

DEFAULT AND DEMAND

10. The Debtor has been experiencing liquidity issues and RBC has had to return payment requests presented on the Debtor's bank accounts at RBC due to either insufficient funds or insufficient credit availability. Further, the demand loan under credit facility 75373994-002, provided to the Debtor pursuant to the credit agreement dated July 31, 2023, has been in arrears since May 9, 2024. The Debtor has also allowed the Equipment Lease to go into arrears to the extent of at least two months of payments.

11. As a result of the foregoing, on June 19, 2024, RBC issued formal written demand for repayment of amounts owed by the Debtor in respect of the Credit Agreements and Equipment Lease, as well as on Rejoy and Prince in respect of their obligations pursuant to the Rejoy Guarantee and Prince Guarantee, respectively (collectively, the "**Demand Letters**"). A notice of intention to enforce security (the "**BIA Notice**") pursuant to subsection 244(1) of the *Bankruptcy and Insolvency Act* (Canada) accompanied the Demand Letter sent to the Debtor. Copies of the Demand Letters and the BIA Notice are attached collectively as **Exhibit "G"** to this Affidavit.

12. As set out in the Demand Letters, a total of \$3,861,433.20 for principal and interest (exclusive of legal fees, disbursements and accruing interest) was owing by the Debtor to RBC as of June 18, 2024 in respect of the Credit Agreements and a total of \$480,300.29 was owing by the Debtor to RBC as of June 17, 2024 in respect of the Equipment Lease (collectively, the "**Indebtedness**").

13. The Debtor has failed to honour its obligation to repay amounts owed to RBC as at the date of the swearing of this Affidavit. Similarly, both Rejoy and Prince have failed to honour payment obligations under the Rejoy Guarantee and Prince Guarantee, respectively.

14. I understand that counsel from at least two law firms have been in contact with counsel to RBC in respect of the Debtor's loan arrangements. No acceptable repayment plan or proposal has been put forward by the Debtor. The Debtor has also failed to formally engage counsel to address this issue as at the time of the swearing of this affidavit.

15. At this stage, RBC considers the only reasonable and prudent path forward is to take any and all steps necessary to protect the Property by having a receiver appointed, and it is within RBC's rights under the GSA and Equipment Lease to do so. RBC is not presently claiming relief against Rejoy or Prince but reserves the right to do so in the future should circumstances warrant.

APPOINTMENT OF A RECEIVER

16. The Debtor has failed to repay the amounts owed to RBC or make a formal insolvency filing.

17. In the circumstances set out above, I believe that it is just and equitable that a receiver be appointed. A receiver is necessary for the protection of the Property and the interests of RBC. RBC believes that the appointment of a receiver would enhance the prospect of recovery by RBC and protect other stakeholders.

18. RBC proposes that Spergel be appointed as the receiver.

19. Spergel is a licensed insolvency trustee and is familiar with the circumstances of the Debtor and its arrangements with RBC.

20. Spergel has consented to act as receiver should the Court so appoint it, as set out in Spergel's consent attached as **Exhibit "H"** to this Affidavit.

21. This Affidavit is made in support of the within application, and for no other or improper purpose whatsoever.

SWORN by David Jenkins at)
the City of Kingston, in the Province of)
Ontario, before me on this 15th day of)
August, 2024 in accordance with)
O. Reg. 431/20, Administering Oath)
or Declaration Remotely.)

Samantha Hans

Commissioner for taking affidavits, etc.
Samantha Hans LSO# 84737H

Signed by:
David Jenkins
330A1E619812458

DAVID JENKINS

This is Exhibit "A" referred to in the Affidavit of David Jenkins
sworn before me at City of Toronto, in the Province of Ontario
this 15th day of August, 2024 in accordance with O. Reg. 431/20
Administering Oath or Declaration Remotely



Commissioner for Taking Affidavits
Samantha Hans (LSO # 84737H)



Profile Report

GIFFT EXPRESS INC. as of August 12, 2024

Act	Business Corporations Act
Type	Ontario Business Corporation
Name	GIFFT EXPRESS INC.
Ontario Corporation Number (OCN)	2597894
Governing Jurisdiction	Canada - Ontario
Status	Active
Date of Incorporation	September 21, 2017
Registered or Head Office Address	27 Split Rail Road, Brampton, Ontario, L6X 4R8, Canada

Certified a true copy of the record of the Ministry of Public and Business Service Delivery.

V. Quintanilla W.

Director/Registrar

This report sets out the most recent information filed on or after June 27, 1992 in respect of corporations and April 1, 1994 in respect of Business Names Act and Limited Partnerships Act filings and recorded in the electronic records maintained by the Ministry as of the date and time the report is generated, unless the report is generated for a previous date. If this report is generated for a previous date, the report sets out the most recent information filed and recorded in the electronic records maintained by the Ministry up to the "as of" date indicated on the report. Additional historical information may exist in paper or microfiche format.

