUDBURY ON P3A 0C3

Agence du revenu  
du Canada  
CP 3800 SUCC A  
SUDBURY ON P3A 0C3

We will charge a fee for any dishonoured payment.  
**DO NOT** staple, paper clip, tape or fold voucher or your  
cheque.  
**DO NOT** mail cash.

Vous devrez payer des frais si votre paiement est refusé.  
**NE PAS** agraffer, utiliser de trombone ou de ruban adhésif,  
plier le formulaire ou le chèque.  
**NE PAS** envoyer de l'argent comptant.

To make your payment directly to the CRA, return the  
bottom portion with your cheque or money order made  
payable to the Receiver General to the address shown  
below. To help us credit your payment, write the tax debtor's  
account number on the back of your cheque or money  
order.

Pour effectuer votre paiement directement à l'ARC,  
retournez la partie inférieure avec votre chèque ou  
mandat payable au Receveur général à l'adresse indiquée  
ci-dessous. Pour nous aider à créditer votre paiement,  
inscrivez le numéro de compte du débiteur fiscal à l'endos  
de votre chèque ou mandat.

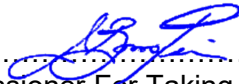
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**DO NOT** staple, paper clip, tape or fold voucher or your  
cheque.  
**DO NOT** mail cash.

Vous devrez payer des frais si votre paiement est refusé.  
**NE PAS** agraffer, utiliser de trombone ou de ruban adhésif,  
plier le formulaire ou le chèque.  
**NE PAS** envoyer de l'argent comptant.

Canada Revenue  
Agency  
PO BOX 3800 STN A  
SUDBURY ON P3A 0C3

Agence du revenu  
du Canada  
CP 3800 SUCC A  
SUDBURY ON P3A 0C3

This is **Exhibit "GG"** referred to in the affidavit of Tyson Hartwell, sworn before me by videoconference on April 27, 2023 in accordance with O.Reg. 431/20: Administering Oath or Declaration Remotely. The deponent was located in the City of Calgary in the Province of Alberta and I was located in the City of Toronto in the Province of Ontario.



.....  
A Commissioner For Taking Affidavits

Jeremy Bornstein  
LSO#: 65425C



Canadian Western Bank (RTP)  
Third Party Demands  
Suite 3000  
10303 Jasper Ave  
Edmonton AB T5J 3X6

## Notice details

Date **MAR 28 2023**

Contact name R. Dabbour (1213)

Telephone number (647) 395-3149

Toll free number

Account number 700769276RT0001

## Requirement to pay

The following taxpayer(s) owe(s) **\$49,060.62** for the account 700769276RT0001.

421 WHARNCLIFFE LTD.  
C/O ABDUL MUQEET  
110 HERDWICK ST  
BRAMPTON ON L6S 0A5  
BN: 700769276RT0001

This requirement to pay from the Minister of National Revenue requires you to send us any money you would otherwise pay to the taxpayer; but do not send more than \$49,060.62, at the rate of 100% of all payments. For requirements to pay, money includes amounts from any assets of the taxpayer that can be converted into cash.

You are required to pay under subsections 317(1), (2), and/or (6) of the Excise Tax Act, subsections 289(1), (2), and/or (4) of the Excise Act, 2001, subsections 75(1), (2), and/or (5) of the Air Travellers Security Charge Act, or subsections 89(1), (2), and/or (4) of the Softwood Lumber Products Export Charge Act, 2006, or subsections 153(1), (2) and/or (4) of the Greenhouse Gas Pollution Pricing Act.

## Money you owe or are paying to the taxpayer

You may owe money to the taxpayer now or you may have to pay the taxpayer later. Either way, you must send this money instead of paying the taxpayer.

1. If you owe money to the taxpayer now, you must send us this amount right away.
2. If you owe money to the taxpayer within the next year, you must send this amount to us as soon as this money becomes due.
3. If you owe money to the taxpayer within or after one year, such as interest, rent, salary or wages, dividends, annuities, or any other periodic payments, you must send this money to us as soon as it becomes due.
4. Within the next 90 days, if you are:
  - a bank, a credit union, a trust company, or another similar person, and you loan or advance money to the taxpayer, make a payment for the taxpayer, or pay a negotiable instrument issued by the taxpayer, and you hold security for the amounts you loan or advance, you must send this money to us.
  - a person, other than an institution, and you lend or advance money to or pay an amount for the taxpayer, and the taxpayer is, was, or will become your employee, or you engaged or will engage the taxpayer to provide services or property within this period of time, you must send this money to us.
  - a corporation and will lend or advance money to or make a payment for the taxpayer and you are not dealing at arm's length with the taxpayer, you must send this money to us.

**Please make your payment payable to the Receiver General.**

Canadian Western Bank (RTP)  
Third Party Demands  
Suite 3000  
10303 Jasper Ave  
Edmonton AB T5J 3X6

## Notice details

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Date **MAR 28 2023**

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### Your legal obligation

You are required to send this money to us even if you were planning to or have been directed to send money that would otherwise be payable to the taxpayer, to a creditor of the taxpayer, the taxpayer's representative, or to any other person.

### Your liability

If you do not pay the money that is required according to the terms of this requirement, you will become liable for the payment of this money.

### Keep records

Keep a copy of this requirement to pay for at least **one year**. Also keep a detailed record of all payments you send us for at least six years from the date of this requirement.

For more information regarding requirements to pay, go to [canada.ca/cra-requirement-to-pay](https://canada.ca/cra-requirement-to-pay).



Team Leader, Revenue Collections

(THIRD PARTY)



### Response - requirement to pay

**If no money is due or payable to the taxpayer**

Please provide us with the details by returning this form to the address shown below or by calling the contact on the requirement to pay.

<b>Account number</b> 700769276RT0001	<b>Return address</b> Toronto TSO 1 Front Street West - Ste 100 2nd Fl Toronto ON M5J 2X6 ATTN: R. Dabbour (1213)
<b>Taxpayer name</b> 421 WHARNCLIFFE LTD.	
<b>Third party</b> Canadian Western Bank (RTP)	<b>Reference number</b> 006905645

Reason no money is due or payable:

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<b>Name (print)</b>	<b>Telephone number</b>	
	<b>Date</b>	<b>Position</b>

**Note**

Returning this form does not relieve you of your obligation to comply with the requirement to pay.

(Ce formulaire est disponible en français.)





Canada Revenue  
Agency  
PO BOX 3800 STN A  
SUDBURY ON P3A 0C3

Agence du revenu  
du Canada  
CP 3800 SUCC A  
SUDBURY ON P3A 0C3

We will charge a fee for any dishonoured payment.  
**DO NOT** staple, paper clip, tape or fold voucher or your  
cheque.  
**DO NOT** mail cash.

Vous devrez payer des frais si votre paiement est refusé.  
**NE PAS** agraffer, utiliser de trombone ou de ruban adhésif,  
plier le formulaire ou le chèque.  
**NE PAS** envoyer de l'argent comptant.

To make your payment directly to the CRA, return the  
bottom portion with your cheque or money order made  
payable to the Receiver General to the address shown  
below. To help us credit your payment, write the tax debtor's  
account number on the back of your cheque or money  
order.

Pour effectuer votre paiement directement à l'ARC,  
retournez la partie inférieure avec votre chèque ou  
mandat payable au Receveur général à l'adresse indiquée  
ci-dessous. Pour nous aider à créditer votre paiement,  
inscrivez le numéro de compte du débiteur fiscal à l'endos  
de votre chèque ou mandat.

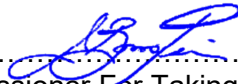
We will charge a fee for any dishonoured payment.  
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**NE PAS** agraffer, utiliser de trombone ou de ruban adhésif,  
plier le formulaire ou le chèque.  
**NE PAS** envoyer de l'argent comptant.

Canada Revenue  
Agency  
PO BOX 3800 STN A  
SUDBURY ON P3A 0C3

Agence du revenu  
du Canada  
CP 3800 SUCC A  
SUDBURY ON P3A 0C3

This is **Exhibit “HH”** referred to in the affidavit of Tyson Hartwell, sworn before me by videoconference on April 27, 2023 in accordance with O.Reg. 431/20: Administering Oath or Declaration Remotely. The deponent was located in the City of Calgary in the Province of Alberta and I was located in the City of Toronto in the Province of Ontario.



.....  
A Commissioner For Taking Affidavits

Jeremy Bornstein  
LSO#: 65425C



## Notice details

Canadian Western Bank (RTP)  
Third Party Demands  
Suite 3000  
10303 Jasper Ave  
Edmonton AB T5J 3X6

Date **APR 03 2023**

Contact name R. Dabbour (1213)

Telephone number (647) 395-3149

Toll free number

Account number 731987285RT0001

## Requirement to pay

The following taxpayer(s) owe(s) **\$37,086.55** for the account 731987285RT0001.

11030418 Canada Inc.  
C/O ABDUL MUQEET  
110 HERDWICK ST  
BRAMPTON ON L6S 0A5  
BN: 731987285RT0001

This requirement to pay from the Minister of National Revenue requires you to send us any money you would otherwise pay to the taxpayer; but do not send more than \$37,086.55, at the rate of 100% of all payments. For requirements to pay, money includes amounts from any assets of the taxpayer that can be converted into cash.

You are required to pay under subsections 317(1), (2), and/or (6) of the Excise Tax Act, subsections 289(1), (2), and/or (4) of the Excise Act, 2001, subsections 75(1), (2), and/or (5) of the Air Travellers Security Charge Act, or subsections 89(1), (2), and/or (4) of the Softwood Lumber Products Export Charge Act, 2006, or subsections 153(1), (2) and/or (4) of the Greenhouse Gas Pollution Pricing Act.

### Money you owe or are paying to the taxpayer

You may owe money to the taxpayer now or you may have to pay the taxpayer later. Either way, you must send this money instead of paying the taxpayer.

1. If you owe money to the taxpayer now, you must send us this amount right away.
2. If you owe money to the taxpayer within the next year, you must send this amount to us as soon as this money becomes due.
3. If you owe money to the taxpayer within or after one year, such as interest, rent, salary or wages, dividends, annuities, or any other periodic payments, you must send this money to us as soon as it becomes due.
4. Within the next 90 days, if you are:
  - a bank, a credit union, a trust company, or another similar person, and you loan or advance money to the taxpayer, make a payment for the taxpayer, or pay a negotiable instrument issued by the taxpayer, and you hold security for the amounts you loan or advance, you must send this money to us.
  - a person, other than an institution, and you lend or advance money to or pay an amount for the taxpayer, and the taxpayer is, was, or will become your employee, or you engaged or will engage the taxpayer to provide services or property within this period of time, you must send this money to us.
  - a corporation and will lend or advance money to or make a payment for the taxpayer and you are not dealing at arm's length with the taxpayer, you must send this money to us.

**Please make your payment payable to the Receiver General.**

By Adina at 12:37 pm, Apr 18, 2023

Canadian Western Bank (RTP)  
Third Party Demands  
Suite 3000  
10303 Jasper Ave  
Edmonton AB T5J 3X6

## Notice details

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Date APR 03 2023

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### Your legal obligation

You are required to send this money to us even if you were planning to or have been directed to send money that would otherwise be payable to the taxpayer, to a creditor of the taxpayer, the taxpayer's representative, or to any other person.

### Your liability

If you do not pay the money that is required according to the terms of this requirement, you will become liable for the payment of this money.

### Keep records

Keep a copy of this requirement to pay for at least **one year**. Also keep a detailed record of all payments you send us for at least six years from the date of this requirement.

For more information regarding requirements to pay, go to [canada.ca/cra-requirement-to-pay](https://canada.ca/cra-requirement-to-pay).



Team Leader, Revenue Collections

(THIRD PARTY)



### Response - requirement to pay

**If no money is due or payable to the taxpayer**

Please provide us with the details by returning this form to the address shown below or by calling the contact on the requirement to pay.

<b>Account number</b> 731987285RT0001	<b>Return address</b> Toronto TSO 1 Front Street West - Ste 100 2nd Fl Toronto ON M5J 2X6 ATTN: R. Dabbour (1213)
<b>Taxpayer name</b> 11030418 Canada Inc.	
<b>Third party</b> Canadian Western Bank (RTP)	<b>Reference number</b> 006910891

Reason no money is due or payable:

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<b>Name (print)</b>	<b>Telephone number</b>	
	<b>Date</b>	<b>Position</b>

**Note**

Returning this form does not relieve you of your obligation to comply with the requirement to pay.

(Ce formulaire est disponible en français.)

Vous NE POUVEZ PAS effectuer votre versement à un établissement financier. Veuillez retourner votre versement à un bureau de l'Agence du revenu du Canada.

The payment of this remittance CANNOT be made at a financial institution and must be forwarded to a Canada Revenue Agency office.

203000020000900731987285RT0001000000000037086552030009

Amount paid - Montant du paiement

Tax Debtor - Débiteur fiscal  
11030418 Canada Inc.

Contact  
R. Dabbour (1213)  
Tel. - Tél. (647) 395-3149  
Ext. - Poste

Third Party Demands  
Suite 3000  
10303 Jasper Ave  
Edmonton  
AB T5J 3X6

Reference number - Numéro de référence

Canadian Western Bank (RTP)

731987285RT0001

Third Party Remittance Voucher  
Pièce de versement pour le tiers  
Remitting Third Party - Tiers payeur

Account number - Numéro de compte  
9891 20 9

Canada Revenue Agency  
Agence du revenu du Canada



Canada Revenue Agency  
Agence du revenu du Canada



RC103 (17)X

Canadian Western Bank (RTP)

11030418 Canada Inc.

Third Party Demands  
Suite 3000  
10303 Jasper Ave  
Edmonton  
AB T5J 3X6

C/O ABDUL MUQEET  
110 HERDWICK ST

BRAMPTON

ON L6S 0A5

National Sub-ledger/Ontario Regional  
Collection Centre  
Contact R. Dabbour (1213) Tel. - Tél. (647) 395-3149 Ext. - Poste

Account number - Numéro de compte 731987285RT0001 Date Amount paid - Montant du paiement

Reference number - Numéro de référence Date Amount paid - Montant du paiement



Canada Revenue Agency  
Agence du revenu du Canada

Third Party Remittance Voucher  
Pièce de versement pour le tiers  
Remitting Third Party - Tiers payeur

9891 20 9 RC103 (17)X

Account number - Numéro de compte 731987285RT0001

Reference number - Numéro de référence

Contact R. Dabbour (1213) Tel. - Tél. (647) 395-3149 Ext. - Poste

Canadian Western Bank (RTP)

Third Party Demands  
Suite 3000  
10303 Jasper Ave  
Edmonton  
AB T5J 3X6

Amount paid - Montant du paiement

Tax Debtor - Débiteur fiscal  
11030418 Canada Inc.

