

## **SCHEDULE A**

### **Form of Advance Request**

#### **NOTICE OF ADVANCE REQUEST**

**[Date]**

**PTC Address**

**Attention: Contact person**

**E-MAIL: E-mail address**

#### **BORROWING NOTICE**

We refer to the Warehouse Line of Credit Agreement dated as of January 19, 2018 (the "Agreement"; capitalized terms used herein but not otherwise defined shall have the meanings set forth in the Agreement), entered into by and among Crown Crest Financial Corp. ("Borrower") and Peoples Trust Company ("PTC").

We hereby instruct and authorize PTC to make Advance(s) to our disbursement account(s), subject to and in accordance with the terms and provisions of the Agreement to the TD Bank account # [NUMBER], Transit # [NUMBER] and to charge Borrower's loan account with each such Advance(s).

Borrower hereby request an advance (the "**Advance**") be made as follows:

**A. The date of Advance: ●**

**B. Type/amount of Advance: CAD: \$ Amount**

**Borrower hereby confirms as follows:**

(a) Each of the representations and warranties made by each of Borrower in or pursuant to the Agreement and the other Loan Documents are true and correct in all material respects on and as of the date hereof as if made on and as of such date, except as PTC may have otherwise agreed to herein or in a separate writing.

(b) No Event of Default has occurred as of the date hereof or will occur after the making of the Advance(s) requested hereunder.

(c) Borrower is in compliance with each of the covenants set forth in Section 8.1 of the Agreement.

(d) The Advance(s) requested hereunder will not cause the aggregate principal amount of Advance(s) outstanding under the Agreement to exceed the Borrowing Base or the Maximum Amount of the Loan.

**DATED ●.**

**BORROWER: Crown Crest Financial Corp.**

**By:**

**Name:**

**Title:**

**SCHEDULE B**  
**BORROWING BASE CERTIFICATE**

see attached.

# SAMPLE



	Rental Rate (Eligible Assets)	Warehouse PV (Eligible Assets)	Purchase Facility (PV)	Current Facility Balance (PCH Amort) Dec 31, 2017			Amount in Reserve	Reserve Required
				2017	Net Funding			
Amount in purchase facility	338,123.12	-	-	26,662,807.76	-	-	911,201.13	
Amount in warehouse facility	189,454.11	16,756,245.19	-	16,756,245.17	0.02	-	589,096.53	
Warehouse (current batch):	16,921.74	1,504,226.90	-	-	1,504,226.90	-	57,803.33	
Amount in warehouse facility 2	77,683.07	6,721,904.23	-	6,721,904.23	0.00	-	199,641.20	
Warehouse 2 (current batch):	622,182.04	24,982,376.32	-	50,140,957.15	1,504,226.92	1,712,462.51	1,757,742.19	
	Threshold %	Threshold \$		Actual	Difference			
Total in warehouse				24,982,376.32				
Low score test (< 600)	10%	2,498,238		1,248,773.25	1,249,464.38	PASS		
Low value (Below 45)								
Low value (Between 45 and 65-Tankless)	35%	8,743,832		10,473,232.91	(1,729,401.20)	FAIL		
<u>Warehouse</u>	Available Draw							
Room available / Draw request		1,504,226.92						
Additional reserve		45,279.68						
<u>Warehouse 2</u>	Available Draw							
Room available / Draw request		0.00						
"Scheduled Payment" means, in respect of a Lease Asset, the regularly scheduled monthly rental payment payable by the obligor thereunder during a term not exceeding the lesser of (i) the term of the Receivable, (ii) ten years, and (iii) the remainder of the Prescribed Term,								
"Borrowing Base" means at any time, the product of (i) 90%, and (ii) the sum of the present values of all unpaid Scheduled Payments arising under Eligible Assets then owned by the Borrower, discounted to such date at a discount rate equal to the sum of [BMO] Prime in effect at such time plus 3.55% per annum.								
"Outstanding Balance" means at any time in respect of a Lease Asset, the product of (i) 90%, and (ii) the sum of the present values of all unpaid Scheduled Payments arising under such Lease Assets, discounted to such date at a discount rate equal to the sum of BMO Prime in effect at such time plus 3.55% per annum.								

Facility	Balance	Low Value	Low Value %
PCH	25,830,199	3,500,035	14%
WH	12,239,231	6,823,372	56%
WH2	5,971,834	2,874,520	48%
<b>Total</b>	<b>44,041,264</b>	<b>13,197,928</b>	<b>30%</b>

	WH "<600"	WHC "<600"	WH2 "<600"	TOTAL
APPLICANTS <600	1,091,857.86	25,773.68	256,797.49	<b>1,374,429.03</b>
CO-Applicant 600+	(117,657.17)	(7,998.61)	-	<b>(125,655.78)</b>
<b>TOTAL</b>	<b>974,200.69</b>	<b>17,775.08</b>	<b>256,797.49</b>	<b>1,248,773.25</b>

## **FIRST AMENDMENT TO WAREHOUSE LINE OF CREDIT AGREEMENT**

THIS AGREEMENT made this 16<sup>th</sup> day of March, 2018.

BETWEEN:

**CROWN CREST FINANCIAL CORP.**

(“CCFC”)

- and -

**SIMPLY GREEN HOME SERVICES INC.**

(“Guarantor”)

- and -

**PEOPLES TRUST COMPANY**

(“PTC”).

**WHEREAS** CCFC, Guarantor and PTC have entered in to a Warehouse Line of Credit Agreement made as of January 19, 2018 (the “**Original Credit Agreement**”);

**AND WHEREAS**, in accordance with the terms of this amending agreement (this “**Agreement**”), CCFC, Guarantor and PTC wish to amend the Original Credit Agreement hereunder;

**NOW THEREFORE THIS AGREEMENT WITNESSES** that in consideration of the premises and covenants and agreements of the parties herein contained and for other good and valuable consideration (the receipt and sufficiency of which are hereby acknowledged by each of the parties), the parties hereby covenant and agree as follows:

### **1. INTERPRETATION**

- 1.1 All initially capitalized terms used in this Agreement, including the recitals, that are defined in the Original Credit Agreement and not otherwise defined in this Agreement have the meaning specified in the Original Credit Agreement.
- 1.2 Unless expressly stated otherwise, all references herein to sections or schedules of an agreement other than this Agreement shall be to sections or schedules of the Original Credit Agreement.
- 1.3 Section headings in this Agreement are for convenience of reference only and shall not affect the interpretation of this Agreement.

### **2. AMENDMENTS TO THE ORIGINAL CREDIT AGREEMENT**

Section 15.1 is deleted in its entirety and replaced with the following:

“15.1 Maximum Amount of Loan (Section 1): \$2,600,000.00 (Canadian).”

**3. OTHER DOCUMENTS**

3.1 Any reference to the Original Credit Agreement made in any documents delivered pursuant thereto or in connection therewith shall be deemed to refer to the Original Credit Agreement as amended, extended, modified, renewed or supplemented from time to time, including as amended by this Agreement, unless the context otherwise requires.

**4. MISCELLANEOUS**

4.1 Except for the specific changes and amendments provided for in this Agreement, (a) the Original Credit Agreement and all related documents are in all other respects hereby ratified and confirmed and the Original Credit Agreement as amended hereby shall be read, taken and construed as one and the same instrument and remains in full force and effect.

4.2 This Agreement shall enure to the benefit of and be binding upon the parties, their successors and any permitted assigns.

4.3 This Agreement may be executed in one or more counterparts each of which shall be deemed an original and all of which when taken together shall constitute one and the same instrument.

4.4 None of the rights or obligations hereunder shall be assignable or transferable by any party without the prior written consent of the other party.

4.5 This Agreement shall be governed and construed in accordance with the laws of the Province of Ontario and the federal laws of Canada applicable therein.

IN WITNESS WHEREOF, the Parties hereto have caused this Agreement to be executed by their authorized signatories as of the date first above written.

CROWN CREST FINANCIAL CORP.

Per:

  
Name: Lawrence Reinert  
Title: CEO

SIMPLY GREEN HOME SERVICES INC.

Per:

  
Name: Lawrence Reinert  
Title: CEO

PEOPLES TRUST COMPANY

Per:

Name:  
Title:

Per:

Name:  
Title:

## **SECOND AMENDMENT TO WAREHOUSE LINE OF CREDIT AGREEMENT**

THIS AGREEMENT made this 10<sup>th</sup> day of September, 2018.

BETWEEN:

**CROWN CREST FINANCIAL CORP.**

(“CCFC”)

- and -

**SIMPLY GREEN HOME SERVICES INC.**

(“Guarantor”)

- and -

**PEOPLES TRUST COMPANY**

(“PTC”).

**WHEREAS** CCFC, Guarantor and PTC have entered in to a Warehouse Line of Credit Agreement made as of January 19, 2018 (the “**Original Credit Agreement**”), as amended by a first amendment agreement made as of March 16, 2018 (together with the Original Credit Agreement, the “**Amended Credit Agreement**”);

**AND WHEREAS** CCFC, Guarantor and PTC wish to amend the Amended Credit Agreement, in accordance with the terms of this amending agreement (this “**Agreement**”).

**NOW THEREFORE THIS AGREEMENT WITNESSES** that in consideration of the premises and covenants and agreements of the parties herein contained and for other good and valuable consideration (the receipt and sufficiency of which are hereby acknowledged by each of the parties), the parties hereby covenant and agree as follows:

### **1. INTERPRETATION**

- 1.1 All initially capitalized terms used in this Agreement, including the recitals, that are defined in the Amended Credit Agreement and not otherwise defined in this Agreement have the meaning specified in the Amended Credit Agreement.
- 1.2 Unless expressly stated otherwise, all references herein to sections or schedules of an agreement other than this Agreement shall be to sections or schedules of the Amended Credit Agreement.
- 1.3 Section headings in this Agreement are for convenience of reference only and shall not affect the interpretation of this Agreement.

## **2. AMENDMENTS TO THE ORIGINAL CREDIT AGREEMENT**

Section 15.1 is deleted in its entirety and replaced with the following:

“15.1 Maximum Amount of Loan (Section 1): \$1,400,000.00 (Canadian).”

## **3. OTHER DOCUMENTS**

3.1 Any reference to the Original Credit Agreement or the Amended Credit Agreement made in any documents delivered pursuant thereto or in connection therewith shall be deemed to refer to the Amended Credit Agreement as amended, extended, modified, renewed or supplemented from time to time, including as amended by this Agreement, unless the context otherwise requires.

## **4. MISCELLANEOUS**

4.1 Except for the specific changes and amendments provided for in this Agreement, the Amended Credit Agreement and all related documents are in all other respects hereby ratified and confirmed and the Amended Credit Agreement as amended hereby shall be read, taken and construed as one and the same instrument and remains in full force and effect.

4.2 This Agreement shall enure to the benefit of and be binding upon the parties, their successors and any permitted assigns.

4.3 This Agreement may be executed in one or more counterparts each of which shall be deemed an original and all of which when taken together shall constitute one and the same instrument. Counterparts may be executed electronically and delivered by e-mail, fax or other electronic means.

4.4 None of the rights or obligations hereunder shall be assignable or transferable by any party without the prior written consent of the other party.

4.5 This Agreement shall be governed and construed in accordance with the laws of the Province of Ontario and the federal laws of Canada applicable therein.

**IN WITNESS WHEREOF**, the Parties hereto have caused this Agreement to be executed by their authorized signatories as of the date first above written.

**CROWN CREST FINANCIAL CORP.**

Per:



Name: Lawrence Krimker  
Title:

**SIMPLY GREEN HOME SERVICES INC.**

Per:



Name: Lawrence Krimker  
Title:

**PEOPLES TRUST COMPANY**

Per:

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

Per:

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

**IN WITNESS WHEREOF**, the Parties hereto have caused this Agreement to be executed by their authorized signatories as of the date first above written.

**CROWN CREST FINANCIAL CORP.**

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

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

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

**SIMPLY GREEN HOME SERVICES INC.**

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

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

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

**PEOPLES TRUST COMPANY**

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

Name: Waheed Hirji

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

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

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

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

## THIRD AMENDMENT TO WAREHOUSE LINE OF CREDIT AGREEMENT

THIS AGREEMENT made this 31<sup>st</sup> day of October, 2018.

BETWEEN:

**CROWN CREST FINANCIAL CORP.**

(“CCFC”)

- and -

**SIMPLY GREEN HOME SERVICES INC.**

(“Guarantor”)

- and -

**PEOPLES TRUST COMPANY**

(“PTC”).

**WHEREAS** CCFC, Guarantor and PTC have entered in to a Warehouse Line of Credit Agreement made as of January 19, 2018 (the “**Original Credit Agreement**”), as amended by amendment agreements made as of March 16, 2018 and September 10, 2018 (together with the Original Credit Agreement, the “**Amended Credit Agreement**”);

**AND WHEREAS** CCFC, Guarantor and PTC wish to amend the Amended Credit Agreement, in accordance with the terms of this amending agreement (this “**Agreement**”).

**NOW THEREFORE THIS AGREEMENT WITNESSES** that in consideration of the premises and covenants and agreements of the parties herein contained and for other good and valuable consideration (the receipt and sufficiency of which are hereby acknowledged by each of the parties), the parties hereby covenant and agree as follows:

### 1. **INTERPRETATION**

- 1.1 All initially capitalized terms used in this Agreement, including the recitals, that are defined in the Amended Credit Agreement and not otherwise defined in this Agreement have the meaning specified in the Amended Credit Agreement.
- 1.2 Unless expressly stated otherwise, all references herein to sections or schedules of an agreement other than this Agreement shall be to sections or schedules of the Amended Credit Agreement.
- 1.3 Section headings in this Agreement are for convenience of reference only and shall not affect the interpretation of this Agreement.

## WAREHOUSE LINE OF CREDIT AGREEMENT

This Warehouse Line of Credit Agreement is dated as of May 29, 2019.

This Agreement is entered into by and among Crown Crest Funding Corp. ("Trustee"), in its capacity as trustee of Crown Crest Capital Trust, a trust duly formed and validly subsisting trust under the laws of the Province of Ontario ("Borrower"), Crown Crest Capital Management Corp., a corporation incorporated under the laws of the Province of Ontario ("Guarantor") and Peoples Trust Company, a trust company existing under the laws of Canada ("PTC").

### RECITALS:

- A. Borrower is a special purpose trust, formed to acquire and hold Leases for the lease and sale of Approved Equipment by the Originators; and
- B. Borrower desires to obtain from PTC a demand line of credit ("Loan") and PTC is willing to make the Loan, but only on the terms and conditions hereinafter set forth.

NOW, THEREFORE in consideration of the premises and the mutual promises herein contained and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereto agree as follows:

### 1. DEFINITIONS.

#### 1.1 DEFINITIONS

**"Advance"** has the meaning ascribed to it in Section 2.1.

**"Advance Request"** means an advance request in the form of Schedule A.

**"Adverse Claim"** means a security interest or other lien, charge, encumbrance, right or claim, including any filing or registration made in respect thereof, of or through any Person (other than PTC).

**"Agreement"** shall mean this warehouse line of credit agreement and all schedules and exhibits hereto, as it may be amended, restated, supplemented, modified or replaced from time to time.

**"Approved Equipment"** shall mean storage water heaters, tankless water heaters, water filtration and/or treatment systems, Heating Recovery Ventilation ('HRV') and/or High-efficiency particulate arrestance ('HEPA') systems, furnace and air conditioning ('HVAC') equipment and boiler systems, sub-metering equipment as well as such other consumer equipment as may be agreed by the Borrower under Program Agreements.

**"Approved Originator"** means each of the following Originators:

- a) Simply Green Home Services Inc.;
- b) Alberta Water Home Comfort Services Inc.;
- c) HVAC Consulting Corporation;

- d) Ontario HVAC and Water Incorporated;
- e) Applied Energy Incorporated;
- f) Preferred Air Limited;
- g) 4140800 Canada Inc. carrying on business as Cool Heat Comfort;
- h) Penguin Heating & Cooling Incorporated;
- i) 9506888 Canada Incorporated, carrying on business as True North Home Solutions;
- j) National Green Home Services;
- k) Alberta Quality Home Comfort Incorporated;
- l) Canada Green Energy Ltd.; and
- m) Just Green Home Services;

together with any additional Originators approved in writing, where approval by PTC is subject to receipt by PTC at least five Business Days before any such approval is to be provided of all information required by PTC concerning the proposed additional Originator and PTC being satisfied, acting reasonably, with the results of its review of that information.

**“BFI Facility”** means the warehouse financing made available by Bridge Finance Inc. and/or its affiliates.

**“Blocked Account Agreement”** means the blocked account agreement to be entered into between the Trustee, PTC and The Toronto–Dominion Bank within 20 Business Days of the date of this Agreement, as the same may be amended, restated, supplemented or replaced from time to time.

**“BMO Prime”** means, at any time, the posted “prime rate” of interest charged by Bank of Montreal for its commercial loans that are made in Canadian dollars.

**“Borrowing Base”** means at any time, the product of (i) 90%, and (ii) the sum of the present values of all unpaid Scheduled Payments arising under Eligible Assets then owned by the Borrower, discounted to such date at the discount rate established pursuant to Section 1.2.

**“Borrowing Base Certificate”** means a certified calculation of the Borrowing Base in the form of Schedule B.

**“Business Day”** means any day that is not a Saturday, Sunday or other day to which commercial banks in Vancouver, British Columbia or Toronto, Ontario are authorized or required by applicable law to remain closed.

**“Charged-Off Asset”** means any Lease Asset (i) for which the Borrower has become aware that an Insolvency Event has occurred in respect of the related Obligor or (ii) that is or is required to be charged-off as uncollectible by the Borrower in accordance with the Credit and Collection Policies it being acknowledged that under the Credit and Collection Policies a Lease Asset would be charged-off as uncollectible upon the Borrower becoming aware that an Insolvency Event had occurred in respect of the related Obligor.

**“Collections”** means, without duplication (i) in respect of any Eligible Asset, all cash collections and other cash proceeds in respect thereof and of the related rights and Leases and (ii) the net proceeds of any disposition of the related Eligible Asset.

**“Collections Account”** means the account established and maintained in the name of the Borrower as the account owner at The Toronto-Dominion Bank (Branch ID: 31382, Account Number: 5237256) or such other account as is designated by notice to PTC as the Collections Account for the purposes hereof, which account shall at all times be subject to a blocked account agreement in form and substance acceptable to PTC.

**“Credit and Collection Policies”** means the Borrower’s credit, collection and administration policies and procedures relating to its portfolio of loans, as represented in the Borrower’s operating procedures manual, which for greater certainty, has been reviewed and approved by PTC.

**“Credit Parties”** means, collectively, the Borrower, the Guarantor and the Trustee, and **“Credit Party”** means any of them.

**“Delinquency Rate”** means, for any Reporting Period, the sum of the Outstanding Balances of Eligible Assets that are Delinquent Assets at the end of such Reporting Period, divided by the Outstanding Balance of all Eligible Assets at the end of such Reporting Period.

**“Delinquency Rate Reimbursement”** means an administration fee equal to \$2500, which for greater certainty, is not and shall not be deemed to be a penalty in any way, and represents costs incurred by PTC with respect to the monitoring, analyzing and reporting on either of the Excess LS Delinquencies or the Excess LV Delinquencies, as such terms are defined in Section 2.5.

**“Delinquent Asset”** means:

- (a) if the Lease Asset is a not a RNC Lease, any amount payable thereunder is more than 30 days past due; or
- (b) if the Lease Asset is a RNC Lease, the RNC Lease Builder has failed or fails to take all steps necessary for the RNC Lease Homeowner to assume all obligations pursuant to the RNC Lease concurrently with the closing of the purchase and sale of the building in which the Approved Equipment under the RNC Lease has been installed; or
- (c) if the Lease Asset is a RNC Lease, either (i) more than 90 days have elapsed since the date on which the RNC Lease Homeowner assumed all obligations under the RNC Lease without the RNC Homeowner making the first payment required under the RNC Lease or, (ii) after the 90-day period from the date the RNC Homeowner assumed all obligations under the RNC has elapsed, any amount payable under the RNC Lease is more than 30 days past due.

**“Eligible Asset”** means any Lease Asset:

- (a) in respect of which the Obligor thereunder is a Person who is resident in Canada and is not (i) an affiliate of the Borrower; (ii) the Government of Canada or any agency or instrumentality thereof or any federal crown corporation other than those listed as exempt under applicable legislation from restrictions or requirements for consent or notice on the assignment of receivables in respect of which they are obligors; or (iii) any provincial government or agency thereof if the enforceability against such government or agency of an assignment of debts owing thereby is subject to any pre-condition which has not been fulfilled;
- (b) which is not a Charged-Off Asset;
- (c) that has a fair market value (based on monthly payments) that is greater than or equal to its face value;
- (d) which is payable to an address in Canada only and is denominated and payable in Canadian Dollars and in respect of which the Obligor has been directed to remit payments to the Collections Account;
- (e) which has been duly authorized, executed and delivered by the parties thereto, has been entered into in compliance with all applicable laws (including any licensure laws applicable to Borrower), and, together with all related Rights (including any guarantee, indemnity or agreement referred to in clause (g) of the definition of Rights), is in full force and effect and constitutes the legal, valid and binding obligation of the related Obligor enforceable against such Obligor in accordance with its terms, subject to applicable bankruptcy, reorganization, insolvency, moratorium or similar laws affecting creditors' rights generally and subject to equitable principles of general application (regardless of whether enforcement is sought in a proceeding at law or in equity);
- (f) which is not subject to any dispute, set-off, counterclaim or defense whatsoever, no prepayments have been made thereunder and which is owned by the Borrower and free of any Adverse Claim and has not been extended or otherwise modified except in the ordinary course of business and in accordance with the Credit and Collection Policies;
- (g) in respect of which the Borrower or the Originator is not in default in the performance of any of the covenants of the Borrower or the Originator thereunder;
- (h) the terms of which do not contravene any laws, rules or regulations applicable thereto (including, without limitation, such laws, rules, or regulations relating to usury, truth in lending, credit business practices, cost of borrowing, consumer protection, equal credit opportunity, fair debt collection practices and privacy), except where such contravention would not materially adversely affect the collectability or enforceability of the related Rights;
- (i) in which the perfection of the Borrower's rights complies with the requirements of the Credit and Collection Policies in all material respects, it being acknowledged that Lease Assets that are Low Value Leases do not require perfection of the Borrower's rights;

- (j) the related Obligor is not the subject of any Insolvency Event (except where such Insolvency Event occurred prior to the origination of the Lease and such origination was consistent with the Credit and Collection Policies) and there are no such proceedings pending, or to the best of the Borrower's knowledge, threatened against such Obligor;
- (k) in respect of which the related Rights may be assigned in whole or in part without the consent of the related Obligor;
- (l) which is documented pursuant to a form of contract which is similar in all material respects to one of the forms of contract that have previously been delivered to and accepted by PTC, acting reasonably;
- (m) in respect of which the Borrower is the legal and beneficial owner of the Lease Asset, the related Leases and Rights free and clear of any Adverse Claim other than as contemplated hereunder;
- (n) that has not been satisfied, subordinated, waived or rescinded;
- (o) that has not been compromised, adjusted or modified except in accordance with the Credit and Collection Policies;
- (p) that was generated in the ordinary course of business;
- (q) except in the case of Low Value Leases, for which all filings or recordings with respect to the Borrower's interest therein and the related Leases and Rights necessary by law or reasonably prudent and desirable for the perfection and protection of such interests including any further filings, recordings or renewals thereof, have been effected by the Borrower ("Lien Registration"); provided, however, if the Lease Asset is a Low Value Lease in respect of which there is no Lien Registration, the Outstanding Balance of such Lease Asset, together with the Outstanding Balance of all Eligible Assets in respect of which there are no Lien Registrations, does not exceed 35% of the Outstanding Balance of all Eligible Assets at such time;
- (r) in respect of which there is a parts and labour warranty on the related Leased Equipment as issued by a third party insurer that is approved in writing by PTC (acting reasonably) or the Borrower has otherwise made arrangements with a third party (other than the Obligor or the Borrower) to ensure that any repair and servicing of the Leased Equipment is conducted and completed as required from time to time;
- (s) in respect of which the related Originator Reserve required under the terms of the related Program Agreement has been deposited to the Reserve Account and, (i) in the case of a Low Value Lease in respect of which there is no Lien Registration or no measured credit score for the related Obligor, the Originator Reserve has been increased by an additional 1% of the Outstanding Balance of such Lease Asset, and (ii) in the case of a Lease Asset that does not have a parts and labour warranty on the related Leased Equipment, on such warranty terms and with such insurers as may be approved by PTC in writing (acting reasonably), the Originator Reserve has been increased by an additional 0.25% of the Outstanding Balance of such Lease Asset;

Asset; provided, however, that in no event shall the Originator Reserve be required to exceed 4% of the Outstanding Balance of a Lease Asset in order for the Lease Asset to qualify as an Eligible Lease;

- (t) that is not a Non-Performing Asset;
- (u) in respect of which the related Originator is an Approved Originator;
- (v) which is not a Lease Asset specifically excluded by the Borrower in a Borrowing Base Certificate, provided that the Borrower may not exclude any Lease Assets as contemplated hereunder if the aggregate amount of the Advance then outstanding exceeds or would exceed the Borrowing Base at such time;
- (w) the related Obligor's credit score at the time of origination was not less than 500, provided that the related Obligor may have no measured credit score in respect of a Low Value Lease if evidence has been obtained of the related Obligor's ownership of the residential property at which the related Leased Equipment has been installed;
- (x) the Lease Asset is not a Non-AML-Compliant Lease Asset; and
- (y) if the Lease Asset is a RNC Lease, then the Outstanding Balance of such Lease Asset, together with the Outstanding Balances of all Leases relating to Leased Assets that are RNC Leases, does not exceed \$10 million.

**"End Date"** shall have the meaning set forth in Section 2.1.

**"Escalation Amount"** means, in respect of a Lease, all monthly amounts payable as rental payments in excess of the Rental Amount.

**"GAAP"** means at any particular time with respect to any Credit Party, generally accepted accounting principles as in effect at such time in Canada, consistently applied.

**"Governmental Authority"** means any federal, state, provincial, regional, local or foreign court or governmental agency, authority, instrumentality or regulatory body.

**"Guarantee"** has the meaning ascribed to it in Section 4.1.

**"HVAC"** has the meaning ascribed to it in the definition of Approved Equipment.

**"Indemnitee"** has the meaning ascribed to it in Section 14.2.

**"Insolvency Event"** means, in respect of any Person, such Person shall generally not pay its debts as they become due, or shall admit in writing its inability to pay its debts generally, or shall make a general assignment for the benefit of creditors; or any proceedings shall be instituted by or against, as the case may be, seeking to adjudicate it as bankrupt or insolvent or seeking liquidation, winding up, reorganization arrangement, adjustment, protection, relief or composition of it or its debts under any law relating to bankruptcy, insolvency, reorganization or relief of insolvent debtors, or seeking the entry of an order for relief by the appointment of a

receiver, trustee, custodian or similar official for its or a substantial part of its property and, if such proceeding has been instituted against such Person, while being contested in good faith by such Person, such proceeding has not been stayed or dismissed within 45 days, or a receiver, trustee, custodian or other similar official is appointed for it or any substantial part of its property; or a receiver being privately appointed in respect of a substantial part of the assets of such Person; or such Person, takes any corporate action to authorize any of the actions described above.

**“Lease”** means a lease, rental agreement or conditional sales contract or similar agreement (including a sub-metering agreement) for the lease or sale of Approved Equipment originated by an Originator.

**“Lease Asset”** means a Lease together with the related Rights.

**“Leased Equipment”** means in respect of a Lease, the equipment leased to the related Obligor hereunder, including any replacements thereof under the terms of the Lease.

**“Loan”** has the meaning ascribed to it in Recital B.

**“Loan Documents”** has the meaning ascribed to it in Section 5.1(a).

**“Low Score Leases”** means Lease Assets in respect of which the beacon score of the related Obligor is less than 600 on the date such Lease Asset is originated.

**“Low Value Lease”** means a Lease Asset in respect of which the related Approved Equipment is a water heater or other equipment where the monthly rental payment (excluding taxes) is less than \$45 or a tankless water heater where the monthly rental payment (excluding taxes) is less than \$65.

**“Maximum Amount of Loan”** means the amount set forth in Section 15.

**“Non-AML-Compliant Eligible Asset”** means a Non-AML-Compliant Lease Asset that meets all of the requirements to be treated as an Eligible Asset under this Agreement other than under paragraph (z) of the definition of Eligible Asset.

**“Non-AML-Compliant Eligible Asset Advance”** means an Advance drawn pursuant to an Advance Request that specifies that the Advance is “to be used for Non-AML-Compliant Eligible Assets”.

**“Non-AML-Compliant Lease Asset”** means a Lease Asset that does not comply with the “know your customer” requirements imposed by any anti-money laundering or anti-terrorist financing legislation applicable to PTC, as determined by PTC in its sole discretion.

**“Non-Performing Asset”** means any Lease Asset that is more than 90 days past due.

**“Note”** has the meaning ascribed to it in Section 2.4.

**“Obligor”** means in respect of any Lease Asset, the Person or Persons obligated to make payments thereunder and, in the case of a RNC Lease, includes the agent of that Person or Persons.

**“Originators”** means Approved Originators and such other Persons who become parties to Program Agreements with the Borrower from time to time.

**“Originator Reserves”** means the cash reserves held by the Borrower under the Program Agreements and available to be applied toward losses or other shortfalls suffered in respect of the Lease Assets acquired under the related Program Agreement.

**“Outstanding Balance”** means at any time in respect of a Lease Asset, the product of (i) 90%, and (ii) the sum of the present values of all unpaid Scheduled Payments arising under such Lease Assets, discounted to such date at the discount rate established pursuant to Section 1.2.

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

**“Program Agreements”** means the program agreements entered into by the Borrower with each Originator pursuant to which the Borrower acquires Leases from time to time.

**“Records”** means, in respect of any Lease Asset, all contracts (including those evidencing such Lease Asset), books, records, reports and other documents and information (including, to the extent obtainable by way of existing software controlled by the Borrower, hard copies of all data maintained in databases of the Borrower, tapes and disks) maintained by or on behalf of the Borrower in respect of the Lease Assets and the related Obligor.

**“Rental Amount”** means in respect of a Lease, the original regularly-scheduled monthly rental payment amount of the Obligor thereunder (excluding any Escalation Amount).

**“Reporting Period”** means a calendar month.

**“Reserve Account”** means the account established and maintained in the name of PTC as the account owner at The Toronto-Dominion Bank (account number is 01020-5516580) or such other account as is designated by notice to the Borrower as the Reserve Account for the purposes hereof.

**“Rights”** means, in respect of any Lease Asset, the following:

- (a) all rights and benefits accruing to the Borrower under such Lease Asset, including all right, title and interest in and to the related receivables;
- (b) all of the Borrower’s right, title and interest in and to the related Leased Equipment;
- (c) all of the Borrower’s right, title and interest in the Originator Reserves held under the Program Agreements in respect of the Lease Asset and available to be applied toward the payment of any Lease Asset under the terms of the related Program Agreement;

- (d) all right in or to payments (including both proceeds and, to the extent the Borrower has any rights therein, premium refunds) under any insurance policies maintained by the related Obligor pursuant to the terms of such Lease Asset or by the Borrower in respect of such Lease Asset;
- (e) all claims, demands, actions, damages and indemnities owing to the Borrower under such Lease Asset;
- (f) the right of the Borrower to ask, demand, sue for, collect, receive and enforce any and all sums payable under the Lease Asset and to enforce all other covenants, obligations, rights and remedies thereunder with respect thereto;
- (g) all of the right, title and interest of the Borrower in, to and under all prepayments, guarantees, promissory notes and indemnities (including all security interests and all property subject thereto) from time to time supporting or securing payment or performance of the related Obligor's obligations in respect of the Lease Asset, whether pursuant to the Lease Asset or otherwise;
- (h) the related Records; and
- (i) all proceeds of or relating to any of the foregoing.

**"RNC Lease"** means a Lease Asset for which the original Obligor under the applicable Lease is a RNC Lease Builder.

**"RNC Lease Builder"** means a builder or developer who does not intend to occupy the building in which the Approved Equipment under a RNC Lease is to be installed.

**"RNC Lease Homeowner"** means the first Obligor or Obligors under a RNC Lease who is not a RNC Lease Builder.

**"Sale and Servicing Agreement"** means the sale and servicing agreement dated December 1, 2016 entered into between the Borrower, PTC and the Guarantor, as amended, restated, supplemented, replaced or otherwise modified from time to time.

**"Scheduled Payment"** means, in respect of a Lease Asset, the aggregate of the Rental Payment and any Escalation Payment payable by the Obligor thereunder during a term not exceeding the lesser of (i) the term of the Receivable, (ii) 180 months, and (iii) the remainder of the Prescribed Term, as such term is defined in the related Program Agreement.

**"Security"** has the meaning ascribed to it in Section 3.1.

**"Security Agreement"** means the general security agreement dated the date hereof between the Borrower and PTC, as the same may be amended, restated, supplemented, replaced or otherwise modified from time to time;

**"SGHS"** means Simply Green Home Services Inc.

**“Shareholders’ Agreement”** means the unanimous shareholders’ agreement among the Guarantor, SGHS and PTC, as the same may be amended, restated, replaced, supplemented or otherwise modified from time to time.

**“Subordinated Debt”** means subordinated debt incurred by the Borrower from time to time to finance or refinance the acquisition of Leases, which debt may be secured but shall be subordinated and postponed to the Loan.

**“Trustee”** means Crown Crest Funding Corp.

## 1.2 DISCOUNT RATE

Any reference to a “discount rate” in the definition of “Borrowing Base” or “Outstanding Balance” means a discount rate equal to 4% per annum, provided that PTC may adjust the discount rate on January 2 of any calendar year by notice in writing delivered not less than 30 days before such date in respect of the Advance to be made after such date. An increase in the discount rate may not exceed the net increase in BMO Prime during the calendar year during which the notice is given.

## 1.3 AMENDMENTS TO DEFINITION OF ELIGIBLE ASSET

If, at any time, PTC determines, acting reasonably, that there has been a material change in the information contained in a Borrowing Base Certificate from the information contained in any previous Borrowing Base Certificate, then PTC may elect by notice in writing to the Borrower and the Guarantor to amend the definition of Eligible Asset so that it contains one or more of the following additional requirements:

- (a) if the Lease Asset is a Low Score Lease, then the Outstanding Balance of such Lease Asset, together with the Outstanding Balances of all Leases relating to Leased Assets that are Low Score Leases, does not exceed 5% of the Outstanding Balance of all Lease Assets at such time; and
- (b) if the Lease Asset is a Low Value Lease, then the Outstanding Balance of such Lease Asset, together with the Outstanding Balances of all Leases relating to Leased Assets that are Low Value Leases, does not exceed 35% of the Outstanding Balance of all Leased Assets at such time;

and the definition of Eligible Asset will be deemed to have been amended from the time of delivery of notice of any such election by PTC to the Borrower and the Guarantor.

## 2. LOAN

### 2.1 LOAN

Subject to the terms and conditions contained in this Agreement and in the other documents, instruments and agreements executed in connection with the Loan, including without limitation, the Security Agreement and the other Loan Documents, PTC will establish for the

Borrower the Loan as a demand line of credit against which PTC will make a single one-time advance (the “Advance”) for the purpose of repaying the BFI Facility. Subject to the terms hereof, including without limitation Section 2.2, the Borrower shall have the right to obtain and repay the Advance. At no time shall the unpaid principal balance of the Loan exceed the lesser of (a) the Borrowing Base, and (b) the Maximum Amount of Loan. The Advance of the Loan shall be made on or before the date set forth in Section 2.8 (“End Date”).

## 2.2 ADVANCE

Subject to the terms and conditions hereof, the Advance of the Loan will be limited to a single one-time Advance as of the date hereof to repay a portion of the total amount required to repay in full the BFI Facility, by delivery on the date hereof of an Advance Request together with a current Borrowing Base Certificate. For the purposes of this Advance only, it will not be a requirement that the Eligible Assets used in calculating the Borrowing Base for the Borrowing Base Certificate are Lease Assets for which the related Originator is an Approved Originator.

The aggregate principal amount of the Advance shall not exceed the Borrowing Base or the Maximum Amount of Loan.

Cash reserves held by the Borrower in accordance with the Program Agreements shall be held in the Reserve Account and applied by the Borrower to shortfalls in respect of Leases as provided under the related Program Agreements. Without limiting the foregoing, the Borrower shall ensure that the amount on deposit in the Reserve Account shall be no less than 4% of the Outstanding Balances related to all Eligible Assets.

## 2.3 NON-AML-COMPLIANT ELIGIBLE ASSETS

All requirements and obligations imposed on the Borrower pursuant to this Agreement will be met and performed by the Borrower separately for:

- (a) all Eligible Assets; and
- (b) all Non-AML-Compliant Eligible Assets;

and, in meeting all such requirements and obligations with respect to any Non-AML-Compliant Eligible Assets, all references in this Agreement to “Eligible Assets” will be deemed to be references to “Non-AML-Compliant Eligible Assets”.

As an example, where, pursuant to Section 8.1(b)(iii)(C) of this Agreement, the Borrower covenants to provide a Borrowing Base Certificate that includes a calculation of the Delinquency Rate, the Borrower shall provide one such Borrowing Base Certificate where the calculation of the Delinquency Rate includes only Eligible Assets, and one such Borrowing Base Certificate where the calculation of the Delinquency Rate includes only Non-AML-Compliant Eligible Assets.

## 2.4 NOTE

The Loan shall be evidenced by a promissory note ("Note") of even date herewith in a form prepared and approved by PTC in the Maximum Amount of Loan, payable in accordance with the terms thereof.

## 2.5 INTEREST AND PAYMENTS

Subject to the following sentence, Interest on the principal amounts of the Advance outstanding from time to time shall be the per annum rate specified in Section 15 as the "Interest on the Loan" (the "Interest Rate") as adjusted below and should such rates of interest as calculated thereunder exceed that allowed by law, the applicable rate of interest will be the maximum rate of interest allowed by applicable law. Interest on the principal amounts of the Non-AML-Compliant Eligible Asset Advance outstanding from time to time shall be the per annum rate specified in Section 15 as the "Interest on the Non-AML Compliant Portion of the Loan" (the "Non-AML-Compliant Interest Rate") as adjusted below and should such rates of interest as calculated thereunder exceed that allowed by law, the applicable rate of interest will be the maximum rate of interest allowed by applicable law.

Subject to the following sentence, Interest on the principal amount of the Advance outstanding from time to time will be calculated and compounded monthly, not in advance, at the Interest Rate, both before and after maturity and default, and with interest on overdue interest at the same rate, until payment in full has been made of the principal amount and all accrued interest. Interest on the principal amount of the Non-AML-Compliant Eligible Asset Advance outstanding from time to time will be calculated and compounded monthly, not in advance, at the Non-AML-Compliant Interest Rate, both before and after maturity and default, and with interest on overdue interest at the same rate, until payment in full has been made of the principal amount and all accrued interest.

All interest hereunder shall be payable for the actual number of days elapsed (including the first day and the last day).

If the Delinquency Rate for the Low Score Leases included in the Borrowing Base exceeds, at any time during any Reporting Period, 8% (the amount of any excess being the "Excess LS Delinquencies"), a Delinquency Rate Reimbursement (an "Excess LS Delinquencies Reimbursement") shall be paid by the Borrower to PTC for each Reporting Period (that is, each calendar month) during which such Delinquency Rate had exceeded 8%. For greater certainty, the Borrower and PTC agree that any such Excess LS Delinquencies Reimbursement is not and shall not be deemed to be a penalty or fee in any way, but rather a true representation of the costs that PTC shall incur in respect of the monitoring, analyzing and reporting on the Excess LS Delinquencies.

If the Delinquency Rate for the Low Value Leases included in the Borrowing Base exceeds, at any time during any Reporting Period, 10% (the amount of any excess being the "Excess LV Delinquencies"), a Delinquency Rate Reimbursement (an "Excess LV Delinquencies

Reimbursement") shall be paid by the Borrower to PTC for each Reporting Period (that is, each calendar month) during which such Delinquency Rate had exceeded 10%. For greater certainty, the Borrower and PTC agree that any such Excess LS Delinquencies Reimbursement is not and shall not be deemed to be a penalty or fee in any way, but rather a true representation of the costs that PTC shall incur in respect of the monitoring, analyzing and reporting on the Excess LV Delinquencies.

For greater certainty, both an Excess LS Delinquencies Reimbursement and an Excess LV Delinquencies Reimbursement may be payable by the Borrower to PTC for the same Reporting Period.

Accrued interest on the Loan shall be payable in arrears on the first (1<sup>st</sup>) day of each month and upon termination of the commitments hereunder (including upon the occurrence of the End Date).

The Borrower, Guarantor and PTC confirm that the initial cash payment in respect of any Eligible Asset purchased by PTC pursuant to the Sale and Servicing Agreement prior to the date of this Agreement has been deemed to have been paid to the Borrower in accordance with the Sale and Servicing Agreement and then repaid to PTC and applied toward the repayment of principal owing on the Loan in accordance with this Agreement. For greater certainty, this paragraph shall not apply to any Non-AML-Compliant Eligible Assets.

The Borrower shall pay to PTC on the End Date or other date of maturity of the Note or Loan, whether by acceleration or otherwise, the aggregate principal amount of the Advance outstanding on such date.

All payments and prepayments of principal, interest and fees under this Agreement and the Note and Loan shall be made to PTC prior to 12:00 p.m. (noon), Pacific time, in immediately available funds and for the ratable benefit of PTC.

## 2.6 PREPAYMENTS

If for any reason the aggregate principal amount of the Loan outstanding at any time shall exceed the lesser of (i) the Maximum Amount of the Loan and (ii) the Borrowing Base at such time, the Borrower, without notice or demand, shall immediately make a principal payment to PTC in an amount equal to such excess plus accrued and unpaid interest thereon. If any fine, penalty, sanction, order or other liability is imposed upon or determined against any of the Borrower, PTC or any Originator in connection with or relating to any Eligible Asset the purchase of which was financed by an Advance hereunder, such Lease Asset shall cease to be an Eligible Asset and the Borrower shall immediately, make a principal payment to PTC in an amount equal to the Advance made in connection with the relevant Eligible Asset. The Borrower may from time to time, prepay all or part of the outstanding principal balance of the Loan provided that in the event of any prepayment prior to the expiration of ninety (90) days from the date hereof, the Borrower shall pay to PTC an amount equal to the interest that would

otherwise have been payable under the Note from the date of the prepayment until the end of such ninety (90) days.