Active Director(s)

Minimum Number of Directors 1
Maximum Number of Directors 12

Name KAMAL GNAWALI
Address for Service 61 Tumbleweed Tr, Brampton, Ontario, L6Y 5A1, Canada
Resident Canadian Yes
Date Began February 01, 2023

Name REJOY THOMMIKATTIL PHILIP
Address for Service 27 Split Rai Road, Brampton, Ontario, L6X 4R8, Canada
Resident Canadian Yes
Date Began September 21, 2017

Name PRINCE PRINCE NIVAS SATHYAN
Address for Service 1 Allanhurst Cres., Brampton, Ontario, L6P 1C8, Canada
Resident Canadian Yes
Date Began September 21, 2017

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Director/Registrar

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Active Officer(s)

There are no active Officers currently on file for this corporation.

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Corporate Name History

Name

Effective Date

GIFFT EXPRESS INC.

September 21, 2017

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Active Business Names

This corporation does not have any active business names registered under the Business Names Act in Ontario.

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Expired or Cancelled Business Names

This corporation does not have any expired or cancelled business names registered under the Business Names Act in Ontario.

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Document List

Filing Name	Effective Date
CIA - Notice of Change PAF: PRINCE PRINCE NIVAS SATHYAN	July 02, 2024
Archive Document Package	August 25, 2022
CIA - Notice of Change PAF: PRINCE PRINCE NIVAS SATHYAN - DIRECTOR	September 24, 2021
CIA - Notice of Change PAF: PRINCE PRINCE NIVAS SATHYAN - DIRECTOR	April 26, 2021
Annual Return - 2019 PAF: PRINCE PRINCE NIVAS SATHYAN - DIRECTOR	June 21, 2020
Annual Return - 2018 PAF: REJOY NIVAS THOMMIKATTIL PHILIP - DIRECTOR	November 24, 2019
Annual Return - 2017 PAF: REJOY NIVAS THOMMIKATTIL PHILIP - DIRECTOR	November 25, 2018
BCA - Articles of Incorporation	September 21, 2017

All "PAF" (person authorizing filing) information is displayed exactly as recorded in the Ontario Business Registry. Where PAF is not shown against a document, the information has not been recorded in the Ontario Business Registry.

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V. Quintanilla W.

Director/Registrar

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This is Exhibit "B" referred to in the Affidavit of David Jenkins
sworn before me at City of Toronto, in the Province of Ontario
this 15th day of August, 2024 in accordance with O. Reg. 431/20
Administering Oath or Declaration Remotely



Commissioner for Taking Affidavits
Samantha Hans (LSO # 84737H)



Royal Bank of Canada
 Commercial Financial Services
 6880 Financial Drive – 2nd Floor
 Mississauga, ON L5N 7Y5

July 31, 2023

Private and Confidential

GIFFT EXPRESS INC.
 27 Split Rail Road
 Brampton, Ontario
 L6X4R8

ROYAL BANK OF CANADA (the “Bank”) hereby offers the credit facilities described below (the “Credit Facilities”) subject to the terms and conditions set forth below and in the attached Terms & Conditions and Schedules (collectively the “Agreement”). Any and all security that has been delivered to the Bank and is set forth as Security below, shall remain in full force and effect, is expressly reserved by the Bank and, unless expressly indicated otherwise, shall apply in respect of all obligations of the Borrower under the Credit Facilities. Unless otherwise provided, all dollar amounts are in Canadian currency.

The Bank reserves all of its rights and remedies at any time and from time to time in connection with any or all breaches, defaults or Events of Default now existing or hereafter arising under this Agreement or any other agreement delivered to the Bank, and whether known or unknown, and this Agreement shall not be construed as a waiver of any such breach, default or Event of Default.

BORROWER: Giff Express Inc. (the “Borrower”)

CREDIT FACILITIES

Facility #1: \$2,500,000.00 revolving demand facility by way of:

a) RBP based loans (“RBP Loans”)

Revolve in increments of:	\$5,000.00	Minimum retained balance:	\$0.00
Revolved by:	Bank	Interest rate (per annum):	RBP + 1.00%

AVAILABILITY

The Borrower may borrow, repay and reborrow up to the amount of this facility provided this facility is made available at the sole discretion of the Bank and the Bank may cancel or restrict the availability of any unutilized portion at any time and from time to time without notice.

In the event the aggregate Borrowings outstanding under this facility exceed \$1,000,000.00, the aggregate Borrowings outstanding under this facility must not exceed at any time the aggregate of the following, less Potential Prior-Ranking Claims (the “Borrowing Limit”):

- a) 75% of Good Canadian/US Accounts Receivable;
- b) 90% of Good Private Insured Accounts Receivable;

* Registered Trademark of Royal Bank of Canada

REPAYMENT

Notwithstanding compliance with the covenants and all other terms and conditions of this Agreement, Borrowings under this facility are repayable on demand.