203000020000900731987285RT0001000000000037086552030009

The payment of this remittance CANNOT be made at a financial institution and must be forwarded to a Canada Revenue Agency office.

Vous NE POUVEZ PAS effectuer votre versement à un établissement financier. Veuillez retourner votre versement à un bureau de l'Agence du revenu du Canada.

Canada Revenue  
Agency  
PO BOX 3800 STN A  
SUDBURY ON P3A 0C3

Agence du revenu  
du Canada  
CP 3800 SUCC A  
SUDBURY ON P3A 0C3

We will charge a fee for any dishonoured payment.  
**DO NOT** staple, paper clip, tape or fold voucher or your  
cheque.  
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Vous devrez payer des frais si votre paiement est refusé.  
**NE PAS** agraffer, utiliser de trombone ou de ruban adhésif,  
plier le formulaire ou le chèque.  
**NE PAS** envoyer de l'argent comptant.

To make your payment directly to the CRA, return the  
bottom portion with your cheque or money order made  
payable to the Receiver General to the address shown  
below. To help us credit your payment, write the tax debtor's  
account number on the back of your cheque or money  
order.

Pour effectuer votre paiement directement à l'ARC,  
retournez la partie inférieure avec votre chèque ou  
mandat payable au Receveur général à l'adresse indiquée  
ci-dessous. Pour nous aider à créditer votre paiement,  
inscrivez le numéro de compte du débiteur fiscal à l'endos  
de votre chèque ou mandat.

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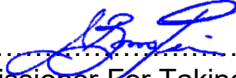
Vous devrez payer des frais si votre paiement est refusé.  
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Canada Revenue  
Agency  
PO BOX 3800 STN A  
SUDBURY ON P3A 0C3

Agence du revenu  
du Canada  
CP 3800 SUCC A  
SUDBURY ON P3A 0C3



This is **Exhibit "II"** referred to in the affidavit of Tyson Hartwell, sworn before me by videoconference on April 27, 2023 in accordance with O.Reg. 431/20: Administering Oath or Declaration Remotely. The deponent was located in the City of Calgary in the Province of Alberta and I was located in the City of Toronto in the Province of Ontario.



.....  
A Commissioner For Taking Affidavits

Jeremy Bornstein  
LSO#: 65425C

## NOTICE TO TERMINATE FOR FAILURE OF TENANT TO PAY RENT ARREARS

To: 11030418 CANADA INC., ET AL

TAKE NOTICE that the Landlord, **VILLBROOK INC.**, hereby terminates your tenancy of the Leased Premises ("Premises") located at **72 BALDWIN STREET, UNIT 105, WHITBY, ONTARIO** for Rent arrears and Additional Rent in the amount of **SIXTY-FOUR THOUSAND, TWENTY-EIGHT DOLLARS AND TWENTY-FIVE CENTS (\$64,028.25)** plus all costs, including Bailiff Fees, locksmith, and any other fees associated with this Termination.

**AND FURTHER TAKE NOTICE** that the locks have been changed and that entry to the Premises for removal of personal property may be done only with the prior permission of the Landlord or its Bailiff.

**AND FURTHER TAKE NOTICE** any attempt by any person whatsoever to gain entry to the Premises is unlawful without the prior written consent by the Landlord or its Bailiff, and such person will be deemed a trespasser and will be dealt with as directed by law.

**AND FURTHER TAKE NOTICE** that you have 5 days from this date to remove assets from the Premises or be subject to storage and costs thereafter.

**AND FURTHER TAKE NOTICE** that the Landlord expressly preserves its rights under Your Lease to look to you for all Rent and other charges owing at the present time and throughout the balance of the Term of your Lease, and intends to seek recovery of damages incurred by reason of the Landlord losing the benefit of the balance of the Term of your Lease, including, without limitation, the costs of recovering the Premises, bailiff fees, arrears and all future Rental payments or deficiency thereon, due under your Lease for the balance of the Term.

DATED at Whitby, Ontario, this 10th day of April A.D. 2023

Landlord: **VILLBROOK INC.**  
**C/O STEVENSON WHELTON LLP**  
7501 Keele Street, Suite 200  
Vaughan, Ontario  
M4K 1V2

Attn: Anubash Laljie

Tel: 416-595-7900

Served by: **STERLING BAILIFFS INC.**  
1001 Patricia Court  
Toronto, Ontario  
M5S 1A7

Tel: 416-701-1822 Fax: 416-701-0005

This is **Exhibit "JJ"** referred to in the affidavit of Tyson Hartwell, sworn before me by videoconference on April 27, 2023 in accordance with O.Reg. 431/20: Administering Oath or Declaration Remotely. The deponent was located in the City of Calgary in the Province of Alberta and I was located in the City of Toronto in the Province of Ontario.



.....  
A Commissioner For Taking Affidavits

Jeremy Bornstein  
LSO#: 65425C

# Cassels

April 12, 2023

**By Courier and Email**

**425 Wharncliffe Road Inc.**

110 Herdwick Street  
Brampton, Ontario L6S 0A5

**Attention: Abdul Muqet**

jbornstein@cassels.com

tel: +1 416-869-5386

file # 50098-113

Dear Sir:

**Re: Loans made available by Canadian Western Bank (the “Lender”) to Index Holding Group Inc. (“IHG”) and guaranteed by Index Group of Companies Inc., Index International Inc., Index Foods Inc., 2640179 Ontario Inc., 11030434 Canada Ltd., 2700774 Ontario Inc., 2700767 Ontario Inc., 2683960 Ontario Ltd., 11030418 Canada Inc., 2723710 Ontario Inc., 2718366 Ontario Inc., 2737332 Ontario Inc., 2737334 Ontario Inc., 2723714 Ontario Inc., 2723716 Ontario Inc., 2737338 Ontario Inc. (“2737338 Ontario”) (collectively, the “2020 ELSA Guarantors”), 2790760 Ontario Inc., 2775290 Ontario Inc., 2775296 Ontario Inc., 421 Wharncliffe Ltd. (“421” and collectively, the “Additional 2021 ELSA Guarantors”, and collectively the Additional 2021 ELSA Guarantors with the 2020 ELSA Guarantors, the “Corporate Guarantors”), Abdul Muqet (“Muqet” and collectively with the Corporate Guarantors, the “Guarantors”) and 425 Wharncliffe Road Inc. (“425”)**

**And Re: 425 Mortgage (as defined below) to the Lender in connection with the real property located at 425 Wharncliffe Road South, London, Ontario**

**And Re: Forbearance Agreement between the Lender, IHG, the Corporate Guarantors, 425 and Muqet dated February 15, 2023 (the “Forbearance Agreement”)**

We are counsel to the Lender. Capitalized terms used in this letter and not otherwise defined have the meaning given to them in the Forbearance Agreement.

In connection with the Forbearance Agreement, 425 provided additional security to guarantee the Obligations (as defined in the Guarantee, as defined below). We refer you to the following security:

- (a) a guarantee and indemnity by 425 and IHG in favour of the Lender dated February 28, 2023 (the “**Guarantee**”);

- (b) a general security agreement by 425 in favour of the Lender dated February 28, 2023;
- (c) a cross-collateralization acknowledgment and agreement in respect of the Loan and Security Documents and Obligations by IHG, the Guarantors and 425 in favour of the Lender dated February 28, 2023 (the “**Cross Collateralization Agreement**”);
- (d) a mortgage granted by 425 in favour of the Lender in respect of the lands municipally known as 425 Wharncliffe Road South, London, Ontario and legally described as PT LTS 1 & 2, PL 29, PART 2, 33R2551, S/T 929439, if any, S/T 837774, if any, S/T 583284, if any; LONDON/WESTMINSTER registered in the land registry office for Middlesex in the Province of Ontario as Instrument No. ER1515046 on February 28, 2023 (the “**Mortgage**”);
- (e) a debenture in the principal amount of \$8,000,000 by 425 in favour of the Lender dated February 28, 2023 (the “**Debenture**”),

(collectively, and together with such other security agreements entered into between the 425 and the Lender from time to time, in each case, as amended, amended and restated, renewed, extended, supplemented, replaced or otherwise modified from time to time in accordance with their provisions, the “**Security**”).

Pursuant to the terms of the Cross Collateralization Agreement, among other things, the Security also secures the performance of the obligations of IHG and the Guarantors under the Forbearance Agreement and any default under the Forbearance Agreement shall constitute a default under the Security. Further, the Debenture is a demand debenture pursuant to which the Lender is entitled to demand repayment at any time after a default has occurred under any of the Facility Agreements.

The following defaults, among others, have occurred in respect of the Security and after entering into the Forbearance Agreement and it becoming effective: (a) failure to pay certain Priority Payables when due including amounts owed to Canada Revenue Agency in respect of 2700774 Ontario Inc.; (b) failure to provide to the Lender certain reporting required under the terms of the Forbearance Agreement; (c) the occurrence of a fire at the premises located at 165 E Liberty Street, Toronto, Ontario where certain of the Lender’s collateral is situated resulting in a material adverse change in the business or operations of a Corporate Guarantor; and (d) the failure to pay certain amounts when due under the Facility Agreements. Upon the occurrence of any of such defaults, the Forbearance Period shall forthwith terminate at the option of the Lender.

As a result of the defaults in respect of the Facility Agreements, Security and Forbearance Agreement, all amounts due and owing by 425 to the Lender in respect of the Guarantee and Debenture are immediately due and payable in accordance with the terms thereof including all applicable interest thereon and all fees and expenses incurred by the Lender (including, without

limitation, all legal fees and disbursements) to the date of repayment in full (collectively, the “**Outstanding Indebtedness**”).

The Lender hereby demands payment in full of all of the Outstanding Indebtedness. For certainty, the amount of the Outstanding Indebtedness as at April 11, 2023 is \$7,939,792.73, which sum includes principal and interest properly due and owing as at April 11, 2023, including the Forbearance Fee, but excludes other fees, charges and expenses (including legal fees).

All applicable interest continues to accrue under the Debenture and the Facility Agreement in accordance with their terms, and the Lender is entitled to payment of all fees and expenses incurred by the Lender (including, without limitation, all legal fees and disbursements) to the date of payment in full. The exact amount owing by 425 may be obtained at any time by 425 contacting the Lender.

Failure by 425 to pay in full all of the Outstanding Indebtedness within 10 days of the date of this letter will result in the Lender taking whatever steps it deems necessary to recover the Outstanding Indebtedness, including without limitation enforcement action by the Lender pursuant to the Security entered into or delivered by 425.

Enclosed is a Notice of Intention to Enforce Security addressed to 425 and issued pursuant to subsection 244(1) of the *Bankruptcy and Insolvency Act* (Canada). Should 425 wish to consent to the immediate enforcement by the Lender of the Security, please sign the consent and waiver attached to the Notice of Intention to Enforce Security and return it to the attention of the undersigned at your earliest convenience.

The Lender expressly reserves all rights, remedies and claims with respect to the Security, Facility Agreements and Forbearance Agreements, and the transactions contemplated thereby, any of which rights, remedies and claims may be exercised or pursued at any time and from time to time and without further notice, in the sole discretion of the Lender.

Yours truly,  
Cassels Brock & Blackwell LLP



Jeremy Bornstein  
JB/am

Encl.

**NOTICE OF INTENTION TO ENFORCE SECURITY UNDER SECTION 244(1) OF  
THE BANKRUPTCY AND INSOLVENCY ACT (CANADA)**

**TO:**                    **425 Wharncliffe Road Inc.**, an insolvent person (the “**Debtor**”)

Take notice that:

1. Under section 244(1) of the *Bankruptcy and Insolvency Act* (Canada), Canadian Western Bank (the “**Secured Party**”) intends to enforce its security on the property of the Debtor, including without limitation as described below:

all of the Debtor’s present and future real property, personal property, assets and undertaking of any nature or kind (collectively, the “**Collateral**”), including, without limiting the generality of the foregoing, all real property, personal property, assets and undertaking at any time owned, leased or licensed by the Debtor or in which the Debtor at any time has any right or interest or to which the Debtor is or may at any time become entitled, subject to certain limited exclusions, in all property of the following kinds:

- (a) all present and future equipment, including all of its present and future machinery, fixtures, plant, tools, furniture, books, records, documents, vehicles of any nature, kind or description, and all accessions to any of the foregoing, including all spare parts and accessories installed in or affixed or attached to any of the foregoing, and all drawings, specifications, plans and manuals relating to the foregoing;
- (b) all present and future inventory, including all of its present and future raw materials, materials used or consumed in its business, work-in-progress, finished goods, goods used for packing and goods acquired or held for sale or lease or that have been leased or furnished or that are to be furnished under contracts of rental or service, and all accessions to any of the foregoing, including all spare parts and accessories installed in or affixed or attached to any of the foregoing;
- (c) all present and future agreement, right, franchise, royalty, licence, authorization, approval, privilege or permit (a) to which the Debtor is now or hereafter becomes a party, (b) in which the Debtor now or hereafter has any interest or (c) of which the Debtor is or hereafter becomes a beneficiary and all other intangibles, including all of its present and future accounts and other amounts receivable, book debts, goodwill, patents, trademarks, trade names, business names, trade styles, logos and other business identifiers, copyrights, technology, inventions, industrial designs, know-how, trade secrets and other industrial and intellectual property in which the Debtor now or in the future has any right, title or interest, choses in action of every nature and kind and interests in partnerships;
- (d) all present and future documents of title, chattel paper, instruments and money;
- (e) all present and future Investment Property (as such term is defined in the *Personal Property Security Act* (Ontario)) and Financial Assets (as such term is defined in the *Securities Transfer Act* (Ontario)), including all present and future options and warrants of the Debtor and all other rights and entitlements arising therefrom or related thereto, and the Debtor’s present and future interests in partnerships,

limited partnerships, limited liability partnerships and limited liability companies, and including all substitutions for any of the foregoing and dividends and income derived therefrom or payable in connection therewith; and

- (f) all proceeds arising from the property, assets and undertaking referred to above, including insurance proceeds and any other payment representing indemnity or compensation for loss of or damage thereto.