## 2.7 REMITTANCE ACCOUNT.

The Collections received by Borrower from its collection of Leases, excluding Leases purchased under the Sale and Servicing Agreement, which have been assigned, by way of security pursuant to Section 3.1, shall be remitted to the Collections Account and subject to the terms of the Blocked Account Agreement.

## 2.8 END DATE / RENEWAL

The Loans shall mature and be repayable on the End Date specified in Section 15. Notwithstanding the foregoing, the End Date may be extended by PTC for an additional 6 months by written notice to the Borrower, such notice to be sent no earlier than 6 months prior to the scheduled End Date and no later than 4 months prior to the scheduled End Date. Upon such extension, the End Date shall be deemed to be such date 6 months following the scheduled End Date for all purposes hereunder until further extended by PTC pursuant to this Section 2.8.

## 3. SECURITY

### 3.1 Security

As security for the payment of the Note, the Loan, and all other liabilities and obligations of Borrower to PTC, now existing or hereafter created, Borrower shall grant a security interest in and set over to PTC, all of the Borrower's present and after-acquired personal property, including without limitation, all of the Borrower's rights, titles and interests in all of Borrower's Lease Assets ("Security"); and any cash flow and proceeds therefrom. Such assignment, pledge and security interest shall be granted by way of the Security Agreement and such other instruments or specific assignments, by way of security, and shall be registered and perfected under applicable personal property security legislation in all required jurisdictions, in each case, as determined by PTC in its sole discretion.

### 3.2 RESTRICTIONS

Except as set out herein, the Borrower may not grant or assign, pledge or set over any of its rights, titles or interests in a Lease to any third party. Borrower shall be free to sell, assign or convey any Eligible Assets to any Person provided that (i) the Borrower offers to sell, assign or convey any Eligible Assets firstly to PTC, on substantially similar terms (ii) PTC declines to purchase such Eligible Assets on such terms, and following any such sale, assignment and conveyance, (iii) the aggregate amount of the Advance shall not exceed the Borrowing Base at any time and (iv) the Borrower shall within 15 days of such sale, assignment and conveyance either (A) deliver to PTC an amount equal to 100% of the net proceeds of such sale, assignment

and conveyance as a prepayment of the amounts outstanding under the Advance or (B) use such net proceeds to purchase and refinance additional Eligible Assets. For greater certainty, the right of first refusal granted to PTC in paragraphs (i) and (ii) of this Section 3.2 will not apply to any proposed sale, assignment or conveyance of any Non-AML-Compliant Eligible Assets, and the remaining conditions in this Section 3.2 will apply to any such sale, assignment or conveyance of any Non-AML-Compliant Eligible Assets

### 3.3 ADDITIONAL DOCUMENTS

Borrower or the Trustee as applicable shall execute from time to time upon the request of PTC, a standard Blocked Account Agreement in respect of the Collections Account and the Reserve Account and such financing statements or other documents as reasonably required by PTC to perfect or continue PTC's rights, titles and interests in the Leases. For greater certainty, such Blocked Account Agreement shall permit Borrower to withdraw funds from the Collections Account and the Reserve Account unless and until "activated" by PTC on the occurrence of an Event of Default.

## 4. GUARANTEE

### 4.1 GUARANTOR

Guarantor shall grant and execute in favour of PTC a guarantee (the "Guarantee") whereby the Guarantor shall irrevocably and unconditionally guarantee to PTC the due and punctual payment in full of the Note, Loan, and all other liabilities and obligations of Borrower to PTC hereunder when the same shall become due, and such Guarantee shall be in form and content satisfactory to PTC in its sole discretion.

## 5. CONDITIONS PRECEDENT

### 5.1 CONDITIONS PRECEDENT TO ADVANCE

In addition to the conditions set out in Section 2.2, PTC shall have no obligation to make any Advance until the conditions set forth in the following subparagraphs and elsewhere herein have been satisfied at the expense of the Borrower, as determined by PTC in its sole and absolute discretion:

(a) each Credit Party shall have delivered, or cause to be delivered, to PTC, in form and substance satisfactory to PTC, this Agreement, the Note, the Security Agreement, the Blocked Account Agreement and the Guarantee, and such other documents, instruments, financing statements, certificates, legal opinions, and agreements as PTC may reasonably request (collectively, the "Loan Documents");

(b) each Credit Party shall have delivered, or cause to be delivered, to PTC, in form and substance satisfactory to PTC in its sole and absolute discretion certified copies of resolutions of such Credit Party's trustees, directors or partners, as the case may be, authorizing such Credit Party to execute, deliver, honour and perform the Agreement, the Note, the Security

Agreement and a certificate of incumbency certifying the names and signatures of the trustees, officers or partners, as the case may be, of each Credit Party authorized to sign the Loan Documents;

(c) All of PTC's liens and security interests securing the Note, Loan, and all other liabilities and obligations of Borrower to PTC shall have been validly perfected and be representative of a first charge over the Security;

(d) PTC shall have received evidence of, or undertakings from the Borrower's solicitors in relation to, the discharge of any indebtedness or Adverse Claims, except as permitted in accordance with Section 8.1(g), as determined satisfactory in the reasonably exercised opinion of PTC's solicitors;

(e) No material adverse change shall have occurred in the business or financial condition of Borrower since the date of the latest financial statements given to PTC by on behalf of Borrower;

(f) Each of the warranties and representations made by Borrower in this Agreement shall be true and correct as of the date of each Advance; and

(g) Borrower shall have kept and performed the various covenants, obligations and agreements on its part to be kept and performed under this Agreement and no Event of Default, or act or event which with the giving of notice or the passage of time, or both, would constitute an Event of Default hereunder shall have occurred and be continuing.

## 5.2 REQUEST FOR ADVANCE

The Advance may be made by PTC upon receipt of an Advance Request (including a calculation of the current Borrowing Base) executed by the Persons named in Section 15 hereof, either one acting alone, who are authorized to request the Advance and direct disposition of any such Advance, for and on behalf of the Borrower, until written notice of the revocation of such authority is received from Borrower by PTC. Each request by Borrower for an Advance shall constitute a reaffirmation, as of the date of such request, of all of the representations and warranties of Borrower contained in this Agreement.

## 5.3 NO WAIVER

No Advance, or any waiver of a condition in connection therewith, shall constitute a waiver of any of the conditions to the Advance.

## 6. FEES

### 6.1 FEES

As additional consideration for PTC's commitments herein, Borrower agrees to pay to PTC the following fees, which shall be fully earned and non-refundable to Borrower, shall be held and retained by PTC as its sole property and shall not be applied to any payments due under the Loan Documents or Note other than this Section 6:

(a) a commitment fee in the amount set forth in Section 15 hereof, payable on or before the date hereof and in each instance where the Maximum Amount of Loan is increased or renewed for a new term;

(b) a non-utilization fee computed at the rate per annum set forth in Section 15 hereof on the unused portion of the Maximum Amount of Loan and payable quarterly in arrears to be calculated from the date hereof, where the phrase 'unused portion of the Maximum Amount of Loan' means the average difference between (i) the Maximum Amount of Loan and (ii) the outstanding principal balance of the Loan on each day during such period; and

(c) an inspection fee in the amount per inspection set forth in Section 15 hereof, payable within ten (10) days of Borrower being billed therefor by PTC.

## 7. REPRESENTATIONS AND WARRANTIES

### 7.1 REPRESENTATIONS AND WARRANTIES

Each Credit Party confirms that it made the following representations and warranties to PTC as of the date hereof, which representations and warranties survived the execution of this Agreement:

(a) Legal Status. Borrower is a trust that has been duly formed and is validly existing under the laws of Ontario and is qualified to transact business in Ontario and in every other jurisdiction in which the nature of its business requires such qualifications; and each of the Trustee and the Guarantor is a corporation that has been duly organized and is validly existing under the laws of Ontario and is qualified to transact business, and has made all filings and is in good standing, in Ontario and in every other jurisdiction in which the nature of its business requires such qualifications;

(b) No Violation. The making and performance by the Credit Parties of the Loan Documents do not violate any provision of law, nor any provision of such Credit Party's formation documents, including, without limitation, articles of incorporation or any partnership agreement or trust indenture, or result in a breach of, or constitute a default under, any agreement, indenture or other instrument to which such Credit Party is a party or by which such Credit Party may be bound;

(c) Authorization. This Agreement and the other Loan Documents have been duly authorized, executed and delivered, and are legal, valid and binding agreements of the Credit Parties who are party thereto enforceable against such Credit Party in accordance with their terms, except as enforceability may be limited by bankruptcy, solvency, reorganization, moratorium or similar laws affecting creditors' rights generally and by general principles of equity;

(d) Financial Statements. All financial statements and reports (including Borrowing Base Certificates) that have heretofore been presented to PTC in conjunction with the transaction which is the subject of this Agreement, have been prepared in conformity with GAAP consistently applied, fairly and accurately present the financial condition and income of the

subject thereof, as of the date given, and neither contain any untrue statement of a material fact nor fail to state a material fact required in order to make such financial statements not misleading. Since the date of such financial statements, there has been no adverse material change in the financial condition or operations of the subject thereof;

(e) Consent and Licences. No consent, approval or authorization of, or registration or filing with, any governmental body or authority, or any other Person, firm or entity not a party hereto, is or will be required as a condition to the valid execution, delivery, performance or enforceability of documents contemplate herein, or the transactions contemplated hereby or thereby, or to the conduct of the business of the Borrower;

(f) Litigation. There is no material litigation either pending or, to the best of its knowledge, threatened against the Credit Parties before any court or administrative agency, or before any arbitrator, which may have a material adverse effect on the assets, business, financial conditions or operations of the Credit Parties, or which would prevent or hinder the performance of the obligations of the Credit Parties under the Agreement, and, furthermore, each Credit Party has not violated any law in any material respect and, to the best of its knowledge, is not the subject of any investigation by a governmental agency that could reasonably be expected to result in an indictment or a forfeiture or seizure of any of its assets; and

(g) Environmental Matters. Each Credit Party, to the best of its knowledge after due investigation, is in compliance in all material respects with all applicable environmental, health and safety statutes and regulations and each Credit Party does not have any material contingent liability in connection with any improper treatment, storage, disposal or release into the environment of any hazardous or toxic waste or substance.

## 8. COVENANTS OF THE CREDIT PARTIES

### 8.1 COVENANTS

Until the payment in full of the Loan and until the fulfillment of all of its obligations hereunder, each Credit Party shall comply with the following covenants:

(a) Books and Records. Each Credit Party shall at all times keep accurate and complete books, records and accounts of all of such Credit Party's business activities, prepared in accordance with GAAP consistently applied, and each Credit Party shall permit PTC, or any Persons designated by PTC, at any reasonable time, to inspect, audit and examine such books, records and accounts and to make copies or extracts thereof;

(b) Statements and Reports. Each Credit Party shall furnish to PTC:

(i) within the number of days set forth in Section 15 hereof after the end of each fiscal year of such Credit Party, financial statements of such Credit Party, which shall include a balance sheet, an income statement showing the results of operations for such a fiscal year and a change in financial position statement for such fiscal year, together, in each

case, with the comparable figures for the immediately preceding fiscal year, all in reasonable detail and prepared in accordance with GAAP, consistently applied, which statements shall contain the certification requirements set forth in Section 15 hereof;

(ii) within the number of days set forth in Section 15 hereof after the end of each of the fiscal periods of the Borrower set forth in Section 15 hereof, financial reports of the Borrower, which shall include a balance sheet, an income statement showing the results of operations for such fiscal period and a change in financial position statement for such fiscal period, together, in each case, with the comparable figures for the immediately preceding corresponding fiscal period, all in reasonable detail and prepared in accordance with GAAP, consistently applied, and containing the certifications required pursuant to Section 15 hereof;

(iii) within twenty (20) days after the end of each month a Borrowing Base Certificate which shall include the following:

(A) An aging and listing of all accounts receivable prepared in accordance with GAAP which itemizes each account debtor, including each Lease, by name and addresses and which states the total amount payable to Borrower and contains a breakdown indicating future amounts due and when due, current amounts due, amounts thirty (30) days past due, sixty (60) days past due, and ninety (90) or more days past due, and reflecting any credit adjustments, returns and allowances;

(B) An aging and listing of all accounts payable—trade prepared in a similar manner; and

(c) A calculation of the Delinquency Rate in respect of all Low Score Leases and Low Value Leases forming part of the Borrowing Base and all Eligible Assets, as well as the balance of all amounts held in the Reserve Account that are represented or included in the Borrowing Base (such balance shall be set out for those in respect of Low Score Leases, Low Value Leases and those in respect of all Eligible Assets other than Low Score Leases and Low Value Leases), together with a calculation of all amounts required to be deposited therein pursuant to the Program Agreements;

(iv) promptly, from time to time, upon request of PTC, such other information concerning the financial condition, business and affairs of each Credit Party as shall be reasonably requested by PTC;

(c) Notices. Each Credit Party shall promptly notify PTC in writing of the occurrence of any Event of Default or any act or event which, with the giving of notice or the passage of time, or both, would be such an Event of Default and of any legal action, proceeding or investigation threatened or instituted against such Credit Party that might have a material adverse effect upon the operations, financial condition or business of the Credit Parties or the Borrower's

ability to repay the Loan, or PTC's security interest in the Leases or any of them, and from time to time, at PTC's request, each Credit Party will furnish to PTC a summary of the status of all such actions, proceedings or investigation;

(d) **Maintain Business.** Each Credit Party shall maintain in full force and effect all material licenses, permits, authorizations, bonds, franchises and other rights necessary or desirable to the profitable conduct of its business, shall continue in, and limit its operations to, the same general lines of business as are presently conducted and shall comply with all applicable laws, orders, regulations and ordinances of all governmental authorities, in all material respects and shall maintain its corporate existence;

(e) **Mergers, Sale of Assets.** Borrower will not, without PTC's prior written consent: (i) sell, lease, transfer or dispose of substantially all of its assets to another entity; or (ii) consolidate with or merge into another entity, permit any other entity to merge into it or consolidate with it, or permit any transfer of the ownership of, or power to control, Borrower;

(f) **Dividends and Other Distributions.** Unless otherwise indicated herein, Borrower will not, without PTC's prior written consent, declare, order, pay or make, directly or indirectly any dividend or other distribution or other payment or loan other than as permitted in the Shareholders' Agreement;

(g) **Indebtedness.** Borrower will not, without PTC's prior written consent,

(i) incur, create, assume or permit to exist any obligation or indebtedness, except

(A) existing indebtedness disclosed on financial statements previously delivered to PTC;

(B) the Loan;

(C) other indebtedness and trade obligations and normal accruals in the ordinary course of business including indebtedness to Originators arising under Program Agreements;

(D) other indebtedness subordinated and postponed to repayment of the Advance that is subject to a subordination and postponement agreement that is in form and content satisfactory to PTC;

(ii) become liable, directly, or indirectly, as guarantor or otherwise, for any obligation of any other Person, except existing obligations of such kind previously disclosed to PTC in writing and other than the indebtedness set out in Section 8.1(g)(i) above, in excess of the amount set forth in Section 15;

(h) **Lien.** Borrower will not, without PTC's prior written consent, agree for any Person, to have the benefit of or recourse to the Borrower's assets except to the extent fully subordinated to the security interest, claims, and liens of PTC under the Security Agreement;

(i) Insurance. Each Credit Party shall maintain and keep in force insurance of the types and amounts customarily carried in its lines of business, including, without limitation, fire, public liability, product liability, property damage and workers' compensation, such insurance to be carried with companies and in amounts satisfactory to PTC, in its reasonable discretion, and each Credit Party shall deliver to PTC from time to time as PTC may request, schedules setting forth all insurance then in effect and copies of the policies;

(j) Debts. Each Credit Party shall pay all permitted debts, legal awards, taxes, levies, penalties, interest and any other obligation, immediately upon such obligation coming due;

(k) Underwriting. Borrower has and will undertake all appropriate underwriting of the Leases and is holding and will hold written proof of the same, on behalf of PTC; and

(l) Environmental Matters. Each Credit Party will take all reasonable actions to prevent the occurrence of any material violation of any applicable environmental, health and safety statutes and regulations, or any order or judgment of any court with respect to environmental pollution or contamination, hazardous waste disposal or any other environmental matter and each Credit Party shall promptly give written notice to PTC of the following occurrences and of the steps being taken by such Credit Party, with respect thereto:

(i) notice that such Credit Party's operations are not in full compliance with the requirements of applicable environmental, health and safety statutes and regulations;

(ii) notice that such Credit Party is subject to a governmental investigation evaluating whether any remedial action is needed to respond to the release of any hazardous or toxic waste or substance into the environment; or

(iii) notice that any properties or assets of such Credit Party are subject to any environmental lien.

(m) Monitoring. The Borrower shall monitor the level of complaints received by it arising from all Eligible Assets acquired by the Borrower and take commercially reasonable steps to address such complaints. If, at any given time, the level of unresolved complaints exceeds 1% (being the percentage of active Obligors with unresolved complaints to total active Obligors) or if the level of total complaints (whether resolved or not) exceeds 5% (as the percentage of active Obligors who have made a complaint to total active Obligors), such excess shall be reported to the next meeting of the directors of Crown Crest Capital Management Corp. for a discussion on required management actions in respect of the interests of the Obligors.

## 8.2 Non-Performing Receivable

If any Eligible Asset, (other than a Lease Asset sold to PTC pursuant to the Sale and Servicing Agreement), becomes a Non-Performing Asset, the Borrower shall (i) notify PTC in writing of such event and (ii) repay any amount by which the aggregate outstanding amount of the Advance hereunder exceeds the Borrower Base as a result of such Eligible Asset becoming a Non-Performing Asset.

## 9. EVENTS OF DEFAULT

9.1 EVENTS OF DEFAULT. The occurrence of one or more of the following events shall constitute an Event of Default under this Agreement:

- (a) The Borrower defaults in the repayment of any of the amounts payable hereunder, under the Note or any of the Loan Documents and such default is not remedied within 3 Business Days following notice from PTC;
- (b) There shall occur a material event of default under any of the Security Agreement, the other Loan Documents and if such event of default is capable of being cured or remedied, such event of default is not cured or remedied within 30 days following notice from PTC;
- (c) Any Credit Party fails to observe or perform any of the covenants, obligations (including payments) conditions and agreements on the part of the Credit Parties contained herein in any material respect and if such failure is capable of being cured or remedied, such failure is not cured or remedied within 30 days following notice from PTC;
- (d) If any representation or warranty made by the Credit Parties to PTC contained herein or any other document proves to have been untrue in any material respect when made, and if capable of being remedied, is not so remedied within 30 days following notice from PTC;
- (e) Any Credit Party shall be in default in the payment or performance of any material obligation under any indenture, contract, mortgage, law, deed of trust or other agreement or instrument to which such Credit Party is a party or by which it is bound, and if such default is capable of being cured or remedied, is not so cured or remedied within 30 days of notice from PTC;
- (f) The dissolution, termination of existence, insolvency, bankruptcy or business failure of any Credit Party, as applicable, or upon the appointment of a receiver, receiver-manager or receiver and manager of any part of the property of any Credit Party, or the commencement by or against any Credit Party of any proceeding under any bankruptcy, arrangement, reorganization, dissolution, liquidation, insolvency or similar law for the relief of or otherwise affecting creditors of any Credit Party, or by or against any guarantor or surety for any Credit Party which is not dismissed within 45 days, or upon the issue of any writ of execution, warrant, attachment, sequestration, levy, third party demand, notice of intention to enforce security or garnishment or similar process against any Credit Party;
- (g) Any Credit Party commits or threatens in writing to commit an act of bankruptcy (as defined in the *Bankruptcy and Insolvency Act*);
- (h) The institution by any Credit Party of any formal or informal proceeding for the dissolution or liquidation of, settlement of claims against or winding up of affairs of any Credit Party;
- (i) There shall exist any act, omission, event or undertaking which would, or would reasonably be expected to, singly or in the aggregate, have a materially adverse effect upon (a) the ability of the Credit Parties taken as a whole to perform their respective obligations under this

Agreement or any other Loan Document in any material respect, (b) the legality, validity, binding effect, enforceability or admissibility into evidence of any Loan Document the ability of PTC to enforce any rights or remedies under or in connection with any Loan Document or (c) the perfection or priority of the Security granted pursuant to the Security Agreement;

(j) PTC in good faith believes the prospect of repayment of the Loan or performance of the obligations hereunder is or is about to be impaired;

(k) The average Delinquency Rate for any Reporting Period and the two immediately preceding Reporting Periods exceeds 8% at any time before the first anniversary of the date of this Agreement, or thereafter exceeds 4%, such average Delinquency Rate to be reviewed and mutually agreed upon by the parties upon or promptly following the first anniversary of this Agreement; or

(l) The amount on deposit in the Reserve Account is less than 50% of the aggregate required "Cash Reserve Amount" specified under each Program Agreement or as otherwise required under the terms of this Agreement.

## 10. REMEDIES OF PTC UPON DEFAULT

10.1 REMEDIES. At any time after any Event of Default has occurred, PTC may, without presentment, demand, protest or further notice of any kind (all of which are hereby expressly waived) and, notwithstanding the provisions contained in any other document or instrument executed or to be executed by the Credit Parties to PTC hereunder or contained in any other agreement, take any one or more of the following actions:

(a) Declare the entire principal and any accrued interest on the Loan, together with all costs and expenses, to be immediately due and payable, and to enforce payment thereof by any means permitted by law or in equity;

(b) Without accelerating payment, enforce the payment of sums of principal and interest then due (including any penalty interest or late payment charges);

(c) Require the Credit Parties to take or refrain from taking any action which may be necessary to cure such Event of Default and to obtain affirmative or negative injunctions or restraining orders with respect thereto;

(d) File suit for any sums owing or for damages; and

(e) Exercise any other remedy or right provided in law or in equity or permitted under this Agreement, the Security Agreement or any other Loan Document, including without limitation, the activation of the Blocked Account Agreement in respect of the Collections Account.

## 10.2 REMEDIES CUMULATIVE

Any and all remedies conferred upon PTC shall be deemed cumulative with, and nonexclusive of any other remedy conferred hereby or by law, and PTC in the exercise of any one remedy shall not be precluded from the exercise of any other.

#### 11. FEES AND EXPENSES

In addition to interest and principal as stated in the Note, Borrower shall pay all costs of closing the Loan and all expenses of PTC with respect thereto, including, but not limited to, inspection fees, due diligence costs and in-house and outside legal fees (including legal fees incurred by PTC subsequent to the closing of the Loan in connection with the enforcement of the Loan), filing fees and similar items. PTC will provide a reasonably detailed summary of such costs and expenses prior to the closing of the Loan. Said costs and expenses may, at PTC's option, be deducted from the disbursements of Loan proceeds hereunder. In addition to any liability Borrower may have under applicable law, Borrower shall pay PTC's attorneys' fees and costs incurred in the collection of any indebtedness hereunder, or in enforcing this Agreement, whether or not suit is brought, and any attorneys' fees and costs incurred by PTC in any proceeding under bankruptcy law in order to collect any indebtedness hereunder or to preserve, protect or realize upon any security for such indebtedness.

#### 12. WAIVER

Any waiver of any of the terms of this Agreement by PTC shall not be construed as a waiver of any other terms of this Agreement, and no waiver shall be effective unless made in writing. The failure of PTC to exercise any right with respect to the declaration of any default shall not be deemed or construed to constitute a waiver by, or to preclude PTC from exercising any right with respect to such default at a later date or with respect to any subsequent default by Borrower.

#### 13. NOTICES

Any notices required or permitted to be given pursuant to this Agreement shall be in writing and shall be given by personal delivery or by mailing the same, postage prepaid, to the address set forth in Section 15 hereof. Any such notice shall be deemed received for purposes of this Agreement upon delivery if given by personal delivery or three (3) days after the mailing thereof if given by mail. If either party desires to change the address to which notices are to be sent it shall do so in writing and deliver the same to the other party in accordance with the notice provisions set forth above.

#### 14. MISCELLANEOUS

##### 14.1 PARTIES

This Agreement is made solely among Borrower, the Guarantor and PTC, no other Person shall have any right of action hereunder. The parties expressly agree that no Person shall be a third-party beneficiary to this Agreement.

#### 14.2 INDEMNITY

Borrower agrees to indemnify PTC and each of its directors, officers, employees, trustees, advisors and agents (each such Person being called an "Indemnitee") against, and to hold each Indemnitee harmless from, any and all losses, claims, damages, liabilities and related expenses, including reasonable legal fees (on a solicitor and own client basis), disbursements and other charges, incurred by or asserted or awarded against any Indemnitee arising out of, in any way connected with, or as a result of (i) the execution or delivery of this Agreement, any other Loan Document or any agreement or instrument contemplated hereby or thereby, the performance by the parties hereto or thereto of their respective obligations hereunder or thereunder or the consummation of the transactions contemplated hereby or thereby, (ii) any claim, litigation, investigation or proceeding relating to any of the foregoing, whether or not any Indemnitee is a party thereto, (iii) any claim made against the Borrower in any capacity, any Indemnitee or any Originator by any Obligor arising from, in connection with or relating to the performance of observance of any of the Borrower's or Originator's respective covenants, duties or obligations hereunder, in respect of or relating to any of the Lease Assets, (iv) the failure of the Borrower in any capacity or any Originator to perform or observe any of its respective covenants, duties or obligations hereunder, in respect of or relating to any of the Lease Assets or (v) any fine, penalty, sanction, order, or other liability imposed upon or determined against any of the Borrower, in any capacity, any Indemnitee or any Originator by any Governmental Authority in connection with or relating to any Lease Asset; provided that such indemnity shall not, as to any Indemnitee, be available to the extent that such losses, claims, damages, liabilities or related expenses have resulted from the gross negligence or wilful misconduct of any Indemnitee. The provisions of this Section 14.2 shall remain operative and in full force and effect regardless of the expiration of the term of this Agreement, the consummation of the transactions contemplated hereby, the repayment of the Loan, the invalidity or unenforceability of any term or provision of this Agreement or any other Loan Document, or any investigation made by or on behalf of PTC. All amounts due under this Section 14.2 shall be payable promptly after written demand therefor.

#### 14.3 ENTIRE AGREEMENT

This Agreement including the Schedules attached hereto and by this reference incorporated herein, together with all other documents hereto, constitutes the entire agreement of the parties hereto and thereto, and no prior agreement or understanding with respect to the Loan, whether written or oral and including, but not limited to, any loan commitment issued by PTC to Borrower, shall be of any further force or effect, all such other prior agreements and commitments having been superseded in their entirety by this Agreement.

#### 14.4 ASSIGNMENT

This Agreement shall enure to the benefit of and be binding upon the parties hereto and their respective successors and permitted assigns; provided, however, that neither this Agreement nor any rights or obligations hereunder shall be assignable by Borrower without the prior

express written consent of PTC first having been obtained, and any purported assignment made in contravention hereof shall be void. Only after the occurrence and during the continuance of an Event of Default, PTC may assign any part of or all of the Loan and its rights and obligations hereunder in its sole discretion. PTC may participate all or any portion of the Loan to such other party or parties as PTC shall select provided that any disclosure of information provided to any participant shall be subject to Section 14.9.

#### 14.5 GOVERNING LAW

This Agreement shall be construed in accordance with and governed by the laws of the Province of British Columbia and the federal laws of Canada applicable therein (without regard to the conflicts of laws rules of the Province of British Columbia).

#### 14.6 TIME

Time is of the essence hereof.

#### 14.7 SURVIVAL

The representations and warranties hereunder shall survive the closing of the Loan and PTC may enforce such representations and warranties at any time. The covenants of the Credit Parties shall survive the closing of the Loan and shall be performed fully and faithfully by the Credit Parties at all times. The indemnities of Borrower shall survive repayment of the Loan.

#### 14.8 SEVERABILITY

If any term or provision of this Agreement or any other document, or the application thereof to any circumstance, shall be invalid, illegal or unenforceable to any extent, such term or provision shall not invalidate or render unenforceable any other term or provision of this Agreement or any other Loan Document, or the application of such term or provision to any other circumstance. To the extent permitted by law, the parties hereto hereby waive any provision of law that renders any term or provision hereof invalid or unenforceable in any respect.

#### 14.9 CONFIDENTIALITY

Each party hereto will maintain on a confidential basis (except as otherwise permitted hereunder or as required by applicable law) all information relating to the other party provided to it hereunder by the other parties; provided, however, that this Section shall not apply to any information which (i) was lawfully in the public domain at the time of communication to the first party, (ii) lawfully enters the public domain through no fault of the first party subsequent to the time of communication to the first party, (iii) was lawfully in possession of the first party free of any obligation of confidence at the time of communication to the first party, (iv) was lawfully communicated to the first party free of any obligation of confidence subsequent to the time of initial communication to the first party or (v) was lawfully communicated to any Person free from any obligation of confidence subsequent to the time of communication to the first party.

### 15. STATEMENT OF TERMS

15.1 Maximum Amount of Loan (Section 1): \$25,400,000 (Canadian)

15.2 Number of Days Past Due (definition of Eligible Assets paragraph (s)): 5 days

15.3 Interest on the Loan (Section 2.5): BMO Prime plus 6.05% P.A.

15.4 End Date (Section 2.8): May 29, 2020.

15.5 Persons Authorized to Request Advance (Section 5.2): Lawrence Krimker, Luda Krimker, Liam Coates and such others as designated by notice in writing

15.6 Commitment Fee (Section 6.1(a)): 15 bps of Maximum Amount of Loan

15.7 Non-Utilization Fee (Section 6.1(b)): 32.5 bps of the undrawn amount

15.8 Inspection Fee (Section 6.1(c)): Reasonable charges billed by qualified contractors, along with their related expenses.

15.9 Audited Statements due within 120 days of each fiscal year end (Section 8.1(b)(i))

15.10 Statements due within 45 days of each fiscal quarter end (Section 8.1(b)(ii))

15.11 Maximum amount of indebtedness, liabilities or other contingent obligations (Section 8.1(g)(ii)): \$25,000

15.12 Addresses for Notices (Section 13):

To Borrower:

Crown Crest Capital Management Corp.  
1201-200 Yorkland Blvd.  
Toronto, ON  
M2J 5C1

Attention: President

To PTC:

Peoples Trust Company  
1400-888 Dunsmuir Street  
Vancouver, BC V6C 3K4

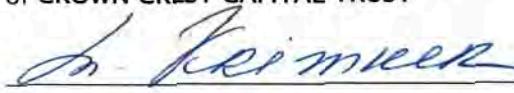
Attention: President and CEO

With a copy to General Counsel and Executive VP & Chief Financial Officer

15.13 Interest on the Non-AML Compliant Portion of the Loan (Section 2.5): BMO Prime plus 6.05% P.A.

CROWN CREST FUNDING CORP., in its capacity as  
trustee of CROWN CREST CAPITAL TRUST

By:

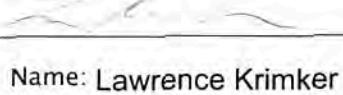


Name: LYUDMILA KRIMKER

Title: PRESIDENT

CROWN CREST CAPITAL MANAGEMENT CORP.

By:



Name: Lawrence Krimker

Title: CEO

PEOPLES TRUST COMPANY

By:

Name:

Title:

CROWN CREST FUNDING CORP., in its capacity as  
trustee of CROWN CREST CAPITAL TRUST

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

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

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

CROWN CREST CAPITAL MANAGEMENT CORP.

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

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

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

PEOPLES TRUST COMPANY

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

Name: Waheed Hirji

Title: COO

Ray Brooker

SVP Retail Lending

**NOTICE OF ADVANCE REQUEST**

May 29, 2019

1400-888 Dunsmuir Street  
Vancouver, BC V6C 3K4

Attention:

Email:

**BORROWING NOTICE**

We refer to the Warehouse Line of Credit Agreement dated as of May 29, 2019 (the “**Agreement**”; capitalized terms used herein but not otherwise defined shall have the meanings set forth in the Agreement), entered into by and among Crown Crest Funding Corp., in its capacity as trustee of Crown Crest Capital Trust (“**Borrower**”), Crown Crest Capital Management Corp., and Peoples Trust Company (“**PTC**”).

We hereby instruct and authorize PTC to make the Advance to our disbursement account(s), subject to and in accordance with the terms and provisions of the Agreement to the TD Bank account #[NUMBER], Transit # [NUMBER] and to charge Borrower’s loan account with such Advance.

Borrower hereby request an advance (the “**Advance**”) be made as follows:

A. **The date of Advance:** ●

B. **Type/amount of Advance:** CAD: \$ Amount

**Borrower hereby confirms as follows:**

(a) Each of the representations and warranties made by each of the Credit Parties in or pursuant to the Agreement and the other Loan Documents are true and correct in all material respects on and as of the date hereof as if made on and as of such date, except as PTC may have otherwise agreed to herein or in a separate writing.

(b) No Event of Default has occurred as of the date hereof or will occur after the making of the Advance requested hereunder.

(c) Each Credit Party is in compliance with each of the covenants set forth in Section 8.1 of the Agreement.

(d) The Advance requested hereunder will not cause the aggregate principal amount of the Advance under the Agreement to exceed the Borrowing Base or the Maximum Amount of the Loan.

**DATED ●.**

**BORROWER: Crown Crest Capital Trust, by its trustee Crown Crest Funding Corp. by its authorized agent, Crown Crest Capital Management Corp.**

**By:**

**Name:**

**Title:**

**SCHEDULE B**  
**BORROWING BASE CERTIFICATE**

<b>Date:</b>	<b>Warehouse</b>	<b>Purchase</b>
WH		PCH
<b>Eligible monthly rental rate</b>		-\$
<b>Borrowing base</b>		-\$

[Attach spreadsheet]

 <b>CROWN CREST CAPITAL</b>			
	<b>Rental Rate</b>	<b>Warehouse PV</b>	<b>Purchase PV</b>
Amount in purchase facility	-	-	-
Amount in warehouse facility	-	-	-
Warehouse (current batch)	-	-	-

## **2. AMENDMENT TO THE AMENDED CREDIT AGREEMENT**

Section 15.4 is deleted in its entirety and replaced with the following:

"15.4 End Date (Section 2.8): December 31, 2018."

## **3. OTHER DOCUMENTS**

3.1 Any reference to the Original Credit Agreement or the Amended Credit Agreement made in any documents delivered pursuant thereto or in connection therewith shall be deemed to refer to the Amended Credit Agreement as amended, extended, modified, renewed or supplemented from time to time, including as amended by this Agreement, unless the context otherwise requires.

## **4. MISCELLANEOUS**

4.1 Except for the specific changes and amendments provided for in this Agreement, the Amended Credit Agreement and all related documents are in all other respects hereby ratified and confirmed and the Amended Credit Agreement as amended hereby shall be read, taken and construed as one and the same instrument and remains in full force and effect.

4.2 This Agreement shall enure to the benefit of and be binding upon the parties, their successors and any permitted assigns.

4.3 This Agreement may be executed in one or more counterparts each of which shall be deemed an original and all of which when taken together shall constitute one and the same instrument. Counterparts may be executed electronically and delivered by e-mail, fax or other electronic means.

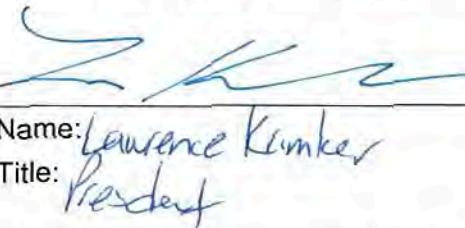
4.4 None of the rights or obligations hereunder shall be assignable or transferable by any party without the prior written consent of the other party.

4.5 This Agreement shall be governed and construed in accordance with the laws of the Province of Ontario and the federal laws of Canada applicable therein.

**IN WITNESS WHEREOF**, the Parties hereto have caused this Agreement to be executed by their authorized signatories as of the date first above written.

**CROWN CREST FINANCIAL CORP.**

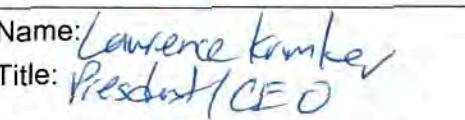
Per:



Name: *Lawrence Kunker*  
Title: *President*

**SIMPLY GREEN HOME SERVICES INC.**

Per:



Name: *Lawrence Kunker*  
Title: *President/CEO*

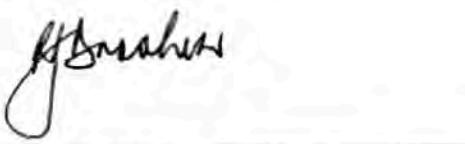
**PEOPLES TRUST COMPANY**

Per:



Name: *William Moffatt*  
Title: *Chief Credit and Risk Officer*

Per:



Name: *Ray Brooker*  
Title: *SVP Retail Lending*

Schedule "B"

**PTC CONCURRENT LEASE AGREEMENTS**

[to be provided]

**CROWN CREST FINANCIAL CORP.**

as Lessor and Servicer;

and

**PEOPLES TRUST COMPANY**

as Concurrent Lessee;

and

**SIMPLY GREEN HOME SERVICES INC.**

as Guarantor

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**CONCURRENT LEASE AGREEMENT**

January 19, 2018

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## CONCURRENT LEASE AGREEMENT

**CONCURRENT LEASE AGREEMENT**, dated as of January 19, 2018 (this **Agreement**), between **Crown Crest Financial Corp.**, a company duly incorporated and validly existing under the laws of the Province of Ontario (together with its successors and assigns, the **Lessor**), **Peoples Trust Company**, a trust company existing under the laws of Canada (**Concurrent Lessee**) and **Simply Green Home Services Inc.** a corporation incorporated under the laws of the Province of Ontario (**Guarantor**).

**WHEREAS** the Lessor wishes to lease certain Leased Assets from time to time to the Concurrent Lessee and the Concurrent Lessee wishes to lease such Leased Assets from the Lessor, on and subject to the terms and conditions of this Agreement.

**NOW THEREFORE THIS AGREEMENT WITNESSES** that in consideration of the mutual covenants and agreements of the parties herein contained, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereto agree as follows:

### Article 1 - DEFINITIONS AND PRINCIPLES OF INTERPRETATION

#### 1.1 Definitions

Words with initial capital letters in this Agreement (including the above recitals) shall have the meanings set out below:

**Administrative Costs** means, in respect of any Lease, all late fees, extension fees and other administrative or similar costs, charges and expenses billed to the applicable Obligor in accordance with the Lessor's customary practice and approved by the Concurrent Lessee, acting reasonably.

**Advance Rate** means, in respect of Scheduled Payments arising under Eligible Assets, 90%.

**Adverse Claim** means a security interest, lien, charge, encumbrance or other right or claim, including any filing or registration made in respect thereof, of or through any Person (other than the Concurrent Lessee).

**Agreement** means this agreement, together with the schedules hereto, as the same may be amended, supplemented, modified, restated or replaced from time to time, and the expressions **hereof**, **herein**, **hereunder**, and **hereby** and similar expressions refer to this agreement and not to any specific article, section, paragraph, subparagraph or clause hereof.

**Amortization Event** means the occurrence of any of the following events:

- (a) on any Reporting Date as of the end of the related Collection Period, either:
  - (i) the Average Delinquency Rate exceeds 6.5%;
  - (ii) the Average Loss Rate exceeds 2.75%; or
- (b) a Servicer Termination Event.

**Amortization Period** means the period commencing on the date of occurrence of an Amortization Event and ending on the earlier of (i) the date such Amortization Event is waived by the Concurrent Lessee, in its sole discretion, and (ii) the date on which no further amounts are payable to the Concurrent Lessee hereunder.

**Approved Equipment** shall mean storage water heaters, tankless water heaters, water filtration and/or treatment systems, Heating Recovery Ventilation ('HRV') and/or High-efficiency particulate arrestance ('HEPA') systems, furnace and air conditioning ('HVAC') equipment and boiler systems, smart home products as well as such other types or classes of consumer equipment as may be agreed to by the Lessor and approved by the Concurrent Lessee in writing.

**Average Delinquency Rate** means for any Reporting Date, the arithmetic mean of the Delinquency Rates for each of the three Collection Periods immediately prior or (a) in the case of the first Reporting Date, the Delinquency Rate for the first Collection Period and (b) in the case of the second Reporting Date, the arithmetic mean of the Delinquency Rates for each of the two Collection Periods immediately prior.

**Average Loss Rate** means for any Reporting Date, the arithmetic mean of the Loss Rates for each of the three Collection Periods immediately prior or (a) in the case of the first Reporting Date, the Loss Rate for the first Collection Period and (b) in the case of the second Reporting Date, the arithmetic mean of the Loss Rates for each of the two Collection Periods immediately prior.

**Blocked Account Agreement** means the blocked account agreement to be entered into between the Lessor and The Toronto-Dominion Bank within 10 Business Days of the date of this Agreement, as the same may be amended, restated, supplemented or replaced from time to time.

**BMO Prime** means, at any time, the posted "prime rate" of interest charged by Bank of Montreal for its commercial loans that are made in Canadian dollars.

**Business Day** means any day other than a Saturday, Sunday, or public holiday on which banks are required or permitted to be closed in the Province of Ontario or the Province of British Columbia.

**Charged-Off Asset** means any Lease (i) for which the Servicer has become aware that an Insolvency Event has occurred in respect of the related Obligor or (ii) that is or is required to be charged-off as uncollectible by the Servicer in accordance with the Credit and Collection Policies it being acknowledged that under the Credit and Collection Policies a Lease would be charged-off as uncollectible upon the Servicer becoming aware that an Insolvency Event had occurred in respect of the related Obligor.

**Closing Date** means, in respect of a Concurrent Lease, the date specified as such in the applicable Concurrent Lease Notice.

**Collection Period** means a calendar month, provided that the initial Collection Period shall commence on the Cut-Off Date in respect of the initial Concurrent Lease and the final Collection Period shall end on (and include) the Final Collection Date.