GENERAL ACCOUNT

The Borrower shall establish a current account with the Bank (the "**General Account**") for the conduct of the Borrower's day-to-day banking business. The Borrower authorizes the Bank daily or otherwise as and when determined by the Bank, to ascertain the balance of the General Account and:

- a) if such position is a debit balance the Bank may, subject to the revolving increment amount and minimum retained balance specified in this Agreement, make available a Borrowing by way of RBP Loans under this facility;
- b) if such position is a credit balance, where the facility is indicated to be Bank revolved, the Bank may, subject to the revolving increment amount and minimum retained balance specified in this Agreement, apply the amount of such credit balance or any part as a repayment of any Borrowings outstanding by way of RBP Loans under this facility;
- c) if such position is a credit balance, where this facility is indicated to be Borrower revolved, the Bank will apply repayments on such facility only if so advised and directed by the Borrower;

Facility #2: \$1,250,000.00 non-revolving term facility by way of:

- a) RBP based loans ("**RBP Loans**") Variable interest rate (per annum) to be determined at time of Borrowing and recorded on the applicable Borrowing Request substantially in the form of Schedule "E"
- b) Fixed Rate Term Loans ("**FRT Loans**") Fixed interest rate to be determined at time of Borrowing and recorded on the applicable Borrowing Request substantially in the form of Schedule "E"

AVAILABILITY

The Borrower may borrow and convert up to the amount of this term facility provided this facility is made available at the sole discretion of the Bank and the Bank may cancel or restrict availability of any unutilized portion of this facility at any time from time to time without notice.

REPAYMENT

Payment Amount:	To be determined at drawdown	Payment Frequency:	Monthly
Payment Type:	To be determined at drawdown	Payment date:	30 days from drawdown
Repayable in full on:	The last day of the term selected by the Borrower	Original Amortization (months)	60
Amount eligible for prepayment of FRT Loan: To be determined at drawdown			

The specific repayment terms for Borrowings under this facility will be agreed to between the Borrower and the Bank at the time of drawdown by way of a Borrowing Request substantially in the form of Schedule "E" provided by the Borrower and accepted by the Bank.

OTHER FACILITIES

The Credit Facilities are in addition to the following facilities (the "**Other Facilities**"). The Other Facilities will be governed by this Agreement and separate agreements between the Borrower and the Bank. In the event of a conflict between this Agreement and any such separate agreement, the terms of the separate agreement will govern.

- a) Credit Card to a maximum amount of \$100,000.00 available in Canadian currency and US currency;

REPORTING REQUIREMENTS

The Borrower will provide the following to the Bank:

- a) in the event the aggregate Borrowings outstanding under Facility #1 exceed \$1,000,000.00 as at the end of any month, a Borrowing Limit Certificate, substantially in the form of Schedule "F", signed on behalf of the Borrower by any one of the Chief Executive Officer, the President, the Vice-President Finance, the Treasurer, the Comptroller, the Chief Accountant or any other employee of the Borrower holding equivalent office, within 30 days of such month end, unless one has been provided within the immediately preceding 30 days pursuant to the Conditions Precedent Facility #1 section of this Agreement;
- b) in the event the aggregate Borrowings outstanding under Facility #1 exceed \$1,000,000.00 as at the end of any month aged list of accounts receivable, aged list of accounts payable, aged list of lienable accounts payable to owners/operators, subcontractors, contract carriers and all parties who haul road freight, aged list of Private Insured Accounts Receivable indicating country of origin for each receivable and most recent credit approval listing from the insurer supported by a loss payable endorsement to or assignment of the applicable insurance policy and listing of Potential Prior-Ranking Claims for the Borrower, within 30 days of such month end, unless these have been provided within the immediately preceding 30 days pursuant to the Conditions Precedent Facility #1 section of this Agreement;
- c) annual equipment and financing listing including year, vehicle make, model, vin, purchase price, down payment, unfunded amounts, loan/lease amounts, payment for the Borrower, within 90 days of each fiscal year end;
- d) annual chartered accountant confirmation of unfunded capitan expenditure for the fiscal year supported by all applicable calculations for the Borrower, within 90 days of each fiscal year end;
- e) annual review engagement financial statements for the Borrower, within 90 days of each fiscal year end;
- f) biennial personal statement of affairs for all Guarantors, who are individuals, within 90 days of the end of every second fiscal year of the Borrower, commencing with the fiscal year ending in 2023;
- g) such other financial and operating statements and reports as and when the Bank may reasonably require.

CONDITIONS PRECEDENT

In no event will the Credit Facilities or any part thereof be available unless the Bank has received:

- a) a duly executed copy of this Agreement;
- b) the Security provided for herein, registered, as required, to the satisfaction of the Bank;
- c) such financial and other information or documents relating to the Borrower or any Guarantor if applicable as the Bank may reasonably require;
- d) copy of an updated credit bureau report for each of Prince Nivas Sathyan and Rejoy Thommikattil Phillip, satisfactory to the Bank;
- e) confirmation of cancellation of Factoring agreement with BVD Capitals, satisfactory to the Bank;
- f) copy of an updated credit bureau report for the Borrower, satisfactory to the Bank; and
- g) such other authorizations, approvals, opinions and documentation as the Bank may reasonably require.

Additionally:

- h) all documentation to be received by the Bank shall be in form and substance satisfactory to the Bank;

FEES**One Time Fee:**

Payable upon acceptance of this Agreement or as agreed upon between the Borrower and the Bank.

Monthly Fee:

Payable in arrears on the same day of each month.

Application Fee: \$1,000.00

Management Fee: \$500.00

Other Fees:**Renewal Fee:**

If the Bank renews or extends any term facility or term loan beyond its Maturity Date, an additional renewal fee may be payable in connection with any such renewal in such amount as the Bank may determine and notify the Borrower.