2. The security that is to be enforced is in the form of:

- (a) a mortgage granted by the Debtor in favour of the Secured Party in respect of the lands municipally known as 425 Wharnccliffe Road South, London, Ontario and legally described as PT LTS 1 & 2, PL 29, PART 2, 33R2551, S/T 929439, if any, S/T 837774, if any, S/T 583284, if any; LONDON/WESTMINSTER registered in the land registry office for Middlesex in the Province of Ontario as Instrument No. ER1515046 on February 28, 2023;
- (b) a debenture in the principal amount of \$8,000,000 by the Debtor in favour of the Secured Party dated February 28, 2023 (the “**Debenture**”);
- (c) a general assignment of rents and certain lease rights by the Debtor in favour of the Secured Party dated February 28, 2023;
- (d) a general security agreement by the Debtor in favour of the Secured Party dated February 28, 2023;
- (e) a guarantee and indemnity by the Debtor and Index Holding Group Inc. (“**IHG**”) in favour of the Secured Party dated February 28, 2023;
- (f) an assignment of material agreements by the Debtor and IHG in favour of the Secured Party dated February 28, 2023;
- (g) an assignment of all risk insurance by the Debtor in favour of the Secured Party dated February 28, 2023;
- (h) an environmental indemnity agreement by the Debtor and IHG in favour of the Secured Party dated February 28, 2023; and
- (i) a cross collateralization acknowledgement and agreement by the Debtor, IHG, and others in favour of the Secured Party dated February 28, 2023,

in each case as amended, confirmed or supplemented from time to time, and any other security delivered from time to time by the Debtor to the Secured Party (collectively, the “**Security**”).

- 3. As of April 11, 2023, the amount of indebtedness including principal and interest (but excluding fees charges and expenses, including legal fees) secured by the Security is \$7,939,792.73, which amount includes all applicable interest up to April 11, 2023. All applicable interest continues to accrue under the Security in accordance with its terms, and the Secured Party is entitled to payment of all fees and expenses incurred by the Secured Party (including, without limitation, all legal fees and disbursements) to the date of payment in full.
- 4. The Secured Party will not have the right to enforce the Security until after the expiry of the 10-day period following the sending of this notice unless the insolvent person consents



to an earlier enforcement by returning to the Secured Party an executed copy of the enclosed consent.

Date April 12, 2023.

**CANADIAN WESTERN BANK**

by its lawyers,

**CASELS BROCK & BLACKWELL LLP**

Suite 2100, Scotia Plaza

40 King Street West

Toronto, Ontario M5H 3C2

By:



---

Jeremy Bornstein

**CONSENT TO EARLIER ENFORCEMENT OF SECURITY UNDER SECTION 244(2) OF  
THE BANKRUPTCY AND INSOLVENCY ACT (CANADA)**

**TO:** Canadian Western Bank (the “**Secured Party**”)

**RE:** Notice of Intention to Enforce Security under Section 244(1) of the *Bankruptcy and Insolvency Act* (Canada) (the “**Act**”), dated April 12, 2023 from the Secured Party (the “**Notice**”)

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Capitalized terms used in this consent and waiver and not otherwise defined have meanings given to them in the Notice.

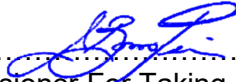
The undersigned hereby acknowledges that it has received the Notice and, in accordance with section 244(2) of the Act, it consents to earlier enforcement by the Secured Party of its Security on the Collateral.

Dated April \_\_, 2023.

**425 WHARNCLIFFE ROAD INC.**

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

This is **Exhibit “KK”** referred to in the affidavit of Tyson Hartwell, sworn before me by videoconference on April 27, 2023 in accordance with O.Reg. 431/20: Administering Oath or Declaration Remotely. The deponent was located in the City of Calgary in the Province of Alberta and I was located in the City of Toronto in the Province of Ontario.



.....  
A Commissioner For Taking Affidavits

Jeremy Bornstein  
LSO#: 65425C

## **ONTARIO PPSA SEARCH RESULTS**

(Currency date: April 11, 2023)

### **INDEX HOLDING GROUP INC.**

<b>Debtor</b>	<b>Secured Party</b>	<b>Date</b>	<b>Period</b>	<b>Reg. No. File No.</b>	<b>Collateral Classification</b>	<b>Collateral Description</b>
INDEX HOLDING GROUP INC.	Canadian Western Bank	June 17, 2020	10	20200617 1702 1462 7842 762797331	Inventory Equipment Accounts Other Motor Vehicle	NONE
INDEX HOLDING GROUP INC.	2851604 Ontario Inc.	February 17, 2022	5	20220217 1520 1590 8752 780487182	General Collateral Inventory Equipment Accounts Other Motor Vehicle	110 HERDWICK STREET, BRAMPTON, ON, CANADA L6S 0A5

### **INDEX GROUP OF COMPANIES INC.**

<b>Debtor</b>	<b>Secured Party</b>	<b>Date</b>	<b>Period</b>	<b>Reg. No. File No.</b>	<b>Collateral Classification</b>	<b>Collateral Description</b>
INDEX GROUP OF COMPANIES INC.	Canadian Western Bank	June 17, 2020	10	20200617 1702 1462 7842 762797331	Inventory Equipment Accounts Other Motor Vehicle	NONE
INDEX GROUP OF COMPANIES INC.	Toyota Credit Canada Inc.	May 29, 2019	6	20190529 1050 1532 6039 751695264	General Collateral Equipment Other Motor Vehicle	NONE
INDEX GROUP OF COMPANIES INC.	The Bank of Nova Scotia	January 14, 2021	6	20210114 1229 1419 5445 769220109	Equipment Other Motor Vehicle	OUR SECURITY INTEREST IS LIMITED TO THE MOTOR VEHICLES LISTED ABOVE AND THE PROCEEDS OF THOSE VEHICLES

Debtor	Secured Party	Date	Period	Reg. No. File No.	Collateral Classification	Collateral Description
INDEX GROUP OF COMPANIES INC.	Hyundai Capital Lease Inc. Genesis Motor Finance	June 21, 2021	5	20210621 1744 1901 2273 773685801	General Collateral Other Motor Vehicle	TOGETHER WITH ALL ATTACHMENTS ACCESSORIES ACCESSIONS REPLACEMENTS SUBSTITUTIONS ADDITIONS AND IMPROVEMENTS THERETO AND ALL PROCEEDS IN ANY FORM DERIVED DIRECTLY OR INDIRECTLY FROM ANY SALE AND OR DEALINGS WITH THE COLLATERAL AND A RIGHT TO AN INSURANCE PAYMENT OR OTHER PAYMENT THAT INDEMNIFIES OR COMPENSATES FOR LOSS OR DAMAGE TO THE COLLATERAL OR PROCEEDS OF THE COLLATERAL

**INDEX INTERNATIONAL INC.**

<b>Debtor</b>	<b>Secured Party</b>	<b>Date</b>	<b>Period</b>	<b>Reg. No. File No.</b>	<b>Collateral Classification</b>	<b>Collateral Description</b>
INDEX INTERNATIONAL INC.	Canadian Western Bank	June 17, 2020	10	20200617 1702 1462 7842 762797331	Inventory Equipment Accounts Other Motor Vehicle	NONE
INDEX INTERNATIONAL INC.	1000017398 Ontario Inc.	November 16, 2022	5	20221116 1259 5064 2063 788515488	Inventory Equipment Accounts	ALL OF THE BUSINESS ASSETS AND PROPERTY OF INDEX INTERNATIONAL INC. LOCATED AT 1525 DUNDAS STREET EAST, WHITBY, ON, L1N 2K6.

**INDEX FOODS INC.**

<b>Debtor</b>	<b>Secured Party</b>	<b>Date</b>	<b>Period</b>	<b>Reg. No. File No.</b>	<b>Collateral Classification</b>	<b>Collateral Description</b>
INDEX FOODS INC.	Canadian Western Bank	June 17, 2020	10	20200617 1702 1462 7842 762797331	Inventory Equipment Accounts Other Motor Vehicle	NONE
INDEX FOODS INC.	1000017398 Ontario Inc.	November 16, 2022	5	20221116 1300 5064 2065 788515668	Inventory Equipment Accounts	ALL OF THE BUSINESS ASSETS AND PROPERTY OF INDEX FOODS INC. LOCATED AT 965 DUNDAS STREET WEST, WHITBY, ON L1P 1G8.

**2640179 ONTARIO INC.**

Debtor	Secured Party	Date	Period	Reg. No. File No.	Collateral Classification	Collateral Description
2640179 ONTARIO INC.	Canadian Western Bank	June 17, 2020	10	20200617 1702 1462 7842 762797331	Inventory Equipment Accounts Other Motor Vehicle	NONE

**11030434 CANADA LTD.**

Debtor	Secured Party	Date	Period	Reg. No. File No.	Collateral Classification	Collateral Description
11030434 CANADA LTD.	Canadian Western Bank	June 17, 2020	10	20200617 1702 1462 7842 762797331	Inventory Equipment Accounts Other Motor Vehicle	NONE

**2700774 ONTARIO INC.**

Debtor	Secured Party	Date	Period	Reg. No. File No.	Collateral Classification	Collateral Description
2700774 ONTARIO INC.	Canadian Western Bank	June 17, 2020	10	20200617 1702 1462 7842 762797331	Inventory Equipment Accounts Other Motor Vehicle	NONE
2700774 ONTARIO INC.	2851605 Ontario Inc.	February 17, 2022	5	20220217 1517 1590 8746 780487155	General Collateral Inventory Equipment Accounts Other	110 HERDWICK STREET, BRAMPTON, ON, CANADA L6S 0A5
2700774 ONTARIO INC.	2752908 Ontario Ltd./Midtown Capital	March 6, 2023	2	20230306 1705 1462 3946 791257194	General Collateral Inventory Equipment Accounts	ALL PRESENT AND AFTER-ACQUIRED PROPERTY OF THE DEBTOR. PROCEEDS INCLUDING BUT NOT LIMITED TO GOODS,

Debtor	Secured Party	Date	Period	Reg. No. File No.	Collateral Classification	Collateral Description
					Other	CHATTEL PAPER, SECURITIES, DOCUMENTS OF TITLE, INSTRUMENTS, MONEY, INTANGIBLES, INSURANCE AND ALL OTHER PROCEEDS ARISING DIRECTLY OR INDIRECTLY FROM THE DISPOSITION, EXCHANGE, LOSS, REPLACEMENT, RENEWAL, OF OR DEALING WITH THE COLLATERAL.

**2700767 ONTARIO INC.**

Debtor	Secured Party	Date	Period	Reg. No. File No.	Collateral Classification	Collateral Description
2700767 ONTARIO INC.	Canadian Western Bank	June 17, 2020	10	20200617 1702 1462 7842 762797331	Inventory Equipment Accounts Other Motor Vehicle	NONE

**2683960 ONTARIO LTD.**

Debtor	Secured Party	Date	Period	Reg. No. File No.	Collateral Classification	Collateral Description
2683960 ONTARIO LTD.	Canadian Western Bank	June 17, 2020	10	20200617 1702 1462 7842 762797331	Inventory Equipment Accounts Other Motor Vehicle	NONE



**11030418 CANADA INC.**

Debtor	Secured Party	Date	Period	Reg. No. File No.	Collateral Classification	Collateral Description
11030418 CANADA INC.	Canadian Western Bank	June 17, 2020	10	20200617 1702 1462 7842 762797331	Inventory Equipment Accounts Other Motor Vehicle	NONE

**2723710 ONTARIO INC.**

Debtor	Secured Party	Date	Period	Reg. No. File No.	Collateral Classification	Collateral Description
2723710 ONTARIO INC.	Canadian Western Bank	June 17, 2020	10	20200617 1702 1462 7842 762797331	Inventory Equipment Accounts Other Motor Vehicle	NONE
2723710 ONTARIO INC.	2851606 Ontario Inc.	February 17, 2022	5	20220217 1518 1590 8749 780487173	General Collateral Inventory Equipment Accounts Other	110 HERDWICK STREET, BRAMPTON, ON, CANADA L6S 0A5

**2718366 ONTARIO INC.**

Debtor	Secured Party	Date	Period	Reg. No. File No.	Collateral Classification	Collateral Description
2718366 ONTARIO INC.	Canadian Western Bank	June 17, 2020	10	20200617 1702 1462 7842 762797331	Inventory Equipment Accounts Other Motor Vehicle	NONE

**2737332 ONTARIO INC.**

Debtor	Secured Party	Date	Period	Reg. No. File No.	Collateral Classification	Collateral Description
2737332 ONTARIO INC.	Canadian Western Bank	June 17, 2020	10	20200617 1702 1462 7842 762797331	Inventory Equipment Accounts Other Motor Vehicle	NONE

**2737334 ONTARIO INC.**

Debtor	Secured Party	Date	Period	Reg. No. File No.	Collateral Classification	Collateral Description
2737334 ONTARIO INC.	Canadian Western Bank	June 17, 2020	10	20200617 1702 1462 7842 762797331	Inventory Equipment Accounts Other Motor Vehicle	NONE

**2723714 ONTARIO INC.**

Debtor	Secured Party	Date	Period	Reg. No. File No.	Collateral Classification	Collateral Description
2723714 ONTARIO INC.	Canadian Western Bank	June 17, 2020	10	20200617 1702 1462 7842 762797331	Inventory Equipment Accounts Other Motor Vehicle	NONE