**Collections** means without duplication (i) in respect of any Leased Asset, all cash collections and other cash proceeds in respect thereof and of the related Rights and Receivables (excluding Administrative Costs and Sales Taxes but including payments of interest, principal and fees as well as reserves applied toward the payment of such amounts) received after the applicable Cut-Off Date, (ii) any Deemed Collections in respect of such Leased Assets, and (iii) the net proceeds of any disposition of the related Leased Asset.

**Collections Account** means the account established and maintained in the name of the Lessor as the account owner at The Toronto-Dominion Bank (Branch ID: 14822, Account Number: 5266776) or such other account as is designated by notice to the Lessor as the Collections Account for the purposes hereof, which account shall at all times be subject to a Blocked Account Agreement in form and substance acceptable to the Concurrent Lessee.

**Concurrent Lease** means each concurrent lease of Approved Equipment entered into in accordance with Article 2.

**Concurrent Lease Entitlements** has the meaning ascribed thereto in Section 2.6.

**Concurrent Lease Notice** means the offer by the Lessor to lease Lease Assets to the Concurrent Lessee in the form attached hereto as Schedule "A".

**Credit and Collection Policies** means the Lessor's credit, collection and administration policies and procedures relating to its portfolio of loans, as represented in the Lessor's operating procedures manual, which for greater certainty, has been reviewed and approved by the Concurrent Lessee.

**Cut-Off Date** means the date specified as such in the Concurrent Lease Notice.

**Deemed Collections** means amounts required to be deposited to the Collections Account pursuant to Sections 2.11 and 6.5 hereof.

**Deferred Rent** has the meaning set forth in Section 2.4.

**Delinquency Rate** means, for any Collection Period, the sum of the outstanding principal balances of Leased Assets other than Charged-Off Assets that are Delinquent Assets at the end of such Collection Period, divided by the Pool Balance at the end of such Collection Period.

**Delinquent Asset** means a Lease where any amount payable thereunder or any portion thereof is more than 30 days past due.

**Discount Rate** means, in respect of a Concurrent Lease, a discount rate equivalent to 4% per annum, provided that the Concurrent Lessee may adjust the Discount Rate on January 2 of any calendar year by notice in writing delivered not less than 30 days before such date in respect of Concurrent Leases to be entered into after such date. Any increase in the Discount Rate cannot exceed any net increase in BMO Prime during the calendar year then ended.

**Eligible Asset** means any Lease:

- (a) in respect of which the Obligor thereunder is a Person who is resident in Canada and is not (i) an affiliate of the Lessor or the Concurrent Lessee; (ii) the Government of Canada or any agency or instrumentality thereof or any federal crown corporation other than those listed as exempt under applicable legislation from restrictions or requirements for consent or notice on the assignment of receivables in respect of which they are obligors; or (iii) any provincial government or agency thereof if the enforceability against such government or agency of an assignment of debts owing thereby is subject to any precondition which has not been fulfilled;
- (b) which is not a Charged-Off Asset or a Delinquent Asset;
- (c) that has a fair market value that is greater than or equal to its face value;
- (d) which is payable to an address in Canada only and is denominated and payable in Canadian Dollars and in respect of which the Obligor has been directed to remit payments to the Collections Account;
- (e) which has been duly authorized, executed and delivered by the parties thereto, has been entered into in compliance with all applicable laws (including any licensure laws applicable to Lessor), and, together with all related Rights (including any guarantee,

indemnity or agreement referred to in clause (g) of the definition of Rights), is in full force and effect and constitutes the legal, valid and binding obligation of the related Obligor enforceable against such Obligor in accordance with its terms, subject to applicable bankruptcy, reorganization, insolvency, moratorium or similar laws affecting creditors' rights generally and subject to equitable principles of general application (regardless of whether enforcement is sought in a proceeding at law or in equity);

- (f) which is not subject to any dispute, set-off, counterclaim or defense whatsoever, no prepayments have been made thereunder and which is owned by the Lessor and free of any Adverse Claim and has not been extended or otherwise modified except in the ordinary course of business and in accordance with the Credit and Collection Policies;
- (g) in respect of which the Lessor is not in default in the performance of any of the covenants of the Lessor thereunder;
- (h) the terms of which do not contravene any laws, rules or regulations applicable thereto (including, without limitation, such laws, rules, or regulations relating to usury, truth in lending, credit business practices, cost of borrowing, consumer protection, equal credit opportunity, fair debt collection practices and privacy), except where such contravention would not materially adversely affect the collectability or enforceability of the related Rights;
- (i) in which the perfection of the Lessor's rights complies with the requirements of the Credit and Collection Policies in all material respects it being acknowledged that Lease Assets that are Low Value Leases do not require perfection of the Lessor's rights;
- (j) the related Obligor is not the subject of any Insolvency Event (except where such Insolvency Event occurred prior to the origination of the Receivable and such origination was consistent with the Credit and Collection Policies) or, to the best of the Lessor's knowledge, there are no such proceedings pending against such Obligor;
- (k) in respect of which the related Rights may be assigned in whole or in part without the consent of the related Obligor;
- (l) which is documented pursuant to a form of contract which is similar in all material respects to one of the forms of contract that have previously been delivered to and accepted by the Concurrent Lessee, acting reasonably;
- (m) in respect of which immediately prior to the lease hereunder the Lessor is the legal and beneficial owner of the Lease Asset, the related Receivables and Rights free and clear of any Adverse Claim;
- (n) in respect of which after the Concurrent Lease of the related Equipment to the Concurrent Lessee, the Concurrent Lessee would be the sole legal and beneficial owner of the related Concurrent Lease Entitlements with full right to transfer, sell and encumber such Concurrent Lease Entitlements free and clear of any lien;
- (o) that has not been satisfied, subordinated, waived or rescinded;
- (p) that has not been compromised, adjusted or modified except in accordance with the Credit and Collection Policies;
- (q) that was generated in the ordinary course of business;

- (r) except in the case of Low Value Leases, for which all filings or recordings with respect to the Lessor's interest therein and the related Leases and Rights necessary by law or reasonably prudent and desirable for the perfection and protection of such interests including any further filings, recordings or renewals thereof, have been effected by the Lessor (**Lien Registration**);
- (s) in respect of which the related Reserve has been deposited to the Reserve Account and the Reserve is not less than 3.75% of the Outstanding Balance thereof; and
- (t) which satisfies such other criteria as may be added by the Concurrent Lessee in accordance with Section 5.4 from time to time.

**Escalation Amount** means in respect of a Lease, all monthly amounts payable as rental payments by an Obligor in excess of the Rental Amount.

**ETA** means Part IX of the *Excise Tax Act* (Canada).

**Excess LS Delinquencies** is defined in Section 6.2(l).

**Excess LS Delinquencies Reimbursement** is defined in Section 6.2(l).

**Excess LV Delinquencies** is defined in Section 6.2(l).

**Excess LV Delinquencies Reimbursement** is defined in Section 6.2(l).

**Final Collection Date** means the date on which all Leases subject to Concurrent Leases have been terminated, fully collected and/or written off as uncollectible pursuant to the Credit and Collection Policies.

**Finance Charge Collections** means Collections in respect of interest and fees (other than Administrative Costs).

**Funding Costs** means, in respect of a Settlement Period, the product of (i) the Investment as of the first day of the Settlement Period and (ii) the weighted average Funding Rate for all Concurrent Leases and the related Settlement Period.

**Funding Rate** means, in respect of a Concurrent Lease, an annual interest rate equivalent to the average of BMO Prime for the 30 days in effect prior to each Closing Date plus 2.05% per annum, provided that from and after the 5<sup>th</sup> anniversary of each Closing Date, BMO Prime for the related Concurrent Leases and the calculation Funding Costs shall be adjusted to BMO Prime in effect on such 5<sup>th</sup> anniversary plus 2.05% per annum.

**GAAP** means generally accepted accounting principles from time to time approved by the Chartered Professional Accountants of Canada or any successor body, applicable as at the date in question and applied on a consistent basis.

**Governmental Authority** means any federal, state, provincial, regional, local or foreign court or governmental agency, authority, instrumentality or regulatory body.

**Guarantee** means the guarantee granted by the Guarantor in favour of the Concurrent Lessee, in form and content satisfactory to the Concurrent Lessee, whereby the Guarantor guarantees the payment and performance of all obligations owing by the Lessor to the Concurrent Lessee under this Agreement and whereby such guarantee, and any obligations thereunder, becomes effective only if, and during such times that, the amounts held in the Reserve Account falls below 1% of the aggregate Outstanding Balances of all Concurrent Leases.

**GST/HST** means the goods and services tax, harmonized sales tax, and all other amounts payable under the ETA or pursuant to any similar value added tax legislation in any other jurisdiction of Canada or is similar thereto.

**Insolvency Event** means, in respect of any Person, such Person shall generally not pay its debts as they become due, or shall admit in writing its inability to pay its debts generally, or shall make a general assignment for the benefit of creditors; or any proceedings shall be instituted by or against, as the case may be, seeking to adjudicate it as bankrupt or insolvent or seeking liquidation, winding up, reorganization arrangement, adjustment, protection, relief or composition of it or its debts under any law relating to bankruptcy, insolvency, reorganization or relief of insolvent debtors, or seeking the entry of an order for relief by the appointment of a receiver, trustee, custodian or similar official for its or a substantial part of its property and, if such proceeding has been instituted against such Person, while being contested in good faith by such Person, such proceeding has not been stayed or dismissed within 45 days or a receiver, trustee, custodian or other similar official is appointed for it or any substantial part of its property; or a receiver being privately appointed in respect of a substantial part of the assets of such Person; or such Person, takes any corporate action to authorize any of the actions described above.

**Investment** means at any time the sum of all Prepaid Rent paid (or deemed to have been made) by the Concurrent Lessee to the Lessor, less (ii) the sum of all amounts paid to the Concurrent Lessee on account of the Pool Balance Reduction Amount pursuant to Article 3, and less (iii) the Rent Rebate paid by the Lessor in respect of all Concurrent Leases terminated from time to time.

**ITA** means the *Income Tax Act* (Canada) and includes any corresponding, applicable provincial income tax statute, and for greater certainty, where this Agreement refers to a specific provision of the ITA, such reference includes a reference to any corresponding provision of an applicable provincial income tax statute.

**Lease** means a lease or rental agreement or similar agreement (including a sub-metering agreement) for the lease or sale of Approved Equipment originated by an Originator.

**Lease Asset** means a Lease together with the related Rights.

**Lease End Date** means, in respect of any Lease and Concurrent Lease, the Settlement Date immediately following the scheduled date of the last Scheduled Payment under the related Lease.

**Leased Assets** means the Approved Equipment concurrently leased or purported to be concurrently leased by the Concurrent Lessee hereunder (other than Concurrent Leases terminated hereunder).

**Lessor Parties** means, collectively, the Lessor and the Guarantor.

**Lock-Up Event** means on any Reporting Date as of the end of the related Collection Period, either:

- (a) the Average Delinquency Rate exceeds 6.5%; or
- (b) the Average Loss Rate exceeds 2.75%;

**Loss Rate** means in respect of a Collection Period, net losses in respect of Leases subject to Concurrent Leases divided by the original outstanding net present value of the Leases subject to Concurrent Leases subject to losses during such Collection Period.

**Low Score Leases** means Leases in respect of which the beacon score of the related Obligor is less than 600 but greater than 500 on the date such Lease is originated.

**Low Value Lease** means a Lease Asset in respect of which the related Approved Equipment is a water heater or other equipment where the monthly rental payment (excluding taxes) is less than \$45 or a tankless water heater where the monthly rental payment (excluding taxes) is less than \$65.

**Material Adverse Effect** means, in respect of any Person or any Lease subject to a Concurrent Lease any effect on it which could reasonably be expected to have an adverse impact on (i) in the case of such Person the ability of such Person to perform its obligations hereunder or under any Related Document, or (ii) the enforceability or collectability of such Lease or (iii) the value of such Lease.

**Obligor** means in respect of any Lease, the Person or Persons obligated to make payments thereunder.

**Originator** means in respect of any Lease, the original lessor.

**Outstanding Balance** means, in respect of a Concurrent Lease, the product of (i) the Advance Rate, and (ii) the sum of the net present values of each unpaid Scheduled Payment under the related Lease, discounted to the date of determination at the applicable Discount Rate.

**Person** means an individual, partnership, corporation, trust, joint venture, unincorporated association, government (or any agency or political subdivision thereof) or other entity.

**Pool Balance** means at any time the aggregate Outstanding Balance of all Concurrent Leases other than in respect of Charged-Off Assets or Lease Assets where the related Concurrent Lease has been terminated.

**Pool Balance Reduction Amount**, for any Settlement Date, means the lesser of (i) the Concurrent Lessee's Investment, and (ii) the amount required to reduce the Concurrent Lessee's Investment to the Pool Balance as of the last day of the related Collection Period.

**Portfolio Report** means a report substantially in the form attached hereto as Schedule "C", delivered by the Lessor to the Concurrent Lessee pursuant to Section 6.2(m)).

**PPSA** means the *Personal Property Security Act* (British Columbia) or the comparable legislation of the other provinces of Canada including, in Québec, the Civil Code of Québec.

**Prepaid Rent** means the lump sum rent required to prepay the monthly rental payments due under any Concurrent Leases pursuant to Article 2, which shall be equal to the product of (i) the Advance Rate and (ii) the sum of the net present values of each unpaid Scheduled Payment of the applicable Lease Asset, discounted to the related Closing Date at the applicable Discount Rate.

**Prescribed Term** means, in respect of any Lease at any time, the lesser of 10 years and the remaining term of such Lease at such time.

**PST** means amounts payable under any statute in Canada imposing a single stage retail sales tax.

**Receivables** means, in respect of any Lease, all moneys payable with respect to such Lease Asset including all scheduled periodic payments, principal, interest, interchange, extra charges, fees and penalties and other moneys payable by the related Obligor (exclusive of Administrative Costs) during the period from but excluding the Cut-Off Date, to the date when all amounts have been paid under such Lease.

**Records** means, in respect of any Lease subject to a Concurrent Lease, all contracts (including those evidencing such Lease), books, records, reports and other documents and information (including, to the extent obtainable by way of existing software controlled by the Lessor, hard copies of all data maintained in databases of the Lessor, tapes and disks) maintained by or on behalf of the Lessor in respect of the Lease and the related Obligor.

**Related Documents** means any agreement, document, exhibit, notice or other communication which has at any time been delivered by the Lessor to the Concurrent Lessee pursuant hereto, including all agreements and documents required hereunder.

**Rental Amount** means in respect of a Lease, the original regularly-scheduled monthly rental payment amount of the Obligor thereunder (excluding any Escalation Amount).

**Rent Rebate** means, at any time with respect to any Concurrent Lease in respect of which the Concurrent Lessee made a payment of Prepaid Rent, an amount equal to the product of (i) the Advance Rate and (ii) the sum of the net present values of each unpaid Scheduled Payment arising under the related Lease, discounted to the date of determination at the applicable Discount Rate.

**Replacement Servicer** means any Person appointed by the Concurrent Lessee to replace the initial or any subsequent Servicer upon the occurrence of a Servicer Termination Event.

**Replacement Servicer Fee** has the meaning given to it in Section 7.3.

**Reporting Date** means in respect of a Collection Period the second Business Day preceding the related Settlement Date.

**Reserve Account** means the account established and maintained in the name of the Concurrent Lessee as the account owner at The Toronto-Dominion Bank as is designated by notice to the Lessor as the Reserve Account for the purposes hereof.

**Reserves** means the cash reserves held by the Lessor and available to be applied toward losses or other shortfalls suffered in respect of the Leases.

**Rights** means, in respect of any Lease, the following:

- (a) all rights and benefits accruing to the Lessor under such Lease, including all right, title and interest in and to the related receivables;
- (b) all of the Lessor's right, title and interest in and to the related Approved Equipment;
- (c) all of the Lessor's right, title and interest in the Reserves in respect of the Lease and available to be applied toward the payment of any Lease;
- (d) all right in or to payments (including both proceeds and, to the extent the Lessor has any rights therein, premium refunds) under any insurance policies maintained by the related Obligor pursuant to the terms of such Lease or by the Lessor in respect of such Lease;
- (e) all claims, demands, actions, damages and indemnities owing to the Lessor under such Lease;
- (f) the right of the Lessor to ask, demand, sue for, collect, receive and enforce any and all sums payable under the Lease and to enforce all other covenants, obligations, rights and remedies thereunder with respect thereto;

- (g) all of the right, title and interest of the Lessor in, to and under all prepayments made after the Cut-Off Date, guarantees, promissory notes and indemnities (including all security interests and all property subject thereto) from time to time supporting or securing payment or performance of the related Obligor's obligations in respect of the Lease, whether pursuant to the Lease or otherwise;
- (h) the related Records; and
- (i) all proceeds of or relating to any of the foregoing.

**Sales Taxes** means all federal, provincial and other sales, goods and services, value added, use or other transfer taxes, and all other similar taxes whatsoever, including GST/HST and PST.

**Scheduled Payment** means, in respect of a Lease, (a) the Rental Amount and (b) the Escalation Amount payable by the Obligor thereunder during a term not exceeding the lesser of (i) the remaining term of the Lease, (ii) ten years and (iii) the remainder of the Prescribed Term.

**Servicer** means Lessor in its capacity as servicer hereunder and any Replacement Servicer.

**Servicing Fee** means in respect of any Settlement Date, a fee not exceeding 0.40% per annum of the Pool Balance at such time.

**Servicer Termination Event** has the meaning set forth in Section 7.1.

**Settlement Date** means, in respect of a Collection Period, the 15<sup>th</sup> calendar day of the calendar month (or the next Business Day if such day is not a Business Day) following the calendar month related to such Collection Period.

**Settlement Period** means in respect of a Settlement Date, the period commencing on and including the immediately preceding Settlement Date to but excluding such Settlement Date, provided that the first Settlement Period shall commence on and include the date hereof and the final Settlement Date shall end on and exclude the Final Collection Date.

## 1.2 Extended Meanings

In this Agreement, words importing the singular number include the plural and vice versa and words importing gender include each gender. Unless the context requires otherwise, any reference herein to any Person shall be construed to include such Person's successors and permitted assigns.

## 1.3 Headings and Table of Contents

The table of contents does not form part of this Agreement. Article and Section headings are not to be considered part of this Agreement, are included solely for convenience of reference and do not define, limit or enlarge the construction or interpretation hereof.

## 1.4 References to Sections, Articles and Schedules

Unless otherwise provided, all references herein to Sections, Articles or Schedules are references to Sections, Articles and Schedules of or to this Agreement.

## 1.5 References to Statutes

Unless otherwise provided, all references herein to any statute or any provision thereof shall mean such statute or provision as amended, restated or re-enacted from time to time.

1.6 Certain Phrases

Unless otherwise provided herein, the words "including", "includes" and "include" mean "including (or includes or include) without limitation".

1.7 Governing Law

This Agreement will be governed by and construed in accordance with the laws of the Province of British Columbia and the federal laws of Canada applicable therein (without regard to the conflict of laws rules of the Province of British Columbia).

1.8 Invalidity of Provisions

Save and except for any provision or covenant contained herein which is fundamental to the subject matter of this Agreement (including those that relate to the payment of moneys), the invalidity or unenforceability of any provision or covenant hereof or herein contained will not affect the validity or enforceability of any other provision or covenant hereof or herein contained and any such invalid or unenforceable provision or covenant will be deemed to be severable.

1.9 Computation of Time Periods

Unless otherwise provided herein, in the computation of a period of time from a specified date to a later specified date, the word "from" means "from and including" and each of the words "to" and "until" means "to but excluding".

1.10 Non-Business Days

Whenever any payment to be made hereunder shall be stated to be due, any period of time would begin or end, any calculation is to be made or any other action to be taken hereunder shall be stated to be required to be taken, on a day other than a Business Day, such payment shall be made, such period of time shall begin or end, such calculations shall be made and such other action shall be taken on the next succeeding Business Day.

1.11 Accounting Principles

Where the character or amount of any asset or liability or item of revenue or expense is required to be determined, or any consolidation or other accounting computation or presentation is required to be made for the purpose of this Agreement, such determination, consolidation, computation or presentation shall, to the extent applicable and except as otherwise specified herein or as otherwise agreed to in writing by the parties, be made in accordance with GAAP applied on a consistent basis. Wherever in this Agreement reference is made to generally accepted accounting principles, such reference shall be deemed to be to GAAP applicable as at the date on which such determination, consolidation, computation or presentation is made or required to be made.

1.12 Currency

Unless otherwise provided, all amounts herein are stated in Canadian Dollars.

1.13 Entire Agreement

This Agreement contains the entire agreement between the parties relative to the subject matter hereof and supersedes all prior and contemporaneous agreements, term sheets, commitments, understandings, negotiations, and discussions, whether oral or written. There are no warranties,

representations or other agreements between the parties in connection with the subject matter hereof except as specifically set forth herein.

#### 1.14 Schedules

The following schedules annexed hereto are incorporated herein by reference and are deemed to be part hereof:

Schedule "A" – Form of Concurrent Lease Notice

Schedule "B" – Lessor's Addresses

Schedule "C" – Form of Portfolio Report (or such other format as mutually agreed upon by the parties)

## Article 2 - CONCURRENT LEASE

#### 2.1 Grant of Concurrent Lease

- (a) Upon the terms and subject to the conditions set forth herein, the Lessor may from time to time prior to the occurrence of an Amortization Event, by delivering a completed Concurrent Lease Notice, offer to concurrently lease Approved Equipment to the Concurrent Lessee at least 5 Business Days before a proposed Closing Date. The Concurrent Lessee shall indicate its acceptance of the offer to concurrently lease Approved Equipment by countersigning the Concurrent Lease Notice delivered by the Lessor on or before the proposed Closing Date.
- (b) On each Closing Date, Lessor shall hereby lease to Concurrent Lessee, free and clear of all security interests, liens or other adverse claims other than the leasehold interests of the relevant Obligors, and Concurrent Lessee shall hereby lease from Lessor, the Approved Equipment as listed on the related Concurrent Lease Notice delivered by Lessor to Concurrent Lessee) with effect as of the Closing Date. It is hereby expressly acknowledged and agreed that the interest of the Concurrent Lessee under each Concurrent Lease in and to the related Approved Equipment is that of a lessee only, and that title to and ownership in all such Approved Equipment shall, subject to Section 2.6, remain vested in the Lessor. It is hereby further expressly acknowledged and agreed that, as of each Closing Date and until the applicable Final Collection Date, the beneficial ownership of the interest of the Lessor in respect of each Lease relating to Leased Assets and the related Collections will automatically vest in the Concurrent Lessee and the Lessor will hold in trust for the benefit of the Concurrent Lessee the interest of the Lessor under each such Lease and related Collections. It is hereby further expressly acknowledged and agreed that, notwithstanding the grant by the Lessor to the Concurrent Lessee of each Concurrent Lease, the rights of the lessee Obligors with respect to the possession and use of the Approved Equipment shall continue and be the same as under their respective Leases.
- (c) In its capacity as lessor to the Concurrent Lessee and so that the Concurrent Lessee will not be in violation of its obligation as lessor to the Obligors or any of them, the Lessor hereby covenants and agrees to and in favour of the Concurrent Lessee that at all times during the term of each Concurrent Lease, the Lessor will, in all material respects, comply with and perform each term, condition, representation, warranty and covenant of the lessor contained in each Lease and will not take or omit to take any action in its capacity as owner of the Approved Equipment and lessor under any Concurrent Lease and which would cause any material failure by it to so comply with and perform each term, condition, representation, warranty and covenant required to be complied with or performed by the lessor under each Lease.

(d) In its capacity as lessee under each Concurrent Lease, the Concurrent Lessee hereby covenants and agrees, to and in favour of the Lessor, to cause and require each Obligor to comply with and perform each term, condition, representation, warranty and covenant required to be complied with or performed by an Obligor under the relevant Lease.

## 2.2 Terms of Concurrent Leases

The term of each Concurrent Lease in respect of an item of Approved Equipment shall be deemed to commence at the close of business on the related Closing Date and, unless terminated or deemed terminated earlier in accordance with the provisions hereof, shall terminate on the Lease End Date for the related Lease. It is hereby expressly acknowledged and agreed that the Lessor's title and ownership of the Approved Equipment owned by it shall be subject to the rights of the Concurrent Lessee under each Concurrent Lease with respect to such Approved Equipment, and, consequently, except as otherwise provided herein, upon the termination of the Lease relating to any Approved Equipment (whether upon the expiry of the Term thereof, as a result of a default by the Obligor thereunder or otherwise), the Concurrent Lessee shall, until the expiry of the term of the Concurrent Lease relating to such Approved Equipment, have the exclusive right to possess, use and lease such Approved Equipment as provided for in this Article 2. Except as provided herein, neither the Concurrent Lessee nor the Lessor shall be entitled to terminate the Concurrent Lease in respect of any or all of the Approved Equipment.

## 2.3 Rent for Concurrent Lease

In consideration of the grant by the Lessor to the Concurrent Lessee of each Concurrent Lease, the Concurrent Lessee shall pay to the Lessor, on the first day of each calendar month after the Closing Date during the term of each Concurrent Lease, as monthly rent, an amount equal to 99.99% of the sum of all payments forming part of the Scheduled Payments to be made in respect of the Leases of Leased Assets in respect thereof during the related Collection Period. Any Taxes will be added to any amount so paid if applicable.

## 2.4 Prepaid and Deferred Rent

The Lessor acknowledges and agrees that the Concurrent Lessee may satisfy and discharge its obligations to make all monthly rent payments required by Section 2.3 by (a) paying to the Lessor, on the related Closing Date, as a prepayment of rent, a sum equal to the Prepaid Rent, (b) paying to the Lessor the amounts specified pursuant to and in accordance with Section 3.1 as deferred rent (the Deferred Rent), each of which payments shall be made without the need on the part of the Lessor to provide the Concurrent Lessee with any invoices. The Concurrent Lessee shall be deemed to have elected to make the payments specified in (a) and (b) if it pays the Prepaid Rent on the related Closing Date. Any Taxes will be added to any amount so paid if applicable.

## 2.5 Acknowledgment

The Lessor acknowledges and agrees that, as a consequence of the grant and demise of rights by it to the Concurrent Lessee under this Agreement, and in consideration of the obligation and the liability of the Concurrent Lessee to pay to the Lessor the rent (including any payment by the Concurrent Lessee of Prepaid Rent), as provided for in this Article 2, the Concurrent Lessee shall be entitled, among other things, to receive all Scheduled Payments under the Leases, the Leased Assets relating to which is concurrently leased to the Concurrent Lessee hereunder, as of and from the close of business on the related Closing Date.

## 2.6 Security Interest

As continuing security for the due and timely payment from time to time by the Lessor of all obligations of the Lessor, the Lessor hereby grants, pledges and charges, to and in favour of the Concurrent Lessee, a first charge and security interest in and to all of the Lessor's right, title and interest, both present and future, in, to and under the following:

- (a) all of the Lessor's right, title and interest in, to and under the Leased Assets and the Leases related thereto including, without limitation, all amounts owed to or received by the Lessor in respect of Collections from any Obligor or other Person, including all liquidation proceeds and subsequent recoveries in respect of the Leased Assets and the related Records;
- (b) all of the Lessor's right, title and interest in and to all Collections made on or after the related Closing Date and the right to make Collections in respect of the remaining Term thereof made on or after the Closing Date including, without limitation, rights, if any, under direct debit agreements with Obligors, and all cheques, notes, instruments of payment and other remittances relating thereto;
- (c) all of the Lessor's right, title and interest in and to the related Rights relating to the Leased Assets; and
- (d) all proceeds from any or all of the foregoing;

(all of such property and rights being collectively referred to herein as the Concurrent Lease Entitlements). The Lessor and the Concurrent Lessee agree that value has been given for the granting by the Lessor of such charge and security interest, that they have not agreed to postpone the time for attachment with respect thereto and that attachment will occur immediately upon the Lessor acquiring rights to receive any such Collections or other amounts.

## 2.7 Concurrent Lessee Rights

The Lessor hereby acknowledges that, as a consequence of the granting of the Concurrent Leases hereunder, the Concurrent Lessee through the Servicer on its behalf, shall have the right, at any time, to:

- (a) notify any Obligor of the Concurrent Lease by the Concurrent Lessee of the Leased Assets;
- (b) to the extent that the Lessor has such rights, contact any Obligor for any purpose, including for the performance of audits and verification analyses, and the determination of account balances and other data maintained by the Servicer;
- (c) direct any Obligor to make all payments on account of any Leases directly to the Concurrent Lessee at an address designated by the Concurrent Lessee or to such third party (including the Servicer) or bank or depositary as may be designated by the Concurrent Lessee;
- (d) request any Obligor to change the instructions for any direct debit or electronic funds transfer otherwise payable to the Lessor or the Servicer;
- (e) proceed directly against any Obligor and take any and all other actions, in the Lessor's name or otherwise, necessary or reasonably desirable to collect the Leases, enforce the related Rights or effect any related result; and

(f) subject to the terms of the related Lease, sell by power of sale any Leased Assets for any price the Concurrent Lessee (or the Servicer on its behalf) deems reasonable in its sole discretion and apply the liquidation proceeds arising from any such sale towards any Rent Rebate arising therefrom.

2.8 Application Fee

The Lessor shall pay to the Concurrent Lessee following the completion of each Concurrent Lease an application fee in respect of such Concurrent Lease in the amount equal to 0.15% of the applicable Prepaid Rent of the applicable Lease Asset in respect of the concurrent lease by the Concurrent Lessee from the Lessor.

2.9 Payment of GST/HST

The Concurrent Lessee certifies that it is at all relevant times, including at the time of each Concurrent Lease, a registrant under Part IX of the Excise Tax Act (Canada) (the **ETA**) and that its registration number is 10414 3698 RT0001.

2.10 Disqualified Assets

Promptly at any time after a Closing Date upon discovering that an eligibility requirement contained in the definition of "Eligible Asset" was not satisfied with respect to any Leased Asset and Concurrent Lease on the Cut-Off Date where the Concurrent Lessee made a payment of Prepaid Rent, the Lessor shall pay to the Concurrent Lessee an amount equal to the Rent Rebate in respect of the Concurrent Lease. Upon the payment of such amount to Collection Account, the related Concurrent Lease of such Leased Asset will be deemed to have been terminated without the need for any further action. Upon payment of such amount, any incorrectness in any representation or warranty or covenant by the Lessor with respect thereto shall be deemed to have been rectified.

2.11 Termination Rights

Either the Concurrent Lessee or the Lessor may terminate any Concurrent Lease at the end of each calendar year by notice in writing. Upon such termination, in the event Prepaid Rent was paid in respect of the Concurrent Lease, the Lessor shall be obligated to pay the Rent Rebate in respect thereof and shall have a period of up to 180 days to negotiate a repayment schedule with the Concurrent Lessee. Upon payment in full of the Rent Rebate to the Collection Account, the related Concurrent Lease of such Leased Asset will be deemed to have been terminated without the need for any further action.

2.12 Limited Recourse

Upon any Lease subject to a Concurrent Lease becoming a Charged-Off Asset, the Servicer shall deposit an amount from the Reserve that is held in the Reserve Account in respect of the Lease equal to the Outstanding Balance of the related Concurrent Lease into the Collection Account. For greater certainty, the Reserve shall be greater than or equal to 3.75% of the applicable Prepaid Rent in respect of the related Concurrent Lease.

2.13 Liquidated Leases

The parties acknowledge that the Servicer is obligated and exclusively entitled, in accordance with this Agreement, to enforce a defaulted Lease including by using its normal practices to take actual possession of and sell the Leased Assets forming the subject matter of such Lease and, if necessary, by enforcing the related Rights. The Servicer shall also be entitled to purchase such Leased Assets for a price deemed by the Servicer to be reasonable for such Leased Assets.

Upon the Servicer's enforcement, the Leased Assets of which are subject to a Concurrent Lease, the Concurrent Lessee shall, subject to the following sentence, require the Lessor to terminate the related Concurrent Lease. The Concurrent Lease shall be terminated with respect to such Leased Assets, as of the date on which the Servicer completes the sale of the Leased Assets to a purchaser thereof. Upon such termination, the Lessor shall be obligated to pay to the Concurrent Lessee, on the date such sale is effected, as a refund of a portion of the Prepaid Rent paid by the Concurrent Lessee in respect of such Leased Assets, an amount equal to the Rent Rebate relating to such Concurrent Lease. The Lessor's obligation to pay any such Rent Rebate shall be fulfilled by, and recourse against the Lessor shall be limited to, the liquidation proceeds from the related Leased Assets and recoveries against the related Obligor received by the Servicer, and Lessor irrevocably directs the Servicer to apply such liquidation proceeds as Collections in accordance with Article 3.

#### 2.14 Sale of Leased Assets

Each party hereto acknowledges that the Servicer may, in accordance with the terms of the related Lease, allow other Persons to purchase the Leased Assets that are subject to a Concurrent Lease hereunder prior to the expiry of a Concurrent Lease. If Leased Assets that are subject to a Concurrent Lease hereunder are sold at any time, then the Concurrent Lease shall be terminated with respect to such Leased Assets as of the date on which the Servicer completes the sale of the Leased Assets to a purchaser thereof. Upon any such termination, the Lessor shall be obligated to pay to the Concurrent Lessee, on the date such sale is effected, as a refund of a portion of the Prepaid Rent paid by the Concurrent Lessee in respect of such Leased Assets, an amount equal to the Rent Rebate relating to such Concurrent Lease.

## **Article 3 - APPLICATION OF COLLECTIONS**

#### 3.1 Settlement Procedures

Collections of the Leases subject to Concurrent Leases shall be administered by the Servicer in accordance with the terms of this Agreement. The Lessor shall provide to the Servicer (if other than the Lessor) on a timely basis all information needed for such administration, including notice of the occurrence of any Amortization Event. The Servicer will allocate Collections received from each Obligor in accordance with the Credit and Collection Policies. On each Settlement Date, Collections for the related Collection Period with respect to each Lease subject to a Concurrent Lease, will be applied as follows:

- (a) first, during an Amortization Period only, to the Servicer, the Servicing Fee or following a Servicer Termination Event, to the Replacement Servicer, if any, the Replacement Servicer Fee;
- (b) second, to the Concurrent Lessee the Funding Costs for the related Settlement Period, together with arrears if any from any prior Settlement Periods;
- (c) third, to the Concurrent Lessee, the Pool Balance Reduction Amount for such Collection Period as a reduction in the Concurrent Lessee's Investment, together with arrears if any from any prior Collection Periods;
- (d) fourth, in the event an Amortization Event has occurred and is continuing, to the Concurrent Lessee, as a reduction in the Concurrent Lessee's Investment, the lesser of the remaining Investment at such time and the remainder of Collections; and
- (e) fifth, provided that a Lock-Up Event has not occurred, the remainder shall be paid to the Lessor as Deferred Rent.

### 3.2 Lock-Up Event

Except in the event of an Amortization Event that is continuing, upon the occurrence of a Lock-Up Event, the balance of Collections following the application of Section 3.1(a), (b) and (c) shall be retained in the Collection Account and applied as Collections on the following Settlement Date.

## Article 4 - REPRESENTATIONS AND WARRANTIES

### 4.1 Representations and Warranties of the Lessor Parties

Each of the Lessor Parties represents and warrants to the Concurrent Lessee as of the date of this Agreement and as of each Closing Date (except as otherwise specified below) on a several basis in respect of itself only that:

- (a) the Lessor is (i) a trust validly existing under the laws of the Province of Ontario; and (ii) duly qualified to carry on business in each jurisdiction in which the failure to be so qualified would reasonably be expected to have a Material Adverse Effect;
- (b) the Guarantor is (i) a corporation validly existing under the laws of the Province of Ontario; and (ii) duly qualified to carry on business in each jurisdiction in which the failure to be so qualified would reasonably be expected to have a Material Adverse Effect;
- (c) it has full power and capacity to enter into this Agreement and the Guarantee, as applicable, and to do all acts and things as are required or contemplated of it hereunder and thereunder;
- (d) it has taken all necessary action to authorize the execution, delivery and performance of this Agreement and the Guarantee, as applicable, and to do all acts and things as are required or contemplated of it hereunder and thereunder;
- (e) there are no actions, suits or proceedings pending or to the knowledge of any officer of any Lessor Party, threatened against or affecting such Lessor Party or any of its undertakings and assets at law, in equity or before any arbitrator or before or by any governmental department, body, commission, board, bureau, agency or instrumentality having jurisdiction in the premises in respect of which there is a reasonable possibility of a determination adverse to the Lessor Parties which would reasonably be expected to have a Material Adverse Effect and each Lessor Party is not in default in respect of any applicable law, rule, regulation, order, judgment, injunction, award or decree as a result of which a Material Adverse Effect would reasonably be expected to occur;
- (f) each of this Agreement and the Guarantee has been duly executed and delivered by the applicable Lessor Party and constitutes a legally binding obligation of such Lessor Party enforceable against it in accordance with its terms, subject to applicable bankruptcy, reorganization, insolvency, moratorium or other laws affecting creditors' rights generally and to equitable principles of general application (regardless of whether enforcement is sought in a proceeding at law or in equity);
- (g) the execution and delivery of this Agreement and the Guarantee and compliance with their respective terms and conditions will not (i) result in a violation of the constating documents or by-laws of any Lessor Party; (ii) result in a violation of any applicable law, rule, regulation, order, judgment, injunction, award or decree; (iii) result in a breach of, or constitute a default under, any loan agreement, indenture, trust deed or any other agreement or instrument to which any Lessor Party is a party or by which it is bound which would reasonably be expected to have a Material Adverse Effect; or (iv) require any approval or consent of, or any notice to or filing with, any Governmental Authority or

agency having jurisdiction except such as has already been given, filed or obtained, as the case may be;

- (h) no default has occurred and is outstanding under any loan agreement, indenture, trust deed or any other agreement or instrument to which any Lessor Party is a party or by which it is bound which would reasonably be expected to have a Material Adverse Effect;
- (i) its principal place of business, chief executive office and registered office are located at the address set forth under its name on the signature pages hereto and the offices where it keeps all Records held by it are located at the addresses set out in Schedule "B" hereto or such other addresses as the Lessor Parties shall from time to time notify the Concurrent Lessee;
- (j) it is not a non-resident of Canada within the meaning of the ITA;
- (k) the Lessor has delivered to the Concurrent Lessee all financial information received by the Lessor in respect of each Eligible Asset;
- (l) all federal, provincial and local and foreign national, state, provincial, regional and local and all other tax returns of such Lessor Party required by applicable law to be filed have been duly filed, and all federal, provincial and local and foreign national, state, provincial, regional and local and all other taxes, assessments and other governmental charges or levies upon such Lessor Party and its property, income, profits and assets which are due and payable have been paid. The charges, accruals and reserves on the books of such Lessor Party in respect of federal, provincial and local taxes and foreign national, state, provincial, regional and local taxes for all fiscal years and portions thereof since the organization of such Lessor Party, are in the judgment of such Lessor Party adequate in all material respect;
- (m) all written information, reports, certificates, financial statements and other papers and data produced by or on behalf of such Lessor Party and furnished to the Concurrent Lessee, including those in respect of Eligible Assets, were, at the time the same were so furnished, complete and correct in all material respects to the extent necessary to give the recipient a true and accurate knowledge of the subject matter, and, no fact is known to such Lessor Party which has had, or could reasonably be expected to in the future have, a Material Adverse Effect;
- (n) each Lessor Party is not be an "Insolvent Person" as defined in the *Bankruptcy and Insolvency Act* (Canada), and shall not have unreasonably small capital to carry out its businesses as conducted or as proposed to be conducted
- (o) each Lease Asset in respect of which the related Equipment is offered to be concurrently leased to the Concurrent Lessee hereunder is an Eligible Asset as of the Cut-Off Date; and
- (p) no Amortization Event or Servicer Termination Event has occurred that is continuing.

#### 4.2 Representations and Warranties of the Concurrent Lessee

The Concurrent Lessee represents and warrants to the Lessor as of the date of this Agreement that:

- (a) the Concurrent Lessee is (i) a trust company duly organized and validly existing under the *Trust and Loan Companies Act* (Canada); and (ii) duly qualified to carry on business

in each jurisdiction in which the failure to do so would reasonably be expected to have a Material Adverse Effect;

- (b) the Concurrent Lessee has full power and capacity to enter into this Agreement and to do all acts and things as are required or contemplated of it hereunder;
- (c) the Concurrent Lessee has taken all necessary action to authorize the execution, delivery and performance of this Agreement and to do all acts and things as are required or contemplated of it hereunder;
- (d) there are no actions, suits or proceedings pending or to the knowledge of any officer of the Concurrent Lessee, threatened against or affecting the Concurrent Lessee or any of its undertakings and assets at law, in equity or before any arbitrator or before or by any governmental department, body, commission, board, bureau, agency or instrumentality having jurisdiction in the premises in respect of which there is a reasonable possibility of a determination adverse to the Concurrent Lessee which would reasonably be expected to have a Material Adverse Effect and the Concurrent Lessee is not in default in respect of any applicable law, rule, regulation, order, judgment, injunction, award or decree as a result of which a Material Adverse Effect would reasonably be expected to occur;
- (e) this Agreement has been duly executed and delivered by it and constitutes a legally binding obligation of the Concurrent Lessee enforceable against it in accordance with its terms, subject to applicable bankruptcy, reorganization, insolvency, moratorium or other laws affecting creditors' rights generally and to equitable principles of general application (regardless of whether enforcement is sought in a proceeding at law or in equity);
- (f) the execution and delivery of this Agreement and compliance with its terms and conditions will not (i) result in a violation of its constating documents; (ii) result in a violation of any applicable law, rule, regulation, order, judgment, injunction, award or decree; (iii) result in a breach of, or constitute a default under, any loan agreement, indenture, trust deed or any other agreement or instrument to which the Concurrent Lessee is a party or by which it is bound which would reasonably be expected to have a Material Adverse Effect; or (iv) require any approval or consent of, or any notice to or filing with, any Governmental Authority or agency having jurisdiction except such as has already been given, filed or obtained, as the case may be; and
- (g) no default has occurred and is outstanding under any loan agreement, indenture, trust deed or any other agreement or instrument to which the Concurrent Lessee is a party or by which it is bound which would reasonably be expected to have a Material Adverse Effect.