SECURITY

Security for the Borrowings and all other obligations of the Borrower to the Bank, including, without limitation, any amounts outstanding under any Leases, if applicable, (collectively, the "Security"), shall include:

- a) General security agreement on the Bank's form 924 signed by the Borrower constituting a first ranking security interest in all personal property of the Borrower;
- b) Guarantee and postponement of claim on the Bank's form 812 in the amount of \$3,850,000.00 signed by Prince Nivas Sathyan;
- c) Guarantee and postponement of claim on the Bank's form 812 in the amount of \$3,850,000.00 signed by Rejoy Thommikattil Philip;
- d) Postponement and assignment of claim on the Bank's form 918 signed by Prince Nivas Sathyan;
- e) Postponement and assignment of claim on the Bank's form 918 signed by Rejoy Thommikattil Philip.

FINANCIAL COVENANTS

In the event that the Borrower changes accounting standards, accounting principles and/or the application of accounting principles during the term of this Agreement, all financial covenants shall be calculated using the accounting standards and principles applicable at the time this Agreement was entered into.

Without affecting or limiting the right of the Bank to terminate or demand payment of, or cancel or restrict availability of any unutilized portion of any demand or other discretionary facility, the Borrower covenants and agrees with the Bank that the Borrower will:

- a) maintain, to be measured as at the end of each fiscal year:
 - i. Fixed Charge Coverage of not less than 1.15:1;
- b) ensure, to be measured as at the end of each fiscal year, a ratio of Total Liabilities to Tangible Net Worth of not greater than 4.15:1 reducing to 3.5:1 as of fiscal year ending December 31, 2023, and thereafter maintain to be measured as at the end of each fiscal year, a ratio of Total Liabilities to Tangible Net Worth of not greater than 3.5:1.

- i) no Borrowing under Facility #2 will be made available unless the Bank has received
 - i) a Borrowing Request from the Borrower substantially in the form of Schedule "E";
 - ii) copy of payout statements from Business Development Corporation and lender of private loans, satisfactory to the Bank;
- j) no Borrowing will be made available unless a satisfactory visit and inspection of the Borrower's premises, properties and assets, including any equipment financed, has been completed by the Bank, or its representatives;

CONDITIONS PRECEDENT FACILITY #1

In addition to the conditions set forth in the Conditions Precedent section above, in the event the aggregate Borrowings outstanding under Facility #1, after giving effect to the requested Borrowing, would exceed \$1,000,000.00, the availability of such Borrowing is conditional upon the receipt of the following prior to each and every Borrowing:

- i) Borrowing Limit Certificate, substantially in the form of Schedule "F", signed on behalf of the Borrower by any one of the Chief Executive Officer, the Vice-President Finance, the President, the Treasurer, the Comptroller, the Chief Accountant or any other employee of the Borrower holding equivalent office, unless one has been provided within the immediately preceding 30 days pursuant to this section or the Reporting Requirements section of this Agreement;
- ii) aged list of accounts receivable, aged list of accounts payable, aged list of lienable accounts payable to owners/operators, subcontractors, contract carriers and all parties who haul road freight, aged list of Private Insured Accounts Receivable indicating country of origin for each receivable and most recent credit approval listing from the insurer supported by a loss payable endorsement to or assignment of the applicable insurance policy and listing of Potential Prior-Ranking Claims for the Borrower, unless these have been provided within the immediately preceding 30 days pursuant to this section or the Reporting Requirements section of this Agreement.

BUSINESS LOAN INSURANCE PLAN

The Borrower hereby acknowledges that the Bank has offered it group creditor insurance coverage on the Borrowings under the Business Loan Insurance Plan and the Borrower hereby acknowledges that it is the Borrower's responsibility to apply for any new or increased insurance amount for the Borrowings that may be eligible.

If the Borrower decides to apply for insurance on the Borrowings, the application will be made via the Bank's Business Loan Insurance Plan application (form 3460 ENG or 53460 FRE). If the Borrower has existing uninsured Borrowings and decides not to apply for Business Loan Insurance Plan coverage on any new Borrowings, it hereby acknowledges that the Bank may accept the Borrower's signature below as the Borrower's waiver of the Bank's offer to apply for Business Loan Insurance Plan coverage on all such Borrowings, and that all such Borrowings are not insured under the Policy as at the date of acceptance of this Agreement.

If the Borrower has Business Loan Insurance Plan coverage on previously approved Borrowings, such coverage will be applied automatically to all new Borrowings eligible for Business Loan Insurance Plan coverage that share the same loan account number, up to the approved amount of Business Loan Insurance Plan coverage. This Agreement cannot be used to waive coverage on new Borrowings eligible for Business Loan Insurance Plan coverage if Business Loan Insurance Plan coverage is in effect on the Borrower's existing Borrowings. If the Borrower does not want Business Loan Insurance Plan coverage to apply to any new Borrowings, a different loan account number will need to be set up and all uninsured loans attached to it.

If the Borrower has existing Borrowings to which Business Loan Insurance Plan coverage applies, and any new Borrowings would exceed the approved amount of Business Loan Insurance Plan coverage already in place, the Borrower must apply for additional Business Loan Insurance Plan coverage (if eligible) in order for Business Loan Insurance Plan coverage

to apply to any new Borrowings. If the Borrower decides not to apply for additional Business Loan Insurance Plan coverage in respect of any new Borrowings (if eligible), the Borrower hereby acknowledges that the Bank may accept the Borrower's signature below as the Borrower's waiver of the Bank's offer to apply for additional Business Loan Insurance Plan coverage on such new Borrowings and that such new Borrowings are not insured under the Policy as at the date the Borrower executes this Agreement.