**2723716 ONTARIO INC.**

Debtor	Secured Party	Date	Period	Reg. No. File No.	Collateral Classification	Collateral Description
2723716 ONTARIO INC.	Canadian Western Bank	June 17, 2020	10	20200617 1702 1462 7842 762797331	Inventory Equipment Accounts Other Motor Vehicle	NONE

**2737338 ONTARIO INC.**

Debtor(s)	Secured Party	Date	Period	Reg. No. File No.	Collateral Classification	Collateral Description
2737338 ONTARIO INC.	Canadian Western Bank	June 17, 2020	10	20200617 1702 1462 7842 762797331	Inventory Equipment Accounts Other Motor Vehicle	NONE

**2790760 ONTARIO INC.**

Debtor(s)	Secured Party	Date	Period	Reg. No. File No.	Collateral Classification	Collateral Description
2790760 ONTARIO INC.	Canadian Western Bank	November 12, 2021	10	20211112 1702 1462 6867 778188762	Inventory Equipment Accounts Other Motor Vehicle	NONE

**2775290 ONTARIO INC.**

Debtor(s)	Secured Party	Date	Period	Reg. No. File No.	Collateral Classification	Collateral Description
2775290 ONTARIO INC.	Canadian Western Bank	November 12, 2021	10	20211112 1702 1462 6867 778188762	Inventory Equipment Accounts Other Motor Vehicle	NONE

**2775296 ONTARIO INC.**

Debtor(s)	Secured Party	Date	Period	Reg. No. File No.	Collateral Classification	Collateral Description
2775296 ONTARIO INC.	Canadian Western Bank	November 12, 2021	10	20211112 1702 1462 6867 778188762	Inventory Equipment Accounts Other Motor Vehicle	NONE

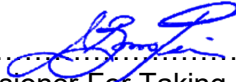
**421 WHARNCLIFFE LTD.**

Debtor	Secured Party	Date	Period	Reg. No. File No.	Collateral Classification	Collateral Description
421 WHARNCLIFFE LTD.	Canadian Western Bank	November 12, 2021	10	20211112 1702 1462 6866 778188753	Inventory Equipment Accounts Other Motor Vehicle	NONE

**425 WHARNCLIFFE ROAD INC.**

Debtor	Secured Party	Date	Period	Reg. No. File No.	Collateral Classification	Collateral Description
425 WHARNCLIFFE ROAD INC.	Canadian Western Bank	February 28, 2023	5	20230228 1419 9234 7012 791089974	Inventory Equipment Accounts Other Motor Vehicle	NONE

This is **Exhibit “LL”** referred to in the affidavit of Tyson Hartwell, sworn before me by videoconference on April 27, 2023 in accordance with O.Reg. 431/20: Administering Oath or Declaration Remotely. The deponent was located in the City of Calgary in the Province of Alberta and I was located in the City of Toronto in the Province of Ontario.



.....  
A Commissioner For Taking Affidavits

Jeremy Bornstein  
LSO#: 65425C

PROPERTY DESCRIPTION: PT LT 1, PL 29, PTS 1 & 2, 33R5153 & PT 2, 33R5487 S/T 837774 IF ANY, S/T 583284 IF ANY ; LONDON/WESTMINSTER

PROPERTY REMARKS:

ESTATE/QUALIFIER:  
FEE SIMPLE  
LT CONVERSION QUALIFIED

RECENTLY:  
FIRST CONVERSION FROM BOOK

PIN CREATION DATE:  
1994/04/25

OWNERS' NAMES  
421 WHARNCLIFFE LTD.

CAPACITY SHARE  
ROWN

REG. NUM.	DATE	INSTRUMENT TYPE	AMOUNT	PARTIES FROM	PARTIES TO	CERT/CHKD
<p><b>**EFFECTIVE 2000/07/29 THE NOTATION OF THE "BLOCK IMPLEMENTATION DATE" OF 1994/04/25 ON THIS PIN**</b></p> <p><b>**WAS REPLACED WITH THE "PIN CREATION DATE" OF 1994/04/25**</b></p> <p><b>** PRINTOUT INCLUDES ALL DOCUMENT TYPES AND DELETED INSTRUMENTS SINCE 1994/04/22 **</b></p> <p><b>**SUBJECT, ON FIRST REGISTRATION UNDER THE LAND TITLES ACT, TO:</b></p> <p><b>** SUBSECTION 44(1) OF THE LAND TITLES ACT, EXCEPT PARAGRAPH 11, PARAGRAPH 14, PROVINCIAL SUCCESSION DUTIES * AND ESCHEATS OR FORFEITURE TO THE CROWN.</b></p> <p><b>** THE RIGHTS OF ANY PERSON WHO WOULD, BUT FOR THE LAND TITLES ACT, BE ENTITLED TO THE LAND OR ANY PART OF IT THROUGH LENGTH OF ADVERSE POSSESSION, PRESCRIPTION, MISDESCRIPTION OR BOUNDARIES SETTLED BY CONVENTION.</b></p> <p><b>** ANY LEASE TO WHICH THE SUBSECTION 70(2) OF THE REGISTRY ACT APPLIES.</b></p> <p><b>**DATE OF CONVERSION TO LAND TITLES: 1994/04/25 **</b></p>						
77753	1955/12/20	BYLAW				C
119427	1959/04/23	BYLAW				C
CORRECTIONS: 'DATE OF REGN.' CHANGED FROM '1959/04/29' TO '1959/04/23' ON 1990/11/22 BY BRUCE BURT.						
161524	1962/02/16	BYLAW				C
608318	1981/12/07	TRANSFER		*** COMPLETELY DELETED ***	J. BOTTOM HOLDINGS LIMITED	
608320	1981/12/07	CHARGE		*** COMPLETELY DELETED ***	DAIRY QUEEN CANADA INC.	
33R5153	1982/02/22	PLAN REFERENCE				C
617070	1982/06/03	TRANSFER		*** COMPLETELY DELETED ***		

NOTE: ADJOINING PROPERTIES SHOULD BE INVESTIGATED TO ASCERTAIN DESCRIPTIVE INCONSISTENCIES, IF ANY, WITH DESCRIPTION REPRESENTED FOR THIS PROPERTY.  
NOTE: ENSURE THAT YOUR PRINTOUT STATES THE TOTAL NUMBER OF PAGES AND THAT YOU HAVE PICKED THEM ALL UP.

REG. NUM.	DATE	INSTRUMENT TYPE	AMOUNT	PARTIES FROM	PARTIES TO	CERT/ CHKD
33R5487	1982/12/29	PLAN REFERENCE			J. BOTTOM HOLDINGS LIMITED	C
33R11809	1994/10/27	PLAN REFERENCE				C
LT377222	1995/03/03	NOTICE		BLAKE, ERNEST E. G.	J. BOTTOM HOLDINGS LIMITED	C
		REMARKS: 37829 AND WU42424				
ER804132	2012/01/05	CHARGE		*** COMPLETELY DELETED *** J. BOTTOM HOLDINGS LIMITED	SINASAC, FRANK	
ER810767	2012/02/23	APL CH NAME OWNER		*** COMPLETELY DELETED *** J. BOTTOM HOLDINGS LIMITED	421 WHARNCLIFFE INC.	
ER1340007	2020/12/01	DISCH OF CHARGE		*** COMPLETELY DELETED *** DAIRY QUEEN CANADA INC.		
		REMARKS: 608320.				
ER1340884	2020/12/04	TRANSFER	\$650,000	421 WHARNCLIFFE INC.	421 WHARNCLIFFE LTD.	C
		REMARKS: PLANNING ACT STATEMENTS.				
ER1340885	2020/12/04	CHARGE		*** COMPLETELY DELETED *** 421 WHARNCLIFFE LTD.	1778130 ONTARIO INC.	
ER1340943	2020/12/04	NO ASSGN RENT GEN		*** COMPLETELY DELETED *** 421 WHARNCLIFFE LTD.	1778130 ONTARIO INC.	
		REMARKS: ER1340885.				
ER1341265	2020/12/07	DISCH OF CHARGE		*** COMPLETELY DELETED *** SINASAC, LORISSA		
		REMARKS: ER804132.				
ER1443829	2022/03/02	CHARGE	\$1,100,000	421 WHARNCLIFFE LTD.	CANADIAN WESTERN BANK	C
ER1443830	2022/03/02	NO ASSGN RENT GEN		421 WHARNCLIFFE LTD.	CANADIAN WESTERN BANK	C
		REMARKS: ER1443829.				
ER1443887	2022/03/02	DISCH OF CHARGE		*** COMPLETELY DELETED *** 1778130 ONTARIO INC.		
		REMARKS: ER1340885.				
ER1490874	2022/09/22	APL GOVT ORDER		THE CORPORATION OF THE CITY OF LONDON		C

NOTE: ADJOINING PROPERTIES SHOULD BE INVESTIGATED TO ASCERTAIN DESCRIPTIVE INCONSISTENCIES, IF ANY, WITH DESCRIPTION REPRESENTED FOR THIS PROPERTY.

NOTE: ENSURE THAT YOUR PRINTOUT STATES THE TOTAL NUMBER OF PAGES AND THAT YOU HAVE PICKED THEM ALL UP.

LAND  
 REGISTRY  
 OFFICE #33

08398-0360 (LT)

\* CERTIFIED IN ACCORDANCE WITH THE LAND TITLES ACT \* SUBJECT TO RESERVATIONS IN CROWN GRANT \*

REG. NUM.	DATE	INSTRUMENT TYPE	AMOUNT	PARTIES FROM	PARTIES TO	CERT/ CHKD
ER1514998	2023/02/28	NOTICE		421 WHARNCLIFFE LTD.	CANADIAN WESTERN BANK	C
		<i>REMARKS: PROPERTY STANDARDS ORDER</i>				
		<i>REMARKS: ER1443829</i>				



This is **Exhibit “MM”** referred to in the affidavit of Tyson Hartwell, sworn before me by videoconference on April 27, 2023 in accordance with O.Reg. 431/20: Administering Oath or Declaration Remotely. The deponent was located in the City of Calgary in the Province of Alberta and I was located in the City of Toronto in the Province of Ontario.



.....  
A Commissioner For Taking Affidavits

Jeremy Bornstein  
LSO#: 65425C

PROPERTY DESCRIPTION: PT LTS 1 & 2, PL 29 , PART 2 , 33R2551 , S/T 929439, IF ANY, S/T 837774, IF ANY, S/T 583284, IF ANY ; LONDON/WESTMINSTER

PROPERTY REMARKS: CORRECTION: DOCUMENT 479403 REMOVED FROM 08398-0362 ON 2013/01/15 AT 15:42 BY JAMES, FRAN.

ESTATE/QUALIFIER:  
FEE SIMPLE  
LT CONVERSION QUALIFIED

RECENTLY:  
FIRST CONVERSION FROM BOOK

PIN CREATION DATE:  
1994/04/25

OWNERS' NAMES  
425 WHARNCLIFFE ROAD INC.

CAPACITY SHARE

REG. NUM.	DATE	INSTRUMENT TYPE	AMOUNT	PARTIES FROM	PARTIES TO	CERT/CHKD
<p><b>**EFFECTIVE 2000/07/29 THE NOTATION OF THE "BLOCK IMPLEMENTATION DATE" OF 1994/04/25 ON THIS PIN**</b></p> <p><b>**WAS REPLACED WITH THE "PIN CREATION DATE" OF 1994/04/25**</b></p> <p><b>** PRINTOUT INCLUDES ALL DOCUMENT TYPES AND DELETED INSTRUMENTS SINCE 1994/04/22 **</b></p> <p><b>**SUBJECT, ON FIRST REGISTRATION UNDER THE LAND TITLES ACT, TO:</b></p> <p><b>** SUBSECTION 44(1) OF THE LAND TITLES ACT, EXCEPT PARAGRAPH 11, PARAGRAPH 14, PROVINCIAL SUCCESSION DUTIES * AND ESCHEATS OR FORFEITURE TO THE CROWN.</b></p> <p><b>** THE RIGHTS OF ANY PERSON WHO WOULD, BUT FOR THE LAND TITLES ACT, BE ENTITLED TO THE LAND OR ANY PART OF IT THROUGH LENGTH OF ADVERSE POSSESSION, PRESCRIPTION, MISDESCRIPTION OR BOUNDARIES SETTLED BY CONVENTION.</b></p> <p><b>** ANY LEASE TO WHICH THE SUBSECTION 70(2) OF THE REGISTRY ACT APPLIES.</b></p> <p><b>**DATE OF CONVERSION TO LAND TITLES: 1994/04/25 **</b></p>						
77753	1955/12/20	BYLAW				C
119427	1959/04/23	BYLAW				C
CORRECTIONS: 'DATE OF REGN.' CHANGED FROM '1959/04/29' TO '1959/04/23' ON 1990/11/22 BY BRUCE BURT.						
161524	1962/02/16	BYLAW				C
33R2396	1977/03/23	PLAN REFERENCE				C
33R2551	1977/06/21	PLAN REFERENCE				C
498791	1977/11/14	TRANSFER		*** COMPLETELY DELETED ***	BURGER KING CANADA LTD.	
518505	1978/07/06	BYLAW				C
REMARKS: ENCROACHMENT & SKETCH ATTACHED						

NOTE: ADJOINING PROPERTIES SHOULD BE INVESTIGATED TO ASCERTAIN DESCRIPTIVE INCONSISTENCIES, IF ANY, WITH DESCRIPTION REPRESENTED FOR THIS PROPERTY.

NOTE: ENSURE THAT YOUR PRINTOUT STATES THE TOTAL NUMBER OF PAGES AND THAT YOU HAVE PICKED THEM ALL UP.