#### 4.3 Survival

Representations, warranties and statements of the Lessor and the Concurrent Lessee (or any of them or of any of their respective officers) set forth herein have been relied upon by the Concurrent Lessee, shall not merge on the completion of the execution and delivery of this Agreement or on the completion of any Concurrent Lease and shall survive thereafter.

### **Article 5 - COVENANTS**

#### 5.1 Delivery of Files and Records

The Servicer will hold the Records relating to the applicable Leased Assets on behalf of the Concurrent Lessee, and will provide a copy of such Records to the Concurrent Lessee upon request.

## 5.2 Further Assurances

- (a) Each of the Lessor and the Concurrent Lessee will from time to time make, do, execute, endorse, acknowledge and deliver or cause and procure to be made, done, executed, endorsed, acknowledged, filed, registered and delivered any and all further acts and assurances, including without limitation, any conveyance, deed, transfer, assignment or other instrument in writing as, in the opinion of either of such Persons, may be necessary or desirable to give effect to this Agreement and the transactions provided for in this Agreement and will take all such other action as may be required or desirable for more effectually and completely vesting all Rights acquired by the Concurrent Lessee.
- (b) Each of the Lessor and Concurrent Lessee from the period commencing on the Closing Date until the termination of this Agreement, shall maintain in force insurance coverage in areas and amounts customary for its industry.

## 5.3 General Covenants of the Lessor

The Lessor covenants with the Concurrent Lessee:

- (a) to preserve and maintain its existence, rights, franchises and privileges and to qualify and remain qualified to carry on business in each jurisdiction in which the failure to do so would reasonably be expected to have a Material Adverse Effect;
- (b) to not, except as expressly permitted herein (i) sell, assign (by operation of law or otherwise) or dispose of any part of the Leased Assets; (ii) take any action which may cause the validity, effectiveness or enforceability of the Leased Assets or the related Rights to be impaired; or (iii) take or omit to take any action which may cause an Adverse Claim to attach or extend to or otherwise burden any part of the Leased Assets;
- (c) to comply with all laws (including, without limitation, privacy laws) rules, regulations, orders, judgments, injunctions, awards or decrees applicable to the Lessor or the Leased Assets except where the failure to do so would not reasonably be expected to have a Material Adverse Effect;
- (d) to promptly notify the Concurrent Lessee at least twenty (20) Business Days prior to changing its name from that which is stated in its constating documents;
- (e) to promptly notify the Concurrent Lessee at least twenty (20) Business Days prior to changing the jurisdiction in which its principal place of business, chief executive office or registered office is located;
- (f) to promptly notify the Concurrent Lessee of any amendment, limitation or restriction of any license issued to the Lessor by a regulatory authority relating to the carrying on by the Lessor of its business if such amendment, limitation or restriction would have a Material Adverse Effect;
- (g) to notify the Concurrent Lessee forthwith of the occurrence of any Amortization Event or Servicer Termination Event or of any event which, with the giving of notice of the passage of time, or both, could become an Amortization Event or Servicer Termination Event;
- (h) to not amend or waive the Credit and Collection Policies without the prior written consent of the Concurrent Lessee;
- (i) to not establish or maintain a defined benefit pension plan;

- (j) to make notations in its books, records, documents and instruments relating to the Leased Assets to evidence the interest of the Concurrent Lessee therein; and
- (k) to timely and fully perform and comply with all material terms, covenants and other provisions of the contracts relating to the Leased Assets, including without limitation the Leased Assets, required to be performed by and observed by the Lessor thereunder.

#### 5.4 Amendments to Definition of Eligible Asset

If, at any time, the Concurrent Lessee determines, acting reasonably, that there has been a material change in the information contained in a Portfolio Report from the information contained in any previous Portfolio Report, then the Concurrent Lessee may elect by notice to the Lessor to amend the definition of Eligible Asset so that it contains one or more of the following additional requirements:

- (a) in respect of which there is a parts and labor warranty on the related Leased as issued by a third party insurer that is approved in writing by the Concurrent Lessee (acting reasonably) or the Lessor has otherwise made arrangements with a third party (other than the Obligor or the Lessor) to ensure that any repair and servicing of the related Approved Equipment is conducted and completed as required from time to time;
- (b) if the Lease is a Low Score Lease, the Outstanding Balance of such Lease, together with the Outstanding Balance of all Leases relating to Leased Assets that are Low Score Leases, does not exceed 5% of the Outstanding Balance of all Concurrent Leases at such time; and
- (c) if the Lease is a Low Value Lease, the Outstanding Balance of such Lease, together with the Outstanding Balance of all Leases relating to Leased Assets that are Low Value Leases, does not exceed 35% of the Outstanding Balance of all Leased Assets at such time;

and the definition of Eligible Asset will be deemed to have been amended from the time of delivery of notice of any such election by the Concurrent Lessee to the Lessor and the Guarantor.

## Article 6 - SERVICING OF PORTFOLIO

#### 6.1 Appointment of the Lessor as Servicer

- (a) The Concurrent Lessee hereby appoints the Servicer to be its exclusive agent for the purposes of servicing the Leased Assets as set out in this Article 6 (it being acknowledged that the Concurrent Lease made hereunder is made on a fully-serviced basis in accordance with this Agreement) and the Lessor hereby accepts such appointment.
- (b) The Lessor may subcontract with a subservicer or sub-originator, provided that such subservicer or sub-originator shall be approved by the Concurrent Lessee acting reasonably, for the servicing or subservicing of the Leased Assets; provided, however, that the Lessor will remain liable to the Concurrent Lessee for the performance of the duties and obligations so subcontracted and all other duties and obligations of the Lessor set forth in this Article 6.
- (c) Except as provided hereunder, the Servicer shall have the exclusive right to service the Leased Assets and the Concurrent Lessee shall not contact any Obligor or inform any Obligor of its interests in the Leased Assets or otherwise take any steps to modify any Leased Assets.

## 6.2 Servicing of Leased Assets

During the term of this Agreement, unless a Replacement Servicer is designated by the Concurrent Lessee pursuant to Section 7.2, the Lessor covenants to service the Leased Assets with reasonable care using that degree of skill and attention that it exercises with respect to comparable receivables that it services for itself and others and in accordance with the Credit and Collection Policies, and subject to and in accordance with the provisions of this Agreement. Without limiting the generality of the foregoing, the Lessor, unless a Replacement Servicer is designated by the Concurrent Lessee pursuant to Section 7.2, shall and covenants to:

- (a) deposit Collections to the Collections Account (which will, until remitted, be held in trust for the Concurrent Lessee) in respect of such Settlement Period in accordance with Section 6.3;
- (b) hold the Records in trust for the Concurrent Lessee and at any time and from time to time during regular business hours permit the Concurrent Lessee, its agents or representatives upon five (5) Business Days' prior notice to (i) examine and make copies of all such Records in the possession (or under the control) of the Lessor; and (ii) visit the offices and properties of the Lessor for the purpose of examining such Records and discussing matters relating to the Leased Assets and the Lessor's performance under the Leased Assets or hereunder with any of the Lessor's officers or employees having knowledge of such matters;
- (c) maintain and implement prudent and reasonable administrative and operating procedures (including an ability to recreate the Records in the event of the destruction of the originals thereof) and keep and maintain all books, records, documents and other information reasonably necessary or advisable for the identification and collection of the Leased Assets (including records adequate to permit all collections of and reductions or adjustments);
- (d) timely and fully perform and comply with all terms, covenants and other provisions of the Leased Assets required to be performed and observed by it or the Concurrent Lessee;
- (e) comply in all respects with the Credit and Collection Policies in regard to each Leased Asset;
- (f) not, without the prior written consent of the Concurrent Lessee, make any change in the Credit and Collection Policies;
- (g) not extend, amend or otherwise modify or waive any term or condition of any Leased Asset unless permitted in accordance with the terms of the Credit and Collection Policies;
- (h) use its commercially reasonable efforts to collect all Receivables payable in respect of the Leased Assets in accordance with all applicable laws, rules and regulations, the provisions hereof and the Credit and Collection Policies;
- (i) make all payments payable by it to government agencies and others where a statutory lien or deemed trust might arise having priority over the Concurrent Lessee's interest in any part of the Leased Assets; provided that the Lessor may protest the payment of any such amounts if it is acting in good faith and it either provides the Concurrent Lessee with cash in an amount sufficient to satisfy the same or otherwise satisfies the Concurrent Lessee, acting reasonably, that its interests are not prejudiced thereby;
- (j) as soon as possible, effect all filings or recordings with respect to the Concurrent Lessee's interest in all Rights necessary by law or reasonably prudent or desirable for the

perfection and protection of such interest and all appropriate renewals or amendments thereof;

- (k) promptly, from time to time, furnish to the Concurrent Lessee such documents, records, information or reports in respect of the Leased Assets or the conditions or operations, financial or otherwise, of the Lessor as may be in existence in written form or, if available in databases maintained by the Lessor, as may be produced with existing software as the Concurrent Lessee may from time to time reasonably request;
- (l) If the Delinquency Rate
  - (i) calculated in respect of Low Score Leases that are Leased Assets exceeds, for any Reporting Period and the two (2) immediately preceding Reporting Periods, 8% (the amount of any excess being the **Excess LS Delinquencies**), the Lessor shall pay to the Concurrent Lessee, for each Reporting Period (that is, each calendar month) during which such excess exists, an amount equal to \$2,500 (the **Excess LS Delinquencies Reimbursement**), which shall represent a reimbursement for the Concurrent Lessee for the costs incurred by the Concurrent Lessee with respect to the monitoring, analyzing and reporting on the Excess LS Delinquencies. The Lessor and the Concurrent Lessee hereby agree that any such Excess LS Delinquencies Reimbursement is not and shall not be deemed to be a penalty or a fee in any way, but a true representation of the costs that the Concurrent Lessee shall incur in respect of the monitoring, analyzing and reporting on the Excess LS Delinquencies; and
  - (ii) calculated in respect of Low Value Leases that are Leased Assets exceeds, for any Reporting Period and the two (2) immediately preceding Reporting Periods, 10% (the amount of any excess being the **Excess LV Delinquencies**), the Lessor shall pay to the Concurrent Lessee, for each Reporting Period (that is, each calendar month) during which such excess exists, an amount equal to \$2,500 (the **Excess LV Delinquencies Reimbursement**), which shall represent a reimbursement for the Concurrent Lessee for the costs incurred by the Concurrent Lessee with respect to the monitoring, analyzing and reporting on the Excess LV Delinquencies. The Lessor and the Concurrent Lessee hereby agree that any such Excess LV Delinquencies Reimbursement is not and shall not be deemed to be a penalty or a fee in any way, but a true representation of the costs that the Concurrent Lessee shall incur in respect of the monitoring, analyzing and reporting on the Excess LV Delinquencies.

For greater certainty, both an Excess LS Delinquencies Reimbursement and an Excess LV Delinquencies Reimbursement may be payable by the Lessor to the Concurrent Lessee for the same Reporting Period.

- (m) on or before each Reporting Date, prepare and deliver to the Concurrent Lessee a Portfolio Report relating to the Receivables payable in respect of the Leased Assets as of the close of business on the last day of the immediately preceding Collection Period;
- (n) at all times, ensure that the amount on deposit in the Reserve Account is no less than 3.75% of the Outstanding Balances related to the Leased Assets. In the event that such amounts on deposit in the Reserve Account is not in such compliance, the Lessor shall immediately notify the Concurrent Lessee in writing of such non-compliance along with proposed actions that the Lessor will undertake to restore compliance. On each Settlement Date, to the extent the amount in the Reserve Account exceeds 3.75% of the Outstanding Balances related to the Leased Assets, the Concurrent Lessee shall release such excess amounts to the Lessor; and

(o) to monitor the level of complaints arising from the Leased Assets received by it and take commercially reasonable steps to address such complaints. If, at any given time, the level of unresolved complaints exceeds 1% (being the percentage of active Obligors with unresolved complaints to total active Obligors) or if the level of total complaints (whether resolved or not) exceeds 5% (as the percentage of active Obligors who have made a complaint to total active Obligors), such excess shall be reported to the next meeting of the board of directors of Crown Crest Capital Management Corp. for a discussion on required management actions in respect of the interests of the Obligors.

#### 6.3 Deposit of Collections

All Collections shall be deposited by the Servicer in the Collections Account within two (2) Business Days of the date of receipt by the Servicer (or, in the case of Deemed Collections, on the date of deemed receipt).

#### 6.4 Power of Attorney

The Concurrent Lessee hereby constitutes and appoints the Servicer the true and lawful attorney of the Concurrent Lessee, with full power of substitution, to execute, deliver and register, for and on behalf of and in the name of the Concurrent Lessee, such documents, instruments or agreements which may be necessary or desirable to enable the Servicer to perform its obligations set out in this Agreement. The Servicer agrees that it will not exercise such power of attorney for any other purpose whatsoever. Such power of attorney is coupled with an interest.

#### 6.5 Deemed Collections

If, on any day prior to the date on which the Concurrent Lessee's Investment is reduced to nil, any Receivable payable in respect of any Leased Asset (i) is extended by the Lessor beyond its original term in a manner inconsistent with the Credit and Collection Policies, (ii) has its Scheduled Payment reduced by the Lessor in a manner inconsistent with the Credit and Collection Policies, (iii) is reduced or cancelled as a result of any breach by the Lessor of the terms of such Leased Asset, (iv) is reduced or cancelled as a result of a set-off in respect of any claim by the applicable Obligor against the Lessor or the Concurrent Lessee other than as a result of an act or omission of the Concurrent Lessee (whether such claim arises out of the same or a related transaction or an unrelated transaction), (v) is reduced to reflect any adjustment for returns, billing errors, NSF cheques, fraudulent charges and similar payment reconciliations, (vi) is otherwise reduced or cancelled by the Lessor or any subservicer, or (vii) if any fine, penalty, sanction, order or other liability is imposed upon or determined against any of the Lessor, the Concurrent Lessee or any Originator in connection with or relating to any Leased Asset, the Lessor shall be deemed to have received for the Concurrent Lessee's account on the last day of the Collection Period during which such day occurred, a Collection of such Receivable in the amount of such reduction or cancellation, and shall deposit to the Collections Account on the immediately following Settlement Date such amount.

#### 6.6 Payment Terms

(a) All amounts to be paid or deposited by the Lessor, the Replacement Servicer or the Concurrent Lessee hereunder will be paid or deposited on the day when due in same day funds.

(b) The Lessor will make all payments required to be made hereunder without deduction or set-off (except as expressly permitted hereunder) regardless of any defense or counterclaim.

## Article 7 - SERVICER TERMINATION

### 7.1 Servicer Termination Events

The happening of any of the following shall constitute a Servicer Termination Event hereunder:

- (a) The Lessor defaults in the payment of any amount due to the Concurrent Lessee hereunder and such default remains unremedied for a period of three (3) Business Days after written notice of such default has been given to the Lessor;
- (b) The Lessor defaults in the observance or performance in any manner of any of its covenants or obligations contained in this Agreement in any material respect (other than those obligations referred to in paragraph (a) above) and, if such default is capable of rectification and remains unremedied for a period of thirty (30) days after the earlier of (i) the date on which written notice of such default has been given to the Lessor by the Concurrent Lessee and (ii) the date on which the Lessor has actual notice of such default;
- (c) any representation or warranty made by the Lessor in or pursuant to this Agreement proves to have been false or incorrect when made in any material respect, and, if the circumstances giving rise to such incorrect representation or warranty are capable of rectification, such representation or warranty remains uncorrected for a period of 30 days after the earlier of (i) the date on which written notice has been given to the Lessor by the Concurrent Lessee specifying the incorrectness and demanding that the circumstances giving rise thereto be rectified and (ii) the date on which the Lessor had actual knowledge of such incorrectness; or
- (d) an Insolvency Event shall occur in respect of the Lessor.

### 7.2 Designation of Replacement Servicer

- (a) If a Servicer Termination Event has occurred and is continuing, the Concurrent Lessee may designate a Replacement Servicer to succeed the Lessor with respect to the Leased Assets on such terms as it may consider reasonable, provided that any such Person so designated shall agree to perform the duties and obligations of the Lessor provided for in Article 6.
- (b) Upon the appointment of a Replacement Servicer pursuant to Section 7.2(a), the Lessor will, on demand and at its expense: (i) assemble all Records and make them available to the Replacement Servicer; (ii) notify all Obligors (x) of the sale, assignment and transfer to the Concurrent Lessee of the Leased Assets; and (y) to remit all payments due under such Leased Assets to the Replacement Servicer; and (iii) segregate, in a manner reasonably acceptable to the Concurrent Lessee, all cash, cheques and other instruments constituting Collections which are received by it from time to time and remit the same to the Replacement Servicer duly endorsed or with duly executed instruments of transfer, if applicable.

### 7.3 Replacement Servicer Fee

A Replacement Servicer appointed pursuant to Section 7.2 shall be entitled to a reasonable fee for services rendered, such fee to be determined by the Concurrent Lessee with the Replacement Servicer to a maximum, in respect of any Collection Period, of 15% of the Collections remitted to the Collections Account during such Collection Period (the **Replacement Servicer Fee**). Such Replacement Servicer Fee and any out-of-pocket expenses incurred by the Replacement

Servicer in connection with its duties as Replacement Servicer, together with any applicable Sales Taxes, shall be payable to the Replacement Servicer in accordance with this Agreement.

#### 7.4 Leased Assets

If a Servicer Termination Event has occurred and is continuing, the legal right, title and interest to any Leased Assets related to any Leased Asset which are held by the Lessor in trust for the Concurrent Lessee shall automatically transfer to the Concurrent Lessee upon notice from the Concurrent Lessee to the Lessor.

#### 7.5 Power of Attorney

(a) The Lessor hereby grants to the Concurrent Lessee, to become effective immediately upon the occurrence of a Servicer Termination Event, an irrevocable power of attorney and hereby irrevocably appoints the Concurrent Lessee as the Lessor's attorney-in-fact, with full power of substitution, to take in the place and stead of and in the name of the Lessor or in the Concurrent Lessee's own name from time to time at the Concurrent Lessee's discretion, acting reasonably, such actions as the Lessor may be obligated to take hereunder or as the Concurrent Lessee may deem necessary or advisable to collect, endorse, negotiate or otherwise realize on any Leased Asset including any related Receivable, any negotiable instrument, or any other right of any kind, held or owned by the Lessor and transferred, assigned or delivered to or received by the Concurrent Lessee as payment on account or otherwise in respect of any of the Leased Assets, including:

- (i) to evidence or protect the Concurrent Lessee's interest in the Leased Assets and to execute and file, in the Lessor's name and on the Lessor's behalf, such recording, registration, financing or similar statements (including any amendments, renewals and continuation statements) under applicable laws;
- (ii) to ask, demand, collect, sue for, recover, compound, receive and give acquittances and receipts for moneys due and to become due in connection with the Receivables or otherwise owed to the Concurrent Lessee;
- (iii) to receive, endorse and collect any cheques, drafts or other instruments, documents and chattel paper in connection with moneys due and to become due in connection with the Receivables forming part of the Leased Assets or otherwise owed to the Concurrent Lessee;
- (iv) to file any claims or take any action or institute any proceedings that the Concurrent Lessee may deem to be necessary or desirable for the collection of any Receivable; and
- (v) to prepare, execute, deliver, and/or register in the Lessor's name and on the Lessor's behalf, such instruments and documents (including assignments) necessary or desirable in furtherance of the foregoing.

(b) The power of attorney granted hereby shall be expressly coupled with an interest in favour of the Concurrent Lessee. The powers of attorney and other rights and privileges granted hereby shall survive any dissolution, liquidation or winding-up of the Lessor.

## Article 8 - CONDITIONS PRECEDENT

### 8.1 Conditions to Effectiveness

This Agreement shall become effective on the date hereof if the following conditions precedent have been satisfied or waived on or prior to such date and/or the Concurrent Lessee shall have received from the Lessor the following documents, in form and substance satisfactory to the Concurrent Lessee:

- (a) a certificate of an officer of the Lessor, dated the date hereof certifying (A) that attached thereto is a true and complete copy of the Certificate and Articles of Incorporation and any amendments thereto, and the by-laws of the Lessor, each as in effect on the date of such certificate; (B) that attached thereto is a true and complete copy of a resolution adopted by the Lessor's board of directors authorizing the execution, delivery and performance of this Agreement and the other Related Documents, and that such resolution has not been modified, rescinded or amended and is in full force and effect; and (C) as to the incumbency and true specimen signature of each of the Lessor's officers executing this Agreement or any of the Related Documents, on which certificate the Concurrent Lessee shall be entitled to conclusively rely until such time as the Concurrent Lessee receives from Lessor a replacement certificate meeting the requirements of this Section 8.1(a);
- (b) a certificate of compliance issued in respect of the Lessor in its jurisdiction of incorporation, and an equivalent certificate from the appropriate authority in each other jurisdiction in which qualification is necessary in order for the Lessor to own or lease its property and conduct its business, each to be certified as of a recent date;
- (c) executed copies of this Agreement, the Guarantee and copies of the Credit and Collection Policies;
- (d) reports, satisfactory to the Concurrent Lessee acting reasonably, showing the results of searches conducted against the Lessor under applicable personal property security registers in the provinces where the Leased Assets are located, together with executed copies of all discharges or releases of prior security interests relating to Leased Assets that are then to be sold hereunder; provided that the Lessor may establish that any particular registration does not affect any such Leased Assets by delivering a letter or acknowledgment signed by the applicable secured party;
- (e) a copy of verifications statements or other filings filed in each relevant jurisdiction, that are sufficient to perfect the interests of the Concurrent Lessee as the first priority ownership interest in the Leased Assets as against creditors of the Lessor;
- (f) executed copies of all discharges and releases, if any, necessary to discharge or release all security interest and other rights or interest of any Person in the Rights, previously granted by or through the Lessor and which could constitute an Adverse Claim, together with, where applicable, copies of the relevant financing change statements or other discharge statements with the registration particulars stamped thereon; and/or appropriate intercreditor agreements with such other parties in form and substance as the Concurrent Lessee may require; and
- (g) such other approvals, opinions or documents as the Concurrent Lessee may reasonably request.

## Article 9 - MISCELLANEOUS

### 9.1 Amendments and Waivers

- (a) This Agreement may be amended, supplemented, modified, restated or replaced by written instrument only signed by the Lessor and the Concurrent Lessee.
- (b) No waiver of any provision of this Agreement, nor consent to any departure by any party therefrom, shall in any event be effective unless the same shall be in writing signed by such party, and then such waiver or consent shall be effective only in the specific instance and for the specific purpose for which given. No failure on the part of any party to exercise, and no delay in exercising, any right hereunder shall operate as a waiver thereof.

### 9.2 Binding Effect; Assignability

This Agreement shall be binding upon and enure to the benefit of the Lessor and the Concurrent Lessee, and their respective successors and assigns.

The Lessor shall not have the right to assign any interest herein without the consent of the Concurrent Lessee, provided however that the Lessor may grant a security interest in all or a portion of the Deferred Concurrent LeasePrice.

The Concurrent Lessee shall not have the right to assign any interest herein without the consent of the Lessor, except as follows: (i) at any time after an Amortization Event or Servicer Termination Event has been in effect for at least 30 days, or (ii) to an affiliate. Each of the other parties hereto agrees that, upon such assignment, the assignee or its further assigns may enforce directly, without joinder of the original Concurrent Lessee, the rights set forth in this Agreement. Each of the Lessor and the Concurrent Lessee agrees to grant to any such assignee or its further assigns or its agents such powers of attorney as may be necessary for the exercise of their rights hereunder.

### 9.3 Notices

Any notice, consent, request, agreement, approval, waiver or other communication required or permitted to be given or delivered hereunder shall, unless otherwise stated herein, be in writing (including photocopy, facsimile, electronic mail or other digital communication) and sent, as to each party hereto, at its address set forth under its name on the signature pages hereto, or at such other address as shall be designated by such party in a written notice to the other parties hereto. All such notices and communications shall be effective when sent.

### 9.4 Indemnification

- (a) The Lessor hereby agrees to indemnify the Concurrent Lessee and each of its directors, officers, employees, trustees, advisors and agents, and to save such Person harmless from and against any and all damages, losses, claims, liabilities, costs and expenses (including reasonable legal fees and disbursements) awarded against or incurred by any such Person arising out of or as a result of:
  - (i) any representation or warranty made or deemed to be made by the Lessor in any capacity (whether as Lessor, Servicer or otherwise) (or any of its officers) in or in connection with this Agreement, any of the Leased Assets, or any Related Document, which was incorrect in any material respect when made or deemed made or delivered;

- (ii) the failure of the Lessor in any capacity (whether as Lessor, Servicer or otherwise) or any Originator to perform or observe any of its respective covenants, duties or obligations hereunder, in respect of or relating to any of the Leased Assets or under any of the Related Documents;
- (iii) any claim made against the Lessor in any capacity (whether as Lessor, Servicer or otherwise), the Lender or any Originator by any Obligor arising from, in connection with or relating to the performance of observance of any of the Lessor's or Originator's respective covenants, duties or obligations hereunder, in respect of or relating to any of the Leased Assets or under any of the Related Documents;
- (iv) the failure to vest in and maintain vested in the Concurrent Lessee, the beneficial interest of the Lessor in and to the Leases relating to the Leased Assets and related Collections which are, or are intended to be transferred to the Concurrent Lessee hereunder, free and clear of any Adverse Claim (whether existing at the time of the Concurrent Lease thereof or arising at any time thereafter);
- (v) the failure by the Lessor in any capacity (whether as Lessor, Servicer or otherwise) to comply with any applicable law, rule, regulation, order, judgment, injunction, award or decree with respect to any part of the Leased Assets, or the non-conformity of any Leased Asset with any applicable law, rule, regulation, order, injunction, award or decree; and
- (vi) any fine, penalty, sanction, order, or other liability imposed upon or determined against any of the Lessor in any capacity (whether as Lessor, Servicer or otherwise) the Lender or any Originator by any Governmental Authority in connection with or relating to any Leased Asset;

(b) The Lessor shall not be liable to the Concurrent Lessee hereunder for any damages, losses, claims, liabilities, costs or expenses resulting solely from the failure of any Obligor to discharge its payment obligations (except as specifically provided in Section 9.4(a)).

(c) The Lessor and the Concurrent Lessee each agree to provide reasonable assistance to the other party, at the request of such other party and, in either case, at the Lessor's expense, in any action, suit or proceeding brought by or against, or any investigation involving such requesting party relating to any of the transactions contemplated hereby or to any part of the Leased Assets. If the Lessor has acknowledged its liability under Section 9.4(a) in respect of any damages, losses, claims, liabilities, costs or expenses in connection with any such action, suit, proceeding or investigation, and, in the sole determination of the Concurrent Lessee, acting reasonably, the Lessor has the financial ability to pay such damages, losses, claims, liabilities, costs and expenses, the Lessor will have the right, on behalf of the Concurrent Lessee but at the Lessor's expense, to defend such action, suit or proceeding, or participate in such investigation, with counsel selected by it, and will have sole discretion as to whether to litigate, appeal or settle.

(d) The obligations of the Lessor under this Section 9.4 will survive this Agreement and remain in full force and effect for a period up to and including the date that is six years from the Final Collection Date.

## 9.5 Time of Essence

Time will be of the essence of this Agreement.

9.6 Failure to Perform

If the Lessor fails to perform any of its agreements or obligations hereunder, the Concurrent Lessee may (but will not be required to) itself perform, or cause to be performed, such agreement or obligation at, in the case of any such failure to perform by the Lessor, the cost of the Lessor.

9.7 Confidentiality

Each party hereto will maintain on a confidential basis (except as otherwise permitted hereunder or as required by applicable law) all information relating to the other party provided to it hereunder by the other parties; provided, however, that this Section shall not apply to any information which (i) was lawfully in the public domain at the time of communication to the first party, (ii) lawfully enters the public domain through no fault of the first party subsequent to the time of communication to the first party, (iii) was lawfully in possession of the first party free of any obligation of confidence at the time of communication to the first party, (iv) was lawfully communicated to the first party free of any obligation of confidence subsequent to the time of initial communication to the first party or (v) was lawfully communicated to any Person free from any obligation of confidence subsequent to the time of communication to the first party.

9.8 Further Assurances

The parties hereto agree, from time to time, to enter into such further agreements and to execute all such further instruments as may be reasonably necessary or desirable to give full effect to the terms of this Agreement and to the ability of the Concurrent Lessee to exercise or enforce any of its rights and remedies hereunder.

9.9 Remedies

The remedies herein provided are cumulative and not exclusive of any remedies provided at law.

9.10 Execution in Counterparts

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

[The signature pages follow.]

IN WITNESS WHEREOF the parties hereto have executed this Agreement as of the date first above written.

CROWN CREST FINANCIAL CORP., as Lessor and Servicer

By: 

Name: Lawrence Krimker

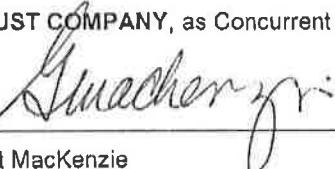
Title: President

Address: 1201-200 Yorkland Street  
Toronto, ON M2J 5C1

Attention: President and CEO

Fax No.: 647-846-7475

PEOPLES TRUST COMPANY, as Concurrent Lessee

By: 

Grant MacKenzie

President and CEO

Address: 1400-888 Dunsmuir Street  
Vancouver, BC V6C 3K4

 Samson Lim

Executive Vice President &  
Chief Financial Officer

Attention: President and CEO

With a copy to General Counsel and  
Executive VP & Chief Financial Officer

Fax No.: 604-331-3469

SIMPLY GREEN HOME SERVICES INC., as Guarantor

By: 

Name: Lawrence Krimker

Title: CEO

Address: 1201-200 Yorkland Street  
Toronto, ON M2J 5C1

Attention: President and CEO

Fax No.: 647-846-7475

FORM OF CONCURRENT LEASE NOTICE

To: Peoples Trust Company ("Concurrent Lessee")

Re: Concurrent Lease Agreement dated as of January 19, 2018 among Concurrent Lessee and the undersigned (the "Concurrent Lease Agreement")

The undersigned hereby gives notice of a concurrent lease pursuant to Section 2.1 of the Concurrent Lease Agreement as follows:

Closing Date:

Cut-Off Date:

Leased Assets: Attached Schedule A

The undersigned hereby represents and warrants that the Lease Assets described in the attached Schedule A are Eligible Assets as of the related Cut-off Date. The undersigned further confirms that all representations and warranties of the Lessor contained in the Concurrent Lease Agreement are true and correct, no Servicer Termination Event has occurred that is continuing, and the Lessor is in compliance with all covenants under the Concurrent Lease Agreement.

Capitalized terms used and not defined in this Concurrent Lease Notice have the meanings set forth in the Concurrent Lease Agreement.

CROWN CREST FINANCIAL CORP., as Lessor and Servicer

By: 

Name: Lawrence Krimker

Title: President

Accepted:

PEOPLES TRUST COMPANY, as Concurrent Lessee

By: 

Name:

Samson Lim

Title: Executive Vice President & Chief Financial Officer

Waheed Hirji

Chief Operations Officer

Schedule A to Concurrent Lease Notice – Attach list of Lease Assets

**SCHEDULE “B”**

**LESSOR'S ADDRESSES**

Location of Records:

1201-200 Yorkland Street  
Toronto, ON M2J 5C1

**SCHEDULE “C”**  
**FORM OF PORTFOLIO REPORT**

(Form attached.)

# SAMPLE



## Portfolio Summary by Beacon: People's Trust

### # and \$ by Beacon Score

#### Warehouse

	Dec-17		Nov-17		Oct-17		Rolling Average 3 months	
	Total # Accts	Total \$	Total # Accts	Total \$	Total # Accts	Total \$	# Accts	Total \$
600+	1490	\$ 8,169,268.23	1346	\$ 7,443,650.29	1,157	\$ 6,611,943	1,331	\$ 7,408,287
Sub-600	171	\$ 933,848.48	166	\$ 909,122.24	155	\$ 859,981	164	\$ 900,984
Auto-Approved	3226	\$ 8,988,378.37	2535	\$ 6,987,501.28	2,039	\$ 5,521,974	2,600	\$ 7,165,951
<b>TOTAL</b>	<b>4,887</b>	<b>\$ 18,091,495</b>	<b>4,047</b>	<b>\$ 15,340,274</b>	<b>3,351</b>	<b>\$ 12,993,898</b>	<b>4,095</b>	<b>\$ 15,475,222</b>
Sub-600 Delinquency	27	\$ 185,366	26	\$ 179,853	26	\$ 179,853	26	\$ 181,691
Auto-Approved Delinquency	17	\$ 40,532	17	\$ 40,532	17	\$ 40,532	17	\$ 40,532
		\$ 0		\$ 0		\$ 0		

#### Purchase Facility

	Dec-17		Nov-17		Oct-17		Rolling Average 3 months	
	Total # Accts	Total \$	Total # Accts	Total \$	Total # Accts	Total \$	# Accts	Total \$
600+	3799	\$ 23,501,108.44	3804	\$ 23,694,892.81	3,729	\$ 23,483,590	3,777	\$ 23,559,864
Sub-600	169	\$ 1,148,889.39	172	\$ 1,175,859.60	169	\$ 1,164,030	170	\$ 1,162,926
Auto-Approved	832	\$ 2,113,539.04	832	\$ 2,128,514.18	832	\$ 2,133,715	832	\$ 2,125,256
<b>TOTAL</b>	<b>4,800</b>	<b>\$ 26,763,537</b>	<b>4,808</b>	<b>\$ 26,999,267</b>	<b>4,730</b>	<b>\$ 26,781,335</b>	<b>4,779</b>	<b>\$ 26,848,046</b>
Sub-600 Delinquency	36	\$ 263,449	33	\$ 243,238	33	\$ 243,238	34	\$ 249,975
Auto-Approved Delinquency	10	\$ 24,972	10	\$ 24,972	10	\$ 24,972	10	\$ 24,972
		\$ 0		\$ 0		\$ 1		

#### Portfolio Breakdown by Beacon

#### Warehouse

	Dec-17		Nov-17		Oct-17		Rolling Average 3 months	
	Total # Accts	Total \$	Total # Accts	Total \$	Total # Accts	Total \$	# Accts	Total \$
600+	30.5%	45.2%	33.3%	48.5%	34.5%	50.9%	32.5%	47.9%
Sub-600	3.5%	5.2%	4.1%	5.9%	4.6%	6.6%	4.0%	5.8%
Auto-Approved	66.0%	49.7%	62.6%	45.6%	60.8%	42.5%	63.5%	46.3%
<b>TOTAL</b>	<b>100.0%</b>	<b>100.0%</b>						
Sub-600 Delinquency %	0.6%	1.0%	0.6%	1.2%	0.8%	1.4%	0.6%	1.2%
Auto-Approved Delinquency %	0.3%	0.2%	0.4%	0.3%	0.5%	0.3%	0.4%	0.3%

#### Purchase Facility

	Dec-17		Nov-17		Oct-17		Rolling Average 3 months	
	Total # Accts	Total \$	Total # Accts	Total \$	Total # Accts	Total \$	# Accts	Total \$
600+	79.1%	87.8%	79.1%	87.8%	78.8%	87.7%	79.0%	87.8%
Sub-600	3.5%	4.3%	3.6%	4.4%	3.6%	4.3%	3.6%	4.3%
Auto-Approved	17.3%	7.9%	17.3%	7.9%	17.6%	8.0%	17.4%	7.9%
<b>TOTAL</b>	<b>100.0%</b>	<b>100.0%</b>						
Sub-600 Delinquency	0.8%	1.0%	0.7%	0.9%	0.7%	0.9%	0.7%	0.9%
Auto-Approved Delinquency %	0.2%	0.1%	0.2%	0.1%	0.2%	0.1%	0.2%	0.1%

**CROWN CREST CAPITAL TRUST**

as Lessor and Servicer

and

**PEOPLES TRUST COMPANY**

as Concurrent Lessee

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**CONCURRENT LEASE AGREEMENT**

May 29, 2019

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## CONCURRENT LEASE AGREEMENT

**CONCURRENT LEASE AGREEMENT**, dated as of May 29, 2019 (this **Agreement**), between CROWN CREST FUNDING CORP. (the **Trustee**), in its capacity as trustee of CROWN CREST CAPITAL TRUST, a duly formed and validly existing trust under the laws of the Province of Ontario (together with its successors and assigns, the **Lessor**) and PEOPLES TRUST COMPANY, a trust company existing under the laws of Canada (**Concurrent Lessee**).

**WHEREAS** the Lessor wishes to lease certain Leased Assets from time to time to the Concurrent Lessee and the Concurrent Lessee wishes to lease such Leased Assets from the Lessor;

**NOW THEREFORE THIS AGREEMENT WITNESSES** that in consideration of the mutual covenants and agreements of the parties herein contained, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereto agree as follows:

### Article 1 - DEFINITIONS AND PRINCIPLES OF INTERPRETATION

#### 1.1 Definitions

Words with initial capital letters in this Agreement (including the above recitals) shall have the meanings set out below:

**Additional Term** means, in respect of a Concurrent Lease, the balance, if any, of the remaining term of the related Lease after the Lease End Date, less one day; provided that the balance of the remaining term may not exceed the lesser of (i) the remaining useful life of the applicable Lease Asset and (ii) 60 months.

**Additional Term Investment** means, on any day, the Initial Additional Term Prepaid Rent less (i) the sum of all amounts paid to the Concurrent Lessee on account of the Concurrent Lessee's Proportionate Share in respect of the Additional Term, less (ii) any Funding Costs allocable to the Additional Term Investment, less (iii) the Rent Rebate allocable to the Additional Term Investment paid by the Lessor in respect of all Concurrent Leases that are ATPR Leases terminated from time to time.

**Administrative Costs** means, in respect of any Lease, all late fees, extension fees and other administrative or similar costs, charges and expenses billed to the applicable Obligor in accordance with the Lessor's customary practice and approved by the Concurrent Lessee, acting reasonably.

**Advance Rate** means 90%.

**Adverse Claim** means a security interest, lien, charge, encumbrance or other right or claim, including any filing or registration made in respect thereof, of or through any Person (other than the Concurrent Lessee).

**Agreement** means this agreement, together with the schedules hereto, as the same may be amended, supplemented, modified, restated or replaced from time to time, and the expressions **hereof**, **herein**, **hereunder**, and **hereby** and similar expressions refer to this agreement and not to any specific article, section, paragraph, subparagraph or clause hereof.

**Amortization Event** means the occurrence of any of the following events:

- (a) on any Reporting Date as of the end of the related Collection Period, either:

- (i) the Average Delinquency Rate exceeds 6.5%;
- (ii) the Average Loss Rate exceeds 2.75%; or

(b) a Servicer Termination Event.

**Amortization Period** means the period commencing on the date of occurrence of an Amortization Event and ending on the earlier of (i) the date such Amortization Event is waived by the Concurrent Lessee, in its sole discretion, and (ii) the date on which no further amounts are payable to the Concurrent Lessee hereunder.

**Approved Equipment** shall mean storage water heaters, tankless water heaters, water filtration and/or treatment systems, Heating Recovery Ventilation ('HRV') and/or High-efficiency particulate arrestance ('HEPA') systems, furnace and air conditioning ('HVAC') equipment and boiler systems, smart home products as well as such other types or classes of consumer equipment as may be agreed to by the Lessor and approved by the Concurrent Lessee in writing.

**ATPR Funding Rate** means, in respect of a Concurrent Lease and a Settlement Period, an annual interest rate equivalent to the average of BMO Prime for the 30 days in effect prior to each Closing Date plus 1.7% per annum, provided that from and after each 5th anniversary of the date of this Agreement, BMO Prime for the related Concurrent Leases and the calculation Funding Costs shall be adjusted to BMO Prime in effect on such 5th anniversary plus 1.7% per annum.

**ATPR Scheduled Leases** means the Leases, the related Approved Equipment of which is the subject of a Concurrent Lease at such time, designated by the Lessor to the Concurrent Lessee by notice in writing on the date of this Agreement, as such schedule may be amended by the Lessor on any Settlement Date, provided that, for greater certainty, to the extent any Lease that is an ATPR Scheduled Lease ceases to be subject to a Concurrent Lease hereunder, such Lease shall thereafter cease to be an ATPR Scheduled Lease.

**Average Delinquency Rate** means for any Reporting Date, the arithmetic mean of the Delinquency Rates for each of the three Collection Periods immediately prior or (a) in the case of the first Reporting Date, the Delinquency Rate for the first Collection Period and (b) in the case of the second Reporting Date, the arithmetic mean of the Delinquency Rates for each of the two Collection Periods immediately prior.

**Average Loss Rate** means for any Reporting Date, the arithmetic mean of the Loss Rates for each of the three Collection Periods immediately prior or (a) in the case of the first Reporting Date, the Loss Rate for the first Collection Period and (b) in the case of the second Reporting Date, the arithmetic mean of the Loss Rates for each of the two Collection Periods immediately prior.

**Blocked Account Agreement** means the blocked account agreement to be entered into between the Trustee, the Lessor and The Toronto-Dominion Bank within 20 Business days of the date of this Agreement, as the same may be amended, restated, supplemented or replaced from time to time.

**BMO Prime** means, at any time, the posted "prime rate" of interest charged by Bank of Montreal for its commercial loans that are made in Canadian dollars.

**Business Day** means any day other than a Saturday, Sunday, or public holiday on which banks are required or permitted to be closed in the Province of Ontario or the Province of British Columbia.

**Charged-Off Asset** means any Lease (i) for which the Servicer has become aware that an Insolvency Event has occurred in respect of the related Obligor or (ii) that is or is required to be charged-off as uncollectible by the Servicer in accordance with the Credit and Collection Policies it being acknowledged that under the Credit and Collection Policies a Lease would be charged-off as uncollectible upon the Servicer becoming aware that an Insolvency Event had occurred in respect of the related Obligor; provided that a Lease will cease to be a Charged-Off Asset if all outstanding amounts are paid in full by the Obligor.

**Closing Date** means, in respect of a Concurrent Lease, the date specified as such in the applicable Concurrent Lease Notice.

**Collection Period** means a calendar month, provided that the initial Collection Period shall commence on the Cut-Off Date in respect of the initial Concurrent Lease and the final Collection Period shall end on (and include) the Final Collection Date.