If there are any discrepancies between the insurance information in this Agreement and the Business Loan Insurance Plan documents regarding the Borrowings, the Business Loan Insurance Plan documents govern.

Business Loan Insurance Plan premiums (plus applicable taxes), will be taken as a separate payment, directly from the bank account associated with the loan, at the same frequency and schedule as your regular loan payments, where applicable. As premiums are based on the outstanding loan balance and the insured person's age at the time the premiums are due, the cost of Business Loan Insurance Plan coverage may increase during the term of the loan. The premium calculation is set out in the Business Loan Insurance Plan terms and conditions provided to the Borrower at the time the application for Business Loan Insurance Plan coverage was completed. Refer to the terms and conditions (form 3460 ENG or 53460 FRE) for further explanation and disclosure.

GOVERNING LAW JURISDICTION

Province of Ontario.

ACCEPTANCE

This Agreement is open for acceptance until August 30, 2023, after which date it will be null and void, unless extended by the Bank in its sole discretion.

ROYAL BANK OF CANADA


Per: 
Title: Vice President

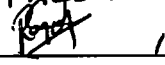
RBC Contact: NILESH GANDHI

/mh

We acknowledge and accept the terms and conditions of this Agreement on this 1st day of August, 2023.

GIFFT EXPRESS INC.

Per: 
Name: PRINCE PRINCE NIVAS SATHYAN
Title: PRESIDENT

Per: 
Name: REJOY THOMMIKATTIL PHILIP
Title: ~~CEO~~ DIRECTOR

I/We have the authority to bind the Borrower

Attachments:

Terms and Conditions

Schedules:

- **Definitions**
- **Calculation and Payment of Interest and Fees**
- **Additional Borrowing Conditions**
- **Borrowing Request**
- **Borrowing Limit Certificate**
- **RBC Covarity Dashboard Terms and Conditions**

TERMS AND CONDITIONS

The Bank is requested by the Borrower to make the Credit Facilities available to the Borrower in the manner and at the rates and times specified in this Agreement. Terms defined elsewhere in this Agreement and not otherwise defined in the Terms and Conditions below or the Schedules attached hereto have the meaning given to such terms as so defined. In consideration of the Bank making the Credit Facilities available, the Borrower agrees, and if the Borrower is comprised of more than one Person, such Persons jointly and severally agree, or in Quebec solidarily agree, with the Bank as follows:

REPAYMENT

Amounts outstanding under the Credit Facilities, together with interest, shall become due in the manner and at the rates and times specified in this Agreement and shall be paid in the currency of the Borrowing. Unless the Bank otherwise agrees, any payment hereunder must be made in money which is legal tender at the time of payment. In the case of a demand facility of any kind, the Borrower shall repay all principal sums outstanding under such facility upon demand. Where any Borrowings are repayable by scheduled blended payments, such payments shall be applied, firstly, to interest due, and the balance, if any, shall be applied to principal outstanding. If any such payment is insufficient to pay all interest then due, the unpaid balance of such interest will be added to such Borrowing, will bear interest at the same rate, and will be payable on demand or on the date specified herein, as the case may be. Borrowings repayable by way of scheduled payments of principal and interest shall be so repaid with any balance of such Borrowings being due and payable as and when specified in this Agreement. The Borrower shall ensure that the maturities of instruments or contracts selected by the Borrower when making Borrowings will be such so as to enable the Borrower to meet its repayment obligations. For any Borrowings that are repayable by scheduled payments, if the scheduled payment date is changed then the Maturity Date of the applicable Borrowings shall automatically be amended accordingly.

In the case of any reducing term loan and/or reducing term facility ("**Reducing Term Loan/Facility**"), provided that nothing contained in this paragraph shall confer any right of renewal or extension upon the Borrower, the Borrower and the Bank agree that, at the Bank's option, the Bank may provide a letter ("**Renewal Letter**") to the Borrower setting out the terms upon which the Bank is prepared to extend the Reducing Term Loan/Facility. In the event that the Bank provides a Renewal Letter to the Borrower and the Reducing Term Loan/Facility is not repaid on or before the Maturity Date of the applicable Reducing Term Loan/Facility, then at the Bank's option the Reducing Term Loan/Facility shall be automatically renewed on the terms set out in the Renewal Letter and the terms of this Agreement shall be amended accordingly.

PREPAYMENT

Where Borrowings are by way of RBP Loans, the Borrower may prepay such Borrowings in whole or in part without fee or premium.

Where Borrowings are by way of FRT Loans, provided an Event of Default shall not have occurred and be continuing, the Borrower may prepay such Borrowings on a non-cumulative basis up to the percentage, as selected by the Borrower for each FRT Loan, of the outstanding principal balance on the day of prepayment, without fee or premium, once per year during the 12 month period from each anniversary date of the Borrowing. Any prepayment of Borrowings by way of FRT Loans prior to the maturity date, in whole or in part (in excess of any prepayment explicitly permitted in this Agreement), requires an amendment of the terms of this Agreement. An amendment to permit such a prepayment requires the Bank's prior written consent. The Bank may provide its consent to an amendment to permit a prepayment upon satisfaction by the Borrower of any conditions the Bank may reasonably impose, including, without limitation, the Borrower's agreement to pay the Prepayment Fee as defined below.