LAND  
REGISTRY  
OFFICE #33

08398-0362 (LT)

PREPARED FOR Feliciani  
ON 2023/04/12 AT 11:15:06

\* CERTIFIED IN ACCORDANCE WITH THE LAND TITLES ACT \* SUBJECT TO RESERVATIONS IN CROWN GRANT \*

REG. NUM.	DATE	INSTRUMENT TYPE	AMOUNT	PARTIES FROM	PARTIES TO	CERT/ CHKD
33R11809	1994/10/27	PLAN REFERENCE				C
ER140828	2002/01/18	APL CH NAME OWNER		*** COMPLETELY DELETED *** BURGER KING CANADA LTD.	BURGER KING RESTAURANTS OF CANADA INC.	
ER161334	2002/06/03	TRANSFER		*** COMPLETELY DELETED *** BURGER KING RESTAURANTS OF CANADA INC.	RJKM HOLDINGS LIMITED	
ER161336	2002/06/03	CHARGE		*** DELETED AGAINST THIS PROPERTY *** RJKM HOLDINGS LIMITED	CANADIAN IMPERIAL BANK OF COMMERCE	
ER161339	2002/06/03	NOTICE OF LEASE		*** COMPLETELY DELETED *** RJKM HOLDINGS LIMITED	1483338 ONTARIO LIMITED	
ER161365	2002/06/03	NO ASSGN RENT SPEC		*** DELETED AGAINST THIS PROPERTY *** RJKM HOLDINGS LIMITED	CANADIAN IMPERIAL BANK OF COMMERCE	
		REMARKS: ER161336				
ER161390	2002/06/03	NO ASSG LESSEE INT		*** COMPLETELY DELETED *** 1483338 ONTARIO LIMITED	BURGER KING RESTAURANTS OF CANADA INC.	
		REMARKS: ER161339				
ER394769	2005/11/08	NO DET/SURR LEASE		*** COMPLETELY DELETED ***	RJKM HOLDINGS LIMITED	
		REMARKS: RE: ER161339				
ER430098	2006/05/15	TRANSFER		*** COMPLETELY DELETED *** RJKM HOLDINGS LIMITED	1682558 ONTARIO LIMITED	
		REMARKS: PLANNING ACT STATEMENTS				
ER430099	2006/05/15	CHARGE		*** COMPLETELY DELETED *** 1682558 ONTARIO LIMITED	ROYAL BANK OF CANADA	
ER473890	2006/12/05	CONSTRUCTION LIEN		*** COMPLETELY DELETED *** SUTTON, ROBERT		
ER476397	2006/12/19	DIS CONSTRUCT LIEN		*** COMPLETELY DELETED ***	SUTTON, ROBERT	
		REMARKS: RE: ER473890				
ER477672	2006/12/27	CHARGE		*** COMPLETELY DELETED *** 1682558 ONTARIO LIMITED	SALMAN, ZOHAR	

NOTE: ADJOINING PROPERTIES SHOULD BE INVESTIGATED TO ASCERTAIN DESCRIPTIVE INCONSISTENCIES, IF ANY, WITH DESCRIPTION REPRESENTED FOR THIS PROPERTY.  
NOTE: ENSURE THAT YOUR PRINTOUT STATES THE TOTAL NUMBER OF PAGES AND THAT YOU HAVE PICKED THEM ALL UP.

REG. NUM.	DATE	INSTRUMENT TYPE	AMOUNT	PARTIES FROM	PARTIES TO	CERT/ CHKD
ER477678	2006/12/27	CHARGE		*** COMPLETELY DELETED *** 1682558 ONTARIO LIMITED	EL-HINDI, OSMAN	
ER515024	2007/07/18	DISCH OF CHARGE		*** COMPLETELY DELETED *** CANADIAN IMPERIAL BANK OF COMMERCE		
		REMARKS: RE: ER161336				
ER862993	2013/01/24	TRANSFER		*** COMPLETELY DELETED *** 1682558 ONTARIO LIMITED	1276154 ONTARIO LIMITED	
		REMARKS: PLANNING ACT STATEMENTS.				
ER862994	2013/01/24	DISCH OF CHARGE		*** COMPLETELY DELETED *** EL-HINDI, OSMAN		
		REMARKS: ER477678.				
ER862995	2013/01/24	CHARGE		*** COMPLETELY DELETED *** 1276154 ONTARIO LIMITED	ROYAL BANK OF CANADA	
ER864773	2013/02/06	DISCH OF CHARGE		*** COMPLETELY DELETED *** 1682558 ONTARIO LIMITED		
		REMARKS: ER477672.				
ER866009	2013/02/19	DISCH OF CHARGE		*** COMPLETELY DELETED *** ROYAL BANK OF CANADA		
		REMARKS: ER430099.				
ER953543	2014/10/07	NOTICE OF LEASE		1276154 ONTARIO LIMITED	CANADIAN ADDICTION TREATMENT CLINICS HOLDINGS LIMITED	C
ER1379599	2021/06/03	TRANSFER	\$1,020,000	1276154 ONTARIO LIMITED	425 WHARNCLIFFE ROAD INC.	C
		REMARKS: PLANNING ACT STATEMENTS.				
ER1379600	2021/06/03	CHARGE	\$720,000	425 WHARNCLIFFE ROAD INC.	1778130 ONTARIO INC.	C
ER1379735	2021/06/04	NO ASSGN RENT GEN		425 WHARNCLIFFE ROAD INC.	1778130 ONTARIO INC.	C
		REMARKS: ER1379600.				
ER1419960	2021/11/16	DISCH OF CHARGE		*** COMPLETELY DELETED *** ROYAL BANK OF CANADA		
		REMARKS: ER862995.				
ER1423265	2021/11/30	CHARGE		*** COMPLETELY DELETED *** 425 WHARNCLIFFE ROAD INC.	KHOKHANI, CHETAN	

LAND  
REGISTRY  
OFFICE #33

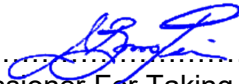
08398-0362 (LT)

PREPARED FOR Feliciani  
ON 2023/04/12 AT 11:15:06

\* CERTIFIED IN ACCORDANCE WITH THE LAND TITLES ACT \* SUBJECT TO RESERVATIONS IN CROWN GRANT \*

REG. NUM.	DATE	INSTRUMENT TYPE	AMOUNT	PARTIES FROM	PARTIES TO	CERT/ CHKD
ER1454216	2022/04/14	DISCH OF CHARGE		*** COMPLETELY DELETED *** KHOKHANI, CHETAN		
	REMARKS: ER1423265.					
ER1454366	2022/04/19	CHARGE	\$400,000	425 WHARNCLIFFE ROAD INC.	1778130 ONTARIO INC	C
ER1515046	2023/02/28	CHARGE	\$8,000,000	425 WHARNCLIFFE ROAD INC.	CANADIAN WESTERN BANK	C
ER1515047	2023/02/28	NO ASSGN RENT GEN		425 WHARNCLIFFE ROAD INC.	CANADIAN WESTERN BANK	C
	REMARKS: ER1515046					
ER1515535	2023/03/03	CHARGE	\$325,000	425 WHARNCLIFFE ROAD INC.	1778130 ONTARIO INC.	C
ER1515537	2023/03/03	NO ASSGN RENT GEN		425 WHARNCLIFFE ROAD INC.	1778130 ONTARIO INC.	C
	REMARKS: ER1515535.					

This is **Exhibit "NN"** referred to in the affidavit of Tyson Hartwell, sworn before me by videoconference on April 27, 2023 in accordance with O.Reg. 431/20: Administering Oath or Declaration Remotely. The deponent was located in the City of Calgary in the Province of Alberta and I was located in the City of Toronto in the Province of Ontario.



.....  
A Commissioner For Taking Affidavits

Jeremy Bornstein  
LSO#: 65425C



# CERTIFICATE OF THE TREASURER

NOTE: Taxes may include phase-in adjustments and cap adjustments.

THE CORPORATION OF THE CITY OF LONDON  
**London**  
CANADA

FINANCE DEPARTMENT  
REVENUE DIVISION

PAID: \$ 60.00

CERTIFICATE NO 201442

CERTIFIED AS AT: April 14, 2023

YOUR FILE NO 50098-113

ISSUED TO: **CASSELS BROCK & BLACKWELL LLP**  
**40 KING ST W**  
**SCOTIA PLAZA, SUITE 2100**  
**TORONTO ON M5H 3C2**

ASSESSED OWNER:  
**421 WHARNCLIFFE LTD**

ROLL NUMBER	ASSESSED DESCRIPTION
CTY: 39    MUN: 36 MAP: 070 POLL: 090 PARCEL: 289000000	<b>421 WHARNCLIFFE RD S</b> <b>PLAN 29 PT LOT 1 RP 33R5153</b> <b>PART 1 AND 2 RP 33R5487 PART 2</b> <b>REG</b> <b>17273.00SF 87.10FR D</b>

### PRIOR YEARS' TAX ARREARS

Statement showing arrears of taxes on the above lands. (Reference Section 352 of the Municipal Act, 2001 as amended.)

YEAR	TAXES LEVIED	PRINCIPAL OUTSTANDING	INTEREST OUTSTANDING	BALANCE OUTSTANDING
2022	15,431.45	13,777.99	1,338.78	15,116.77
2021		0.00	0.00	0.00
Prior Years		0.00	0.00	0.00
TOTAL ARREARS				<b>\$15,116.77</b>

### STATEMENT OF CURRENT YEAR'S TAXES

(Issued pursuant to the provisions of Section 352 of the Municipal Act, 2001 as amended.)

CURRENT LEVY	INSTALLMENT DUE DATES AND AMOUNTS				OUTSTANDING AMOUNTS		
INTERIM	2,830.14	FEB 28	1,415.00	MAR 31	1,415.14	TAX	6,351.77
FINAL	0.00					PENALTY	157.61
SUPP.	0.00					BALANCE	<b>\$6,509.38</b>
TOTAL	<b>2,830.14</b>						

TOTAL BALANCE DUE AS AT DATE OF CERTIFICATION: \$ 21,626.15

Penalty and/or Interest Levied on Outstanding Principal is 1.250 % levied on the first day of each month following the default of payment and the first day of each month until paid.

I hereby certify that, subject to the qualifications noted below, the above statements respectively show:

- All arrears or taxes returned to this office and due and owing against the above lands; and
- The current amount of taxes on real property and whether any or all of the taxes have been paid as at the date of certification in connection with the above lands, and that no part of the said land has been sold for taxes under Part XI of the Municipal Act, 2001 and whether the interim and / or final taxes for the Corporation of the City of London have been levied for the current year.

FOR THE CITY TREASURER  
e.&o.e.

### ANNUAL LOCAL IMPROVEMENTS / FEES AND CHARGES ASSESSED TO THIS PROPERTY TO DATE INCLUDE:

LOCAL ID	DESCRIPTION	AMOUNT	START	EXPIRY

#### Notes:

- This tax certificate has been prepared in accordance with the provisions of Section 352 of the Municipal Act, 2001. This certificate reflects only those charges added to the Tax Collector's Roll up to the day of certification.
- The total taxes shown may include additions to the Tax Collector's Roll as authorized by statute.
- Interest and penalty charges have been calculated to the day of certification only.
- The information on this certificate is based on payments tendered being honoured by the bank upon which they are drawn.
- This certificate is subject to additional taxes or adjustments pursuant to the provisions of the Municipal Act, the Assessment Act or any other applicable legislation.
- Check for arrears of hydro and water with the Hydro Electric Commission, P.O. Box 3060, London, Ontario N6A 4J8.
- This certificate does not include local improvement charges for future years. Contact the Engineer's Department for information.
- Where this certificate includes credit balances the Corporation of the City of London makes no representation as to who may or may not be entitled to any such credits.



# CERTIFICATE OF THE TREASURER

NOTE: Taxes may include phase-in adjustments and cap adjustments.

THE CORPORATION OF THE CITY OF LONDON  
**London**  
CANADA

FINANCE DEPARTMENT  
REVENUE DIVISION

PAID: \$ 60.00

CERTIFICATE NO 201443

CERTIFIED AS AT: April 14, 2023

YOUR FILE NO 50098-113

ISSUED TO: **CASSELS BROCK & BLACKWELL LLP**  
**40 KING ST W**  
**SCOTIA PLAZA, SUITE 2100**  
**TORONTO ON M5H 3C2**

ASSESSED OWNER:  
**425 WHARNCLIFFE ROAD INC**

ROLL NUMBER	ASSESSED DESCRIPTION
CTY: 39    MUN: 36 MAP: 070 POLL: 090 PARCEL: 289010000	<b>425 WHARNCLIFFE RD S</b> <b>PLAN 29 PT LOT 1 PT LOT 2 RP</b> <b>33R2551 PART 2</b> <b>35109.00SF 178.56FR    D</b>

### PRIOR YEARS' TAX ARREARS

Statement showing arrears of taxes on the above lands. (Reference Section 352 of the Municipal Act, 2001 as amended.)

YEAR	TAXES LEVIED	PRINCIPAL OUTSTANDING	INTEREST OUTSTANDING	BALANCE OUTSTANDING
2022	20,765.70	21,234.70	2,698.78	23,933.48
2021		11,353.09	2,790.71	14,143.80
Prior Years		0.00	0.00	0.00
TOTAL ARREARS				<b>\$38,077.28</b>

### STATEMENT OF CURRENT YEAR'S TAXES

(Issued pursuant to the provisions of Section 352 of the Municipal Act, 2001 as amended.)

CURRENT LEVY	INSTALLMENT DUE DATES AND AMOUNTS				OUTSTANDING AMOUNTS		
INTERIM	8,490.42	FEB 28	4,245.00	MAR 31	4,245.42	TAX	8,506.42
FINAL	0.00					PENALTY	159.29
SUPP.	0.00					BALANCE	<b>\$8,665.71</b>
TOTAL	<b>8,490.42</b>						

TOTAL BALANCE DUE AS AT DATE OF CERTIFICATION: \$ 46,742.99

Penalty and/or Interest Levied on Outstanding Principal is 1.250 % levied on the first day of each month following the default of payment and the first day of each month until paid.

I hereby certify that, subject to the qualifications noted below, the above statements respectively show:

- All arrears or taxes returned to this office and due and owing against the above lands; and
- The current amount of taxes on real property and whether any or all of the taxes have been paid as at the date of certification in connection with the above lands, and that no part of the said land has been sold for taxes under Part XI of the Municipal Act, 2001 and whether the interim and / or final taxes for the Corporation of the City of London have been levied for the current year.