**Collections** means without duplication (i) in respect of any Leased Asset, all cash collections and other cash proceeds in respect thereof and of the related Rights and Receivables (excluding Administrative Costs and Sales Taxes but including payments of rent, interest and principal) received after the applicable Cut-Off Date, (ii) any Deemed Collections in respect of such Leased Assets, and (iii) the net proceeds of any disposition of the related Leased Asset, except where the proceeds of disposition are payable directly to the Concurrent Lessee.

**Collections Account** means the account established and maintained in the name of the Lessor as the account owner at The Toronto-Dominion Bank (Branch ID: 31382, Account Number: 5237256) or such other account as is designated by notice to the Lessor as the Collections Account for the purposes hereof, which account shall at all times be subject to a Blocked Account Agreement in form and substance acceptable to the Concurrent Lessee.

**Concurrent Lease** means each concurrent lease of Approved Equipment entered into in accordance with Article 2.

**Concurrent Lease Entitlements** has the meaning ascribed thereto in Section 2.6.

**Concurrent Lease Notice** means the offer by the Lessor to lease Lease Assets to the Concurrent Lessee in the form attached hereto as Schedule "A".

**Concurrent Lessee's Proportionate Share** means, in respect of the Collections for a Lease, (i) for a Lease that is a ATPR Scheduled Lease, a percentage equal to the proportion of the Scheduled Payments plus all payments of escalations plus all regularly scheduled payments to be made by the Obligor during the Additional Term for such Lease required to fully amortize the sum of Prepaid Rent and Initial ATPR for such Lease over the sum of the Prescribed Term and the Additional Term at the weighted average of the Funding Rate and ATPR Funding Rate and (ii) for a Lease that is not a ATPR Scheduled Lease, a percentage equal to the proportion of the Scheduled Payments plus all payments of escalations for such Lease required to fully amortize the Prepaid Rent over the Prescribed Term at the Funding Rate.

**Credit and Collection Policies** means the Lessor's credit, collection and administration policies and procedures relating to its portfolio of loans, as represented in the Lessor's operating procedures manual, which for greater certainty, has been reviewed and approved by the Concurrent Lessee.

**Credit Monitoring Fee** means, for a Concurrent Lease on a Closing Date, an amount equal to 3% of the Prepaid Rent, plus, if applicable, 3% of the Initial Additional Term Prepaid Rent.

**Cut-Off Date** means the date specified as such in the Concurrent Lease Notice.

**Deemed Collections** means amounts required to be deposited to the Collections Account pursuant to Section 6.5 hereof.

**Deferred Rent** has the meaning set forth in Section 2.4.

**Delinquency Rate** means, for any Collection Period, the sum of the outstanding principal balances of Leased Assets other than Charged-Off Assets that are Delinquent Assets at the end of such Collection Period, divided by the Pool Balance at the end of such Collection Period.

**Delinquent Asset** means a Lease where any amount payable thereunder or any portion thereof is more than 30 days past due.

**Discount Rate** means, in respect of a Concurrent Lease, a discount rate equivalent to 4 % per annum, provided that the Concurrent Lessee may adjust the Discount Rate on January 2 of any calendar year by notice in writing delivered not less than 30 days before such date in respect of Concurrent Leases to be entered into after such date. Any increase in the Discount Rate cannot exceed any net increase in BMO Prime during the calendar year then ended.

**Eligible Asset** means any Lease:

- (a) in respect of which the Obligor thereunder is a Person who is resident in Canada and is not (i) an affiliate of the Lessor or the Concurrent Lessee; (ii) the Government of Canada or any agency or instrumentality thereof or any federal crown corporation other than those listed as exempt under applicable legislation from restrictions or requirements for consent or notice on the assignment of receivables in respect of which they are obligors; or (iii) any provincial government or agency thereof if the enforceability against such government or agency of an assignment of debts owing thereby is subject to any precondition which has not been fulfilled;
- (b) which is not a Charged-Off Asset or a Delinquent Asset;
- (c) that has a fair market value that is greater than or equal to its face value;
- (d) which is payable to an address in Canada only and is denominated and payable in Canadian Dollars and in respect of which the Obligor has been directed to remit payments to the Collections Account;
- (e) which has been duly authorized, executed and delivered by the parties thereto, has been entered into in compliance with all applicable laws (including any licensure laws applicable to Lessor), and, together with all related Rights (including any guarantee, indemnity or agreement referred to in clause (g) of the definition of Rights), is in full force and effect and constitutes the legal, valid and binding obligation of the related Obligor enforceable against such Obligor in accordance with its terms, subject to applicable bankruptcy, reorganization, insolvency, moratorium or similar laws affecting creditors' rights generally and subject to equitable principles of general application (regardless of whether enforcement is sought in a proceeding at law or in equity);
- (f) which is not subject to any dispute, set-off, counterclaim or defense whatsoever, no prepayments have been made thereunder and which is owned by the Lessor and free of any Adverse Claim and has not been extended or otherwise modified except in the ordinary course of business and in accordance with the Credit and Collection Policies;
- (g) in respect of which the Lessor is not in default in the performance of any of the covenants of the Lessor thereunder;

- (h) the terms of which do not contravene any laws, rules or regulations applicable thereto (including, without limitation, such laws, rules, or regulations relating to usury, truth in lending, credit business practices, cost of borrowing, consumer protection, equal credit opportunity, fair debt collection practices and privacy), except where such contravention would not materially adversely affect the collectability or enforceability of the related Rights;
- (i) in which the perfection of the Lessor's rights complies with the requirements of the Credit and Collection Policies in all material respects it being acknowledged that Lease Assets that are Low Value Leases do not require perfection of the Lessor's rights;
- (j) the related Obligor is not the subject of any Insolvency Event (except where such Insolvency Event occurred prior to the origination of the Receivable and such origination was consistent with the Credit and Collection Policies) or, to the best of the Lessor's knowledge, there are no such proceedings pending against such Obligor;
- (k) in respect of which the related Rights may be assigned in whole or in part without the consent of the related Obligor;
- (l) which is documented pursuant to a form of contract which is similar in all material respects to one of the forms of contract that have previously been delivered to and accepted by the Concurrent Lessee, acting reasonably;
- (m) in respect of which immediately prior to the lease hereunder the Lessor is the legal and beneficial owner of the Lease Asset, the related Receivables and Rights free and clear of any Adverse Claim;
- (n) in respect of which after the Concurrent Lease of the related Equipment to the Concurrent Lessee, the Concurrent Lessee would be the sole legal and beneficial owner of the related Concurrent Lease Entitlements with full right to transfer, sell and encumber such Concurrent Lease Entitlements free and clear of any lien;
- (o) that has not been satisfied, subordinated, waived or rescinded;
- (p) that has not been compromised, adjusted or modified except in accordance with the Credit and Collection Policies;
- (q) that was generated in the ordinary course of business;
- (r) except in the case of Low Value Leases, for which all filings or recordings with respect to the Lessor's interest therein and the related Leases and Rights necessary by law or reasonably prudent and desirable for the perfection and protection of such interests including any further filings, recordings or renewals thereof, have been effected by the Lessor (**Lien Registration**); and
- (s) which satisfies such other criteria as may be added by the Concurrent Lessee in accordance with Section 5.4 from time to time.

**ETA** means Part IX of the *Excise Tax Act* (Canada).

**Excess LV Delinquencies** is defined in Section 6.2(l).

**Excess LV Delinquencies Reimbursement** is defined in Section 6.2(l).

**Final Collection Date** means the date on which all Leases subject to Concurrent Leases have been terminated, fully collected and/or written off as uncollectible pursuant to the Credit and Collection Policies.

**Finance Charge Collections** means Collections in respect of interest and fees (other than Administrative Costs).

**Funding Costs** means, in respect of a Settlement Period, the sum of (a) the product of (i) the Investment as of the first day of the Settlement Period and (ii) the weighted average Funding Rate for all Concurrent Leases and the related Settlement Period, plus (b) the product of (i) the Additional Term Investment as of the first day of the Settlement Period, and (ii) the ATPR Funding Rate.

**Funding Rate** means, in respect of a Concurrent Lease and a Settlement Period, an annual interest rate equivalent to the average of BMO Prime for the 30 days in effect prior to each Closing Date plus 1.3% per annum, provided that from and after the 5<sup>th</sup> anniversary of each Closing Date, BMO Prime for the related Concurrent Leases and the calculation Funding Costs shall be adjusted to BMO Prime in effect on such 5<sup>th</sup> anniversary plus 1.3% per annum.

**GAAP** means generally accepted accounting principles from time to time approved by the Chartered Professional Accountants of Canada or any successor body, applicable as at the date in question and applied on a consistent basis.

**Governmental Authority** means any federal, state, provincial, regional, local or foreign court or governmental agency, authority, instrumentality or regulatory body.

**GST/HST** means the goods and services tax, harmonized sales tax, and all other amounts payable under the ETA or pursuant to any similar value added tax legislation in any other jurisdiction of Canada or is similar thereto.

**Initial Additional Term Prepaid Rent** means, at any time, the aggregate, for each ATPR Scheduled Lease, of the product of (i) the Advance Rate and (ii) the sum of the net present values of each unpaid rental payments coming due over the entire term, ending on the last day of the Additional Term, of the related ATPR Scheduled Lease, excluding all Scheduled Payments, but including all escalations in the rental payments the Lessor is entitled to, discounted to the date of determination at the Discount Rate.

**Insolvency Event** means, in respect of any Person, such Person shall generally not pay its debts as they become due, or shall admit in writing its inability to pay its debts generally, or shall make a general assignment for the benefit of creditors; or any proceedings shall be instituted by or against, as the case may be, seeking to adjudicate it as bankrupt or insolvent or seeking liquidation, winding up, reorganization arrangement, adjustment, protection, relief or composition of it or its debts under any law relating to bankruptcy, insolvency, reorganization or relief of insolvent debtors, or seeking the entry of an order for relief by the appointment of a receiver, trustee, custodian or similar official for its or a substantial part of its property and, if such proceeding has been instituted against such Person, while being contested in good faith by such Person, such proceeding has not been stayed or dismissed within 45 days or a receiver, trustee, custodian or other similar official is appointed for it or any substantial part of its property; or a receiver being privately appointed in respect of a substantial part of the assets of such Person; or such Person, takes any corporate action to authorize any of the actions described above.

**Investment** means at any time the sum of all Prepaid Rent paid (or deemed to have been made) by the Concurrent Lessee to the Lessor, less (i) the sum of all amounts paid to the Concurrent Lessee on account of the Concurrent Lessee's Proportionate Share allocable to the Investment,

less (ii) any Funding Costs allocable to the Investment, less (ii) the Rent Rebate allocable to the Investment paid by the Lessor in respect of all Concurrent Leases terminated from time to time.

**ITA** means the *Income Tax Act* (Canada) and includes any corresponding, applicable provincial income tax statute, and for greater certainty, where this Agreement refers to a specific provision of the ITA, such reference includes a reference to any corresponding provision of an applicable provincial income tax statute.

**Lease** means a lease or rental agreement or similar agreement (including a sub-metering agreement) for the lease or sale of Approved Equipment originated by an Originator.

**Lease Asset** means a Lease together with the related Rights.

**Lease End Date** means, in respect of any Lease and Concurrent Lease, the Settlement Date immediately following the scheduled date of the last Scheduled Payment under the related Lease.

**Leased Assets** means the Approved Equipment concurrently leased or purported to be concurrently leased by the Concurrent Lessee hereunder (other than Concurrent Leases terminated hereunder).

**Loss Rate** means in respect of a Collection Period, net losses in respect of Leases subject to Concurrent Leases divided by the original outstanding net present value of the Leases subject to Concurrent Leases subject to losses during such Collection Period.

**Low Value Lease** means a Lease Asset in respect of which the related Approved Equipment is a water heater or other equipment where the original monthly rental payment (excluding taxes) is less than \$45 or a tankless water heater where the original monthly rental payment (excluding taxes) is less than \$65.

**Material Adverse Effect** means, in respect of any Person or any Lease subject to a Concurrent Lease any effect on it which could reasonably be expected to have an adverse impact on (i) in the case of such Person the ability of such Person to perform its obligations hereunder or under any Related Document, or (ii) the enforceability or collectability of such Lease or (iii) the value of such Lease.

**Obligor** means in respect of any Lease, the Person or Persons obligated to make payments thereunder.

**Originator** means in respect of any Lease, the original lessor.

**Outstanding Balance** means, in respect of a Concurrent Lease, the product of (i) the Advance Rate, and (ii) the sum of the net present values of each unpaid Scheduled Payment plus, if applicable, each unpaid regularly scheduled payment to be made by the Obligor during the Additional Term under the related Lease, discounted to the date of determination at the applicable Discount Rate.

**Person** means an individual, partnership, corporation, trust, joint venture, unincorporated association, government (or any agency or political subdivision thereof) or other entity.

**Pool Balance** means at any time the aggregate Outstanding Balance of all Concurrent Leases other than in respect of Charged-Off Assets or Lease Assets where the related Concurrent Lease has been terminated.

**Portfolio Report** means a report substantially in the form attached hereto as Schedule "C", delivered by the Lessor to the Concurrent Lessee pursuant to Section 6.2(m)).

**PPSA** means the *Personal Property Security Act* (British Columbia) or the comparable legislation of the other provinces of Canada including, in Québec, the Civil Code of Québec.

**Prepaid Rent** means the lump sum rent required to prepay the original monthly rental payments due under any Concurrent Leases pursuant to Article 2, which shall be equal to the product of (i) the Advance Rate and (ii) the sum of the net present values of each unpaid Scheduled Payment of the applicable Lease Asset, discounted to the related Closing Date at the applicable Discount Rate.

**Prescribed Term** means, in respect of any Lease at any time, the lesser of 180 months and the remaining term of such Lease at such time.

**PST** means amounts payable under any statute in Canada imposing a single stage retail sales tax.

**Receivables** means, in respect of any Lease, all moneys payable with respect to such Lease Asset including all scheduled periodic payments, principal, interest, interchange, extra charges, fees and penalties and other moneys payable by the related Obligor (exclusive of Administrative Costs) during the period from but excluding the Cut-Off Date, to the date when all amounts have been paid under such Lease.

**Records** means, in respect of any Lease subject to a Concurrent Lease, all contracts (including those evidencing such Lease), books, records, reports and other documents and information (including, to the extent obtainable by way of existing software controlled by the Lessor, hard copies of all data maintained in databases of the Lessor, tapes and disks) maintained by or on behalf of the Lessor in respect of the Lease and the related Obligor.

**Related Documents** means any agreement, document, exhibit, notice or other communication which has at any time been delivered by the Lessor to the Concurrent Lessee pursuant hereto, including all agreements and documents required hereunder.

**Rental Amount** means in respect of a Lease, the original regularly-scheduled monthly rental payment amount of the Obligor thereunder plus any escalations to the Closing Date.

**Rent Rebate** means, at any time with respect to any Concurrent Lease in respect of which the Concurrent Lessee made a payment of Prepaid Rent and, if applicable, Initial Additional Term Prepaid Rent, an amount equal to the product of (i) the Advance Rate and (ii) the sum of the net present values of each unpaid Scheduled Payment plus, if applicable, each unpaid regularly scheduled payment to be made by the Obligor during the Additional Term arising under the related Lease, discounted to the date of determination at the applicable Discount Rate.

**Replacement Servicer** means any Person appointed by the Concurrent Lessee to replace the initial or any subsequent Servicer upon the occurrence of a Servicer Termination Event.

**Replacement Servicer Fee** has the meaning given to it in Section 7.3.

**Reporting Date** means in respect of a Collection Period the second Business Day preceding the related Settlement Date.

**Rights** means, in respect of any Lease, the following:

- (a) all rights and benefits accruing to the Lessor under such Lease, including all right, title and interest in and to the related receivables;
- (b) all of the Lessor's right, title and interest in and to the related Approved Equipment;

- (c) all right in or to payments (including both proceeds and, to the extent the Lessor has any rights therein, premium refunds) under any insurance policies maintained by the related Obligor pursuant to the terms of such Lease or by the Lessor in respect of such Lease;
- (d) all claims, demands, actions, damages and indemnities owing to the Lessor under such Lease;
- (e) the right of the Lessor to ask, demand, sue for, collect, receive and enforce any and all sums payable under the Lease and to enforce all other covenants, obligations, rights and remedies thereunder with respect thereto;
- (f) all of the right, title and interest of the Lessor in, to and under all prepayments made after the Cut-Off Date, guarantees, promissory notes and indemnities (including all security interests and all property subject thereto) from time to time supporting or securing payment or performance of the related Obligor's obligations in respect of the Lease, whether pursuant to the Lease or otherwise;
- (g) the related Records; and
- (h) all proceeds of or relating to any of the foregoing.

**Sales Taxes** means all federal, provincial and other sales, goods and services, value added, use or other transfer taxes, and all other similar taxes whatsoever, including GST/HST and PST.

**Scheduled Payment** means, in respect of a Lease, the Rental Amount payable by the Obligor thereunder during a term not exceeding the lesser of (i) the remaining term of the Lease, (ii) 180 months and (iii) the remainder of the Prescribed Term.

**Servicer** means Lessor in its capacity as servicer hereunder and any Replacement Servicer.

**Servicing Fee** means in respect of any Settlement Date, a fee not exceeding 0.40% per annum of the Pool Balance at such time.

**Servicer Termination Event** has the meaning set forth in Section 7.1.

**Settlement Date** means, in respect of a Collection Period, the 15<sup>th</sup> calendar day of the calendar month (or the next Business Day if such day is not a Business Day) following the calendar month related to such Collection Period.

**Settlement Period** means in respect of a Settlement Date, the period commencing on and including the immediately preceding Settlement Date to but excluding such Settlement Date, provided that the first Settlement Period shall commence on and include the date hereof and the final Settlement Date shall end on and exclude the Final Collection Date.

## 1.2 Extended Meanings

In this Agreement, words importing the singular number include the plural and vice versa and words importing gender include each gender. Unless the context requires otherwise, any reference herein to any Person shall be construed to include such Person's successors and permitted assigns.

**1.3 Headings and Table of Contents**

The table of contents does not form part of this Agreement. Article and Section headings are not to be considered part of this Agreement, are included solely for convenience of reference and do not define, limit or enlarge the construction or interpretation hereof.

**1.4 References to Sections, Articles and Schedules**

Unless otherwise provided, all references herein to Sections, Articles or Schedules are references to Sections, Articles and Schedules of or to this Agreement.

**1.5 References to Statutes**

Unless otherwise provided, all references herein to any statute or any provision thereof shall mean such statute or provision as amended, restated or re-enacted from time to time.

**1.6 Certain Phrases**

Unless otherwise provided herein, the words "including", "includes" and "include" mean "including (or includes or include) without limitation".

**1.7 Governing Law**

This Agreement will be governed by and construed in accordance with the laws of the Province of British Columbia and the federal laws of Canada applicable therein (without regard to the conflict of laws rules of the Province of British Columbia).

**1.8 Invalidity of Provisions**

Save and except for any provision or covenant contained herein which is fundamental to the subject matter of this Agreement (including those that relate to the payment of moneys), the invalidity or unenforceability of any provision or covenant hereof or herein contained will not affect the validity or enforceability of any other provision or covenant hereof or herein contained and any such invalid or unenforceable provision or covenant will be deemed to be severable.

**1.9 Computation of Time Periods**

Unless otherwise provided herein, in the computation of a period of time from a specified date to a later specified date, the word "from" means "from and including" and each of the words "to" and "until" means "to but excluding".

**1.10 Non-Business Days**

Whenever any payment to be made hereunder shall be stated to be due, any period of time would begin or end, any calculation is to be made or any other action to be taken hereunder shall be stated to be required to be taken, on a day other than a Business Day, such payment shall be made, such period of time shall begin or end, such calculations shall be made and such other action shall be taken on the next succeeding Business Day.

**1.11 Accounting Principles**

Where the character or amount of any asset or liability or item of revenue or expense is required to be determined, or any consolidation or other accounting computation or presentation is required to be made for the purpose of this Agreement, such determination, consolidation, computation or presentation shall, to the extent applicable and except as otherwise specified

herein or as otherwise agreed to in writing by the parties, be made in accordance with GAAP applied on a consistent basis. Wherever in this Agreement reference is made to generally accepted accounting principles, such reference shall be deemed to be to GAAP applicable as at the date on which such determination, consolidation, computation or presentation is made or required to be made.

1.12 **Currency**

Unless otherwise provided, all amounts herein are stated in Canadian Dollars.

1.13 **Entire Agreement**

This Agreement contains the entire agreement between the parties relative to the subject matter hereof and supersedes all prior and contemporaneous agreements, term sheets, commitments, understandings, negotiations, and discussions, whether oral or written. There are no warranties, representations or other agreements between the parties in connection with the subject matter hereof except as specifically set forth herein.

1.14 **Schedules**

The following schedules annexed hereto are incorporated herein by reference and are deemed to be part hereof:

Schedule "A" – Form of Concurrent Lease Notice

Schedule "B" – Lessor's Addresses

Schedule "C" – Form of Portfolio Report (or such other format as mutually agreed upon by the parties)

## **Article 2 - CONCURRENT LEASE**

2.1 **Grant of Concurrent Lease**

(a) Upon the terms and subject to the conditions set forth herein, the Lessor may from time to time prior to the occurrence of an Amortization Event, by delivering a completed Concurrent Lease Notice, offer to concurrently lease Approved Equipment to the Concurrent Lessee at least 5 Business Days before a proposed Closing Date. The Concurrent Lessee shall indicate its acceptance of the offer to concurrently lease Approved Equipment by countersigning the Concurrent Lease Notice delivered by the Lessor on or before the proposed Closing Date.

(b) On each Closing Date, Lessor shall hereby lease to Concurrent Lessee, free and clear of all security interests, liens or other adverse claims other than the leasehold interests of the relevant Obligors, and Concurrent Lessee shall hereby lease from Lessor, the Approved Equipment as listed on the related Concurrent Lease Notice delivered by Lessor to Concurrent Lessee) with effect as of the Closing Date. It is hereby expressly acknowledged and agreed that the interest of the Concurrent Lessee under each Concurrent Lease is and to the related Approved Equipment is that of a lessee only, and that title to and ownership in all such Approved Equipment shall, subject to Section 2.6, remain vested in the Lessor. It is hereby further expressly acknowledged and agreed that, as of each Closing Date and until the applicable Final Collection Date, the beneficial ownership of the interest of the Lessor in respect of each Lease relating to Leased Assets and the related Collections will automatically vest in the Concurrent Lessee and the Lessor will hold in trust for the benefit of the Concurrent Lessee the interest of the Lessor under each such Lease and related Collections. It is hereby further expressly acknowledged and agreed that, notwithstanding the grant by the Lessor to the

Concurrent Lessee of each Concurrent Lease, the rights of the lessee Obligors with respect to the possession and use of the Approved Equipment shall continue and be the same as under their respective Leases.

- (c) On each Closing Date, the Lessor will pay to the Concurrent Lessee the Credit Monitoring Fee for each Concurrent Lease listed in the applicable Concurrent Lease Notice. The Concurrent Lessee may set off the Credit Monitoring Fee payable for a Concurrent Lease against the Prepaid Rent for that Concurrent Lease paid by the Concurrent Lessee on the Closing Date.
- (d) In its capacity as lessor to the Concurrent Lessee and so that the Concurrent Lessee will not be in violation of its obligation as lessor to the Obligors or any of them, the Lessor hereby covenants and agrees to and in favour of the Concurrent Lessee that at all times during the term of each Concurrent Lease, the Lessor will, in all material respects, comply with and perform each term, condition, representation, warranty and covenant of the lessor contained in each Lease and will not take or omit to take any action in its capacity as owner of the Approved Equipment and lessor under any Concurrent Lease and which would cause any material failure by it to so comply with and perform each term, condition, representation, warranty and covenant required to be complied with or performed by the lessor under each Lease.
- (e) In its capacity as lessee under each Concurrent Lease, the Concurrent Lessee hereby covenants and agrees, to and in favour of the Lessor, to cause and require each Obligor to comply with and perform each term, condition, representation, warranty and covenant required to be complied with or performed by an Obligor under the relevant Lease.

## 2.2 Terms of Concurrent Leases

- (a) The term of each Concurrent Lease in respect of an item of Approved Equipment shall be deemed to commence at the close of business on the related Closing Date and, unless terminated or deemed terminated earlier in accordance with the provisions hereof, shall terminate on the Lease End Date for the related Lease.
- (b) Notwithstanding Section 2.2(a), the Concurrent Lessee shall have the right to extend the term of all Concurrent Leases outstanding on the date of this Agreement beyond the relevant Lease End Dates to the end of the Additional Term by giving the Lessor notice.

It is hereby expressly acknowledged and agreed that the Lessor's title and ownership of the Approved Equipment owned by it shall be subject to the rights of the Concurrent Lessee under each Concurrent Lease with respect to such Approved Equipment, and, consequently, except as otherwise provided herein, upon the termination of the Lease relating to any Approved Equipment (whether upon the expiry of the Term thereof, as a result of a default by the Obligor thereunder or otherwise), the Concurrent Lessee shall, until the expiry of the term of the Concurrent Lease relating to such Approved Equipment, have the exclusive right to possess, use and lease such Approved Equipment as provided for in this Article 2. Except as provided herein, neither the Concurrent Lessee nor the Lessor shall be entitled to terminate the Concurrent Lease in respect of any or all of the Approved Equipment.

## 2.3 Rent for Concurrent Lease

In consideration of the grant by the Lessor to the Concurrent Lessee of each Concurrent Lease, the Concurrent Lessee shall pay to the Lessor, on the first day of each calendar month after the Closing Date during the term of each Concurrent Lease, as monthly rent, an amount equal to 99.99% of the sum of all payments forming part of the Scheduled Payments to be made in

respect of the Leases of Leased Assets in respect thereof during the related Collection Period. Any Taxes will be added to any amount so paid if applicable.

#### 2.4 Prepaid and Deferred Rent

The Lessor acknowledges and agrees that the Concurrent Lessee may satisfy and discharge its obligations to make all monthly rent payments required by Section 2.3 by (a) paying to the Lessor, on the related Closing Date, as a prepayment of rent, a sum equal to the Prepaid Rent, (b) paying to the Lessor the amounts specified pursuant to and in accordance with Section 3.1 as deferred rent (the Deferred Rent), each of which payments shall be made without the need on the part of the Lessor to provide the Concurrent Lessee with any invoices. The Concurrent Lessee shall be deemed to have elected to make the payments specified in (a) and (b) if it pays the Prepaid Rent on the related Closing Date. In the event the Concurrent Lessee elects to extend the terms of the Concurrent Leases outstanding on the date of this Agreement to the end of the Additional Term in accordance with Section 2.2(b), the Concurrent Lessee may pay to the Lessor, upon the exercise of its right to extend the terms, as a prepayment of rent, a sum equal to the Initial Additional Term Prepaid Rent. Concurrently with the payment of the Initial Additional Term Prepaid Rent for an ATPR Scheduled Lease, the Lessor will pay to the Concurrent Lessee the Credit Monitoring Fee for that ATPR Scheduled Lease. Any Taxes will be added to any of the foregoing amounts so paid if applicable.

#### 2.5 Acknowledgment

The Lessor acknowledges and agrees that, as a consequence of the grant and demise of rights by it to the Concurrent Lessee under this Agreement, and in consideration of the obligation and the liability of the Concurrent Lessee to pay to the Lessor the rent (including any payment by the Concurrent Lessee of Prepaid Rent), as provided for in this Article 2, the Concurrent Lessee shall be entitled, among other things, to receive all Scheduled Payments under the Leases, the Leased Assets relating to which is concurrently leased to the Concurrent Lessee hereunder, as of and from the close of business on the related Closing Date.

#### 2.6 Security Interest

As continuing security for the due and timely payment from time to time by the Lessor of all obligations of the Lessor, the Lessor hereby grants, pledges and charges, to and in favour of the Concurrent Lessee, a first charge and security interest in and to all of the Lessor's right, title and interest, both present and future, in, to and under the following:

- (a) all of the Lessor's right, title and interest in, to and under the Leased Assets and the Leases related thereto including, without limitation, all amounts owed to or received by the Lessor in respect of Collections from any Obligor or other Person, including all liquidation proceeds and subsequent recoveries in respect of the Leased Assets and the related Records;
- (b) all of the Lessor's right, title and interest in and to all Collections made on or after the related Closing Date and the right to make Collections in respect of the remaining Term thereof made on or after the Closing Date including, without limitation, rights, if any, under direct debit agreements with Obligors, and all cheques, notes, instruments of payment and other remittances relating thereto;
- (c) all of the Lessor's right, title and interest in and to the related Rights relating to the Leased Assets; and
- (d) all proceeds from any or all of the foregoing;

(all of such property and rights being collectively referred to herein as the Concurrent Lease Entitlements). The Lessor and the Concurrent Lessee agree that value has been given for the granting by the Lessor of such charge and security interest, that they have not agreed to postpone the time for attachment with respect thereto and that attachment will occur immediately upon the Lessor acquiring rights to receive any such Collections or other amounts.

## 2.7 Concurrent Lessee Rights

The Lessor hereby acknowledges that, as a consequence of the granting of the Concurrent Leases hereunder, the Concurrent Lessee through the Servicer on its behalf, shall have the right, at any time, to:

- (a) notify any Obligor of the Concurrent Lease by the Concurrent Lessee of the Leased Assets;
- (b) to the extent that the Lessor has such rights, contact any Obligor for any purpose, including for the performance of audits and verification analyses, and the determination of account balances and other data maintained by the Servicer;
- (c) direct any Obligor to make all payments on account of any Leases directly to the Concurrent Lessee at an address designated by the Concurrent Lessee or to such third party (including the Servicer) or bank or depositary as may be designated by the Concurrent Lessee;
- (d) request any Obligor to change the instructions for any direct debit or electronic funds transfer otherwise payable to the Lessor or the Servicer;
- (e) proceed directly against any Obligor and take any and all other actions, in the Lessor's name or otherwise, necessary or reasonably desirable to collect the Leases, enforce the related Rights or effect any related result; and
- (f) subject to the terms of the related Lease, sell by power of sale any Leased Assets for any price the Concurrent Lessee (or the Servicer on its behalf) deems reasonable in its sole discretion and apply the liquidation proceeds arising from any such sale towards any Rent Rebate arising therefrom.

## 2.8 Application Fee

The Lessor shall pay to the Concurrent Lessee following the completion of each Concurrent Lease an application fee in respect of such Concurrent Lease in the amount equal to 0.15% of the applicable Prepaid Rent of the applicable Lease Asset in respect of the concurrent lease by the Concurrent Lessee from the Lessor.

## 2.9 Payment of GST/HST

The Concurrent Lessee certifies that it is at all relevant times, including at the time of each Concurrent Lease, a registrant under Part IX of the Excise Tax Act (Canada) (the **ETA**) and that its registration number is 10414 3698 RT0001.

## 2.10 Disqualified Assets

Promptly at any time after a Closing Date upon discovering that an eligibility requirement contained in the definition of "Eligible Asset" was not satisfied with respect to any Leased Asset and Concurrent Lease on the Cut-Off Date where the Concurrent Lessee made a payment of Prepaid Rent, the Lessor shall pay to the Concurrent Lessee an amount equal to the Rent Rebate

in respect of the Concurrent Lease. Upon the payment of such amount, the related Concurrent Lease of such Leased Asset will be deemed to have been terminated without the need for any further action. Upon payment of such amount, any incorrectness in any representation or warranty or covenant by the Lessor with respect thereto shall be deemed to have been rectified.

2.11 Termination Rights

Either the Concurrent Lessee or the Lessor may terminate any Concurrent Lease at the end of each calendar year by notice in writing. Upon such termination, in the event Prepaid Rent was paid in respect of the Concurrent Lease, the Lessor shall be obligated to pay the Rent Rebate in respect thereof and shall have a period of up to 180 days to negotiate a repayment schedule with the Concurrent Lessee. Upon payment in full of the Rent Rebate, the related Concurrent Lease of such Leased Asset will be deemed to have been terminated without the need for any further action.

2.12 Intentionally Deleted

2.13 Liquidated Leases

The parties acknowledge that the Servicer is obligated and exclusively entitled, in accordance with this Agreement, to enforce a defaulted Lease by using its normal practices to take actual possession of and sell the Leased Assets forming the subject matter of such Lease and, if necessary, by enforcing the related Rights. The Servicer shall also be entitled to purchase such Leased Assets for a price deemed by the Servicer to be reasonable for such Leased Assets. Upon the Servicer's enforcement in respect of the Leased Assets which are subject to a Concurrent Lease, the Concurrent Lessee shall, subject to the following sentence, require the Lessor to terminate the related Concurrent Lease. The Concurrent Lease shall be terminated with respect to such Leased Assets, as of the date on which the Servicer completes the sale of the Leased Assets to a purchaser thereof. Upon such termination, the Lessor shall be obligated to pay to the Concurrent Lessee, on the date such sale is effected, as a refund of a portion of the Prepaid Rent and, if applicable, the Initial Additional Term Prepaid Rent paid by the Concurrent Lessee in respect of such Leased Assets by payment to the Collections Account, the liquidation proceeds from the related Leased Assets and any recoveries against the related Obligor received by the Servicer, and recourse against the Lessor shall be limited to the liquidation proceeds from the related Leased Assets and recoveries against the related Obligor received by the Servicer, and the Lessor irrevocably directs the Servicer to apply such amounts as Collections in accordance with Article 3.

2.14 Sale of Leased Assets

Each party hereto acknowledges that the Servicer may, in accordance with the terms of the related Lease, allow other Persons to purchase the Leased Assets that are subject to a Concurrent Lease hereunder prior to the expiry of a Concurrent Lease. If Leased Assets that are subject to a Concurrent Lease hereunder are sold at any time, then the Concurrent Lease shall be terminated with respect to such Leased Assets as of the date on which the Servicer completes the sale of the Leased Assets to a purchaser thereof. Upon any such termination where the purchaser is the Obligor, the Lessor shall be obligated to pay to the Concurrent Lessee a refund of a portion of the Prepaid Rent and, if applicable, the Initial Additional Term Prepaid Rent paid by the Concurrent Lessee in respect of such Leased Assets, by payment into the Collections Account of the proceeds of the sale of the Leased Assets on the date such sale is effected. Upon any such termination where the purchaser is not the Obligor, the Lessor shall be obligated to pay to the Concurrent Lessee a refund of a portion of the Prepaid Rent and, if applicable, the Initial Additional Term Prepaid Rent paid by the Concurrent Lessee in respect of such Leased Assets, by payment to the Concurrent Lessee of an amount equal to the Rent Rebate relating to such Concurrent Lease on the date such sale is effected. The Servicer will not agree to any purchase of Leased Assets that would result in the termination of a Concurrent Lease, including without

limitation as part of a transaction that involves an Obligor agreeing to lease new Approved Equipment under a new lease, without first obtaining the consent of the Concurrent Lessee.

## **Article 3 - APPLICATION OF COLLECTIONS**

### **3.1 Settlement Procedures**

Collections of the Leases subject to Concurrent Leases shall be administered by the Servicer in accordance with the terms of this Agreement. The Lessor shall provide to the Servicer (if other than the Lessor) on a timely basis all information needed for such administration, including notice of the occurrence of any Amortization Event. The Servicer will allocate Collections received from each Obligor in accordance with the Credit and Collection Policies. On each Settlement Date, Collections for the related Collection Period with respect to each Lease subject to a Concurrent Lease, will be applied as follows:

- (a) first, during an Amortization Period only, to the Servicer, the Servicing Fee or following a Servicer Termination Event, to the Replacement Servicer, if any, the Replacement Servicer Fee, in each case to the extent allocable to such Lease;
- (b) second, to be retained by the Concurrent Lessee, the Concurrent Lessee's Proportionate Share of any Collections in respect of the Lease; and
- (c) third, to the Lessor, the remainder as Deferred Rent.

## **Article 4 - REPRESENTATIONS AND WARRANTIES**

### **4.1 Representations and Warranties of the Lessor**

The Lessor represents and warrants to the Concurrent Lessee as of the date hereof and as of each Closing Date (except as otherwise specified below) that:

- (a) it is (i) a trust validly existing under the laws of the Province of Ontario; and (ii) duly qualified to carry on business in each jurisdiction in which the failure to be so qualified would reasonably be expected to have a Material Adverse Effect;
- (b) it has full power and capacity to enter into this Agreement and to do all acts and things as are required or contemplated of it hereunder and thereunder;
- (c) it has taken all necessary action to authorize the execution, delivery and performance of this Agreement and to do all acts and things as are required or contemplated of it hereunder and thereunder;
- (d) there are no actions, suits or proceedings pending or to the knowledge of any officer of the Lessor, threatened against or affecting the Lessor or any of its undertakings and assets at law, in equity or before any arbitrator or before or by any governmental department, body, commission, board, bureau, agency or instrumentality having jurisdiction in the premises in respect of which there is a reasonable possibility of a determination adverse to the Lessor which would reasonably be expected to have a Material Adverse Effect and the Lessor is not in default in respect of any applicable law, rule, regulation, order, judgment, injunction, award or decree as a result of which a Material Adverse Effect would reasonably be expected to occur;
- (e) this Agreement has been duly executed and delivered by the Lessor and constitutes a legally binding obligation of the Lessor enforceable against it in accordance with its terms, subject to applicable bankruptcy, reorganization, insolvency, moratorium or other

laws affecting creditors' rights generally and to equitable principles of general application (regardless of whether enforcement is sought in a proceeding at law or in equity);

- (f) the execution and delivery of this Agreement and compliance with its terms and conditions will not (i) result in a violation of the constating documents or by-laws of the Lessor; (ii) result in a violation of any applicable law, rule, regulation, order, judgment, injunction, award or decree; (iii) result in a breach of, or constitute a default under, any loan agreement, indenture, trust deed or any other agreement or instrument to which the Lessor is a party or by which it is bound which would reasonably be expected to have a Material Adverse Effect; or (iv) require any approval or consent of, or any notice to or filing with, any Governmental Authority or agency having jurisdiction except such as has already been given, filed or obtained, as the case may be;
- (g) no default has occurred and is outstanding under any loan agreement, indenture, trust deed or any other agreement or instrument to which the Lessor is a party or by which it is bound which would reasonably be expected to have a Material Adverse Effect;
- (h) its principal place of business, chief executive office and registered office are located at the address set forth under its name on the signature pages hereto and the offices where it keeps all Records held by it are located at the addresses set out in Schedule "B" hereto or such other addresses as the Lessor shall from time to time notify the Concurrent Lessee;
- (i) it is not a non-resident of Canada within the meaning of the ITA;
- (j) the Lessor has delivered to the Concurrent Lessee all financial information received by the Lessor in respect of each Eligible Asset;
- (k) all federal, provincial and local and foreign national, state, provincial, regional and local and all other tax returns of the Lessor required by applicable law to be filed have been duly filed, and all federal, provincial and local and foreign national, state, provincial, regional and local and all other taxes, assessments and other governmental charges or levies upon the Lessor and its property, income, profits and assets which are due and payable have been paid. The charges, accruals and reserves on the books of the Lessor in respect of federal, provincial and local taxes and foreign national, state, provincial, regional and local taxes for all fiscal years and portions thereof since the organization of the Lessor, are in the judgment of the Lessor adequate in all material respect;
- (l) all written information, reports, certificates, financial statements and other papers and data produced by or on behalf of the Lessor and furnished to the Concurrent Lessee, including those in respect of Eligible Assets, were, at the time the same were so furnished, complete and correct in all material respects to the extent necessary to give the recipient a true and accurate knowledge of the subject matter, and, no fact is known to the Lessor which has had, or could reasonably be expected to in the future have, a Material Adverse Effect;
- (m) the Lessor is not an "Insolvent Person" as defined in the *Bankruptcy and Insolvency Act* (Canada), and shall not have unreasonably small capital to carry out its businesses as conducted or as proposed to be conducted;
- (n) each Lease Asset in respect of which the related Equipment is offered to be concurrently leased to the Concurrent Lessee hereunder is an Eligible Asset as of the Cut-Off Date; and
- (o) no Amortization Event or Servicer Termination Event has occurred that is continuing.

#### 4.2 Representations and Warranties of the Concurrent Lessee

The Concurrent Lessee represents and warrants to the Lessor as of the date hereof that:

- (a) the Concurrent Lessee is (i) a trust company duly organized and validly existing under the *Trust and Loan Companies Act* (Canada); and (ii) duly qualified to carry on business in each jurisdiction in which the failure to do so would reasonably be expected to have a Material Adverse Effect;
- (b) the Concurrent Lessee has full power and capacity to enter into this Agreement and to do all acts and things as are required or contemplated of it hereunder;
- (c) the Concurrent Lessee has taken all necessary action to authorize the execution, delivery and performance of this Agreement and to do all acts and things as are required or contemplated of it hereunder;
- (d) there are no actions, suits or proceedings pending or to the knowledge of any officer of the Concurrent Lessee, threatened against or affecting the Concurrent Lessee or any of its undertakings and assets at law, in equity or before any arbitrator or before or by any governmental department, body, commission, board, bureau, agency or instrumentality having jurisdiction in the premises in respect of which there is a reasonable possibility of a determination adverse to the Concurrent Lessee which would reasonably be expected to have a Material Adverse Effect and the Concurrent Lessee is not in default in respect of any applicable law, rule, regulation, order, judgment, injunction, award or decree as a result of which a Material Adverse Effect would reasonably be expected to occur;
- (e) this Agreement has been duly executed and delivered by it and constitutes a legally binding obligation of the Concurrent Lessee enforceable against it in accordance with its terms, subject to applicable bankruptcy, reorganization, insolvency, moratorium or other laws affecting creditors' rights generally and to equitable principles of general application (regardless of whether enforcement is sought in a proceeding at law or in equity);
- (f) the execution and delivery of this Agreement and compliance with its terms and conditions will not (i) result in a violation of its constituting documents; (ii) result in a violation of any applicable law, rule, regulation, order, judgment, injunction, award or decree; (iii) result in a breach of, or constitute a default under, any loan agreement, indenture, trust deed or any other agreement or instrument to which the Concurrent Lessee is a party or by which it is bound which would reasonably be expected to have a Material Adverse Effect; or (iv) require any approval or consent of, or any notice to or filing with, any Governmental Authority or agency having jurisdiction except such as has already been given, filed or obtained, as the case may be; and
- (g) no default has occurred and is outstanding under any loan agreement, indenture, trust deed or any other agreement or instrument to which the Concurrent Lessee is a party or by which it is bound which would reasonably be expected to have a Material Adverse Effect.