The Prepayment Fee will be calculated by the Bank as the sum of:

a) the greater of:

- (i) the amount equal to 3 months' interest payable on the amount of the FRT Loan Borrowings being prepaid, calculated at the interest rate applicable to the FRT Loan Borrowings on the date of prepayment; and
- (ii) the present value of the cash flow associated with the difference between the Bank's original cost of funds for the FRT Loan and the current cost of funds for a loan with a term substantially similar to the remaining term of the FRT Loan and an amortization period substantially similar to the remaining amortization period of the FRT Loan, each as determined by the Bank on the date of such prepayment;

plus:

- b) forgone margin over the remainder of the term of the FRT Loan. Foregone margin is defined as the present value of the difference between the Bank's original cost of funds for the FRT Loan and the interest that would have been charged to the Borrower over the remaining term of the FRT Loan;

plus:

- c) a processing fee.

The Prepayment Fee shall also be payable by the Borrower in the event that the Bank demands repayment of the outstanding principal of the FRT Loan on the occurrence of an Event of Default. The Borrower's obligation to pay the Prepayment Fee will be in addition to any other amounts then owing by the Borrower to the Bank, will form part of the loan amount and will be secured by the Security described herein.

The prepayment of any Borrowings under a term facility and/or any term loan will be made in the reverse order of maturity.

EVIDENCE OF INDEBTEDNESS

The Bank shall maintain accounts and records (the "Accounts") evidencing the Borrowings made available to the Borrower by the Bank under this Agreement. The Bank shall record the principal amount of such Borrowings, the payment of principal and interest on account of the Borrowings, and all other amounts becoming due to the Bank under this Agreement. The Accounts constitute, in the absence of manifest error, conclusive evidence of the indebtedness of the Borrower to the Bank pursuant to this Agreement. The Borrower authorizes and directs the Bank to automatically debit, by mechanical, electronic or manual means, any bank account of the Borrower for all amounts payable under this Agreement, including, but not limited to, the repayment of principal and the payment of interest, fees and all charges for the keeping of such bank accounts.

GENERAL COVENANTS

Without affecting or limiting the right of the Bank to terminate or demand payment of, or cancel or restrict availability of any unutilized portion of, any demand or other discretionary facility, the Borrower covenants and agrees with the Bank that the Borrower:

- a) will pay all sums of money when due under the terms of this Agreement;
- b) will immediately advise the Bank of any event which constitutes or which, with notice, lapse of time or both, would constitute a breach of any covenant or other term or condition of this Agreement or any Security or an Event of Default;
- c) will file all material tax returns which are or will be required to be filed by it, pay or make provision for payment of all material taxes (including interest and penalties) and Potential Prior-Ranking Claims, which are or will become due and payable and provide adequate reserves for the payment of any tax, the payment of which is being contested;
- d) will give the Bank 30 days prior notice in writing of any intended change in its ownership structure or composition and will not make or facilitate any such changes without the prior written consent of the Bank;

- e) will comply with all Applicable Laws, including, without limitation, all Environmental and Health and Safety Laws;
- f) will immediately advise the Bank of any action requests or violation notices received concerning the Borrower and hold the Bank harmless from and against any losses, costs or expenses which the Bank may suffer or incur for any environment related liabilities existent now or in the future with respect to the Borrower;
- g) will deliver to the Bank such financial and other information as the Bank may reasonably request from time to time, including, but not limited to, the reports and other information set out under Reporting Requirements;
- h) will immediately advise the Bank of any unfavourable change in its financial position which may adversely affect its ability to pay or perform its obligations in accordance with the terms of this Agreement;
- i) will keep its assets fully insured against such perils and in such manner as would be customarily insured by Persons carrying on a similar business or owning similar assets and, in addition, for any buildings located in areas prone to flood and/or earthquake, will insure and keep fully insured such buildings against such perils;
- j) except for Permitted Encumbrances, will not, without the prior written consent of the Bank, grant, create, assume or suffer to exist any mortgage, charge, lien, pledge, security interest or other encumbrance affecting any of its properties, assets or other rights;
- k) will not, without the prior written consent of the Bank, sell, transfer, convey, lease or otherwise dispose of any of its properties or assets other than in the ordinary course of business and on commercially reasonable terms;
- l) will not, without the prior written consent of the Bank, guarantee or otherwise provide for, on a direct, indirect or contingent basis, the payment of any monies or performance of any obligations by any other Person, except as may be provided for herein;
- m) will not, without the prior written consent of the Bank, merge, amalgamate, or otherwise enter into any other form of combination with any other Person;
- n) will permit the Bank or its representatives, from time to time, i) to visit and inspect the Borrower's premises, properties and assets and examine and obtain copies of the Borrower's records or other information, ii) to collect information from any entity regarding any Potential Prior-Ranking Claims and iii) to discuss the Borrower's affairs with the auditors, counsel and other professional advisers of the Borrower. The Borrower hereby authorizes and directs any such third party to provide to the Bank or its representatives all such information, records or documentation requested by the Bank; and
- o) will not use the proceeds of any Credit Facility for the benefit or on behalf of any Person other than the Borrower.