FOR THE CITY TREASURER  
e.&o.e.

### ANNUAL LOCAL IMPROVEMENTS / FEES AND CHARGES ASSESSED TO THIS PROPERTY TO DATE INCLUDE:

LOCAL ID	DESCRIPTION	AMOUNT	START	EXPIRY
18201	ENC0671951 1982329	47.25	1979	01/01/2100

#### Notes:

- This tax certificate has been prepared in accordance with the provisions of Section 352 of the Municipal Act, 2001. This certificate reflects only those charges added to the Tax Collector's Roll up to the day of certification.
- The total taxes shown may include additions to the Tax Collector's Roll as authorized by statute.
- Interest and penalty charges have been calculated to the day of certification only.
- The information on this certificate is based on payments tendered being honoured by the bank upon which they are drawn.
- This certificate is subject to additional taxes or adjustments pursuant to the provisions of the Municipal Act, the Assessment Act or any other applicable legislation.
- Check for arrears of hydro and water with the Hydro Electric Commission, P.O. Box 3060, London, Ontario N6A 4J8.
- This certificate does not include local improvement charges for future years. Contact the Engineer's Department for information.
- Where this certificate includes credit balances the Corporation of the City of London makes no representation as to who may or may not be entitled to any such credits.



This is **Exhibit "OO"** referred to in the affidavit of Tyson Hartwell, sworn before me by videoconference on April 27, 2023 in accordance with O.Reg. 431/20: Administering Oath or Declaration Remotely. The deponent was located in the City of Calgary in the Province of Alberta and I was located in the City of Toronto in the Province of Ontario.



.....  
A Commissioner For Taking Affidavits

Jeremy Bornstein  
LSO#: 65425C

**Assignment and Postponement Agreements  
Entered into in Favour of CWB in connection to 2020 ELSA and 2021 ELSA**

1. an assignment and postponement of creditors' claims between Abdul Sheikh, IHG and CWB dated June 24, 2020;
2. an assignment and postponement of creditors' claims between Syed Javed Ali, IHG and CWB dated June 24, 2020;
3. an assignment and postponement of creditors' claims between Mansoor Sheikh, IHG and 2723710 Ontario Inc. and CWB dated April 8, 2021;
4. an assignment and postponement of creditors' claims between 2292696 Ontario Inc., IHG and 2723710 Ontario Inc. and CWB dated April 8, 2021; and
5. an assignment and postponement of creditors' claims between Rajandeep Singh Dhillon, IHG and CWB dated November 16, 2021.

This is **Exhibit "PP"** referred to in the affidavit of Tyson Hartwell, sworn before me by videoconference on April 27, 2023 in accordance with O.Reg. 431/20: Administering Oath or Declaration Remotely. The deponent was located in the City of Calgary in the Province of Alberta and I was located in the City of Toronto in the Province of Ontario.



.....  
A Commissioner For Taking Affidavits

Jeremy Bornstein  
LSO#: 65425C

Court File No.:

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

B E T W E E N:

**CANADIAN WESTERN BANK**

Applicant

- and -

**INDEX HOLDING GROUP INC., INDEX GROUP OF COMPANIES INC.,  
INDEX INTERNATIONAL INC., INDEX FOODS INC., 2640179 ONTARIO  
INC., 11030434 CANADA LTD., 2700774 ONTARIO INC., 2700767  
ONTARIO INC., 2683960 ONTARIO LTD., 11030418 CANADA INC.,  
2723710 ONTARIO INC., 2718366 ONTARIO INC., 2737332 ONTARIO  
INC., 2737334 ONTARIO INC., 2723714 ONTARIO INC., 2723716  
ONTARIO INC., 2737338 ONTARIO INC., 2790760 ONTARIO INC.,  
2775290 ONTARIO INC., 2775296 ONTARIO INC., 421 WHARNCLIFFE  
LTD. AND 425 WHARNCLIFFE ROAD INC.**

Respondents

IN THE MATTER OF AN APPLICATION UNDER SECTION 243(1) OF THE *BANKRUPTCY  
AND INSOLVENCY ACT*, R.S.C. 1985, c. B-3, AS AMENDED; AND SECTION 101 OF THE  
*COURTS OF JUSTICE ACT*, R.S.O. 1990, c. C.43, AS AMENDED

**CONSENT**

MNP Ltd. hereby consents to act as receiver, without security, over (a) all of the properties, assets and undertaking of Index Holding Group Inc., Index Group of Companies Inc., Index International Inc., Index Foods Inc., 2640179 Ontario Inc., 11030434 Canada Ltd., 2700774 Ontario Inc., 2700767 Ontario Inc., 2683960 Ontario Ltd., 11030418 Canada Inc., 2723710 Ontario Inc., 2718366 Ontario Inc., 2737332 Ontario Inc., 2737334 Ontario Inc., 2723714 Ontario Inc., 2723716 Ontario Inc., 2737338 Ontario Inc., 2790760 Ontario Inc., 2775290 Ontario Inc., 2775296 Ontario Inc., 421 Wharncliffe Ltd. and 425 Wharncliffe Road Inc., or any one or more of them, and in all proceeds arising therefrom; and (b)(i) the real property municipally known as 421 Wharncliffe Road South, London, Ontario, and as legally described as PT LT 1, PL29, PTS 1&2, 33R5153 & PT2, 33R5487 S/T 837774 IF ANY, S/T 583284 IF ANY; LONDON/WESTMINSTER and (ii) the real property municipally known as 425 Wharncliffe Road South, London, Ontario, and as legally described as PT LTS 1 & 2, PL 29, PART 2, 33R2551, S/T 929439, IF ANY, S/T 837774, IF ANY, S/T 583284, IF ANY; LONDON/WESTMINSTER.

DATED as of April 24, 2023.

**MNP LTD.**

Per:



---

Deborah Hornbostel, Senior Vice President

CANADIAN WESTERN BANK  
Applicants

and

INDEX HOLDING GROUP INC., et al.  
Respondents

Court File No. CV-23-00698447-00CL

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

PROCEEDING COMMENCED AT  
TORONTO

---

**AFFIDAVIT OF TYSON HARTWELL**

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**Cassels Brock & Blackwell LLP**

2100 Scotia Plaza  
40 King Street West  
Toronto, ON M5H 3C2

Jeremy Bornstein LSO #: 65425C

Tel: 416.869.5386

[jbornstein@cassels.com](mailto:jbornstein@cassels.com)

Stephanie Fernandes LSO #: 85819M

Tel: 416.860.6481

[sfernandes@cassels.com](mailto:sfernandes@cassels.com)

Lawyers for the Applicants

# TAB 3

Revised: January 21, 2014  
s.243(1) BIA (National Receiver) and s. 101 CJA (Ontario) Receiver

Court File No. —

Court File No. CV-23-00698447-00CL

**ONTARIO  
SUPERIOR COURT OF JUSTICE  
COMMERCIAL LIST**

THE HONOURABLE — )  
 )  
JUSTICE —● )  
 ) DAY OF WEEKDAY●, THE #●  
 )  
 ) DAY OF MONTH, 20YR●, 2023

~~PLAINTIFF~~<sup>1</sup> CANADIAN WESTERN BANK

~~Plaintiff~~ Applicant

- and -

INDEX HOLDING GROUP INC., INDEX GROUP OF COMPANIES INC., INDEX  
INTERNATIONAL INC., INDEX FOODS INC., 2640179 ONTARIO INC., 11030434  
CANADA LTD., 2700774 ONTARIO INC., 2700767 ONTARIO INC., 2683960  
ONTARIO LTD., 11030418 CANADA INC., 2723710 ONTARIO INC., 2718366  
ONTARIO INC., 2737332 ONTARIO INC., 2737334 ONTARIO INC., 2723714  
ONTARIO INC., 2723716 ONTARIO INC., 2737338 ONTARIO INC., 2790760  
ONTARIO INC., 2775290 ONTARIO INC., 2775296 ONTARIO INC., 421  
WHARNCLIFFE LTD. AND 425 WHARNCLIFFE ROAD INC.

~~DEFENDANT~~ Respondents

~~Defendant~~

IN THE MATTER OF AN APPLICATION UNDER SECTION 243(1) OF THE  
BANKRUPTCY AND INSOLVENCY ACT, RSC 1985, c. B-3, AS AMENDED; AND  
SECTION 101 OF THE COURTS OF JUSTICE ACT, RSO 1990, c. C.43, AS  
AMENDED

<sup>1</sup>—The Model Order Subcommittee notes that a receivership proceeding may be commenced by action or by application. This model order is drafted on the basis that the receivership proceeding is commenced by way of an action.



**ORDER**  
**(~~appointing~~Appointing Receiver)**

THIS ~~MOTION~~APPLICATION made by the Plaintiff<sup>2</sup> Applicant for an Order pursuant to section 243(1) of the *Bankruptcy and Insolvency Act*, R.S.C. RSC 1985, c. B-3, as amended (the "BIA") and section 101 of the *Courts of Justice Act*, R.S.O. RSO 1990, c. C.43, as amended (the "CJA") appointing ~~[RECEIVER'S NAME]~~ MNP Ltd. ("MNP") as receiver ~~[and manager]~~ (in such capacities, the "Receiver") without security, of: (a) all of the assets, undertakings and properties of [DEBTOR'S NAME] (the "Debtor") acquired for, or used in relation to a business carried on by the Debtor, assets and undertaking (collectively, the "Personal Property") of Index Holding Group Inc., Index Group of Companies Inc., Index International Inc., Index Foods Inc., 2640179 Ontario Inc., 11030434 Canada Ltd., 2700774 Ontario Inc., 2700767 Ontario Inc., 2683960 Ontario Ltd., 11030418 Canada Inc., 2723710 Ontario Inc., 2718366 Ontario Inc., 2737332 Ontario Inc., 2737334 Ontario Inc., 2723714 Ontario Inc., 2723716 Ontario Inc., 2737338 Ontario Inc., 2790760 Ontario Inc., 2775290 Ontario Inc., 2775296 Ontario Inc., 421 Wharnccliffe Ltd. and 425 Wharnccliffe Road Inc. (collectively, the "Debtors"), or any one or more of them, and in all proceeds arising therefrom; and (b)(i) the real property municipally known as 421 Wharnccliffe Road South, London, Ontario, and as legally described as PT LT 1, PL29, PTS 1&2, 33R5153 & PT2, 33R5487 S/T 837774 IF ANY, S/T 583284 IF ANY; LONDON/WESTMINSTER (the "421 Real Property") and (ii) the real property municipally known as 425 Wharnccliffe Road South, London, Ontario, and as legally described as PT LTS 1 & 2, PL 29, PART 2, 33R2551, S/T 929439, IF ANY, S/T 837774, IF ANY, S/T 583284, IF ANY; LONDON/WESTMINSTER (the "425 Real Property", and together with the 421 Real Property, the "Real Property" and together with the Personal Property, the "Property"), was heard this day ~~at 330 University Avenue,~~ by judicial teleconference via Zoom at Toronto, Ontario.

ON READING the affidavit of ~~[NAME]~~ Tyson Hartwell sworn ~~[DATE]~~ April 27, 2023 and the Exhibits thereto and on hearing the submissions of counsel for

<sup>2</sup>Section 243(1) of the BIA provides that the Court may appoint a receiver "on application by a secured creditor".

~~[NAMES]~~ the Applicant and such other parties listed on the Counsel Slip, no one appearing ~~for [NAME]~~ although duly served as appears from the ~~affidavit~~ affidavits of service of ~~[NAME]~~ Stephanie Fernandes sworn ~~[DATE]~~ April 28, 2023 and May 1, 2023, and on reading the consent of ~~[RECEIVER'S NAME]~~ MNP to act as the Receiver,

## SERVICE

1. THIS COURT ORDERS that the time for service of the Notice of ~~Motion~~ Application and the ~~Motion~~ Application is hereby abridged and validated<sup>3</sup> so that this ~~motion~~ application is properly returnable today and hereby dispenses with further service thereof.

## APPOINTMENT

2. THIS COURT ORDERS that pursuant to section 243(1) of the BIA and section 101 of the CJA, ~~[RECEIVER'S NAME]~~ MNP is hereby appointed Receiver, without security, of ~~all of the assets, undertakings and properties of the Debtor acquired for, or used in relation to a business carried on by the Debtor, including all proceeds thereof (the "Property")~~ the Property of the Debtors.