#### 4.3 Survival

Representations, warranties and statements of the Lessor and the Concurrent Lessee (or any of them or of any of their respective officers) set forth herein have been relied upon by the Concurrent Lessee, shall not merge on the completion of the execution and delivery of this Agreement or on the completion of any Concurrent Lease and shall survive thereafter.

## Article 5 - COVENANTS

### 5.1 Delivery of Files and Records

The Servicer will hold the Records relating to the applicable Leased Assets on behalf of the Concurrent Lessee, and will provide a copy of such Records to the Concurrent Lessee upon request.

### 5.2 Further Assurances

- (a) Each of the Lessor and the Concurrent Lessee will from time to time make, do, execute, endorse, acknowledge and deliver or cause and procure to be made, done, executed, endorsed, acknowledged, filed, registered and delivered any and all further acts and assurances, including without limitation, any conveyance, deed, transfer, assignment or other instrument in writing as, in the opinion of either of such Persons, may be necessary or desirable to give effect to this Agreement and the transactions provided for in this Agreement and will take all such other action as may be required or desirable for more effectually and completely vesting all Rights acquired by the Concurrent Lessee.
- (b) Each of the Lessor and Concurrent Lessee from the period commencing on the Closing Date until the termination of this Agreement, shall maintain in force insurance coverage in areas and amounts customary for its industry.

### 5.3 General Covenants of the Lessor

The Lessor covenants with the Concurrent Lessee:

- (a) to preserve and maintain its existence, rights, franchises and privileges and to qualify and remain qualified to carry on business in each jurisdiction in which the failure to do so would reasonably be expected to have a Material Adverse Effect;
- (b) to not, except as expressly permitted herein (i) sell, assign (by operation of law or otherwise) or dispose of any part of the Leased Assets; (ii) take any action which may cause the validity, effectiveness or enforceability of the Leased Assets or the related Rights to be impaired; or (iii) take or omit to take any action which may cause an Adverse Claim to attach or extend to or otherwise burden any part of the Leased Assets;
- (c) to comply with all laws (including, without limitation, privacy laws) rules, regulations, orders, judgments, injunctions, awards or decrees applicable to the Lessor or the Leased Assets except where the failure to do so would not reasonably be expected to have a Material Adverse Effect;
- (d) to promptly notify the Concurrent Lessee at least twenty (20) Business Days prior to changing its name from that which is stated in its constating documents;
- (e) to promptly notify the Concurrent Lessee at least twenty (20) Business Days prior to changing the jurisdiction in which its principal place of business, chief executive office or registered office is located;
- (f) to promptly notify the Concurrent Lessee of any amendment, limitation or restriction of any license issued to the Lessor by a regulatory authority relating to the carrying on by the Lessor of its business if such amendment, limitation or restriction would have a Material Adverse Effect;

- (g) to notify the Concurrent Lessee forthwith of the occurrence of any Amortization Event or Servicer Termination Event or of any event which, with the giving of notice of the passage of time, or both, could become an Amortization Event or Servicer Termination Event;
- (h) to not amend or waive the Credit and Collection Policies without the prior written consent of the Concurrent Lessee;
- (i) to not establish or maintain a defined benefit pension plan;
- (j) to make notations in its books, records, documents and instruments relating to the Leased Assets to evidence the interest of the Concurrent Lessee therein; and
- (k) to timely and fully perform and comply with all material terms, covenants and other provisions of the contracts relating to the Leased Assets, including without limitation the Leased Assets, required to be performed by and observed by the Lessor thereunder.

#### 5.4 Amendments to Definition of Eligible Asset

If, at any time, the Concurrent Lessee determines, acting reasonably, that there has been a material change in the information contained in a Portfolio Report from the information contained in any previous Portfolio Report, then the Concurrent Lessee may elect by notice to the Lessor to amend the definition of Eligible Asset so that it contains one or more of the following additional requirements:

- (a) in respect of which there is a parts and labor warranty on the related Leased as issued by a third party insurer that is approved in writing by the Concurrent Lessee (acting reasonably) or the Lessor has otherwise made arrangements with a third party (other than the Obligor or the Lessor) to ensure that any repair and servicing of the related Approved Equipment is conducted and completed as required from time to time; and
- (b) if the Lease is a Low Value Lease, the Outstanding Balance of such Lease, together with the Outstanding Balance of all Leases relating to Leased Assets that are Low Value Leases, does not exceed 35% of the Outstanding Balance of all Leased Assets at such time;

and the definition of Eligible Asset will be deemed to have been amended from the time of delivery of notice of any such election by the Concurrent Lessee to the Lessor.

## **Article 6 - SERVICING OF PORTFOLIO**

#### 6.1 Appointment of the Lessor as Servicer

- (a) The Concurrent Lessee hereby appoints the Servicer to be its exclusive agent for the purposes of servicing the Leased Assets as set out in this Article 6 (it being acknowledged that the Concurrent Lease made hereunder is made on a fully-serviced basis in accordance with this Agreement) and the Lessor hereby accepts such appointment.
- (b) The Lessor may subcontract with a subservicer or sub-originator, provided that such subservicer or sub-originator shall be approved by the Concurrent Lessee acting reasonably, for the servicing or subservicing of the Leased Assets; provided, however, that the Lessor will remain liable to the Concurrent Lessee for the performance of the duties and obligations so subcontracted and all other duties and obligations of the Lessor set forth in this Article 6.

(c) Except as provided hereunder, the Servicer shall have the exclusive right to service the Leased Assets and the Concurrent Lessee shall not contact any Obligor or inform any Obligor of its interests in the Leased Assets or otherwise take any steps to modify any Leased Assets.

## 6.2 Servicing of Leased Assets

During the term of this Agreement, unless a Replacement Servicer is designated by the Concurrent Lessee pursuant to Section 7.2, the Lessor covenants to service the Leased Assets with reasonable care using that degree of skill and attention that it exercises with respect to comparable receivables that it services for itself and others and in accordance with the Credit and Collection Policies, and subject to and in accordance with the provisions of this Agreement. Without limiting the generality of the foregoing, the Lessor, unless a Replacement Servicer is designated by the Concurrent Lessee pursuant to Section 7.2, shall and covenants to:

- (a) deposit Collections to the Collections Account (which will, until remitted, be held in trust for the Concurrent Lessee) in respect of such Settlement Period in accordance with Section 6.3;
- (b) hold the Records in trust for the Concurrent Lessee and at any time and from time to time during regular business hours permit the Concurrent Lessee, its agents or representatives upon five (5) Business Days' prior notice to (i) examine and make copies of all such Records in the possession (or under the control) of the Lessor; and (ii) visit the offices and properties of the Lessor for the purpose of examining such Records and discussing matters relating to the Leased Assets and the Lessor's performance under the Leased Assets or hereunder with any of the Lessor's officers or employees having knowledge of such matters;
- (c) maintain and implement prudent and reasonable administrative and operating procedures (including an ability to recreate the Records in the event of the destruction of the originals thereof) and keep and maintain all books, records, documents and other information reasonably necessary or advisable for the identification and collection of the Leased Assets (including records adequate to permit all collections of and reductions or adjustments);
- (d) timely and fully perform and comply with all terms, covenants and other provisions of the Leased Assets required to be performed and observed by it or the Concurrent Lessee;
- (e) comply in all respects with the Credit and Collection Policies in regard to each Leased Asset;
- (f) not, without the prior written consent of the Concurrent Lessee, make any change in the Credit and Collection Policies;
- (g) not extend, amend or otherwise modify or waive any term or condition of any Leased Asset unless permitted in accordance with the terms of the Credit and Collection Policies;
- (h) use its commercially reasonable efforts to collect all Receivables payable in respect of the Leased Assets in accordance with all applicable laws, rules and regulations, the provisions hereof and the Credit and Collection Policies;
- (i) make all payments payable by it to government agencies and others where a statutory lien or deemed trust might arise having priority over the Concurrent Lessee's interest in any part of the Leased Assets; provided that the Lessor may protest the payment of any such amounts if it is acting in good faith and it either provides the Concurrent Lessee with

cash in an amount sufficient to satisfy the same or otherwise satisfies the Concurrent Lessee, acting reasonably, that its interests are not prejudiced thereby;

- (j) as soon as possible, effect all filings or recordings with respect to the Concurrent Lessee's interest in all Rights necessary by law or reasonably prudent or desirable for the perfection and protection of such interest and all appropriate renewals or amendments thereof;
- (k) promptly, from time to time, furnish to the Concurrent Lessee such documents, records, information or reports in respect of the Leased Assets or the conditions or operations, financial or otherwise, of the Lessor as may be in existence in written form or, if available in databases maintained by the Lessor, as may be produced with existing software as the Concurrent Lessee may from time to time reasonably request;
- (l) If the Delinquency Rate calculated in respect of Low Value Leases that are Leased Assets exceeds, for any Reporting Period and the two (2) immediately preceding Reporting Periods, 10% (the amount of any excess being the **Excess LV Delinquencies**), the Lessor shall pay to the Concurrent Lessee, for each Reporting Period (that is, each calendar month) during which such excess exists, an amount equal to \$2,500 (the **Excess LV Delinquencies Reimbursement**), which shall represent a reimbursement for the Concurrent Lessee for the costs incurred by the Concurrent Lessee with respect to the monitoring, analyzing and reporting on the Excess LV Delinquencies. The Lessor and the Concurrent Lessee hereby agree that any such Excess LV Delinquencies Reimbursement is not and shall not be deemed to be a penalty or a fee in any way, but a true representation of the costs that the Concurrent Lessee shall incur in respect of the monitoring, analyzing and reporting on the Excess LV Delinquencies.

For greater certainty, an Excess LV Delinquencies Reimbursement may be payable by the Lessor to the Concurrent Lessee for the same Reporting Period.

- (m) on or before each Reporting Date, prepare and deliver to the Concurrent Lessee a Portfolio Report relating to the Receivables payable in respect of the Leased Assets as of the close of business on the last day of the immediately preceding Collection Period; and
- (n) to monitor the level of complaints arising from the Leased Assets received by it and take commercially reasonable steps to address such complaints. If, at any given time, the level of unresolved complaints exceeds 1% (being the percentage of active Obligors with unresolved complaints to total active Obligors) or if the level of total complaints (whether resolved or not) exceeds 5% (as the percentage of active Obligors who have made a complaint to total active Obligors), such excess shall be reported to the next meeting of the board of directors of Crown Crest Capital Management Corp. for a discussion on required management actions in respect of the interests of the Obligors.

#### 6.3 Deposit of Collections

All Collections shall be deposited by the Servicer in the Collections Account within two (2) Business Days of the date of receipt by the Servicer (or, in the case of Deemed Collections, on the date of deemed receipt).

#### 6.4 Power of Attorney

The Concurrent Lessee hereby constitutes and appoints the Servicer the true and lawful attorney of the Concurrent Lessee, with full power of substitution, to execute, deliver and register, for and on behalf of and in the name of the Concurrent Lessee, such documents, instruments or

agreements which may be necessary or desirable to enable the Servicer to perform its obligations set out in this Agreement. The Servicer agrees that it will not exercise such power of attorney for any other purpose whatsoever. Such power of attorney is coupled with an interest.

#### 6.5 Deemed Collections

If, on any day prior to the date on which both the Concurrent Lessee's Investment and the Additional Term Investment are reduced to nil, any Receivable payable in respect of any Leased Asset (i) is extended by the Lessor beyond its original term in a manner inconsistent with the Credit and Collection Policies, (ii) has its Scheduled Payment or any other regularly scheduled payment to be made by the Obligor during the Additional Term reduced by the Lessor in a manner inconsistent with the Credit and Collection Policies, (iii) is reduced or cancelled as a result of any breach by the Lessor of the terms of such Leased Asset, (iv) is reduced or cancelled as a result of a set-off in respect of any claim by the applicable Obligor against the Lessor or the Concurrent Lessee other than as a result of an act or omission of the Concurrent Lessee (whether such claim arises out of the same or a related transaction or an unrelated transaction), (v) is reduced to reflect any adjustment for returns, billing errors, NSF cheques, fraudulent charges and similar payment reconciliations, (vi) is otherwise reduced or cancelled by the Lessor or any subservicer, or (vii) if any fine, penalty, sanction, order or other liability is imposed upon or determined against any of the Lessor, the Concurrent Lessee or any Originator in connection with or relating to any Leased Asset, the Lessor shall be deemed to have received for the Concurrent Lessee's account on the last day of the Collection Period during which such day occurred, a Collection of such Receivable in the amount of such reduction or cancellation, and shall deposit to the Collections Account on the immediately following Settlement Date such amount.

#### 6.6 Payment Terms

- (a) All amounts to be paid or deposited by the Lessor, the Replacement Servicer or the Concurrent Lessee hereunder will be paid or deposited on the day when due in same day funds.
- (b) The Lessor will make all payments required to be made hereunder without deduction or set-off (except as expressly permitted hereunder) regardless of any defense or counterclaim.

### **Article 7 - SERVICER TERMINATION**

#### 7.1 Servicer Termination Events

The happening of any of the following shall constitute a Servicer Termination Event hereunder:

- (a) The Lessor defaults in the payment of any amount due to the Concurrent Lessee hereunder and such default remains unremedied for a period of three (3) Business Days after written notice of such default has been given to the Lessor;
- (b) The Lessor defaults in the observance or performance in any manner of any of its covenants or obligations contained in this Agreement in any material respect (other than those obligations referred to in paragraph (a) above) and, if such default is capable of rectification and remains unremedied for a period of thirty (30) days after the earlier of (i) the date on which written notice of such default has been given to the Lessor by the Concurrent Lessee and (ii) the date on which the Lessor has actual notice of such default;

- (c) any representation or warranty made by the Lessor in or pursuant to this Agreement proves to have been false or incorrect when made in any material respect, and, if the circumstances giving rise to such incorrect representation or warranty are capable of rectification, such representation or warranty remains uncorrected for a period of 30 days after the earlier of (i) the date on which written notice has been given to the Lessor by the Concurrent Lessee specifying the incorrectness and demanding that the circumstances giving rise thereto be rectified and (ii) the date on which the Lessor had actual knowledge of such incorrectness; or
- (d) an Insolvency Event shall occur in respect of the Lessor.

#### 7.2 Designation of Replacement Servicer

- (a) If a Servicer Termination Event has occurred and is continuing, the Concurrent Lessee may designate a Replacement Servicer to succeed the Lessor with respect to the Leased Assets on such terms as it may consider reasonable, provided that any such Person so designated shall agree to perform the duties and obligations of the Lessor provided for in Article 6.
- (b) Upon the appointment of a Replacement Servicer pursuant to Section 7.2(a), the Lessor will, on demand and at its expense: (i) assemble all Records and make them available to the Replacement Servicer; (ii) notify all Obligors (x) of the sale, assignment and transfer to the Concurrent Lessee of the Leased Assets; and (y) to remit all payments due under such Leased Assets to the Replacement Servicer; and (iii) segregate, in a manner reasonably acceptable to the Concurrent Lessee, all cash, cheques and other instruments constituting Collections which are received by it from time to time and remit the same to the Replacement Servicer duly endorsed or with duly executed instruments of transfer, if applicable.

#### 7.3 Replacement Servicer Fee

A Replacement Servicer appointed pursuant to Section 7.2 shall be entitled to a reasonable fee for services rendered, such fee to be determined by the Concurrent Lessee with the Replacement Servicer to a maximum, in respect of any Collection Period, of 15% of the Collections remitted to the Collections Account during such Collection Period (the **Replacement Servicer Fee**). Such Replacement Servicer Fee and any out-of-pocket expenses incurred by the Replacement Servicer in connection with its duties as Replacement Servicer, together with any applicable Sales Taxes, shall be payable to the Replacement Servicer in accordance with this Agreement.

#### 7.4 Leased Assets

If a Servicer Termination Event has occurred and is continuing, the legal right, title and interest to any Leased Assets related to any Leased Asset which are held by the Lessor in trust for the Concurrent Lessee shall automatically transfer to the Concurrent Lessee upon notice from the Concurrent Lessee to the Lessor.

#### 7.5 Power of Attorney

- (a) The Lessor hereby grants to the Concurrent Lessee, to become effective immediately upon the occurrence of a Servicer Termination Event, an irrevocable power of attorney and hereby irrevocably appoints the Concurrent Lessee as the Lessor's attorney-in-fact, with full power of substitution, to take in the place and stead of and in the name of the Lessor or in the Concurrent Lessee's own name from time to time at the Concurrent Lessee's discretion, acting reasonably, such actions as the Lessor may be obligated to take hereunder or as the Concurrent Lessee may deem necessary or advisable to collect,

endorse, negotiate or otherwise realize on any Leased Asset including any related Receivable, any negotiable instrument, or any other right of any kind, held or owned by the Lessor and transferred, assigned or delivered to or received by the Concurrent Lessee as payment on account or otherwise in respect of any of the Leased Assets, including:

- (i) to evidence or protect the Concurrent Lessee's interest in the Leased Assets and to execute and file, in the Lessor's name and on the Lessor's behalf, such recording, registration, financing or similar statements (including any amendments, renewals and continuation statements) under applicable laws;
- (ii) to ask, demand, collect, sue for, recover, compound, receive and give acquittances and receipts for moneys due and to become due in connection with the Receivables or otherwise owed to the Concurrent Lessee;
- (iii) to receive, endorse and collect any cheques, drafts or other instruments, documents and chattel paper in connection with moneys due and to become due in connection with the Receivables forming part of the Leased Assets or otherwise owed to the Concurrent Lessee;
- (iv) to file any claims or take any action or institute any proceedings that the Concurrent Lessee may deem to be necessary or desirable for the collection of any Receivable; and
- (v) to prepare, execute, deliver, and/or register in the Lessor's name and on the Lessor's behalf, such instruments and documents (including assignments) necessary or desirable in furtherance of the foregoing.

(b) The power of attorney granted hereby shall be expressly coupled with an interest in favour of the Concurrent Lessee. The powers of attorney and other rights and privileges granted hereby shall survive any dissolution, liquidation or winding-up of the Lessor.

## **Article 8 - CONDITIONS PRECEDENT**

### **8.1 Conditions to Effectiveness**

This Agreement shall become effective on the date hereof if the following conditions precedent have been satisfied or waived on or prior to such date and/or the Concurrent Lessee shall have received from the Lessor the following documents, in form and substance satisfactory to the Concurrent Lessee:

- (a) a certificate of an officer of the Lessor, dated the date hereof certifying (A) that attached thereto is a true and complete copy of the Certificate and Articles of Incorporation and any amendments thereto, and the by-laws of the Lessor, each as in effect on the date of such certificate; (B) that attached thereto is a true and complete copy of a resolution adopted by the Lessor's board of directors authorizing the execution, delivery and performance of this Agreement and the other Related Documents, and that such resolution has not been modified, rescinded or amended and is in full force and effect; and (C) as to the incumbency and true specimen signature of each of the Lessor's officers executing this Agreement or any of the Related Documents, on which certificate the Concurrent Lessee shall be entitled to conclusively rely until such time as the Concurrent Lessee receives from Lessor a replacement certificate meeting the requirements of this Section 8.1(a);

- (b) a certificate of compliance issued in respect of the Lessor in its jurisdiction of incorporation, and an equivalent certificate from the appropriate authority in each other jurisdiction in which qualification is necessary in order for the Lessor to own or lease its property and conduct its business, each to be certified as of a recent date;
- (c) executed copies of this Agreement and copies of the Credit and Collection Policies;
- (d) reports, satisfactory to the Concurrent Lessee acting reasonably, showing the results of searches conducted against the Lessor under applicable personal property security registers in the provinces where the Leased Assets are located, together with executed copies of all discharges or releases of prior security interests relating to Leased Assets that are then to be sold hereunder; provided that the Lessor may establish that any particular registration does not affect any such Leased Assets by delivering a letter or acknowledgment signed by the applicable secured party;
- (e) a copy of verifications statements or other filings filed in each relevant jurisdiction, that are sufficient to perfect the interests of the Concurrent Lessee as the first priority ownership interest in the Leased Assets as against creditors of the Lessor;
- (f) executed copies of all discharges and releases, if any, necessary to discharge or release all security interest and other rights or interest of any Person in the Rights, previously granted by or through the Lessor and which could constitute an Adverse Claim, together with, where applicable, copies of the relevant financing change statements or other discharge statements with the registration particulars stamped thereon; and/or appropriate intercreditor agreements with such other parties in form and substance as the Concurrent Lessee may require; and
- (g) such other approvals, opinions or documents as the Concurrent Lessee may reasonably request.

## **Article 9 - MISCELLANEOUS**

### 9.1 Amendments and Waivers

- (a) This Agreement may be amended, supplemented, modified, restated or replaced by written instrument only signed by the Lessor and the Concurrent Lessee.
- (b) No waiver of any provision of this Agreement, nor consent to any departure by any party therefrom, shall in any event be effective unless the same shall be in writing signed by such party, and then such waiver or consent shall be effective only in the specific instance and for the specific purpose for which given. No failure on the part of any party to exercise, and no delay in exercising, any right hereunder shall operate as a waiver thereof.

### 9.2 Binding Effect; Assignability

This Agreement shall be binding upon and enure to the benefit of the Lessor and the Concurrent Lessee, and their respective successors and assigns.

The Lessor shall not have the right to assign any interest herein without the consent of the Concurrent Lessee, provided however that the Lessor may grant a security interest in all or a portion of the Deferred Rent.

Each of the other parties hereto agrees that, upon such assignment, the assignee or its further assigns may enforce directly, without joinder of the original Concurrent Lessee, the rights set forth

in this Agreement. Each of the Lessor and the Concurrent Lessee agrees to grant to any such assignee or its further assigns or its agents such powers of attorney as may be necessary for the exercise of their rights hereunder.

### 9.3 Notices

Any notice, consent, request, agreement, approval, waiver or other communication required or permitted to be given or delivered hereunder shall, unless otherwise stated herein, be in writing (including photocopy, facsimile, electronic mail or other digital communication) and sent, as to each party hereto, at its address set forth under its name on the signature pages hereto, or at such other address as shall be designated by such party in a written notice to the other parties hereto. All such notices and communications shall be effective when sent.

### 9.4 Indemnification

- (a) The Lessor hereby agrees to indemnify the Concurrent Lessee and each of its directors, officers, employees, trustees, advisors and agents, and to save such Person harmless from and against any and all damages, losses, claims, liabilities, costs and expenses (including reasonable legal fees and disbursements) awarded against or incurred by any such Person arising out of or as a result of:
  - (i) any representation or warranty made or deemed to be made by the Lessor in any capacity (whether as Lessor, Servicer or otherwise) (or any of its officers) in or in connection with this Agreement, any of the Leased Assets, or any Related Document, which was incorrect in any material respect when made or deemed made or delivered;
  - (ii) the failure of the Lessor in any capacity (whether as Lessor, Servicer or otherwise) or any Originator to perform or observe any of its respective covenants, duties or obligations hereunder, in respect of or relating to any of the Leased Assets or under any of the Related Documents;
  - (iii) any claim made against the Lessor in any capacity (whether as Lessor, Servicer or otherwise), the Lender or any Originator by any Obligor arising from, in connection with or relating to the performance of observance of any of the Lessor's or Originator's respective covenants, duties or obligations hereunder, in respect of or relating to any of the Leased Assets or under any of the Related Documents;
  - (iv) the failure to vest in and maintain vested in the Concurrent Lessee, the beneficial interest of the Lessor in and to the Leases relating to the Leased Assets and related Collections which are, or are intended to be transferred to the Concurrent Lessee hereunder, free and clear of any Adverse Claim (whether existing at the time of the Concurrent Lease thereof or arising at any time thereafter);
  - (v) the failure by the Lessor in any capacity (whether as Lessor, Servicer or otherwise) to comply with any applicable law, rule, regulation, order, judgment, injunction, award or decree with respect to any part of the Leased Assets, or the non-conformity of any Leased Asset with any applicable law, rule, regulation, order, injunction, award or decree; and
  - (vi) any fine, penalty, sanction, order, or other liability imposed upon or determined against any of the Lessor in any capacity (whether as Lessor, Servicer or otherwise) the Lender or any Originator by any Governmental Authority in connection with or relating to any Leased Asset;

- (b) The Lessor shall not be liable to the Concurrent Lessee hereunder for any damages, losses, claims, liabilities, costs or expenses resulting solely from the failure of any Obligor to discharge its payment obligations (except as specifically provided in Section 9.4(a)).
- (c) The Lessor and the Concurrent Lessee each agree to provide reasonable assistance to the other party, at the request of such other party and, in either case, at the Lessor's expense, in any action, suit or proceeding brought by or against, or any investigation involving such requesting party relating to any of the transactions contemplated hereby or to any part of the Leased Assets. If the Lessor has acknowledged its liability under Section 9.4(a) in respect of any damages, losses, claims, liabilities, costs or expenses in connection with any such action, suit, proceeding or investigation, and, in the sole determination of the Concurrent Lessee, acting reasonably, the Lessor has the financial ability to pay such damages, losses, claims, liabilities, costs and expenses, the Lessor will have the right, on behalf of the Concurrent Lessee but at the Lessor's expense, to defend such action, suit or proceeding, or participate in such investigation, with counsel selected by it, and will have sole discretion as to whether to litigate, appeal or settle.
- (d) The obligations of the Lessor under this Section 9.4 will survive this Agreement and remain in full force and effect for a period up to and including the date that is six years from the Final Collection Date.

#### 9.5 Time of Essence

Time will be of the essence of this Agreement.

#### 9.6 Failure to Perform

If the Lessor fails to perform any of its agreements or obligations hereunder, the Concurrent Lessee may (but will not be required to) itself perform, or cause to be performed, such agreement or obligation at, in the case of any such failure to perform by the Lessor, the cost of the Lessor.

#### 9.7 Confidentiality

Each party hereto will maintain on a confidential basis (except as otherwise permitted hereunder or as required by applicable law) all information relating to the other party provided to it hereunder by the other parties; provided, however, that this Section shall not apply to any information which (i) was lawfully in the public domain at the time of communication to the first party, (ii) lawfully enters the public domain through no fault of the first party subsequent to the time of communication to the first party, (iii) was lawfully in possession of the first party free of any obligation of confidence at the time of communication to the first party, (iv) was lawfully communicated to the first party free of any obligation of confidence subsequent to the time of initial communication to the first party or (v) was lawfully communicated to any Person free from any obligation of confidence subsequent to the time of communication to the first party.

#### 9.8 Further Assurances

The parties hereto agree, from time to time, to enter into such further agreements and to execute all such further instruments as may be reasonably necessary or desirable to give full effect to the terms of this Agreement and to the ability of the Concurrent Lessee to exercise or enforce any of its rights and remedies hereunder.

#### 9.9 Remedies

The remedies herein provided are cumulative and not exclusive of any remedies provided at law.

#### 9.10 Execution in Counterparts

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

[The signature pages follow.]

IN WITNESS WHEREOF the parties hereto have executed this Agreement as of the date first above written.

**CROWN CREST FUNDING CORP., in its capacity as  
trustee of CROWN CREST CAPITAL TRUST, as Lessor  
and Servicer**

By: 

Name: LYUDMILA KREMKER

Title: PRESIDENT

Address: 1201-200 Yorkland Street  
Toronto, ON M2J 5C1

Attention: President and CEO

Fax No.: 647-846-7475

**PEOPLES TRUST COMPANY, as Concurrent Lessee**

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

Name:

Title:

Address: 1400-888 Dunsmuir Street  
Vancouver, BC V6C 3K4

Attention:

With a copy to General Counsel and  
Executive VP & Chief Financial Officer

Fax No.: 604-331-3469

IN WITNESS WHEREOF the parties hereto have executed this Agreement as of the date first above written.

**CROWN CREST FUNDING CORP., in its capacity as  
trustee of CROWN CREST CAPITAL TRUST, as Lessor  
and Servicer**

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

Name:

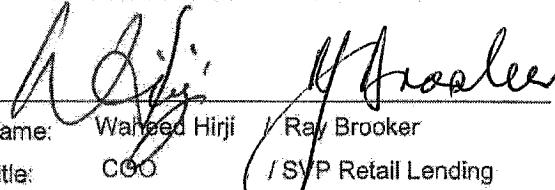
Title:

Address: 1201-200 Yorkland Street  
Toronto, ON M2J 5C1

Attention: President and CEO

Fax No.: 647-846-7475

**PEOPLES TRUST COMPANY, as Concurrent Lessee**

By: 

Name: Waheed Hirji / Ray Brooker

Title: COO / SVP Retail Lending

Address: 1400-888 Dunsmuir Street  
Vancouver, BC V6C 3K4

Attention:

With a copy to General Counsel and  
Executive VP & Chief Financial Officer

Fax No.: 604-331-3469

**SCHEDULE "A"**  
**FORM OF CONCURRENT LEASE NOTICE**

**To: Peoples Trust Company ("Concurrent Lessee")**

**Re: Concurrent Lease Agreement** dated as of May 29, 2019 among Concurrent Lessee and the undersigned (the "Concurrent Lease Agreement")

The undersigned hereby gives notice of a concurrent lease pursuant to Section 2.1 of the Concurrent Lease Agreement as follows:

Closing Date:

Cut-Off Date:

Leased Assets: Attached Schedule A

The undersigned hereby represents and warrants that the Lease Assets described in the attached Schedule A are Eligible Assets as of the related Cut-off Date. The undersigned further confirms that all representations and warranties of the Lessor contained in the Concurrent Lease Agreement are true and correct, no Servicer Termination Event has occurred that is continuing, and the Lessor is in compliance with all covenants under the Concurrent Lease Agreement.

Capitalized terms used and not defined in this Concurrent Lease Notice have the meanings set forth in the Concurrent Lease Agreement.

**CROWN CREST FUNDING CORP.**, in its capacity as trustee of **CROWN CREST CAPITAL TRUST**, as Lessor and Servicer, by its authorized agent, **CROWN CREST CAPITAL MANAGEMENT CORP.**

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

Name:

Title:

Accepted:

**PEOPLES TRUST COMPANY**, as Concurrent Lessee

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

Name:

Title:

Schedule A to Concurrent Lease Notice – Attach list of Lease Assets

**SCHEDULE "B"**

**LESSOR'S ADDRESSES**

Location of Records:

1201-200 Yorkland Street  
Toronto, ON M2J 5C1

**SCHEDULE "C"**  
**FORM OF PORTFOLIO REPORT**

(Form attached.)

**CROWN CREST CAPITAL TRUST**

as Lessor and Servicer

and

**PEOPLES TRUST COMPANY**

as Concurrent Lessee

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**SECOND AMENDED AND RESTATED CONCURRENT LEASE AGREEMENT**

April 15, 2019

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## SECOND AMENDED AND RESTATED CONCURRENT LEASE AGREEMENT

**CONCURRENT LEASE AGREEMENT**, dated as of April 15, 2019 (this **Agreement**), between **Crown Crest Funding Corp.** (the **Trustee**), in its capacity as trustee of **Crown Crest Capital Trust**, a duly formed and validly existing trust under the laws of the Province of Ontario (together with its successors and assigns, the **Lessor**) and **Peoples Trust Company**, a trust company existing under the laws of Canada (**Concurrent Lessee**).

**WHEREAS** the Lessor, the Concurrent Lessee and Simply Green Home Services Inc., as guarantor, entered into a Concurrent Lease Agreement made as of November 30, 2018 (the **Original Agreement**), pursuant to which the Lessor leases certain Leased Assets from time to time to the Concurrent Lessee and the Concurrent Lessee leases such Leased Assets from the Lessor;

**AND WHEREAS** the Lessor and the Concurrent Lessee amended and restated the Original Agreement, including by removing Simply Green Home Services Inc. as guarantor, by an Amended and Restated Concurrent Lease Agreement made as of December 31, 2018 (the **Amended and Restated Agreement**).

**AND WHEREAS** the Lessor and the Concurrent Lessee wish to further amend and restate the Amended and Restated Agreement on and subject to the terms and conditions of this Agreement.

**NOW THEREFORE THIS AGREEMENT WITNESSES** that in consideration of the mutual covenants and agreements of the parties herein contained, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereto agree as follows:

### Article 1 - DEFINITIONS AND PRINCIPLES OF INTERPRETATION

#### 1.1 Definitions

Words with initial capital letters in this Agreement (including the above recitals) shall have the meanings set out below:

**Additional Term** means, in respect of a Concurrent Lease, the balance, if any, of the remaining term of the related Lease after the Lease End Date, less one day; provided that the balance of the remaining term may not exceed the lesser of (i) the remaining useful life of the applicable Lease Asset and (ii) 15 months.

**Additional Term Investment** means, on any day, the Initial Additional Term Prepaid Rent less (i) the sum of all amounts paid to the Concurrent Lessee on account of the Concurrent Lessee's Proportionate Share in respect of the Additional Term, less (ii) any Funding Costs allocable to the Additional Term Investment, less (iii) the Rent Rebate allocable to the Additional Term Investment paid by the Lessor in respect of all Concurrent Leases that are ATPR Leases terminated from time to time.

**Administrative Costs** means, in respect of any Lease, all late fees, extension fees and other administrative or similar costs, charges and expenses billed to the applicable Obligor in accordance with the Lessor's customary practice and approved by the Concurrent Lessee, acting reasonably.

**Advance Rate** means 90%.

**Adverse Claim** means a security interest, lien, charge, encumbrance or other right or claim, including any filing or registration made in respect thereof, of or through any Person (other than the Concurrent Lessee).

**Agreement** means this agreement, together with the schedules hereto, as the same may be amended, supplemented, modified, restated or replaced from time to time, and the expressions **hereof, herein, hereunder, and hereby** and similar expressions refer to this agreement and not to any specific article, section, paragraph, subparagraph or clause hereof.

**Amortization Event** means the occurrence of any of the following events:

- (a) on any Reporting Date as of the end of the related Collection Period, either:
  - (i) the Average Delinquency Rate exceeds 6.5%;
  - (ii) the Average Loss Rate exceeds 2.75%; or
- (b) a Servicer Termination Event.

**Amortization Period** means the period commencing on the date of occurrence of an Amortization Event and ending on the earlier of (i) the date such Amortization Event is waived by the Concurrent Lessee, in its sole discretion, and (ii) the date on which no further amounts are payable to the Concurrent Lessee hereunder.

**Approved Equipment** shall mean storage water heaters, tankless water heaters, water filtration and/or treatment systems, Heating Recovery Ventilation ('HRV') and/or High-efficiency particulate arrestance ('HEPA') systems, furnace and air conditioning ('HVAC') equipment and boiler systems, smart home products as well as such other types or classes of consumer equipment as may be agreed to by the Lessor and approved by the Concurrent Lessee in writing.

**ATPR Funding Rate** means, in respect of a Concurrent Lease and a Settlement Period, an annual interest rate equivalent to the average of BMO Prime for the 30 days in effect prior to each Closing Date plus 1.7% per annum, provided that from and after each 5th anniversary of the date of this Agreement, BMO Prime for the related Concurrent Leases and the calculation Funding Costs shall be adjusted to BMO Prime in effect on such 5th anniversary plus 1.7% per annum

**ATPR Scheduled Leases** means the Leases, the related Approved Equipment of which is the subject of a Concurrent Lease at such time, designated by the Lessor to the Concurrent Lessee by notice in writing on the date of this Agreement, as such schedule may be amended by the Lessor on any Settlement Date, provided that, for greater certainty, to the extent any Lease that is an ATPR Scheduled Lease ceases to be subject to a Concurrent Lease hereunder, such Lease shall thereafter cease to be an ATPR Scheduled Lease.

**Average Delinquency Rate** means for any Reporting Date, the arithmetic mean of the Delinquency Rates for each of the three Collection Periods immediately prior or (a) in the case of the first Reporting Date, the Delinquency Rate for the first Collection Period and (b) in the case of the second Reporting Date, the arithmetic mean of the Delinquency Rates for each of the two Collection Periods immediately prior.

**Average Loss Rate** means for any Reporting Date, the arithmetic mean of the Loss Rates for each of the three Collection Periods immediately prior or (a) in the case of the first Reporting Date, the Loss Rate for the first Collection Period and (b) in the case of the second Reporting Date, the arithmetic mean of the Loss Rates for each of the two Collection Periods immediately prior.

**Blocked Account Agreement** means the blocked account agreement entered into between the Trustee, the Lessor and The Toronto-Dominion Bank, as the same may be amended, restated, supplemented or replaced from time to time.

**BMO Prime** means, at any time, the posted "prime rate" of interest charged by Bank of Montreal for its commercial loans that are made in Canadian dollars.

**Business Day** means any day other than a Saturday, Sunday, or public holiday on which banks are required or permitted to be closed in the Province of Ontario or the Province of British Columbia.

**Charged-Off Asset** means any Lease (i) for which the Servicer has become aware that an Insolvency Event has occurred in respect of the related Obligor or (ii) that is or is required to be charged-off as uncollectible by the Servicer in accordance with the Credit and Collection Policies it being acknowledged that under the Credit and Collection Policies a Lease would be charged-off as uncollectible upon the Servicer becoming aware that an Insolvency Event had occurred in respect of the related Obligor; provided that a Lease will cease to be a Charged-Off Asset if all outstanding amounts are paid in full by the Obligor.

**Closing Date** means, in respect of a Concurrent Lease, the date specified as such in the applicable Concurrent Lease Notice.

**Collection Period** means a calendar month, provided that the initial Collection Period shall commence on the Cut-Off Date in respect of the initial Concurrent Lease and the final Collection Period shall end on (and include) the Final Collection Date.

**Collections** means without duplication (i) in respect of any Leased Asset, all cash collections and other cash proceeds in respect thereof and of the related Rights and Receivables (excluding Administrative Costs and Sales Taxes but including payments of rent, interest and principal) received after the applicable Cut-Off Date, (ii) any Deemed Collections in respect of such Leased Assets, and (iii) the net proceeds of any disposition of the related Leased Asset, except where the proceeds of disposition are payable directly to the Concurrent Lessee.

**Collections Account** means the account established and maintained in the name of the Lessor as the account owner at The Toronto-Dominion Bank (Branch ID: 14822, Account Number: 5293714) or such other account as is designated by notice to the Lessor as the Collections Account for the purposes hereof, which account shall at all times be subject to a Blocked Account Agreement in form and substance acceptable to the Concurrent Lessee.

**Concurrent Lease** means each concurrent lease of Approved Equipment entered into in accordance with Article 2.

**Concurrent Lease Entitlements** has the meaning ascribed thereto in Section 2.6.

**Concurrent Lease Notice** means the offer by the Lessor to lease Lease Assets to the Concurrent Lessee in the form attached hereto as Schedule "A".

**Concurrent Lessee's Proportionate Share** means, in respect of the Collections for a Lease, (i) for a Lease that is a ATPR Scheduled Lease, a percentage equal to the proportion of the Scheduled Payments plus all payments of escalations plus all regularly scheduled payments to be made by the Obligor during the Additional Term for such Lease required to fully amortize the sum of Prepaid Rent and Initial ATPR for such Lease over the sum of the Prescribed Term and the Additional Term at the weighted average of the Funding Rate and ATPR Funding Rate and (ii) for a Lease that is not a ATPR Scheduled Lease, a percentage equal to the proportion of the Scheduled Payments plus all payments of escalations for such Lease required to fully amortize the Prepaid Rent over the Prescribed Term at the Funding Rate.

**Credit and Collection Policies** means the Lessor's credit, collection and administration policies and procedures relating to its portfolio of loans, as represented in the Lessor's operating

procedures manual, which for greater certainty, has been reviewed and approved by the Concurrent Lessee.

**Credit Monitoring Fee** means, for a Concurrent Lease on a Closing Date, an amount equal to 3% of the Prepaid Rent, plus, if applicable, 3% of the Initial Additional Term Prepaid Rent.

**Cut-Off Date** means the date specified as such in the Concurrent Lease Notice.

**Deemed Collections** means amounts required to be deposited to the Collections Account pursuant to Section 6.5 hereof.

**Deferred Rent** has the meaning set forth in Section 2.4.

**Delinquency Rate** means, for any Collection Period, the sum of the outstanding principal balances of Leased Assets other than Charged-Off Assets that are Delinquent Assets at the end of such Collection Period, divided by the Pool Balance at the end of such Collection Period.

**Delinquent Asset** means a Lease where any amount payable thereunder or any portion thereof is more than 30 days past due.

**Discount Rate** means, in respect of a Concurrent Lease, a discount rate equivalent to 4 % per annum, provided that the Concurrent Lessee may adjust the Discount Rate on January 2 of any calendar year by notice in writing delivered not less than 30 days before such date in respect of Concurrent Leases to be entered into after such date. Any increase in the Discount Rate cannot exceed any net increase in BMO Prime during the calendar year then ended.