FEES, COSTS AND EXPENSES

The Borrower agrees to pay the Bank all fees stipulated in this Agreement and all fees charged by the Bank relating to the documentation or registration of this Agreement and the Security. In addition, the Borrower agrees to pay all fees (including legal fees), costs and expenses incurred by the Bank in connection with the preparation, negotiation, documentation and registration of this Agreement and any Security and the administration, operation, termination, enforcement or protection of its rights in connection with this Agreement and the Security. The Borrower shall indemnify and hold the Bank harmless against any loss, cost or expense incurred by the Bank if any facility under the Credit Facilities is repaid or prepaid other than on its Maturity Date. The determination by the Bank of such loss, cost or expense shall be conclusive and binding for all purposes and shall include, without limitation, any loss incurred by the Bank in liquidating or redeploying deposits acquired to make or maintain any facility.

GENERAL INDEMNITY

The Borrower hereby agrees to indemnify and hold the Bank and its directors, officers, employees and agents harmless from and against any and all claims, suits, actions, demands, debts, damages, costs, losses, obligations, judgements, charges, expenses and liabilities of any nature which are suffered, incurred or sustained by, imposed on or asserted against any such Person as a result of, in connection with or arising out of i) any breach of any term or condition of this Agreement or any Security or any other agreement delivered to the Bank by the Borrower or any Guarantor if applicable, or any Event of Default, ii) the Bank acting upon instructions given or

agreements made by electronic transmission of any type, iii) the presence of Contaminants at, on or under or the discharge or likely discharge of Contaminants from, any properties now or previously used by the Borrower or any Guarantor and iv) the breach of or non compliance with any Applicable Law by the Borrower or any Guarantor.

AMENDMENTS AND WAIVERS

Save and except for any waiver or extension of the deadline for acceptance of this Agreement at the Bank's sole discretion, which may be communicated in writing, verbally, or by conduct, no amendment or waiver of any provision of this Agreement will be effective unless it is in writing, signed by the Borrower and the Bank. No failure or delay, on the part of the Bank, in exercising any right or power hereunder or under any Security or any other agreement delivered to the Bank shall operate as a waiver thereof. Each Guarantor, if applicable, agrees that the amendment or waiver of any provision of this Agreement (other than agreements, covenants or representations expressly made by any Guarantor herein, if any) may be made without and does not require the consent or agreement of, or notice to, any Guarantor. Any amendments requested by the Borrower will require review and agreement by the Bank and its counsel. Costs related to this review will be for the Borrower's account.

SUCCESSORS AND ASSIGNS

This Agreement shall extend to and be binding upon the parties hereto and their respective heirs, executors, administrators, successors and permitted assigns. The Borrower shall not be entitled to assign or transfer any rights or obligations hereunder, without the consent in writing of the Bank. The Bank may assign or transfer all or any part of its rights and obligations under this Agreement to any Person. The Bank may disclose to potential or actual assignees or transferees confidential information regarding the Borrower and any Guarantor if applicable, (including, any such information provided by the Borrower, and any Guarantor if applicable, to the Bank) and shall not be liable for any such disclosure.

GAAP

Unless otherwise provided, all accounting terms used in this Agreement shall be interpreted in accordance with Canadian Generally Accepted Accounting Principles, as appropriate, for publicly accountable enterprises, private enterprises, not-for-profit organizations, pension plans and in accordance, as appropriate, with Public Sector Accounting Standards for government organizations in effect from time to time, applied on a consistent basis from period to period. All financial statements and/or reports shall be prepared using one of the above bases of presentation, as appropriate, including, without limitation, the application of accrual accounting. Except for the transition of accounting standards in Canada, any change in accounting principles or the application of accounting principles is only permitted with the prior written consent of the Bank.

SEVERABILITY

The invalidity or unenforceability of any provision of this Agreement shall not affect the validity or enforceability of any other provision of this Agreement and such invalid provision shall be deemed to be severable.

GOVERNING LAW

This Agreement shall be construed in accordance with and governed by the laws of the Province identified in the Governing Law Jurisdiction section of this Agreement and the laws of Canada applicable therein. The Borrower irrevocably submits to the non-exclusive jurisdiction of the courts of such Province and acknowledges the competence of such courts and irrevocably agrees to be bound by a judgment of any such court.

DEFAULT BY LAPSE OF TIME

The mere lapse of time fixed for performing an obligation shall have the effect of putting the Borrower, or a Guarantor if applicable, in default thereof.

SET-OFF

The Bank is authorized (but not obligated), at any time and without notice, to apply any credit balance (whether or not then due) in any account in the name of the Borrower, or to which the Borrower is beneficially entitled (in any currency) at any branch or agency of the Bank in or towards satisfaction of the indebtedness of the Borrower due to the Bank under the Credit Facilities and the other obligations of the Borrower under this Agreement. For that purpose, the Bank is irrevocably authorized to use all or any part of any such credit balance to buy such other currencies as may be necessary to effect such application.