## RECEIVER'S POWERS

3. THIS COURT ORDERS that the Receiver is hereby empowered and authorized, but not obligated, to act at once in respect of the Property and, without in any way limiting the generality of the foregoing, the Receiver is hereby expressly empowered and authorized to do any of the following where the Receiver considers it necessary or desirable:

- (a) to take possession of and exercise control over the Property and any and all proceeds, receipts and disbursements arising out of or

<sup>3</sup> ~~If service is effected in a manner other than as authorized by the Ontario Rules of Civil Procedure, an order validating irregular service is required pursuant to Rule 16.08 of the Rules of Civil Procedure and may be granted in appropriate circumstances.~~

from the Property, including without limitation the Debtors' bank accounts related to the Property wherever located;

- (b) to receive, preserve, and protect the Property, or any part or parts thereof, including, but not limited to, the changing of locks and security codes, the relocating of Property to safeguard it, the engaging of independent security personnel, the taking of physical inventories and the placement of such insurance coverage as may be necessary or desirable;
- (c) to manage, operate, and carry on the business of the ~~Debtor~~Debtors, or any one or more of them, including the powers to enter into any agreements, incur any obligations in the ordinary course of business, cease to carry on all or any part of the business, or cease to perform or disclaim any contracts of the ~~Debtor~~Debtors, or any one or more of them, in respect of the Property;
- (d) to engage consultants, appraisers, agents, real estate brokers, experts, auditors, accountants, managers, counsel and such other persons from time to time and on whatever basis, including on a temporary basis, to assist with the exercise of the ~~Receiver's~~Receiver's powers and duties, including without limitation those conferred by this Order;
- (e) to purchase or lease such machinery, equipment, inventories, supplies, premises or other assets to continue the business of the ~~Debtor~~Debtors, or any one or more of them, with respect to the Property or any part or parts thereof;
- (f) to receive and collect all monies and accounts now owed or hereafter owing to the ~~Debtor~~Debtors, or any one or more of them, with respect to the Property and to exercise all remedies of the

~~Debtor~~Debtors, or any one or more of them, in collecting such monies, including, without limitation, to enforce any security held by the ~~Debtor~~Debtors, or any one or more of them;

(g) to settle, extend or compromise any indebtedness owing to the ~~Debtor~~Debtors, or any one or more of them, with respect to the Property;

(h) to execute, assign, issue and endorse documents of whatever nature in respect of any of the Property, whether in the ~~Receiver's~~Receiver's name or in the name and on behalf of the ~~Debtor~~Debtors, or any one or more of them, for any purpose pursuant to this Order;

(i) to initiate, prosecute and continue the prosecution of any and all proceedings and to defend all proceedings now pending or hereafter instituted with respect to the ~~Debtor~~Debtors, or any one or more of them, the Property or the Receiver, and to settle or compromise any such proceedings.<sup>4</sup> The authority hereby conveyed shall extend to such appeals or applications for judicial review in respect of any order or judgment pronounced in any such proceeding;

(j) to market any or all of the Property, including advertising and soliciting offers in respect of the Property or any part or parts thereof and negotiating such terms and conditions of sale as the Receiver in its discretion may deem appropriate;

~~<sup>4</sup>This model order does not include specific authority permitting the Receiver to either file an assignment in bankruptcy on behalf of the Debtor, or to consent to the making of a bankruptcy order against the Debtor. A bankruptcy may have the effect of altering the priorities among creditors, and therefore the specific authority of the Court should be sought if the Receiver wishes to take one of these steps.~~

- (k) to sell, convey, transfer, lease or assign the Property or any part or parts thereof out of the ordinary course of business,
- (i) without the approval of this Court in respect of any transaction not exceeding \$~~\_\_\_\_\_~~100,000, provided that the aggregate consideration for all such transactions does not exceed \$~~\_\_\_\_\_~~500,000; and
  - (ii) with the approval of this Court in respect of any transaction in which the purchase price or the aggregate purchase price exceeds the applicable amount set out in the preceding clause;

and in each such case notice under subsection 63(4) of the Ontario *Personal Property Security Act*, [or section 31 of the Ontario *Mortgages Act*, as the case may be,<sup>5</sup> shall not be required, ~~and in each case the Ontario *Bulk Sales Act* shall not apply.~~

- (l) to apply for any vesting order or other orders necessary to convey the Property or any part or parts thereof to a purchaser or purchasers thereof, free and clear of any liens or encumbrances affecting such Property;
- (m) to report to, meet with and discuss with such affected Persons (as defined below) as the Receiver deems appropriate on all matters relating to the Property and the receivership, and to share information, subject to such terms as to confidentiality as the Receiver deems advisable;

<sup>5</sup> ~~If the Receiver will be dealing with assets in other provinces, consider adding references to applicable statutes in other provinces. If this is done, those statutes must be reviewed to ensure that the Receiver is exempt from or can be exempted from such notice periods, and further that the Ontario Court has the jurisdiction to grant such an exemption.~~

- (n) to consult with the Applicant on all matters relating to the Property and the receivership, subject to such terms as to confidentiality as the Receiver deems advisable;
- (o) ~~(n)~~ to register a copy of this Order and any other Orders in respect of the Property against title to any of the Property;
- (p) ~~(o)~~ to apply for any permits, licences, approvals or permissions with respect to the Property as may be required by any governmental authority and any renewals thereof for and on behalf of and, if thought desirable by the Receiver, in the name of the ~~Debtor~~ Debtors, or any one or more of them;
- (q) ~~(p)~~ to enter into agreements with any trustee in bankruptcy appointed in respect of the ~~Debtor~~ Debtors, or any one or more of them, including, without limiting the generality of the foregoing, the ability to enter into occupation agreements for any property owned or leased by the ~~Debtor~~ Debtors, or any one or more of them;
- (r) ~~(q)~~ to exercise any shareholder, partnership, joint venture or other rights which the ~~Debtor~~ Debtors, or any one or more of them, may have; and
- (s) ~~(r)~~ to take any steps reasonably incidental to the exercise of these powers or the performance of any statutory obligations;

and in each case where the Receiver takes any such actions or steps, it shall be exclusively authorized and empowered to do so, to the exclusion of all other Persons (as defined below), including the ~~Debtor~~ Debtors, or any one or more of them, and without interference from any other Person.

## DUTY TO PROVIDE ACCESS AND CO-OPERATION TO THE RECEIVER

4. THIS COURT ORDERS that (i) the ~~Debtor~~Debtors, (ii) all of ~~its~~their current and former directors, officers, employees, agents, accountants, legal counsel~~—and~~, shareholders, and all other persons acting on ~~its~~their instructions or behalf, and (iii) all other individuals, firms, corporations, governmental bodies or agencies, or other entities having notice of this Order (all of the foregoing, collectively, being "Persons" and each being a "Person") shall forthwith advise the Receiver of the existence of any Property in such ~~Person's~~Person's possession or control, shall grant immediate and continued access to the Property to the Receiver, and shall deliver all such Property to the Receiver upon the ~~Receiver's~~Receiver's request.

5. THIS COURT ORDERS that all Persons shall forthwith advise the Receiver of the existence of any books, documents, securities, contracts, orders, corporate and accounting records, and any other papers, records and information of any kind related to the business or affairs of the ~~Debtor~~Debtors, or any one or more of them, and any computer programs, computer tapes, computer disks, or other data storage media containing any such information (the foregoing, collectively, the "Records") in that ~~Person's~~Person's possession or control, and shall provide to the Receiver or permit the Receiver to make, retain and take away copies thereof and grant to the Receiver unfettered access to and use of accounting, computer, software and physical facilities relating thereto, provided however that nothing in this paragraph 5 or in paragraph 6 of this Order shall require the delivery of Records, or the granting of access to Records, which may not be disclosed or provided to the Receiver due to the privilege attaching to solicitor-client communication or due to statutory provisions prohibiting such disclosure.

6. THIS COURT ORDERS that if any Records are stored or otherwise contained on a computer or other electronic system of information storage, whether by independent service provider or otherwise, all Persons in possession or control of such Records shall forthwith give unfettered access to the Receiver for the purpose of allowing the Receiver to recover and fully copy all of the information contained therein whether by way of printing the information onto paper or making copies of computer disks or such

other manner of retrieving and copying the information as the Receiver in its discretion deems expedient, and shall not alter, erase or destroy any Records without the prior written consent of the Receiver. Further, for the purposes of this paragraph, all Persons shall provide the Receiver with all such assistance in gaining immediate access to the information in the Records as the Receiver may in its discretion require including providing the Receiver with instructions on the use of any computer or other system and providing the Receiver with any and all access codes, account names and account numbers that may be required to gain access to the information.

7. THIS COURT ORDERS that the Receiver shall provide each of the relevant landlords with notice of the Receiver's intention to remove any fixtures from any leased premises at least seven (7) days prior to the date of the intended removal. The relevant landlord shall be entitled to have a representative present in the leased premises to observe such removal and, if the landlord disputes the Receiver's entitlement to remove any such fixture under the provisions of the lease, such fixture shall remain on the premises and shall be dealt with as agreed between any applicable secured creditors, such landlord and the Receiver, or by further Order of this Court upon application by the Receiver on at least two (2) days notice to such landlord and any such secured creditors.

8. THIS COURT ORDERS that all Persons, including without limitation, the Debtors and all entities affiliated (as such term is defined in the *Business Corporations Act* (Ontario)) with Index Holding Group Inc. (collectively, the "Index Group"), and each of them, shall be required to cooperate, and share information, with the Receiver, in connection with all books and records, contracts, agreements, permits, licenses and insurance policies and other documents in respect of the Debtors, or any one or more of them, and the Property. In addition to the foregoing, general cooperation and information sharing requirements, the Index Group, or any of them, shall be required to do the following: (a) in respect of any and all such contracts, agreements, permits, licenses and insurance policies and other documents: (1) maintain them in good standing and provide immediate notice and copies to the Receiver of any communications received from regulators, providers, lessors or franchisors in respect



thereof; (2) provide immediate notice to the Receiver of any material change and/or pending material change to the status quo in respect thereof; and (3) provide thirty (30) days' written notice to the Receiver of any renewal date, termination date, election date or similar date in respect thereof; and (b) assist, and cooperate with, the Receiver in obtaining any further permits and licenses that may be required in the Receiver's discretion, acting reasonably, in consultation with the Applicant.

#### **NO PROCEEDINGS AGAINST THE RECEIVER**

9. ~~8.~~ THIS COURT ORDERS that no proceeding or enforcement process in any court or tribunal (each, a "Proceeding"), shall be commenced or continued against the Receiver except with the written consent of the Receiver or with leave of this Court.

#### **NO PROCEEDINGS AGAINST THE ~~DEBTOR~~DEBTORS OR THE PROPERTY**

10. ~~9.~~ THIS COURT ORDERS that no Proceeding against or in respect of the ~~Debtor~~Debtors, or any one or more of them, or the Property shall be commenced or continued except with the written consent of the Receiver or with leave of this Court and any and all Proceedings currently under way against or in respect of the ~~Debtor~~Debtors, or any one or more of them, or the Property are hereby stayed and suspended pending further Order of this Court.

#### **NO EXERCISE OF RIGHTS OR REMEDIES**

11. ~~10.~~ THIS COURT ORDERS that all rights and remedies against the ~~Debtor~~Debtors, or any one or more of them, the Receiver, or affecting the Property, including, without limitation, licenses and permits, are hereby stayed and suspended except with the written consent of the Receiver or leave of this Court, provided however that this stay and suspension does not apply in respect of any "eligible financial contract" as defined in the BIA, and further provided that nothing in this paragraph shall (i) empower the Receiver or the ~~Debtor~~Debtors, or any one or more of them, to carry on any business which the ~~Debtor~~Debtors, or any one or more of them, is not lawfully entitled to carry on, (ii) exempt the Receiver or the ~~Debtor~~Debtors, or any one or more of them, from compliance with statutory or regulatory provisions relating to health,

safety or the environment, (iii) prevent the filing of any registration to preserve or perfect a security interest, or (iv) prevent the registration of a claim for lien.

### **NO INTERFERENCE WITH THE RECEIVER**

12. ~~11.~~ THIS COURT ORDERS that no Person shall discontinue, fail to honour, alter, interfere with, repudiate, terminate or cease to perform any right, renewal right, contract, agreement, licence or permit in favour of or held by the ~~Debtor~~Debtors, or any one or more of them, in respect of the Property without written consent of the Receiver or leave of this Court.

### **CONTINUATION OF SERVICES**

13. ~~12.~~ THIS COURT ORDERS that all Persons, including, without limitation, the Index Group, having oral or written agreements with the ~~Debtor~~Debtors, or any one or more of them, in connection with or relating to the Property or statutory or regulatory mandates for the supply of goods and/or services, including without limitation, all computer software, communication and other data services, centralized banking services, payroll services, insurance, transportation services, utility or other services to the ~~Debtor~~Debtors, or any one or more of them, in connection with or relating to the Property are hereby restrained until further Order of this Court from discontinuing, altering, interfering with or terminating the supply of such goods or services as may be required by the Receiver, and that the Receiver shall be entitled to the continued use of the ~~Debtor's~~Debtors', or any one or more of their, current telephone numbers, facsimile numbers, internet addresses and domain names, provided in each case that the normal prices or charges for all such goods or services received after the date of this Order are paid by the Receiver in accordance with normal payment practices of the ~~Debtor~~or Debtors, or any one or more of their, or such other practices as may be agreed upon by the supplier or service provider and the Receiver, or as may be ordered by this Court.

## RECEIVER TO HOLD FUNDS

14. ~~13.~~ THIS COURT ORDERS that all funds, monies, cheques, instruments, and other forms of payments received or collected by the Receiver from and after the making of this Order from any source whatsoever, including without limitation the sale of all or any of the Property and the collection of any accounts receivable in whole or in part in connection with or relating to the Property, whether in existence on the date of this Order or hereafter coming into existence, shall be deposited into one or more new accounts to be opened by the Receiver (the "Post Receivership Accounts") and the monies standing to the credit of such Post Receivership Accounts from time to time, net of any disbursements provided for herein, shall be held by the Receiver to be paid in accordance with the terms of this Order or any further Order of this Court.

## EMPLOYEES

15. ~~14.~~ THIS COURT ORDERS that all employees of the ~~Debtor~~ Debtors, or any one or more of them, shall remain the employees of ~~the~~ such Debtor until such time as the Receiver, on ~~the Debtor's~~ behalf of the Debtors, or any one or more of them, may terminate the employment of such employees. The Receiver shall not be liable for any employee-related liabilities, including any successor employer liabilities as provided for in section 14.06(1.2) of the BIA, other than such amounts as the Receiver may specifically agree in writing to pay, or in respect of its obligations under sections 81.4(5) or 81.6(3) of the BIA or under the *Wage Earner Protection Program Act*.

## PIPEDA

16. ~~15.~~ THIS COURT ORDERS that, pursuant to clause 7(3)(c) of the *Canada Personal Information Protection and Electronic Documents Act*, the Receiver shall disclose personal information of identifiable individuals to prospective purchasers or bidders for the Property and to their advisors, but only to the extent desirable or required to negotiate and attempt to complete one or more sales of the Property (each, a "Sale"). Each prospective purchaser or bidder to whom such personal information is disclosed shall maintain and protect the privacy of such information and limit the use of such information to its evaluation of the Sale, and if it does not complete a Sale, shall

return all such information to the Receiver, or in the alternative destroy all such information. The purchaser of any Property shall be entitled to continue to use the personal information provided to it, and related to the Property purchased, in a manner which is in all material respects identical to the prior use of such information by the ~~Debtor~~ Debtors, or any one or more of them, and shall return all other personal information to the Receiver, or ensure that all other personal information is destroyed.