**Eligible Asset** means any Lease:

- (a) in respect of which the Obligor thereunder is a Person who is resident in Canada and is not (i) an affiliate of the Lessor or the Concurrent Lessee; (ii) the Government of Canada or any agency or instrumentality thereof or any federal crown corporation other than those listed as exempt under applicable legislation from restrictions or requirements for consent or notice on the assignment of receivables in respect of which they are obligors; or (iii) any provincial government or agency thereof if the enforceability against such government or agency of an assignment of debts owing thereby is subject to any precondition which has not been fulfilled;
- (b) which is not a Charged-Off Asset or a Delinquent Asset;
- (c) that has a fair market value that is greater than or equal to its face value;
- (d) which is payable to an address in Canada only and is denominated and payable in Canadian Dollars and in respect of which the Obligor has been directed to remit payments to the Collections Account;
- (e) which has been duly authorized, executed and delivered by the parties thereto, has been entered into in compliance with all applicable laws (including any licensure laws applicable to Lessor), and, together with all related Rights (including any guarantee, indemnity or agreement referred to in clause (g) of the definition of Rights), is in full force and effect and constitutes the legal, valid and binding obligation of the related Obligor enforceable against such Obligor in accordance with its terms, subject to applicable bankruptcy, reorganization, insolvency, moratorium or similar laws affecting creditors' rights generally and subject to equitable principles of general application (regardless of whether enforcement is sought in a proceeding at law or in equity);

- (f) which is not subject to any dispute, set-off, counterclaim or defense whatsoever, no prepayments have been made thereunder and which is owned by the Lessor and free of any Adverse Claim and has not been extended or otherwise modified except in the ordinary course of business and in accordance with the Credit and Collection Policies;
- (g) in respect of which the Lessor is not in default in the performance of any of the covenants of the Lessor thereunder;
- (h) the terms of which do not contravene any laws, rules or regulations applicable thereto (including, without limitation, such laws, rules, or regulations relating to usury, truth in lending, credit business practices, cost of borrowing, consumer protection, equal credit opportunity, fair debt collection practices and privacy), except where such contravention would not materially adversely affect the collectability or enforceability of the related Rights;
- (i) in which the perfection of the Lessor's rights complies with the requirements of the Credit and Collection Policies in all material respects it being acknowledged that Lease Assets that are Low Value Leases do not require perfection of the Lessor's rights;
- (j) the related Obligor is not the subject of any Insolvency Event (except where such Insolvency Event occurred prior to the origination of the Receivable and such origination was consistent with the Credit and Collection Policies) or, to the best of the Lessor's knowledge, there are no such proceedings pending against such Obligor;
- (k) in respect of which the related Rights may be assigned in whole or in part without the consent of the related Obligor;
- (l) which is documented pursuant to a form of contract which is similar in all material respects to one of the forms of contract that have previously been delivered to and accepted by the Concurrent Lessee, acting reasonably;
- (m) in respect of which immediately prior to the lease hereunder the Lessor is the legal and beneficial owner of the Lease Asset, the related Receivables and Rights free and clear of any Adverse Claim;
- (n) in respect of which after the Concurrent Lease of the related Equipment to the Concurrent Lessee, the Concurrent Lessee would be the sole legal and beneficial owner of the related Concurrent Lease Entitlements with full right to transfer, sell and encumber such Concurrent Lease Entitlements free and clear of any lien;
- (o) that has not been satisfied, subordinated, waived or rescinded;
- (p) that has not been compromised, adjusted or modified except in accordance with the Credit and Collection Policies;
- (q) that was generated in the ordinary course of business;
- (r) except in the case of Low Value Leases, for which all filings or recordings with respect to the Lessor's interest therein and the related Leases and Rights necessary by law or reasonably prudent and desirable for the perfection and protection of such interests including any further filings, recordings or renewals thereof, have been effected by the Lessor (**Lien Registration**); and
- (s) which satisfies such other criteria as may be added by the Concurrent Lessee in accordance with Section 5.4 from time to time.

**ETA** means Part IX of the *Excise Tax Act* (Canada).

**Excess LV Delinquencies** is defined in Section 6.2(l).

**Excess LV Delinquencies Reimbursement** is defined in Section 6.2(l).

**Final Collection Date** means the date on which all Leases subject to Concurrent Leases have been terminated, fully collected and/or written off as uncollectible pursuant to the Credit and Collection Policies.

**Finance Charge Collections** means Collections in respect of interest and fees (other than Administrative Costs).

**Funding Costs**, means, in respect of a Settlement Period, the sum of (a) the product of (i) the Investment as of the first day of the Settlement Period and (ii) the weighted average Funding Rate for all Concurrent Leases and the related Settlement Period, plus (b) the product of (i) the Additional Term Investment as of the first day of the Settlement Period, and (ii) the ATPR Funding Rate.

**Funding Rate** means, in respect of a Concurrent Lease and a Settlement Period, an annual interest rate equivalent to the average of BMO Prime for the 30 days in effect prior to each Closing Date plus 1.3% per annum, provided that from and after the 5<sup>th</sup> anniversary of each Closing Date, BMO Prime for the related Concurrent Leases and the calculation Funding Costs shall be adjusted to BMO Prime in effect on such 5<sup>th</sup> anniversary plus 1.3% per annum.

**GAAP** means generally accepted accounting principles from time to time approved by the Chartered Professional Accountants of Canada or any successor body, applicable as at the date in question and applied on a consistent basis.

**Governmental Authority** means any federal, state, provincial, regional, local or foreign court or governmental agency, authority, instrumentality or regulatory body.

**GST/HST** means the goods and services tax, harmonized sales tax, and all other amounts payable under the ETA or pursuant to any similar value added tax legislation in any other jurisdiction of Canada or is similar thereto.

**Initial Additional Term Prepaid Rent** means, at any time, the aggregate, for each ATPR Scheduled Lease, of the product of (i) the Advance Rate and (ii) the sum of the net present values of each unpaid rental payments coming due over the entire term, ending on the last day of the Additional Term, of the related ATPR Scheduled Lease, excluding all Scheduled Payments, but including all escalations in the rental payments the Lessor is entitled to, discounted to the date of determination at the Discount Rate.

**Insolvency Event** means, in respect of any Person, such Person shall generally not pay its debts as they become due, or shall admit in writing its inability to pay its debts generally, or shall make a general assignment for the benefit of creditors; or any proceedings shall be instituted by or against, as the case may be, seeking to adjudicate it as bankrupt or insolvent or seeking liquidation, winding up, reorganization arrangement, adjustment, protection, relief or composition of it or its debts under any law relating to bankruptcy, insolvency, reorganization or relief of insolvent debtors, or seeking the entry of an order for relief by the appointment of a receiver, trustee, custodian or similar official for its or a substantial part of its property and, if such proceeding has been instituted against such Person, while being contested in good faith by such Person, such proceeding has not been stayed or dismissed within 45 days or a receiver, trustee, custodian or other similar official is appointed for it or any substantial part of its property; or a

receiver being privately appointed in respect of a substantial part of the assets of such Person; or such Person, takes any corporate action to authorize any of the actions described above.

**Investment** means at any time the sum of all Prepaid Rent paid (or deemed to have been made) by the Concurrent Lessee to the Lessor, less (i) the sum of all amounts paid to the Concurrent Lessee on account of the Concurrent Lessee's Proportionate Share allocable to the Investment, less (ii) any Funding Costs allocable to the Investment, less (ii) the Rent Rebate allocable to the Investment paid by the Lessor in respect of all Concurrent Leases terminated from time to time.

**ITA** means the *Income Tax Act* (Canada) and includes any corresponding, applicable provincial income tax statute, and for greater certainty, where this Agreement refers to a specific provision of the ITA, such reference includes a reference to any corresponding provision of an applicable provincial income tax statute.

**Lease** means a lease or rental agreement or similar agreement (including a sub-metering agreement) for the lease or sale of Approved Equipment originated by an Originator.

**Lease Asset** means a Lease together with the related Rights.

**Lease End Date** means, in respect of any Lease and Concurrent Lease, the Settlement Date immediately following the scheduled date of the last Scheduled Payment under the related Lease.

**Leased Assets** means the Approved Equipment concurrently leased or purported to be concurrently leased by the Concurrent Lessee hereunder (other than Concurrent Leases terminated hereunder).

**Loss Rate** means in respect of a Collection Period, net losses in respect of Leases subject to Concurrent Leases divided by the original outstanding net present value of the Leases subject to Concurrent Leases subject to losses during such Collection Period.

**Low Value Lease** means a Lease Asset in respect of which the related Approved Equipment is a water heater or other equipment where the original monthly rental payment (excluding taxes) is less than \$45 or a tankless water heater where the original monthly rental payment (excluding taxes) is less than \$65.

**Material Adverse Effect** means, in respect of any Person or any Lease subject to a Concurrent Lease any effect on it which could reasonably be expected to have an adverse impact on (i) in the case of such Person the ability of such Person to perform its obligations hereunder or under any Related Document, or (ii) the enforceability or collectability of such Lease or (iii) the value of such Lease.

**Obligor** means in respect of any Lease, the Person or Persons obligated to make payments thereunder.

**Originator** means in respect of any Lease, the original lessor.

**Outstanding Balance** means, in respect of a Concurrent Lease, the product of (i) the Advance Rate, and (ii) the sum of the net present values of each unpaid Scheduled Payment plus, if applicable, each unpaid regularly scheduled payment to be made by the Obligor during the Additional Term under the related Lease, discounted to the date of determination at the applicable Discount Rate.

**Person** means an individual, partnership, corporation, trust, joint venture, unincorporated association, government (or any agency or political subdivision thereof) or other entity.

**Pool Balance** means at any time the aggregate Outstanding Balance of all Concurrent Leases other than in respect of Charged-Off Assets or Lease Assets where the related Concurrent Lease has been terminated.

**Portfolio Report** means a report substantially in the form attached hereto as Schedule "C", delivered by the Lessor to the Concurrent Lessee pursuant to Section 6.2(m)).

**PPSA** means the *Personal Property Security Act* (British Columbia) or the comparable legislation of the other provinces of Canada including, in Québec, the Civil Code of Québec.

**Prepaid Rent** means the lump sum rent required to prepay the original monthly rental payments due under any Concurrent Leases pursuant to Article 2, which shall be equal to the product of (i) the Advance Rate and (ii) the sum of the net present values of each unpaid Scheduled Payment of the applicable Lease Asset, discounted to the related Closing Date at the applicable Discount Rate.

**Prescribed Term** means, in respect of any Lease at any time, the lesser of 165 months and the remaining term of such Lease at such time.

**PST** means amounts payable under any statute in Canada imposing a single stage retail sales tax.

**Receivables** means, in respect of any Lease, all moneys payable with respect to such Lease Asset including all scheduled periodic payments, principal, interest, interchange, extra charges, fees and penalties and other moneys payable by the related Obligor (exclusive of Administrative Costs) during the period from but excluding the Cut-Off Date, to the date when all amounts have been paid under such Lease.

**Records** means, in respect of any Lease subject to a Concurrent Lease, all contracts (including those evidencing such Lease), books, records, reports and other documents and information (including, to the extent obtainable by way of existing software controlled by the Lessor, hard copies of all data maintained in databases of the Lessor, tapes and disks) maintained by or on behalf of the Lessor in respect of the Lease and the related Obligor.

**Related Documents** means any agreement, document, exhibit, notice or other communication which has at any time been delivered by the Lessor to the Concurrent Lessee pursuant hereto, including all agreements and documents required hereunder.

**Rental Amount** means in respect of a Lease, the original regularly-scheduled monthly rental payment amount of the Obligor thereunder plus any escalations to the Closing Date.

**Rent Rebate** means, at any time with respect to any Concurrent Lease in respect of which the Concurrent Lessee made a payment of Prepaid Rent and, if applicable, Initial Additional Term Prepaid Rent, an amount equal to the product of (i) the Advance Rate and (ii) the sum of the net present values of each unpaid Scheduled Payment plus, if applicable, each unpaid regularly scheduled payment to be made by the Obligor during the Additional Term arising under the related Lease, discounted to the date of determination at the applicable Discount Rate.

**Replacement Servicer** means any Person appointed by the Concurrent Lessee to replace the initial or any subsequent Servicer upon the occurrence of a Servicer Termination Event.

**Replacement Servicer Fee** has the meaning given to it in Section 7.3.

**Reporting Date** means in respect of a Collection Period the second Business Day preceding the related Settlement Date.

**Rights** means, in respect of any Lease, the following:

- (a) all rights and benefits accruing to the Lessor under such Lease, including all right, title and interest in and to the related receivables;
- (b) all of the Lessor's right, title and interest in and to the related Approved Equipment;
- (c) all right in or to payments (including both proceeds and, to the extent the Lessor has any rights therein, premium refunds) under any insurance policies maintained by the related Obligor pursuant to the terms of such Lease or by the Lessor in respect of such Lease;
- (d) all claims, demands, actions, damages and indemnities owing to the Lessor under such Lease;
- (e) the right of the Lessor to ask, demand, sue for, collect, receive and enforce any and all sums payable under the Lease and to enforce all other covenants, obligations, rights and remedies thereunder with respect thereto;
- (f) all of the right, title and interest of the Lessor in, to and under all prepayments made after the Cut-Off Date, guarantees, promissory notes and indemnities (including all security interests and all property subject thereto) from time to time supporting or securing payment or performance of the related Obligor's obligations in respect of the Lease, whether pursuant to the Lease or otherwise;
- (g) the related Records; and
- (h) all proceeds of or relating to any of the foregoing.

**Sales Taxes** means all federal, provincial and other sales, goods and services, value added, use or other transfer taxes, and all other similar taxes whatsoever, including GST/HST and PST.

**Scheduled Payment** means, in respect of a Lease, the Rental Amount payable by the Obligor thereunder during a term not exceeding the lesser of (i) the remaining term of the Lease, (ii) 165 months and (iii) the remainder of the Prescribed Term.

**Servicer** means Lessor in its capacity as servicer hereunder and any Replacement Servicer.

**Servicing Fee** means in respect of any Settlement Date, a fee not exceeding 0.40% per annum of the Pool Balance at such time.

**Servicer Termination Event** has the meaning set forth in Section 7.1.

**Settlement Date** means, in respect of a Collection Period, the 15<sup>th</sup> calendar day of the calendar month (or the next Business Day if such day is not a Business Day) following the calendar month related to such Collection Period.

**Settlement Period** means in respect of a Settlement Date, the period commencing on and including the immediately preceding Settlement Date to but excluding such Settlement Date, provided that the first Settlement Period shall commence on and include the date of the Original Agreement and the final Settlement Date shall end on and exclude the Final Collection Date.

## 1.2 Extended Meanings

In this Agreement, words importing the singular number include the plural and vice versa and words importing gender include each gender. Unless the context requires otherwise, any

reference herein to any Person shall be construed to include such Person's successors and permitted assigns.

**1.3 Headings and Table of Contents**

The table of contents does not form part of this Agreement. Article and Section headings are not to be considered part of this Agreement, are included solely for convenience of reference and do not define, limit or enlarge the construction or interpretation hereof.

**1.4 References to Sections, Articles and Schedules**

Unless otherwise provided, all references herein to Sections, Articles or Schedules are references to Sections, Articles and Schedules of or to this Agreement.

**1.5 References to Statutes**

Unless otherwise provided, all references herein to any statute or any provision thereof shall mean such statute or provision as amended, restated or re-enacted from time to time.

**1.6 Certain Phrases**

Unless otherwise provided herein, the words "including", "includes" and "include" mean "including (or includes or include) without limitation".

**1.7 Governing Law**

This Agreement will be governed by and construed in accordance with the laws of the Province of British Columbia and the federal laws of Canada applicable therein (without regard to the conflict of laws rules of the Province of British Columbia).

**1.8 Invalidity of Provisions**

Save and except for any provision or covenant contained herein which is fundamental to the subject matter of this Agreement (including those that relate to the payment of moneys), the invalidity or unenforceability of any provision or covenant hereof or herein contained will not affect the validity or enforceability of any other provision or covenant hereof or herein contained and any such invalid or unenforceable provision or covenant will be deemed to be severable.

**1.9 Computation of Time Periods**

Unless otherwise provided herein, in the computation of a period of time from a specified date to a later specified date, the word "from" means "from and including" and each of the words "to" and "until" means "to but excluding".

**1.10 Non-Business Days**

Whenever any payment to be made hereunder shall be stated to be due, any period of time would begin or end, any calculation is to be made or any other action to be taken hereunder shall be stated to be required to be taken, on a day other than a Business Day, such payment shall be made, such period of time shall begin or end, such calculations shall be made and such other action shall be taken on the next succeeding Business Day.

1.11 Accounting Principles

Where the character or amount of any asset or liability or item of revenue or expense is required to be determined, or any consolidation or other accounting computation or presentation is required to be made for the purpose of this Agreement, such determination, consolidation, computation or presentation shall, to the extent applicable and except as otherwise specified herein or as otherwise agreed to in writing by the parties, be made in accordance with GAAP applied on a consistent basis. Wherever in this Agreement reference is made to generally accepted accounting principles, such reference shall be deemed to be to GAAP applicable as at the date on which such determination, consolidation, computation or presentation is made or required to be made.

1.12 Currency

Unless otherwise provided, all amounts herein are stated in Canadian Dollars.

1.13 Entire Agreement

This Agreement contains the entire agreement between the parties relative to the subject matter hereof and supersedes all prior and contemporaneous agreements, term sheets, commitments, understandings, negotiations, and discussions, whether oral or written. There are no warranties, representations or other agreements between the parties in connection with the subject matter hereof except as specifically set forth herein.

1.14 Schedules

The following schedules annexed hereto are incorporated herein by reference and are deemed to be part hereof:

Schedule "A" – Form of Concurrent Lease Notice

Schedule "B" – Lessor's Addresses

Schedule "C" – Form of Portfolio Report (or such other format as mutually agreed upon by the parties)

## Article 2 - CONCURRENT LEASE

2.1 Grant of Concurrent Lease

(a) Upon the terms and subject to the conditions set forth herein, the Lessor may from time to time prior to the occurrence of an Amortization Event, by delivering a completed Concurrent Lease Notice, offer to concurrently lease Approved Equipment to the Concurrent Lessee at least 5 Business Days before a proposed Closing Date. The Concurrent Lessee shall indicate its acceptance of the offer to concurrently lease Approved Equipment by countersigning the Concurrent Lease Notice delivered by the Lessor on or before the proposed Closing Date.

(b) On each Closing Date, Lessor shall hereby lease to Concurrent Lessee, free and clear of all security interests, liens or other adverse claims other than the leasehold interests of the relevant Obligors, and Concurrent Lessee shall hereby lease from Lessor, the Approved Equipment as listed on the related Concurrent Lease Notice delivered by Lessor to Concurrent Lessee) with effect as of the Closing Date. It is hereby expressly acknowledged and agreed that the interest of the Concurrent Lessee under each Concurrent Lease in and to the related Approved Equipment is that of a lessee only, and that title to and ownership in all such Approved Equipment shall, subject to Section 2.6, remain vested in the Lessor. It is hereby further expressly acknowledged and agreed

that, as of each Closing Date and until the applicable Final Collection Date, the beneficial ownership of the interest of the Lessor in respect of each Lease relating to Leased Assets and the related Collections will automatically vest in the Concurrent Lessee and the Lessor will hold in trust for the benefit of the Concurrent Lessee the interest of the Lessor under each such Lease and related Collections. It is hereby further expressly acknowledged and agreed that, notwithstanding the grant by the Lessor to the Concurrent Lessee of each Concurrent Lease, the rights of the lessee Obligors with respect to the possession and use of the Approved Equipment shall continue and be the same as under their respective Leases.

- (c) On each Closing Date, the Lessor will pay to the Concurrent Lessee the Credit Monitoring Fee for each Concurrent Lease listed in the applicable Concurrent Lease Notice. The Concurrent Lessee may set off the Credit Monitoring Fee payable for a Concurrent Lease against the Prepaid Rent for that Concurrent Lease paid by the Concurrent Lessee on the Closing Date.
- (d) In its capacity as lessor to the Concurrent Lessee and so that the Concurrent Lessee will not be in violation of its obligation as lessor to the Obligors or any of them, the Lessor hereby covenants and agrees to and in favour of the Concurrent Lessee that at all times during the term of each Concurrent Lease, the Lessor will, in all material respects, comply with and perform each term, condition, representation, warranty and covenant of the lessor contained in each Lease and will not take or omit to take any action in its capacity as owner of the Approved Equipment and lessor under any Concurrent Lease and which would cause any material failure by it to so comply with and perform each term, condition, representation, warranty and covenant required to be complied with or performed by the lessor under each Lease.
- (e) In its capacity as lessee under each Concurrent Lease, the Concurrent Lessee hereby covenants and agrees, to and in favour of the Lessor, to cause and require each Obligor to comply with and perform each term, condition, representation, warranty and covenant required to be complied with or performed by an Obligor under the relevant Lease.

## 2.2 Terms of Concurrent Leases

- (a) The term of each Concurrent Lease in respect of an item of Approved Equipment shall be deemed to commence at the close of business on the related Closing Date and, unless terminated or deemed terminated earlier in accordance with the provisions hereof, shall terminate on the Lease End Date for the related Lease.
- (b) Notwithstanding Section 2.2(a), the Concurrent Lessee shall have the right to extend the term of all Concurrent Leases outstanding on the date of this Agreement beyond the relevant Lease End Dates to the end of the Additional Term by giving the Lessor notice.

It is hereby expressly acknowledged and agreed that the Lessor's title and ownership of the Approved Equipment owned by it shall be subject to the rights of the Concurrent Lessee under each Concurrent Lease with respect to such Approved Equipment, and, consequently, except as otherwise provided herein, upon the termination of the Lease relating to any Approved Equipment (whether upon the expiry of the Term thereof, as a result of a default by the Obligor thereunder or otherwise), the Concurrent Lessee shall, until the expiry of the term of the Concurrent Lease relating to such Approved Equipment, have the exclusive right to possess, use and lease such Approved Equipment as provided for in this Article 2. Except as provided herein, neither the Concurrent Lessee nor the Lessor shall be entitled to terminate the Concurrent Lease in respect of any or all of the Approved Equipment.

### 2.3 Rent for Concurrent Lease

In consideration of the grant by the Lessor to the Concurrent Lessee of each Concurrent Lease, the Concurrent Lessee shall pay to the Lessor, on the first day of each calendar month after the Closing Date during the term of each Concurrent Lease, as monthly rent, an amount equal to 99.99% of the sum of all payments forming part of the Scheduled Payments to be made in respect of the Leases of Leased Assets in respect thereof during the related Collection Period. Any Taxes will be added to any amount so paid if applicable.

### 2.4 Prepaid and Deferred Rent

The Lessor acknowledges and agrees that the Concurrent Lessee may satisfy and discharge its obligations to make all monthly rent payments required by Section 2.3 by (a) paying to the Lessor, on the related Closing Date, as a prepayment of rent, a sum equal to the Prepaid Rent, (b) paying to the Lessor the amounts specified pursuant to and in accordance with Section 3.1 as deferred rent (the Deferred Rent), each of which payments shall be made without the need on the part of the Lessor to provide the Concurrent Lessee with any invoices. The Concurrent Lessee shall be deemed to have elected to make the payments specified in (a) and (b) if it pays the Prepaid Rent on the related Closing Date. In the event the Concurrent Lessee elects to extend the terms of the Concurrent Leases outstanding on the date of this Agreement to the end of the Additional Term in accordance with Section 2.2(b), the Concurrent Lessee may pay to the Lessor, upon the exercise of its right to extend the terms, as a prepayment of rent, a sum equal to the Initial Additional Term Prepaid Rent. Concurrently with the payment of the Initial Additional Term Prepaid Rent for an ATPR Scheduled Lease, the Lessor will pay to the Concurrent Lessee the Credit Monitoring Fee for that ATPR Scheduled Lease. Any Taxes will be added to any of the foregoing amounts so paid if applicable.

### 2.5 Acknowledgment

The Lessor acknowledges and agrees that, as a consequence of the grant and demise of rights by it to the Concurrent Lessee under this Agreement, and in consideration of the obligation and the liability of the Concurrent Lessee to pay to the Lessor the rent (including any payment by the Concurrent Lessee of Prepaid Rent), as provided for in this Article 2, the Concurrent Lessee shall be entitled, among other things, to receive all Scheduled Payments under the Leases, the Leased Assets relating to which is concurrently leased to the Concurrent Lessee hereunder, as of and from the close of business on the related Closing Date.

### 2.6 Security Interest

As continuing security for the due and timely payment from time to time by the Lessor of all obligations of the Lessor, the Lessor hereby grants, pledges and charges, to and in favour of the Concurrent Lessee, a first charge and security interest in and to all of the Lessor's right, title and interest, both present and future, in, to and under the following:

- (a) all of the Lessor's right, title and interest in, to and under the Leased Assets and the Leases related thereto including, without limitation, all amounts owed to or received by the Lessor in respect of Collections from any Obligor or other Person, including all liquidation proceeds and subsequent recoveries in respect of the Leased Assets and the related Records;
- (b) all of the Lessor's right, title and interest in and to all Collections made on or after the related Closing Date and the right to make Collections in respect of the remaining Term thereof made on or after the Closing Date including, without limitation, rights, if any, under direct debit agreements with Obligors, and all cheques, notes, instruments of payment and other remittances relating thereto;

(c) all of the Lessor's right, title and interest in and to the related Rights relating to the Leased Assets; and

(d) all proceeds from any or all of the foregoing;

(all of such property and rights being collectively referred to herein as the Concurrent Lease Entitlements). The Lessor and the Concurrent Lessee agree that value has been given for the granting by the Lessor of such charge and security interest, that they have not agreed to postpone the time for attachment with respect thereto and that attachment will occur immediately upon the Lessor acquiring rights to receive any such Collections or other amounts.

## 2.7 Concurrent Lessee Rights

The Lessor hereby acknowledges that, as a consequence of the granting of the Concurrent Leases hereunder, the Concurrent Lessee through the Servicer on its behalf, shall have the right, at any time, to:

- (a) notify any Obligor of the Concurrent Lease by the Concurrent Lessee of the Leased Assets;
- (b) to the extent that the Lessor has such rights, contact any Obligor for any purpose, including for the performance of audits and verification analyses, and the determination of account balances and other data maintained by the Servicer;
- (c) direct any Obligor to make all payments on account of any Leases directly to the Concurrent Lessee at an address designated by the Concurrent Lessee or to such third party (including the Servicer) or bank or depositary as may be designated by the Concurrent Lessee;
- (d) request any Obligor to change the instructions for any direct debit or electronic funds transfer otherwise payable to the Lessor or the Servicer;
- (e) proceed directly against any Obligor and take any and all other actions, in the Lessor's name or otherwise, necessary or reasonably desirable to collect the Leases, enforce the related Rights or effect any related result; and
- (f) subject to the terms of the related Lease, sell by power of sale any Leased Assets for any price the Concurrent Lessee (or the Servicer on its behalf) deems reasonable in its sole discretion and apply the liquidation proceeds arising from any such sale towards any Rent Rebate arising therefrom.

## 2.8 Application Fee

The Lessor shall pay to the Concurrent Lessee following the completion of each Concurrent Lease an application fee in respect of such Concurrent Lease in the amount equal to 0.15% of the applicable Prepaid Rent of the applicable Lease Asset in respect of the concurrent lease by the Concurrent Lessee from the Lessor.

## 2.9 Payment of GST/HST

The Concurrent Lessee certifies that it is at all relevant times, including at the time of each Concurrent Lease, a registrant under Part IX of the Excise Tax Act (Canada) (the **ETA**) and that its registration number is 10414 3698 RT0001.

## 2.10 Disqualified Assets

Promptly at any time after a Closing Date upon discovering that an eligibility requirement contained in the definition of "Eligible Asset" was not satisfied with respect to any Leased Asset and Concurrent Lease on the Cut-Off Date where the Concurrent Lessee made a payment of Prepaid Rent, the Lessor shall pay to the Concurrent Lessee an amount equal to the Rent Rebate in respect of the Concurrent Lease. Upon the payment of such amount, the related Concurrent Lease of such Leased Asset will be deemed to have been terminated without the need for any further action. Upon payment of such amount, any incorrectness in any representation or warranty or covenant by the Lessor with respect thereto shall be deemed to have been rectified.

## 2.11 Termination Rights

Either the Concurrent Lessee or the Lessor may terminate any Concurrent Lease at the end of each calendar year by notice in writing. Upon such termination, in the event Prepaid Rent was paid in respect of the Concurrent Lease, the Lessor shall be obligated to pay the Rent Rebate in respect thereof and shall have a period of up to 180 days to negotiate a repayment schedule with the Concurrent Lessee. Upon payment in full of the Rent Rebate, the related Concurrent Lease of such Leased Asset will be deemed to have been terminated without the need for any further action.

## 2.12 Intentionally Deleted

## 2.13 Liquidated Leases

The parties acknowledge that the Servicer is obligated and exclusively entitled, in accordance with this Agreement, to enforce a defaulted Lease by using its normal practices to take actual possession of and sell the Leased Assets forming the subject matter of such Lease and, if necessary, by enforcing the related Rights. The Servicer shall also be entitled to purchase such Leased Assets for a price deemed by the Servicer to be reasonable for such Leased Assets. Upon the Servicer's enforcement in respect of the Leased Assets which are subject to a Concurrent Lease, the Concurrent Lessee shall, subject to the following sentence, require the Lessor to terminate the related Concurrent Lease. The Concurrent Lease shall be terminated with respect to such Leased Assets, as of the date on which the Servicer completes the sale of the Leased Assets to a purchaser thereof. Upon such termination, the Lessor shall be obligated to pay to the Concurrent Lessee, on the date such sale is effected, as a refund of a portion of the Prepaid Rent and, if applicable, the Initial Additional Term Prepaid Rent paid by the Concurrent Lessee in respect of such Leased Assets by payment to the Collections Account, the liquidation proceeds from the related Leased Assets and any recoveries against the related Obligor received by the Servicer, and recourse against the Lessor shall be limited to the liquidation proceeds from the related Leased Assets and recoveries against the related Obligor received by the Servicer, and the Lessor irrevocably directs the Servicer to apply such amounts as Collections in accordance with Article 3.

## 2.14 Sale of Leased Assets

Each party hereto acknowledges that the Servicer may, in accordance with the terms of the related Lease, allow other Persons to purchase the Leased Assets that are subject to a Concurrent Lease hereunder prior to the expiry of a Concurrent Lease. If Leased Assets that are subject to a Concurrent Lease hereunder are sold at any time, then the Concurrent Lease shall be terminated with respect to such Leased Assets as of the date on which the Servicer completes the sale of the Leased Assets to a purchaser thereof. Upon any such termination where the purchaser is the Obligor, the Lessor shall be obligated to pay to the Concurrent Lessee a refund of a portion of the Prepaid Rent and, if applicable, the Initial Additional Term Prepaid Rent paid by the Concurrent Lessee in respect of such Leased Assets, by payment into the Collections Account of the proceeds of the sale of the Leased Assets on the date such sale is effected. Upon

any such termination where the purchaser is not the Obligor, the Lessor shall be obligated to pay to the Concurrent Lessee a refund of a portion of the Prepaid Rent and, if applicable, the Initial Additional Term Prepaid Rent paid by the Concurrent Lessee in respect of such Leased Assets, by payment to the Concurrent Lessee of an amount equal to the Rent Rebate relating to such Concurrent Lease on the date such sale is effected. The Servicer will not agree to any purchase of Leased Assets that would result in the termination of a Concurrent Lease, including without limitation as part of a transaction that involves an Obligor agreeing to lease new Approved Equipment under a new lease, without first obtaining the consent of the Concurrent Lessee.

## **Article 3 - APPLICATION OF COLLECTIONS**

### **3.1 Settlement Procedures**

Collections of the Leases subject to Concurrent Leases shall be administered by the Servicer in accordance with the terms of this Agreement. The Lessor shall provide to the Servicer (if other than the Lessor) on a timely basis all information needed for such administration, including notice of the occurrence of any Amortization Event. The Servicer will allocate Collections received from each Obligor in accordance with the Credit and Collection Policies. On each Settlement Date, Collections for the related Collection Period with respect to each Lease subject to a Concurrent Lease, will be applied as follows:

- (a) first, during an Amortization Period only, to the Servicer, the Servicing Fee or following a Servicer Termination Event, to the Replacement Servicer, if any, the Replacement Servicer Fee, in each case to the extent allocable to such Lease;
- (b) second, to be retained by the Concurrent Lessee, the Concurrent Lessee's Proportionate Share of any Collections in respect of the Lease; and
- (c) third, to the Lessor, the remainder as Deferred Rent.

## **Article 4 - REPRESENTATIONS AND WARRANTIES**

### **4.1 Representations and Warranties of the Lessor**

The Lessor represents and warrants to the Concurrent Lessee as of the date of the Original Agreement and as of each Closing Date (except as otherwise specified below) that:

- (a) it is (i) a trust validly existing under the laws of the Province of Ontario; and (ii) duly qualified to carry on business in each jurisdiction in which the failure to be so qualified would reasonably be expected to have a Material Adverse Effect;
- (b) it has full power and capacity to enter into this Agreement and to do all acts and things as are required or contemplated of it hereunder and thereunder;
- (c) it has taken all necessary action to authorize the execution, delivery and performance of this Agreement and to do all acts and things as are required or contemplated of it hereunder and thereunder;
- (d) there are no actions, suits or proceedings pending or to the knowledge of any officer of the Lessor, threatened against or affecting the Lessor or any of its undertakings and assets at law, in equity or before any arbitrator or before or by any governmental department, body, commission, board, bureau, agency or instrumentality having jurisdiction in the premises in respect of which there is a reasonable possibility of a determination adverse to the Lessor which would reasonably be expected to have a Material Adverse Effect and the Lessor is not in default in respect of any applicable law,

rule, regulation, order, judgment, injunction, award or decree as a result of which a Material Adverse Effect would reasonably be expected to occur;

- (e) this Agreement has been duly executed and delivered by the Lessor and constitutes a legally binding obligation of the Lessor enforceable against it in accordance with its terms, subject to applicable bankruptcy, reorganization, insolvency, moratorium or other laws affecting creditors' rights generally and to equitable principles of general application (regardless of whether enforcement is sought in a proceeding at law or in equity);
- (f) the execution and delivery of this Agreement and compliance with its terms and conditions will not (i) result in a violation of the constating documents or by-laws of the Lessor; (ii) result in a violation of any applicable law, rule, regulation, order, judgment, injunction, award or decree; (iii) result in a breach of, or constitute a default under, any loan agreement, indenture, trust deed or any other agreement or instrument to which the Lessor is a party or by which it is bound which would reasonably be expected to have a Material Adverse Effect; or (iv) require any approval or consent of, or any notice to or filing with, any Governmental Authority or agency having jurisdiction except such as has already been given, filed or obtained, as the case may be;
- (g) no default has occurred and is outstanding under any loan agreement, indenture, trust deed or any other agreement or instrument to which the Lessor is a party or by which it is bound which would reasonably be expected to have a Material Adverse Effect;
- (h) its principal place of business, chief executive office and registered office are located at the address set forth under its name on the signature pages hereto and the offices where it keeps all Records held by it are located at the addresses set out in Schedule "B" hereto or such other addresses as the Lessor shall from time to time notify the Concurrent Lessee;
- (i) it is not a non-resident of Canada within the meaning of the ITA;
- (j) the Lessor has delivered to the Concurrent Lessee all financial information received by the Lessor in respect of each Eligible Asset;
- (k) all federal, provincial and local and foreign national, state, provincial, regional and local and all other tax returns of the Lessor required by applicable law to be filed have been duly filed, and all federal, provincial and local and foreign national, state, provincial, regional and local and all other taxes, assessments and other governmental charges or levies upon the Lessor and its property, income, profits and assets which are due and payable have been paid. The charges, accruals and reserves on the books of the Lessor in respect of federal, provincial and local taxes and foreign national, state, provincial, regional and local taxes for all fiscal years and portions thereof since the organization of the Lessor, are in the judgment of the Lessor adequate in all material respect;
- (l) all written information, reports, certificates, financial statements and other papers and data produced by or on behalf of the Lessor and furnished to the Concurrent Lessee, including those in respect of Eligible Assets, were, at the time the same were so furnished, complete and correct in all material respects to the extent necessary to give the recipient a true and accurate knowledge of the subject matter, and, no fact is known to the Lessor which has had, or could reasonably be expected to in the future have, a Material Adverse Effect;
- (m) the Lessor is not an "Insolvent Person" as defined in the *Bankruptcy and Insolvency Act* (Canada), and shall not have unreasonably small capital to carry out its businesses as conducted or as proposed to be conducted;

- (n) each Lease Asset in respect of which the related Equipment is offered to be concurrently leased to the Concurrent Lessee hereunder is an Eligible Asset as of the Cut-Off Date; and
- (o) no Amortization Event or Servicer Termination Event has occurred that is continuing.

#### 4.2 Representations and Warranties of the Concurrent Lessee

The Concurrent Lessee represents and warrants to the Lessor as of the date of the Original Agreement that:

- (a) the Concurrent Lessee is (i) a trust company duly organized and validly existing under the *Trust and Loan Companies Act* (Canada); and (ii) duly qualified to carry on business in each jurisdiction in which the failure to do so would reasonably be expected to have a Material Adverse Effect;
- (b) the Concurrent Lessee has full power and capacity to enter into this Agreement and to do all acts and things as are required or contemplated of it hereunder;
- (c) the Concurrent Lessee has taken all necessary action to authorize the execution, delivery and performance of this Agreement and to do all acts and things as are required or contemplated of it hereunder;
- (d) there are no actions, suits or proceedings pending or to the knowledge of any officer of the Concurrent Lessee, threatened against or affecting the Concurrent Lessee or any of its undertakings and assets at law, in equity or before any arbitrator or before or by any governmental department, body, commission, board, bureau, agency or instrumentality having jurisdiction in the premises in respect of which there is a reasonable possibility of a determination adverse to the Concurrent Lessee which would reasonably be expected to have a Material Adverse Effect and the Concurrent Lessee is not in default in respect of any applicable law, rule, regulation, order, judgment, injunction, award or decree as a result of which a Material Adverse Effect would reasonably be expected to occur;
- (e) this Agreement has been duly executed and delivered by it and constitutes a legally binding obligation of the Concurrent Lessee enforceable against it in accordance with its terms, subject to applicable bankruptcy, reorganization, insolvency, moratorium or other laws affecting creditors' rights generally and to equitable principles of general application (regardless of whether enforcement is sought in a proceeding at law or in equity);
- (f) the execution and delivery of this Agreement and compliance with its terms and conditions will not (i) result in a violation of its constating documents; (ii) result in a violation of any applicable law, rule, regulation, order, judgment, injunction, award or decree; (iii) result in a breach of, or constitute a default under, any loan agreement, indenture, trust deed or any other agreement or instrument to which the Concurrent Lessee is a party or by which it is bound which would reasonably be expected to have a Material Adverse Effect; or (iv) require any approval or consent of, or any notice to or filing with, any Governmental Authority or agency having jurisdiction except such as has already been given, filed or obtained, as the case may be; and
- (g) no default has occurred and is outstanding under any loan agreement, indenture, trust deed or any other agreement or instrument to which the Concurrent Lessee is a party or by which it is bound which would reasonably be expected to have a Material Adverse Effect.

#### 4.3 Survival

Representations, warranties and statements of the Lessor and the Concurrent Lessee (or any of them or of any of their respective officers) set forth herein have been relied upon by the Concurrent Lessee, shall not merge on the completion of the execution and delivery of this Agreement or on the completion of any Concurrent Lease and shall survive thereafter.

### **Article 5 - COVENANTS**

#### 5.1 Delivery of Files and Records

The Servicer will hold the Records relating to the applicable Leased Assets on behalf of the Concurrent Lessee, and will provide a copy of such Records to the Concurrent Lessee upon request.

#### 5.2 Further Assurances

- (a) Each of the Lessor and the Concurrent Lessee will from time to time make, do, execute, endorse, acknowledge and deliver or cause and procure to be made, done, executed, endorsed, acknowledged, filed, registered and delivered any and all further acts and assurances, including without limitation, any conveyance, deed, transfer, assignment or other instrument in writing as, in the opinion of either of such Persons, may be necessary or desirable to give effect to this Agreement and the transactions provided for in this Agreement and will take all such other action as may be required or desirable for more effectually and completely vesting all Rights acquired by the Concurrent Lessee.
- (b) Each of the Lessor and Concurrent Lessee from the period commencing on the Closing Date until the termination of this Agreement, shall maintain in force insurance coverage in areas and amounts customary for its industry.

#### 5.3 General Covenants of the Lessor

The Lessor covenants with the Concurrent Lessee:

- (a) to preserve and maintain its existence, rights, franchises and privileges and to qualify and remain qualified to carry on business in each jurisdiction in which the failure to do so would reasonably be expected to have a Material Adverse Effect;
- (b) to not, except as expressly permitted herein (i) sell, assign (by operation of law or otherwise) or dispose of any part of the Leased Assets; (ii) take any action which may cause the validity, effectiveness or enforceability of the Leased Assets or the related Rights to be impaired; or (iii) take or omit to take any action which may cause an Adverse Claim to attach or extend to or otherwise burden any part of the Leased Assets;
- (c) to comply with all laws (including, without limitation, privacy laws) rules, regulations, orders, judgments, injunctions, awards or decrees applicable to the Lessor or the Leased Assets except where the failure to do so would not reasonably be expected to have a Material Adverse Effect;
- (d) to promptly notify the Concurrent Lessee at least twenty (20) Business Days prior to changing its name from that which is stated in its constating documents;
- (e) to promptly notify the Concurrent Lessee at least twenty (20) Business Days prior to changing the jurisdiction in which its principal place of business, chief executive office or registered office is located;

- (f) to promptly notify the Concurrent Lessee of any amendment, limitation or restriction of any license issued to the Lessor by a regulatory authority relating to the carrying on by the Lessor of its business if such amendment, limitation or restriction would have a Material Adverse Effect;
- (g) to notify the Concurrent Lessee forthwith of the occurrence of any Amortization Event or Servicer Termination Event or of any event which, with the giving of notice of the passage of time, or both, could become an Amortization Event or Servicer Termination Event;
- (h) to not amend or waive the Credit and Collection Policies without the prior written consent of the Concurrent Lessee;
- (i) to not establish or maintain a defined benefit pension plan;
- (j) to make notations in its books, records, documents and instruments relating to the Leased Assets to evidence the interest of the Concurrent Lessee therein; and
- (k) to timely and fully perform and comply with all material terms, covenants and other provisions of the contracts relating to the Leased Assets, including without limitation the Leased Assets, required to be performed by and observed by the Lessor thereunder.

#### 5.4 Amendments to Definition of Eligible Asset

If, at any time, the Concurrent Lessee determines, acting reasonably, that there has been a material change in the information contained in a Portfolio Report from the information contained in any previous Portfolio Report, then the Concurrent Lessee may elect by notice to the Lessor to amend the definition of Eligible Asset so that it contains one or more of the following additional requirements:

- (a) in respect of which there is a parts and labor warranty on the related Leased as issued by a third party insurer that is approved in writing by the Concurrent Lessee (acting reasonably) or the Lessor has otherwise made arrangements with a third party (other than the Obligor or the Lessor) to ensure that any repair and servicing of the related Approved Equipment is conducted and completed as required from time to time; and
- (b) if the Lease is a Low Value Lease, the Outstanding Balance of such Lease, together with the Outstanding Balance of all Leases relating to Leased Assets that are Low Value Leases, does not exceed 35% of the Outstanding Balance of all Leased Assets at such time;

and the definition of Eligible Asset will be deemed to have been amended from the time of delivery of notice of any such election by the Concurrent Lessee to the Lessor.