NOTICES

Any notice or demand to be given by the Bank shall be given in writing by way of a letter addressed to the Borrower. If the letter is sent by telecopier, it shall be deemed received on the date of transmission, provided such transmission is sent prior to 5:00 p.m. on a day on which the Borrower's business is open for normal business, and otherwise on the next such day. If the letter is sent by ordinary mail to the address of the Borrower, it shall be deemed received on the date falling five (5) days following the date of the letter, unless the letter is hand-delivered to the Borrower, in which case the letter shall be deemed to be received on the date of delivery. The Borrower must advise the Bank at once about any changes in the Borrower's address.

CONSENT OF DISCLOSURE

The Borrower hereby grants permission to any Person having information in such Person's possession relating to any Potential Prior-Ranking Claim, to release such information to the Bank (upon its written request), solely for the purpose of assisting the Bank to evaluate the financial condition of the Borrower.

NON-MERGER

The provisions of this Agreement shall not merge with any Security provided to the Bank, but shall continue in full force for the benefit of the parties hereto.

JOINT AND SEVERAL

Where more than one Person is liable as Borrower or Guarantor if applicable for any obligation under this Agreement, then the liability of each such Person for such obligation is joint and several (in Quebec, solidarily) with each other such Person.

COUNTERPART EXECUTION

This Agreement may be executed in any number of counterparts and by different parties in separate counterparts, each of which when so executed shall be deemed to be an original and all of which taken together constitute one and the same instrument.

ELECTRONIC MAIL AND FAX TRANSMISSION

The Bank is entitled to rely on any agreement, document or instrument provided to the Bank by the Borrower or any Guarantor as applicable, by way of electronic mail or fax transmission as though it were an original document. The Bank is further entitled to assume that any communication from the Borrower received by electronic mail or fax transmission is a reliable communication from the Borrower.

ELECTRONIC IMAGING

The parties hereto agree that, at any time, the Bank may convert paper records of this Agreement and all other documentation delivered to the Bank (each, a "Paper Record") into electronic images (each, an "Electronic Image") as part of the Bank's normal business practices. The parties agree that each such Electronic Image shall be considered as an authoritative copy of the Paper Record and shall be legally binding on the parties and admissible in any legal, administrative or other proceeding as conclusive evidence of the contents of such document in the same manner as the original Paper Record.

REPRESENTATIONS AND WARRANTIES

The Borrower represents and warrants to the Bank that:

- a) if applicable, it is duly constituted, validly existing and duly registered or qualified to carry on business or its operations in all jurisdictions where the nature of its properties, assets, business or operations make such registration or qualification necessary or desirable;
- b) the execution, delivery and performance by it of this Agreement do not violate any Applicable Laws or agreements to which it is subject or by which it is bound, and where applicable, have been duly authorized by all necessary actions and do not violate its constituting documents;
- c) no event has occurred which constitutes, or which, with notice, lapse of time, or both, would constitute, a breach of any covenant or other term or condition of this Agreement or any Security or any other agreement delivered to the Bank or an Event of Default;
- d) there is no claim, action, prosecution or other proceeding of any kind pending or threatened against it or any of its assets or properties before any court or administrative agency which relates to any non-compliance with any Environmental and Health and Safety Laws which, if adversely determined, might have a material adverse effect upon its financial condition or operations or its ability to perform its obligations under this Agreement or any Security, and there are no circumstances of which it is aware which might give rise to any such proceeding which it has not fully disclosed to the Bank; and
- e) it has good and marketable title to all of its properties and assets, free and clear of any encumbrances, other than as may be provided for herein.

Representations and warranties are deemed to be repeated as at the time of each Borrowing and/or the entering into each Lease, if applicable, hereunder.

LANGUAGE

The parties hereto have expressly requested that this Agreement and all related documents, including notices, be drawn up in the English language. Les parties ont expressément demandé que la présente convention et tous les documents y afférents, y compris les avis, soient rédigés en langue anglaise.

WHOLE AGREEMENT

This Agreement and any documents or instruments referred to in, or delivered pursuant to, or in connection with, this Agreement constitute the whole and entire agreement between the Borrower and the Bank with respect to the Credit Facilities.

EXCHANGE RATE FLUCTUATIONS

If, for any reason, the amount of Borrowings and/or Leases, if applicable, outstanding under any facility in a currency other than Canadian currency, when converted to the Equivalent Amount in Canadian currency, exceeds the amount available under such facility, the Borrower shall immediately repay such excess or shall secure such excess to the satisfaction of the Bank.

JUDGEMENT CURRENCY

If for the purpose of obtaining judgement in any court in any jurisdiction with respect to this Agreement, it is necessary to convert into the currency of such jurisdiction (the "**Judgement Currency**") any amount due hereunder in any currency other than the Judgement Currency, then conversion shall be made at the rate of exchange prevailing on the Business Day before the day on which judgement is given. For this purpose "rate of exchange" means the rate at which the Bank would, on the relevant date, be prepared to sell a similar amount of such currency in the Toronto foreign exchange market, against the Judgement Currency, in accordance with normal banking procedures.

In the event that there is a change in the rate of exchange prevailing between the Business Day before the day on which judgement is given and the date of payment of the amount due, the Borrower will, on the date of payment, pay such additional amounts as may be necessary to ensure that the amount paid on such date is the amount in the Judgement Currency which, when converted at the rate of exchange prevailing on the date of payment, is the amount then due under this Agreement in such other currency together with interest at RBP and expenses (including legal fees on a solicitor and client basis). Any additional amount due from the Borrower