### **LIMITATION ON ENVIRONMENTAL LIABILITIES**

17. ~~16.~~ THIS COURT ORDERS that nothing herein contained shall require the Receiver to occupy or to take control, care, charge, possession or management (separately and/or collectively, "Possession") of any of the Property that might be environmentally contaminated, might be a pollutant or a contaminant, or might cause or contribute to a spill, discharge, release or deposit of a substance contrary to any federal, provincial or other law respecting the protection, conservation, enhancement, remediation or rehabilitation of the environment or relating to the disposal of waste or other contamination including, without limitation, the *Canadian Environmental Protection Act*, the *Ontario Environmental Protection Act*, the *Ontario Water Resources Act*, or the *Ontario Occupational Health and Safety Act* and regulations thereunder (the "Environmental Legislation"), provided however that nothing herein shall exempt the Receiver from any duty to report or make disclosure imposed by applicable Environmental Legislation. The Receiver shall not, as a result of this Order or anything done in pursuance of the ~~Receiver's~~ Receiver's duties and powers under this Order, be deemed to be in Possession of any of the Property within the meaning of any Environmental Legislation, unless it is actually in possession.

### **LIMITATION ON THE RECEIVER'S LIABILITY**

18. ~~17.~~ THIS COURT ORDERS that the Receiver shall incur no liability or obligation as a result of its appointment or the carrying out the provisions of this Order, save and except for any gross negligence or wilful misconduct on its part, or in respect of its obligations under sections 81.4(5) or 81.6(3) of the BIA or under the *Wage Earner*

*Protection Program Act.* Nothing in this Order shall derogate from the protections afforded the Receiver by section 14.06 of the BIA or by any other applicable legislation.

## ~~RECEIVER'S~~RECEIVER'S ACCOUNTS

19. ~~18.~~ THIS COURT ORDERS that the Receiver and counsel to the Receiver shall be paid their reasonable fees and disbursements, in each case at their standard rates and charges unless otherwise ordered by the Court on the passing of accounts, and that the Receiver and counsel to the Receiver shall be entitled to and are hereby granted a charge (the "~~Receiver's~~"Receiver's Charge") on the Property, as security for such fees and disbursements, both before and after the making of this Order in respect of these proceedings, and that the ~~Receiver's~~Receiver's Charge shall form a first charge on the Property in priority to all security interests, trusts, liens, charges and encumbrances, statutory or otherwise, in favour of any Person, but subject to sections 14.06(7), 81.4(4), and 81.6(2) of the BIA.<sup>6</sup>

20. ~~19.~~ THIS COURT ORDERS that the Receiver and its legal counsel shall pass ~~its~~their accounts from time to time, and for this purpose the accounts of the Receiver and its legal counsel are hereby referred to a judge of the Commercial List of the Ontario Superior Court of Justice.

21. ~~20.~~ THIS COURT ORDERS that prior to the passing of its accounts, the Receiver shall be at liberty from time to time to apply reasonable amounts, out of the monies in its hands, against its fees and disbursements, including legal fees and disbursements, incurred at the standard rates and charges of the Receiver or its counsel, and such amounts shall constitute advances against its remuneration and disbursements when and as approved by this Court.

<sup>6</sup> ~~Note that subsection 243(6) of the BIA provides that the Court may not make such an order "unless it is satisfied that the secured creditors who would be materially affected by the order were given reasonable notice and an opportunity to make representations".~~

## FUNDING OF THE RECEIVERSHIP

22. ~~21.~~ THIS COURT ORDERS that the Receiver be at liberty and it is hereby empowered to borrow by way of a revolving credit or otherwise, such monies from time to time as it may consider necessary or desirable, provided that the outstanding principal amount does not exceed \$ ~~\_\_\_\_\_~~ 250,000 (or such greater amount as this Court may by further Order authorize) at any time, at such rate or rates of interest as it deems advisable for such period or periods of time as it may arrange, for the purpose of funding the exercise of the powers and duties conferred upon the Receiver by this Order, including interim expenditures. The whole of the Property shall be and is hereby charged by way of a fixed and specific charge (the "~~Receiver's~~" Receiver's Borrowings Charge") as security for the payment of the monies borrowed, together with interest and charges thereon, in priority to all security interests, fees, trusts, liens, charges and encumbrances, statutory or otherwise, in favour of any Person, but subordinate in priority to the Receiver's Charge and the charges as set out in sections 14.06(7), 81.4(4), and 81.6(2) of the BIA.

23. ~~22.~~ THIS COURT ORDERS that neither the ~~Receiver's~~ Receiver's Borrowings Charge nor any other security granted by the Receiver in connection with its borrowings under this Order shall be enforced without leave of this Court.

24. ~~23.~~ THIS COURT ORDERS that the Receiver is at liberty and authorized to issue certificates substantially in the form annexed as Schedule "A" hereto (the "Receiver's Certificates") for any amount borrowed by it pursuant to this Order.

25. ~~24.~~ THIS COURT ORDERS that the monies from time to time borrowed by the Receiver pursuant to this Order or any further order of this Court and any and all Receiver's Certificates evidencing the same or any part thereof shall rank on a *pari passu* basis, unless otherwise agreed to by the holders of any prior issued ~~Receiver's~~ Receiver's Certificates.

## SERVICE AND NOTICE

26. ~~25.~~ THIS COURT ORDERS that ~~the E-Service Protocol of the~~The Guide Concerning Commercial List E-Service (the “**Protocol**”) is approved and adopted by reference herein and, in this proceeding, the service of documents made in accordance with the Protocol (which can be found on the Commercial List website at ~~http://www.ontariocourts.ca/scj/practice/practice-directions/toronto/e-service-protocol/~~https://www.ontariocourts.ca/scj/practice/practice-directions/toronto/eservice-commercial/) shall be valid and effective service. Subject to Rule 17.05 this Order shall constitute an order for substituted service pursuant to Rule 16.04 of the Rules of Civil Procedure. Subject to Rule 3.01(d) of the Rules of Civil Procedure and paragraph 21 of the Protocol, service of documents in accordance with the Protocol will be effective on transmission. This Court further orders that a Case Website shall be established in accordance with the Protocol with the following URL ~~‘@’~~www.mnpdebt.ca/Index-Group-et-al.

27. ~~26.~~ THIS COURT ORDERS that if the service or distribution of documents in accordance with the Protocol is not practicable, the Receiver is at liberty to serve or distribute this Order, any other materials and orders in these proceedings, any notices or other correspondence, by forwarding true copies thereof by prepaid ordinary mail, courier, personal delivery or facsimile transmission to the ~~Debtor’s~~Debtors’, or any one or more of their, creditors or other interested parties at their respective addresses as last shown on the records of the ~~Debtor~~Debtors, or any one or more of them, and that any such service or distribution by courier, personal delivery or facsimile transmission shall be deemed to be received on the next business day following the date of forwarding thereof, or if sent by ordinary mail, on the third business day after mailing.

## GENERAL

28. ~~27.~~ THIS COURT ORDERS that the Receiver may from time to time apply to this Court for advice and directions in the discharge of its powers and duties hereunder.

29. ~~28.~~ THIS COURT ORDERS that nothing in this Order shall prevent the Receiver from acting as a trustee in bankruptcy of the ~~Debtor:~~Debtors, or any one or more of

them. For greater certainty, the Property shall remain subject to the terms of this Order including without limitation paragraph 3 hereof and, subject to further Court Order, shall not vest in MNP as trustee in bankruptcy of the Debtors, or any one or more of them.

30. ~~29.~~ THIS COURT HEREBY REQUESTS the aid and recognition of any court, tribunal, regulatory or administrative body having jurisdiction in Canada or in the United States to give effect to this Order and to assist the Receiver and its agents in carrying out the terms of this Order. All courts, tribunals, regulatory and administrative bodies are hereby respectfully requested to make such orders and to provide such assistance to the Receiver, as an officer of this Court, as may be necessary or desirable to give effect to this Order or to assist the Receiver and its agents in carrying out the terms of this Order.

31. ~~30.~~ THIS COURT ORDERS that the Receiver be at liberty and is hereby authorized and empowered to apply to any court, tribunal, regulatory or administrative body, wherever located, for the recognition of this Order and for assistance in carrying out the terms of this Order, and that the Receiver is authorized and empowered to act as a representative in respect of the within proceedings for the purpose of having these proceedings recognized in a jurisdiction outside Canada.

32. ~~31.~~ THIS COURT ORDERS that the ~~Plaintiff~~Applicant shall have its costs of this ~~motion~~Application, up to and including entry and service of this Order, provided for by the terms of the ~~Plaintiff's~~Applicant's security or, if not so provided by the ~~Plaintiff's~~Applicant's security, then on a substantial indemnity basis to be paid by the Receiver from the ~~Debtor's estate~~Debtors, or any one or more of their estates, with such priority and at such time as this Court may determine.

33. ~~32.~~ THIS COURT ORDERS that any interested party may apply to this Court to vary or amend this Order on not less than seven (7) days' notice to the Receiver and to any other party likely to be affected by the order sought or upon such other notice, if any, as this Court may order.



| 34. THIS COURT ORDERS that this Order is effective from today's date and it is not  
| required to be entered.

| \_\_\_\_\_

| \_\_\_\_\_

SCHEDULE "A"

RECEIVER CERTIFICATE

CERTIFICATE NO. \_\_\_\_\_

AMOUNT \$ \_\_\_\_\_

1. THIS IS TO CERTIFY that ~~[RECEIVER'S NAME]~~ MNP Ltd., the receiver (the "Receiver") ~~of the assets, undertakings and properties [DEBTOR'S NAME] acquired for, or used in relation to a business carried on by the Debtor, including all proceeds thereof~~ (collectively, "Receiver") of (a) all of the properties, assets and undertaking (collectively, the "Personal Property") of Index Holding Group Inc., Index Group of Companies Inc., Index International Inc., Index Foods Inc., 2640179 Ontario Inc., 11030434 Canada Ltd., 2700774 Ontario Inc., 2700767 Ontario Inc., 2683960 Ontario Ltd., 11030418 Canada Inc., 2723710 Ontario Inc., 2718366 Ontario Inc., 2737332 Ontario Inc., 2737334 Ontario Inc., 2723714 Ontario Inc., 2723716 Ontario Inc., 2737338 Ontario Inc., 2790760 Ontario Inc., 2775290 Ontario Inc., 2775296 Ontario Inc., 421 Wharnccliffe Ltd. and 425 Wharnccliffe Road Inc. (collectively, the "Debtors"), or any one or more of them, and in all proceeds arising therefrom; and (b)(i) the real property municipally known as 421 Wharnccliffe Road South, London, Ontario, and as legally described as PT LT 1, PL29, PTS 1&2, 33R5153 & PT2, 33R5487 S/T 837774 IF ANY, S/T 583284 IF ANY; LONDON/WESTMINSTER (the "421 Real Property") and (ii) the real property municipally known as 425 Wharnccliffe Road South, London, Ontario, and as legally described as PT LTS 1 & 2, PL 29, PART 2, 33R2551, S/T 929439, IF ANY, S/T 837774, IF ANY, S/T 583284, IF ANY; LONDON/WESTMINSTER (the "425 Real Property", and together with the 421 Real Property, the "Real Property" and together with the Personal Property, the "Property") appointed by Order of the Ontario Superior Court of Justice (Commercial List) (the "Court") dated the \_\_\_ day of \_\_\_\_\_, 20\_\_ (the "Order") made in an action application having Court file number —CV-CL—, has received as such Receiver from the holder of this certificate (the "Lender") the principal sum of \$ \_\_\_\_\_, being part of the total principal

sum of \$ \_\_\_\_\_ which the Receiver is authorized to borrow under and pursuant to the Order.

2. The principal sum evidenced by this certificate is payable on demand by the Lender with interest thereon calculated and compounded [daily][monthly not in advance on the \_\_\_\_\_ day of each month] after the date hereof at a notional rate per annum equal to the rate of \_\_\_\_\_ per cent above the prime commercial lending rate of Bank of \_\_\_\_\_ from time to time.

3. Such principal sum with interest thereon is, by the terms of the Order, together with the principal sums and interest thereon of all other certificates issued by the Receiver pursuant to the Order or to any further order of the Court, a charge upon the whole of the Property, in priority to the security interests of any other person, but subject to the priority of the charges set out in the Order and in the *Bankruptcy and Insolvency Act*, and the right of the Receiver to indemnify itself out of such Property in respect of its remuneration and expenses.

4. All sums payable in respect of principal and interest under this certificate are payable at the main office of the Lender at Toronto, Ontario.

5. Until all liability in respect of this certificate has been terminated, no certificates creating charges ranking or purporting to rank in priority to this certificate shall be issued by the Receiver to any person other than the holder of this certificate without the prior written consent of the holder of this certificate.

6. The charge securing this certificate shall operate so as to permit the Receiver to deal with the Property as authorized by the Order and as authorized by any further or other order of the Court.

7. The Receiver does not undertake, and it is not under any personal liability, to pay any sum in respect of which it may issue certificates under the terms of the Order.

DATED the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_.

|

~~[RECEIVER'S NAME]~~ MNP Ltd., solely in its  
capacity  
as Receiver of the Property, and not in its  
personal capacity

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

Name:

Title:

Applicant

Respondents

Court File No. CV-23-00698447-00CL

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

**PROCEEDING COMMENCED AT**  
**TORONTO**

**ORDER**  
**(APPOINTING RECEIVER)**

**Cassels Brock & Blackwell LLP**

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Lawyers for the Applicant

CANADIAN WESTERN BANK  
Applicant

and INDEX HOLDING GROUP INC. et al.  
Respondents

Court File No. CV-23-00698447-00CL

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

PROCEEDING COMMENCED AT  
TORONTO

**APPLICATION RECORD OF CANADIAN WESTERN BANK  
(RETURNABLE MAY 8, 2023)**

**Cassels Brock & Blackwell LLP**

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