## **Article 6 - SERVICING OF PORTFOLIO**

#### 6.1 Appointment of the Lessor as Servicer

- (a) The Concurrent Lessee hereby appoints the Servicer to be its exclusive agent for the purposes of servicing the Leased Assets as set out in this Article 6 (it being acknowledged that the Concurrent Lease made hereunder is made on a fully-serviced basis in accordance with this Agreement) and the Lessor hereby accepts such appointment.
- (b) The Lessor may subcontract with a subservicer or sub-originator, provided that such subservicer or sub-originator shall be approved by the Concurrent Lessee acting

reasonably, for the servicing or subservicing of the Leased Assets; provided, however, that the Lessor will remain liable to the Concurrent Lessee for the performance of the duties and obligations so subcontracted and all other duties and obligations of the Lessor set forth in this Article 6.

- (c) Except as provided hereunder, the Servicer shall have the exclusive right to service the Leased Assets and the Concurrent Lessee shall not contact any Obligor or inform any Obligor of its interests in the Leased Assets or otherwise take any steps to modify any Leased Assets.

## 6.2 Servicing of Leased Assets

During the term of this Agreement, unless a Replacement Servicer is designated by the Concurrent Lessee pursuant to Section 7.2, the Lessor covenants to service the Leased Assets with reasonable care using that degree of skill and attention that it exercises with respect to comparable receivables that it services for itself and others and in accordance with the Credit and Collection Policies, and subject to and in accordance with the provisions of this Agreement. Without limiting the generality of the foregoing, the Lessor, unless a Replacement Servicer is designated by the Concurrent Lessee pursuant to Section 7.2, shall and covenants to:

- (a) deposit Collections to the Collections Account (which will, until remitted, be held in trust for the Concurrent Lessee) in respect of such Settlement Period in accordance with Section 6.3;
- (b) hold the Records in trust for the Concurrent Lessee and at any time and from time to time during regular business hours permit the Concurrent Lessee, its agents or representatives upon five (5) Business Days' prior notice to (i) examine and make copies of all such Records in the possession (or under the control) of the Lessor; and (ii) visit the offices and properties of the Lessor for the purpose of examining such Records and discussing matters relating to the Leased Assets and the Lessor's performance under the Leased Assets or hereunder with any of the Lessor's officers or employees having knowledge of such matters;
- (c) maintain and implement prudent and reasonable administrative and operating procedures (including an ability to recreate the Records in the event of the destruction of the originals thereof) and keep and maintain all books, records, documents and other information reasonably necessary or advisable for the identification and collection of the Leased Assets (including records adequate to permit all collections of and reductions or adjustments);
- (d) timely and fully perform and comply with all terms, covenants and other provisions of the Leased Assets required to be performed and observed by it or the Concurrent Lessee;
- (e) comply in all respects with the Credit and Collection Policies in regard to each Leased Asset;
- (f) not, without the prior written consent of the Concurrent Lessee, make any change in the Credit and Collection Policies;
- (g) not extend, amend or otherwise modify or waive any term or condition of any Leased Asset unless permitted in accordance with the terms of the Credit and Collection Policies;
- (h) use its commercially reasonable efforts to collect all Receivables payable in respect of the Leased Assets in accordance with all applicable laws, rules and regulations, the provisions hereof and the Credit and Collection Policies;

- (i) make all payments payable by it to government agencies and others where a statutory lien or deemed trust might arise having priority over the Concurrent Lessee's interest in any part of the Leased Assets; provided that the Lessor may protest the payment of any such amounts if it is acting in good faith and it either provides the Concurrent Lessee with cash in an amount sufficient to satisfy the same or otherwise satisfies the Concurrent Lessee, acting reasonably, that its interests are not prejudiced thereby;
- (j) as soon as possible, effect all filings or recordings with respect to the Concurrent Lessee's interest in all Rights necessary by law or reasonably prudent or desirable for the perfection and protection of such interest and all appropriate renewals or amendments thereof;
- (k) promptly, from time to time, furnish to the Concurrent Lessee such documents, records, information or reports in respect of the Leased Assets or the conditions or operations, financial or otherwise, of the Lessor as may be in existence in written form or, if available in databases maintained by the Lessor, as may be produced with existing software as the Concurrent Lessee may from time to time reasonably request;
- (l) If the Delinquency Rate calculated in respect of Low Value Leases that are Leased Assets exceeds, for any Reporting Period and the two (2) immediately preceding Reporting Periods, 10% (the amount of any excess being the **Excess LV Delinquencies**), the Lessor shall pay to the Concurrent Lessee, for each Reporting Period (that is, each calendar month) during which such excess exists, an amount equal to \$2,500 (the **Excess LV Delinquencies Reimbursement**), which shall represent a reimbursement for the Concurrent Lessee for the costs incurred by the Concurrent Lessee with respect to the monitoring, analyzing and reporting on the Excess LV Delinquencies. The Lessor and the Concurrent Lessee hereby agree that any such Excess LV Delinquencies Reimbursement is not and shall not be deemed to be a penalty or a fee in any way, but a true representation of the costs that the Concurrent Lessee shall incur in respect of the monitoring, analyzing and reporting on the Excess LV Delinquencies.

For greater certainty, an Excess LV Delinquencies Reimbursement may be payable by the Lessor to the Concurrent Lessee for the same Reporting Period.

- (m) on or before each Reporting Date, prepare and deliver to the Concurrent Lessee a Portfolio Report relating to the Receivables payable in respect of the Leased Assets as of the close of business on the last day of the immediately preceding Collection Period; and
- (n) to monitor the level of complaints arising from the Leased Assets received by it and take commercially reasonable steps to address such complaints. If, at any given time, the level of unresolved complaints exceeds 1% (being the percentage of active Obligors with unresolved complaints to total active Obligors) or if the level of total complaints (whether resolved or not) exceeds 5% (as the percentage of active Obligors who have made a complaint to total active Obligors), such excess shall be reported to the next meeting of the board of directors of Crown Crest Capital Management Corp. for a discussion on required management actions in respect of the interests of the Obligors.

### 6.3 Deposit of Collections

All Collections shall be deposited by the Servicer in the Collections Account within two (2) Business Days of the date of receipt by the Servicer (or, in the case of Deemed Collections, on the date of deemed receipt).

#### 6.4 Power of Attorney

The Concurrent Lessee hereby constitutes and appoints the Servicer the true and lawful attorney of the Concurrent Lessee, with full power of substitution, to execute, deliver and register, for and on behalf of and in the name of the Concurrent Lessee, such documents, instruments or agreements which may be necessary or desirable to enable the Servicer to perform its obligations set out in this Agreement. The Servicer agrees that it will not exercise such power of attorney for any other purpose whatsoever. Such power of attorney is coupled with an interest.

#### 6.5 Deemed Collections

If, on any day prior to the date on which both the Concurrent Lessee's Investment and the Additional Term Investment are reduced to nil, any Receivable payable in respect of any Leased Asset (i) is extended by the Lessor beyond its original term in a manner inconsistent with the Credit and Collection Policies, (ii) has its Scheduled Payment or any other regularly scheduled payment to be made by the Obligor during the Additional Term reduced by the Lessor in a manner inconsistent with the Credit and Collection Policies, (iii) is reduced or cancelled as a result of any breach by the Lessor of the terms of such Leased Asset, (iv) is reduced or cancelled as a result of a set-off in respect of any claim by the applicable Obligor against the Lessor or the Concurrent Lessee other than as a result of an act or omission of the Concurrent Lessee (whether such claim arises out of the same or a related transaction or an unrelated transaction), (v) is reduced to reflect any adjustment for returns, billing errors, NSF cheques, fraudulent charges and similar payment reconciliations, (vi) is otherwise reduced or cancelled by the Lessor or any subservicer, or (vii) if any fine, penalty, sanction, order or other liability is imposed upon or determined against any of the Lessor, the Concurrent Lessee or any Originator in connection with or relating to any Leased Asset, the Lessor shall be deemed to have received for the Concurrent Lessee's account on the last day of the Collection Period during which such day occurred, a Collection of such Receivable in the amount of such reduction or cancellation, and shall deposit to the Collections Account on the immediately following Settlement Date such amount.

#### 6.6 Payment Terms

- (a) All amounts to be paid or deposited by the Lessor, the Replacement Servicer or the Concurrent Lessee hereunder will be paid or deposited on the day when due in same day funds.
- (b) The Lessor will make all payments required to be made hereunder without deduction or set-off (except as expressly permitted hereunder) regardless of any defense or counterclaim.

## **Article 7 - SERVICER TERMINATION**

#### 7.1 Servicer Termination Events

The happening of any of the following shall constitute a Servicer Termination Event hereunder:

- (a) The Lessor defaults in the payment of any amount due to the Concurrent Lessee hereunder and such default remains unremedied for a period of three (3) Business Days after written notice of such default has been given to the Lessor;
- (b) The Lessor defaults in the observance or performance in any manner of any of its covenants or obligations contained in this Agreement in any material respect (other than those obligations referred to in paragraph (a) above) and, if such default is capable of rectification and remains unremedied for a period of thirty (30) days after the earlier of (i)

the date on which written notice of such default has been given to the Lessor by the Concurrent Lessee and (ii) the date on which the Lessor has actual notice of such default;

- (c) any representation or warranty made by the Lessor in or pursuant to this Agreement proves to have been false or incorrect when made in any material respect, and, if the circumstances giving rise to such incorrect representation or warranty are capable of rectification, such representation or warranty remains uncorrected for a period of 30 days after the earlier of (i) the date on which written notice has been given to the Lessor by the Concurrent Lessee specifying the incorrectness and demanding that the circumstances giving rise thereto be rectified and (ii) the date on which the Lessor had actual knowledge of such incorrectness; or
- (d) an Insolvency Event shall occur in respect of the Lessor.

#### 7.2 Designation of Replacement Servicer

- (a) If a Servicer Termination Event has occurred and is continuing, the Concurrent Lessee may designate a Replacement Servicer to succeed the Lessor with respect to the Leased Assets on such terms as it may consider reasonable, provided that any such Person so designated shall agree to perform the duties and obligations of the Lessor provided for in Article 6.
- (b) Upon the appointment of a Replacement Servicer pursuant to Section 7.2(a), the Lessor will, on demand and at its expense: (i) assemble all Records and make them available to the Replacement Servicer; (ii) notify all Obligors (x) of the sale, assignment and transfer to the Concurrent Lessee of the Leased Assets; and (y) to remit all payments due under such Leased Assets to the Replacement Servicer; and (iii) segregate, in a manner reasonably acceptable to the Concurrent Lessee, all cash, cheques and other instruments constituting Collections which are received by it from time to time and remit the same to the Replacement Servicer duly endorsed or with duly executed instruments of transfer, if applicable.

#### 7.3 Replacement Servicer Fee

A Replacement Servicer appointed pursuant to Section 7.2 shall be entitled to a reasonable fee for services rendered, such fee to be determined by the Concurrent Lessee with the Replacement Servicer to a maximum, in respect of any Collection Period, of 15% of the Collections remitted to the Collections Account during such Collection Period (the **Replacement Servicer Fee**). Such Replacement Servicer Fee and any out-of-pocket expenses incurred by the Replacement Servicer in connection with its duties as Replacement Servicer, together with any applicable Sales Taxes, shall be payable to the Replacement Servicer in accordance with this Agreement.

#### 7.4 Leased Assets

If a Servicer Termination Event has occurred and is continuing, the legal right, title and interest to any Leased Assets related to any Leased Asset which are held by the Lessor in trust for the Concurrent Lessee shall automatically transfer to the Concurrent Lessee upon notice from the Concurrent Lessee to the Lessor.

#### 7.5 Power of Attorney

- (a) The Lessor hereby grants to the Concurrent Lessee, to become effective immediately upon the occurrence of a Servicer Termination Event, an irrevocable power of attorney and hereby irrevocably appoints the Concurrent Lessee as the Lessor's attorney-in-fact,

with full power of substitution, to take in the place and stead of and in the name of the Lessor or in the Concurrent Lessee's own name from time to time at the Concurrent Lessee's discretion, acting reasonably, such actions as the Lessor may be obligated to take hereunder or as the Concurrent Lessee may deem necessary or advisable to collect, endorse, negotiate or otherwise realize on any Leased Asset including any related Receivable, any negotiable instrument, or any other right of any kind, held or owned by the Lessor and transferred, assigned or delivered to or received by the Concurrent Lessee as payment on account or otherwise in respect of any of the Leased Assets, including:

- (i) to evidence or protect the Concurrent Lessee's interest in the Leased Assets and to execute and file, in the Lessor's name and on the Lessor's behalf, such recording, registration, financing or similar statements (including any amendments, renewals and continuation statements) under applicable laws;
- (ii) to ask, demand, collect, sue for, recover, compound, receive and give acquittances and receipts for moneys due and to become due in connection with the Receivables or otherwise owed to the Concurrent Lessee;
- (iii) to receive, endorse and collect any cheques, drafts or other instruments, documents and chattel paper in connection with moneys due and to become due in connection with the Receivables forming part of the Leased Assets or otherwise owed to the Concurrent Lessee;
- (iv) to file any claims or take any action or institute any proceedings that the Concurrent Lessee may deem to be necessary or desirable for the collection of any Receivable; and
- (v) to prepare, execute, deliver, and/or register in the Lessor's name and on the Lessor's behalf, such instruments and documents (including assignments) necessary or desirable in furtherance of the foregoing.

(b) The power of attorney granted hereby shall be expressly coupled with an interest in favour of the Concurrent Lessee. The powers of attorney and other rights and privileges granted hereby shall survive any dissolution, liquidation or winding-up of the Lessor.

## **Article 8 - CONDITIONS PRECEDENT**

### 8.1 Conditions to Effectiveness

This Agreement shall become effective on the date of the Original Agreement if the following conditions precedent have been satisfied or waived on or prior to such date and/or the Concurrent Lessee shall have received from the Lessor the following documents, in form and substance satisfactory to the Concurrent Lessee:

- (a) a certificate of an officer of the Lessor, dated the date of the Original Agreement certifying (A) that attached thereto is a true and complete copy of the Certificate and Articles of Incorporation and any amendments thereto, and the by-laws of the Lessor, each as in effect on the date of such certificate; (B) that attached thereto is a true and complete copy of a resolution adopted by the Lessor's board of directors authorizing the execution, delivery and performance of this Agreement and the other Related Documents, and that such resolution has not been modified, rescinded or amended and is in full force and effect; and (C) as to the incumbency and true specimen signature of each of the Lessor's officers executing this Agreement or any of the Related Documents, on which certificate the Concurrent Lessee shall be entitled to conclusively rely until such time as the

Concurrent Lessee receives from Lessor a replacement certificate meeting the requirements of this Section 8.1(a);

- (b) a certificate of compliance issued in respect of the Lessor in its jurisdiction of incorporation, and an equivalent certificate from the appropriate authority in each other jurisdiction in which qualification is necessary in order for the Lessor to own or lease its property and conduct its business, each to be certified as of a recent date;
- (c) executed copies of this Agreement and copies of the Credit and Collection Policies;
- (d) reports, satisfactory to the Concurrent Lessee acting reasonably, showing the results of searches conducted against the Lessor under applicable personal property security registers in the provinces where the Leased Assets are located, together with executed copies of all discharges or releases of prior security interests relating to Leased Assets that are then to be sold hereunder; provided that the Lessor may establish that any particular registration does not affect any such Leased Assets by delivering a letter or acknowledgment signed by the applicable secured party;
- (e) a copy of verifications statements or other filings filed in each relevant jurisdiction, that are sufficient to perfect the interests of the Concurrent Lessee as the first priority ownership interest in the Leased Assets as against creditors of the Lessor;
- (f) executed copies of all discharges and releases, if any, necessary to discharge or release all security interest and other rights or interest of any Person in the Rights, previously granted by or through the Lessor and which could constitute an Adverse Claim, together with, where applicable, copies of the relevant financing change statements or other discharge statements with the registration particulars stamped thereon; and/or appropriate intercreditor agreements with such other parties in form and substance as the Concurrent Lessee may require; and
- (g) such other approvals, opinions or documents as the Concurrent Lessee may reasonably request.

## **Article 9 - MISCELLANEOUS**

### **9.1 Amendments and Waivers**

- (a) This Agreement may be amended, supplemented, modified, restated or replaced by written instrument only signed by the Lessor and the Concurrent Lessee.
- (b) No waiver of any provision of this Agreement, nor consent to any departure by any party therefrom, shall in any event be effective unless the same shall be in writing signed by such party, and then such waiver or consent shall be effective only in the specific instance and for the specific purpose for which given. No failure on the part of any party to exercise, and no delay in exercising, any right hereunder shall operate as a waiver thereof.

### **9.2 Binding Effect; Assignability**

This Agreement shall be binding upon and enure to the benefit of the Lessor and the Concurrent Lessee, and their respective successors and assigns.

The Lessor shall not have the right to assign any interest herein without the consent of the Concurrent Lessee, provided however that the Lessor may grant a security interest in all or a portion of the Deferred Rent.

Each of the other parties hereto agrees that, upon such assignment, the assignee or its further assigns may enforce directly, without joinder of the original Concurrent Lessee, the rights set forth in this Agreement. Each of the Lessor and the Concurrent Lessee agrees to grant to any such assignee or its further assigns or its agents such powers of attorney as may be necessary for the exercise of their rights hereunder.

#### 9.3 Notices

Any notice, consent, request, agreement, approval, waiver or other communication required or permitted to be given or delivered hereunder shall, unless otherwise stated herein, be in writing (including photocopy, facsimile, electronic mail or other digital communication) and sent, as to each party hereto, at its address set forth under its name on the signature pages hereto, or at such other address as shall be designated by such party in a written notice to the other parties hereto. All such notices and communications shall be effective when sent.

#### 9.4 Indemnification

- (a) The Lessor hereby agrees to indemnify the Concurrent Lessee and each of its directors, officers, employees, trustees, advisors and agents, and to save such Person harmless from and against any and all damages, losses, claims, liabilities, costs and expenses (including reasonable legal fees and disbursements) awarded against or incurred by any such Person arising out of or as a result of:
  - (i) any representation or warranty made or deemed to be made by the Lessor in any capacity (whether as Lessor, Servicer or otherwise) (or any of its officers) in or in connection with this Agreement, any of the Leased Assets, or any Related Document, which was incorrect in any material respect when made or deemed made or delivered;
  - (ii) the failure of the Lessor in any capacity (whether as Lessor, Servicer or otherwise) or any Originator to perform or observe any of its respective covenants, duties or obligations hereunder, in respect of or relating to any of the Leased Assets or under any of the Related Documents;
  - (iii) any claim made against the Lessor in any capacity (whether as Lessor, Servicer or otherwise), the Lender or any Originator by any Obligor arising from, in connection with or relating to the performance of observance of any of the Lessor's or Originator's respective covenants, duties or obligations hereunder, in respect of or relating to any of the Leased Assets or under any of the Related Documents;
  - (iv) the failure to vest in and maintain vested in the Concurrent Lessee, the beneficial interest of the Lessor in and to the Leases relating to the Leased Assets and related Collections which are, or are intended to be transferred to the Concurrent Lessee hereunder, free and clear of any Adverse Claim (whether existing at the time of the Concurrent Lease thereof or arising at any time thereafter);
  - (v) the failure by the Lessor in any capacity (whether as Lessor, Servicer or otherwise) to comply with any applicable law, rule, regulation, order, judgment, injunction, award or decree with respect to any part of the Leased Assets, or the non-conformity of any Leased Asset with any applicable law, rule, regulation, order, injunction, award or decree; and
  - (vi) any fine, penalty, sanction, order, or other liability imposed upon or determined against any of the Lessor in any capacity (whether as Lessor, Servicer or

otherwise) the Lender or any Originator by any Governmental Authority in connection with or relating to any Leased Asset;

- (b) The Lessor shall not be liable to the Concurrent Lessee hereunder for any damages, losses, claims, liabilities, costs or expenses resulting solely from the failure of any Obligor to discharge its payment obligations (except as specifically provided in Section 9.4(a)).
- (c) The Lessor and the Concurrent Lessee each agree to provide reasonable assistance to the other party, at the request of such other party and, in either case, at the Lessor's expense, in any action, suit or proceeding brought by or against, or any investigation involving such requesting party relating to any of the transactions contemplated hereby or to any part of the Leased Assets. If the Lessor has acknowledged its liability under Section 9.4(a) in respect of any damages, losses, claims, liabilities, costs or expenses in connection with any such action, suit, proceeding or investigation, and, in the sole determination of the Concurrent Lessee, acting reasonably, the Lessor has the financial ability to pay such damages, losses, claims, liabilities, costs and expenses, the Lessor will have the right, on behalf of the Concurrent Lessee but at the Lessor's expense, to defend such action, suit or proceeding, or participate in such investigation, with counsel selected by it, and will have sole discretion as to whether to litigate, appeal or settle.
- (d) The obligations of the Lessor under this Section 9.4 will survive this Agreement and remain in full force and effect for a period up to and including the date that is six years from the Final Collection Date.

#### 9.5 Time of Essence

Time will be of the essence of this Agreement.

#### 9.6 Failure to Perform

If the Lessor fails to perform any of its agreements or obligations hereunder, the Concurrent Lessee may (but will not be required to) itself perform, or cause to be performed, such agreement or obligation at, in the case of any such failure to perform by the Lessor, the cost of the Lessor.

#### 9.7 Confidentiality

Each party hereto will maintain on a confidential basis (except as otherwise permitted hereunder or as required by applicable law) all information relating to the other party provided to it hereunder by the other parties; provided, however, that this Section shall not apply to any information which (i) was lawfully in the public domain at the time of communication to the first party, (ii) lawfully enters the public domain through no fault of the first party subsequent to the time of communication to the first party, (iii) was lawfully in possession of the first party free of any obligation of confidence at the time of communication to the first party, (iv) was lawfully communicated to the first party free of any obligation of confidence subsequent to the time of initial communication to the first party or (v) was lawfully communicated to any Person free from any obligation of confidence subsequent to the time of communication to the first party.

#### 9.8 Further Assurances

The parties hereto agree, from time to time, to enter into such further agreements and to execute all such further instruments as may be reasonably necessary or desirable to give full effect to the terms of this Agreement and to the ability of the Concurrent Lessee to exercise or enforce any of its rights and remedies hereunder.

9.9 Remedies

The remedies herein provided are cumulative and not exclusive of any remedies provided at law.

9.10 Amendment and Restatement

This Agreement amends and restates the Original Agreement as of the date first written above.

9.11 Execution in Counterparts

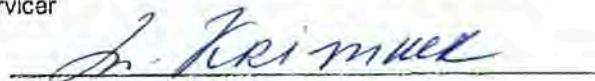
This Agreement may be executed in any number of counterparts and by different parties hereto in separate counterparts, each of which when so executed shall be deemed to be an original and all of which when taken together shall constitute one and the same agreement.

[The signature pages follow.]

IN WITNESS WHEREOF the parties hereto have executed this Agreement as of the date first above written.

CROWN CREST FUNDING CORP., In its capacity as  
trustee of CROWN CREST CAPITAL TRUST, as Lessor  
and Servicer

By:



Name: Lyudmila Krimker

Title: President

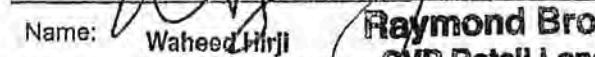
Address: 1201-200 Yorkland Street  
Toronto, ON M2J 5C1

Attention: President and CEO

Fax No.: 647-846-7475

PEOPLES TRUST COMPANY, as Concurrent Lessee

By:



Raymond Brooker  
SVP Retail Lending

Name: Waheed Hirji

Title: Chief Operations Officer

Address: 1400-888 Dunsmuir Street  
Vancouver, BC V6C 3K4

Attention:

With a copy to General Counsel and  
Executive VP & Chief Financial Officer

Fax No.: 604-331-3469

**SCHEDULE "A"**  
**FORM OF CONCURRENT LEASE NOTICE**

**To: Peoples Trust Company ("Concurrent Lessee")**

**Re: Second Amended and Restated Concurrent Lease Agreement** dated as of April 15, 2019 among Concurrent Lessee and the undersigned (the "Concurrent Lease Agreement")

The undersigned hereby gives notice of a concurrent lease pursuant to Section 2.1 of the Concurrent Lease Agreement as follows:

Closing Date:

Cut-Off Date:

Leased Assets: Attached Schedule A

The undersigned hereby represents and warrants that the Lease Assets described in the attached Schedule A are Eligible Assets as of the related Cut-off Date. The undersigned further confirms that all representations and warranties of the Lessor contained in the Concurrent Lease Agreement are true and correct, no Servicer Termination Event has occurred that is continuing, and the Lessor is in compliance with all covenants under the Concurrent Lease Agreement.

Capitalized terms used and not defined in this Concurrent Lease Notice have the meanings set forth in the Concurrent Lease Agreement.

**CROWN CREST FUNDING CORP.**, in its capacity as trustee of **CROWN CREST CAPITAL TRUST**, as Lessor and Servicer, by its authorized agent, **CROWN CREST CAPITAL MANAGEMENT CORP.**

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

Name:

Title:

Accepted:

**PEOPLES TRUST COMPANY**, as Concurrent Lessee

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

Name:

Title:

Schedule A to Concurrent Lease Notice – Attach list of Lease Assets

**SCHEDULE "B"**

**LESSOR'S ADDRESSES**

Location of Records:

1201-200 Yorkland Street  
Toronto, ON M2J 5C1

**SCHEDULE "C"**  
**FORM OF PORTFOLIO REPORT**

(Form attached.)

**CROWN CREST CAPITAL TRUST**

as Lessor and Servicer

and

**PEOPLES TRUST COMPANY**

as Concurrent Lessee

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**THIRD AMENDED AND RESTATED CONCURRENT LEASE AGREEMENT**

April 15, 2019

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## THIRD AMENDED AND RESTATED CONCURRENT LEASE AGREEMENT

**CONCURRENT LEASE AGREEMENT**, dated as of April 15, 2019 (this **Agreement**), between **Crown Crest Funding Corp.** (the **Trustee**), in its capacity as trustee of **Crown Crest Capital Trust**, a trust duly formed and validly existing trust under the laws of the Province of Ontario (together with its successors and assigns, the **Lessor**) and **Peoples Trust Company**, a trust company existing under the laws of Canada (**Concurrent Lessee**).

**WHEREAS** the Lessor, the Concurrent Lessee and Simply Green Home Services Inc., as guarantor entered into a Concurrent Lease Agreement made as of February 13, 2018, as amended by an Amended and Restated Concurrent Lease Agreement made as of November 30, 2018 (the **Amended and Restated Agreement**), and as further amended by a Second Amended and Restated Concurrent Lease Agreement made as of December 31, 2018 (the **Second Amended and Restated Agreement**), pursuant to which the Lessor leases certain Leased Assets from time to time to the Concurrent Lessee and the Concurrent Lessee leases such Leased Assets from the Lessor;

**AND WHEREAS** the Lessor and the Concurrent Lessee wish to further amend and restate the Second Amended and Restated Agreement on and subject to the terms and conditions of this Agreement.

**NOW THEREFORE THIS AGREEMENT WITNESSES** that in consideration of the mutual covenants and agreements of the parties herein contained, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereto agree as follows:

### Article 1 - DEFINITIONS AND PRINCIPLES OF INTERPRETATION

#### 1.1 Definitions

Words with initial capital letters in this Agreement (including the above recitals) shall have the meanings set out below:

**Additional Term** means, in respect of a Concurrent Lease, the balance, if any, of the remaining term of the related Lease after the Lease End Date, less one day; provided that the balance of the remaining term may not exceed the lesser of (i) the useful life of the applicable Lease Asset and (ii) 60 months.

**Additional Term Investment** means, at any time, the sum of the Initial Additional Term Prepaid Rent, minus the amount of all ATPR Amortization on any prior Settlement Date, plus the amount of any Subsequent Additional Term Prepaid Rent on any Settlement Date.

**Administrative Costs** means, in respect of any Lease, all late fees, extension fees and other administrative or similar costs, charges and expenses billed to the applicable Obligor in accordance with the Lessor's customary practice and approved by the Concurrent Lessee, acting reasonably.

**Advance Rate** means 90%.

**Adverse Claim** means a security interest, lien, charge, encumbrance or other right or claim, including any filing or registration made in respect thereof, of or through any Person (other than the Concurrent Lessee).

**Agreement** means this agreement, together with the schedules hereto, as the same may be amended, supplemented, modified, restated or replaced from time to time, and the expressions **hereof**, **herein**, **hereunder**, and **hereby** and similar expressions refer to this agreement and not to any specific article, section, paragraph, subparagraph or clause hereof.

**Amortization Event** means the occurrence of any of the following events:

- (a) on any Reporting Date as of the end of the related Collection Period, either:
  - (i) the Average Delinquency Rate exceeds 6.5%;
  - (ii) the Average Loss Rate exceeds 2.75%;
- (b) a Servicer Termination Event; or
- (c) an Event of Default under the Credit Agreement that has been declared by the Concurrent Lessee, in writing.

**Amortization Period** means the period commencing on the date of occurrence of an Amortization Event and ending on the earlier of (i) the date such Amortization Event is waived by the Concurrent Lessee, in its sole discretion, and (ii) the date on which no further amounts are payable to the Concurrent Lessee hereunder.

**Approved Equipment** shall mean storage water heaters, tankless water heaters, water filtration and/or treatment systems, Heating Recovery Ventilation ('HRV') and/or High-efficiency particulate arrestance ('HEPA') systems, furnace and air conditioning ('HVAC') equipment and boiler systems, sub-metering equipment, smart home products as well as such other types or classes of consumer equipment as may be agreed to by the Lessor under Program Agreements and approved by the Concurrent Lessee in writing.

**Approved Originator** shall have the meaning ascribed thereto in the Credit Agreement.

**ATPR Amortization** means, on any Settlement Date, the amount, if any, by which the Additional Term Investment exceeds the product of (i) the Advance Rate and (ii) the sum of the net present values of each unpaid rental payments coming due over the entire term, ending on the last day of the Additional Term, of the ATPR Scheduled Leases on the immediately preceding Settlement Date, excluding all Scheduled Payments, but including all escalations in the rental payments the Lessor is entitled to, discounted to the date of determination at the Discount Rate.

**ATPR Funding Rate** means, in respect of a Concurrent Lease and a Settlement Period, an annual interest rate equivalent to the average of BMO Prime for the 30 days in effect prior to each Closing Date plus 1.7% per annum, provided that from and after each 5th anniversary of the date of the Amended and Restated Agreement, BMO Prime for the related Concurrent Leases and the calculation Funding Costs shall be adjusted to BMO Prime in effect on such 5th anniversary plus 1.7% per annum

**ATPR Scheduled Leases** means the Leases, the related Approved Equipment of which is the subject of a Concurrent Lease at such time, designated by the Lessor to the Concurrent Lessee by notice in writing on the date of the Amended and Restated Agreement, as such schedule may be amended by the Lessor on any Settlement Date, provided that, for greater certainty, to the extent any Lease that is an ATPR Scheduled Lease ceases to be subject to a Concurrent Lease hereunder, such Lease shall thereafter cease to be an ATPR Scheduled Lease.

**Average Delinquency Rate** means for any Reporting Date, the arithmetic mean of the Delinquency Rates for each of the three Collection Periods immediately prior or (a) in the case of the first Reporting Date, the Delinquency Rate for the first Collection Period and (b) in the case of the second Reporting Date, the arithmetic mean of the Delinquency Rates for each of the two Collection Periods immediately prior.

**Average Loss Rate** means for any Reporting Date, the arithmetic mean of the Loss Rates for each of the three Collection Periods immediately prior or (a) in the case of the first Reporting Date, the Loss Rate for the first Collection Period and (b) in the case of the second Reporting Date, the arithmetic mean of the Loss Rates for each of the two Collection Periods immediately prior.

**Blocked Account Agreement** means the blocked account agreement made as of December 1, 2016 between the Trustee, the Lessor and The Toronto-Dominion Bank, as the same may be amended, restated, supplemented or replaced from time to time.

**BMO Prime** means, at any time, the posted “prime rate” of interest charged by Bank of Montreal for its commercial loans that are made in Canadian dollars.

**Business Day** means any day other than a Saturday, Sunday, or public holiday on which banks are required or permitted to be closed in the Province of Ontario or the Province of British Columbia.

**Charged-Off Asset** means any Lease (i) for which the Servicer has become aware that an Insolvency Event has occurred in respect of the related Obligor or (ii) that is or is required to be charged-off as uncollectible by the Servicer in accordance with the Credit and Collection Policies it being acknowledged that under the Credit and Collection Policies a Lease would be charged-off as uncollectible upon the Servicer becoming aware that an Insolvency Event had occurred in respect of the related Obligor; provided that a Lease will cease to be a Charged-Off Asset if all outstanding amounts are paid in full by the Obligor.

**Closing Date** means, in respect of a Concurrent Lease, the date specified as such in the applicable Concurrent Lease Notice.

**Collection Period** means a calendar month, provided that the initial Collection Period shall commence on the Cut-Off Date in respect of the initial Concurrent Lease and the final Collection Period shall end on (and include) the Final Collection Date.

**Collections** means without duplication (i) in respect of any Leased Asset, all cash collections and other cash proceeds in respect thereof and of the related Rights and Receivables (excluding Administrative Costs and Sales Taxes but including payments of rent, interest and principal) received after the applicable Cut-Off Date, (ii) any Deemed Collections in respect of such Leased Assets, and (iii) the net proceeds of any disposition of the related Leased Asset, except where the proceeds of disposition are payable directly to the Concurrent Lessee.

**Collections Account** means the account established and maintained in the name of the Lessor as the account owner at The Toronto-Dominion Bank (Branch ID: 14822, Account Number: 5293714) or such other account as is designated by notice to the Lessor as the Collections Account for the purposes hereof, which account shall at all times be subject to a Blocked Account Agreement in form and substance acceptable to the Concurrent Lessee.

**Concurrent Lease** means each concurrent lease of Approved Equipment entered into in accordance with Article 2.

**Concurrent Lease Entitlements** has the meaning ascribed thereto in Section 2.6.

**Concurrent Lease Notice** means the offer by the Lessor to lease Lease Assets to the Concurrent Lessee in the form attached hereto as Schedule “A”.

**Concurrent Lessee’s Proportionate Share** means, in respect of the Collections for a Lease, (i) for a Lease that is a ATPR Scheduled Lease or a Second ATPR Scheduled Lease, a percentage

equal to the proportion of the Scheduled Payments plus all payments of escalations plus all regularly scheduled payments to be made by the Obligor during the Additional Term or Second Additional Term, as applicable, for such Lease required to fully amortize the sum of Prepaid Rent, Initial Additional Term Prepaid Rent, Subsequent Additional Term Prepaid Rent and Second Additional Term Prepaid Rent, as applicable, for such Lease over the sum of the Prescribed Term and the Additional Term or Second Additional Term, as applicable, at the weighted average of the Funding Rate and ATPR Funding Rate or Second ATPR Funding Rate, as applicable, and (ii) for a Lease that is not a ATPR Scheduled Lease or a Second ATPR Scheduled Lease, a percentage equal to the proportion of the Scheduled Payments plus all payments of escalations for such Lease required to fully amortize the Prepaid Rent over the Prescribed Term at the Funding Rate.

**Credit and Collection Policies** means the Lessor's credit, collection and administration policies and procedures relating to its portfolio of loans, as represented in the Lessor's operating procedures manual, which for greater certainty, has been reviewed and approved by the Concurrent Lessee.

**Credit Monitoring Fee** means, for a Concurrent Lease on a Closing Date, an amount equal to 3% of the Prepaid Rent plus, if applicable, 3% of the Initial Additional Term Prepaid Rent or Second Additional Term Prepaid Rent.

**Credit Agreement** means the warehouse line of credit agreement made as of December 1, 2016 between the Lessor, as borrower, Crown Crest Capital Management Corp., as guarantor, and the Concurrent Lessee as lender, as the same has been and may be amended, restated, supplemented or otherwise modified from time to time.

**Cut-Off Date** means the date specified as such in the Concurrent Lease Notice.

**Deemed Collections** means amounts required to be deposited to the Collections Account pursuant to Section 6.5 hereof.

**Deferred Rent** has the meaning set forth in Section 2.4.

**Delinquency Rate** means, for any Collection Period, the sum of the outstanding principal balances of Leased Assets other than Charged-Off Assets that are Delinquent Assets at the end of such Collection Period, divided by the Pool Balance at the end of such Collection Period.

**Delinquent Asset** means a Lease where any amount payable thereunder or any portion thereof is more than 30 days past due.

**Discount Rate** means, in respect of a Concurrent Lease, a discount rate equivalent to 4% per annum, provided that the Concurrent Lessee may adjust the Discount Rate on January 2 of any calendar year by notice in writing delivered not less than 30 days before such date in respect of Concurrent Leases to be entered into after such date. Any increase in the Discount Rate cannot exceed any net increase in BMO Prime during the calendar year then ended.

**Eligible Asset** means any Lease:

- (a) in respect of which the Obligor thereunder is a Person who is resident in Canada and is not (i) an affiliate of the Lessor or the Concurrent Lessee; (ii) the Government of Canada or any agency or instrumentality thereof or any federal crown corporation other than those listed as exempt under applicable legislation from restrictions or requirements for consent or notice on the assignment of receivables in respect of which they are obligors; or (iii) any provincial government or agency thereof if the enforceability against such government or agency of an assignment of debts owing thereby is subject to any precondition which has not been fulfilled;

- (b) which is not a Charged-Off Asset or a Delinquent Asset;
- (c) that has a fair market value that is greater than or equal to its face value;
- (d) which is payable to an address in Canada only and is denominated and payable in Canadian Dollars and in respect of which the Obligor has been directed to remit payments to the Collections Account;
- (e) which has been duly authorized, executed and delivered by the parties thereto, has been entered into in compliance with all applicable laws (including any licensure laws applicable to Lessor), and, together with all related Rights (including any guarantee, indemnity or agreement referred to in clause (g) of the definition of Rights), is in full force and effect and constitutes the legal, valid and binding obligation of the related Obligor enforceable against such Obligor in accordance with its terms, subject to applicable bankruptcy, reorganization, insolvency, moratorium or similar laws affecting creditors' rights generally and subject to equitable principles of general application (regardless of whether enforcement is sought in a proceeding at law or in equity);
- (f) which is not subject to any dispute, set-off, counterclaim or defense whatsoever, no prepayments have been made thereunder and which is owned by the Lessor and free of any Adverse Claim and has not been extended or otherwise modified except in the ordinary course of business and in accordance with the Credit and Collection Policies;
- (g) in respect of which the Lessor or the Originator is not in default in the performance of any of the covenants of the Lessor or the Originator thereunder;
- (h) the terms of which do not contravene any laws, rules or regulations applicable thereto (including, without limitation, such laws, rules, or regulations relating to usury, truth in lending, credit business practices, cost of borrowing, consumer protection, equal credit opportunity, fair debt collection practices and privacy), except where such contravention would not materially adversely affect the collectability or enforceability of the related Rights;
- (i) in which the perfection of the Lessor's rights complies with the requirements of the Credit and Collection Policies in all material respects it being acknowledged that Lease Assets that are Low Value Leases do not require perfection of the Lessor's rights;
- (j) the related Obligor is not the subject of any Insolvency Event (except where such Insolvency Event occurred prior to the origination of the Receivable and such origination was consistent with the Credit and Collection Policies) or, to the best of the Lessor's knowledge, there are no such proceedings pending against such Obligor;
- (k) in respect of which the related Rights may be assigned in whole or in part without the consent of the related Obligor;
- (l) which is documented pursuant to a form of contract which is similar in all material respects to one of the forms of contract that have previously been delivered to and accepted by the Concurrent Lessee, acting reasonably;
- (m) in respect of which immediately prior to the lease hereunder the Lessor is the legal and beneficial owner of the Lease Asset, the related Receivables and Rights free and clear of any Adverse Claim;
- (n) in respect of which after the Concurrent Lease of the related Equipment to the Concurrent Lessee, the Concurrent Lessee would be the sole legal and beneficial owner

of the related Concurrent Lease Entitlements with full right to transfer, sell and encumber such Concurrent Lease Entitlements free and clear of any lien;

- (o) that has not been satisfied, subordinated, waived or rescinded;
- (p) that has not been compromised, adjusted or modified except in accordance with the Credit and Collection Policies;
- (q) that was generated in the ordinary course of business;
- (r) except in the case of Low Value Leases, for which all filings or recordings with respect to the Lessor's interest therein and the related Leases and Rights necessary by law or reasonably prudent and desirable for the perfection and protection of such interests including any further filings, recordings or renewals thereof, have been effected by the Lessor (**Lien Registration**);
- (s) in respect of which the related Originator is an Approved Originator;
- (t) the related Obligor's credit score at the time of origination was not less than 500, provided that the related Obligor may have no measured credit score in respect of a Low Value Lease if evidence has been obtained of the related Obligor's ownership of the residential property at which the related Leased Assets has been installed; and
- (u) which satisfies such other criteria as may be added by the Concurrent Lessee in accordance with Section 5.4 from time to time.

**ETA** means Part IX of the *Excise Tax Act* (Canada).

**Excess LS Delinquencies** is defined in Section 6.2(l).

**Excess LS Delinquencies Reimbursement** is defined in Section 6.2(l).

**Excess LV Delinquencies** is defined in Section 6.2(l).

**Excess LV Delinquencies Reimbursement** is defined in Section 6.2(l).

**Final Collection Date** means the date on which all Leases subject to Concurrent Leases have been terminated, fully collected and/or written off as uncollectible pursuant to the Credit and Collection Policies.

**Finance Charge Collections** means Collections in respect of interest and fees (other than Administrative Costs).

**Funding Costs**, means, in respect of a Settlement Period, the sum of (a) the product of (i) the Investment as of the first day of the Settlement Period and (ii) the weighted average Funding Rate for all Concurrent Leases and the related Settlement Period, plus (b) the product of (i) the Additional Term Investment as of the first day of the Settlement Period, and (ii) the ATPR Funding Rate, plus (c) the product of (i) the Second Additional Term Investment as of the first day of the Settlement Period, and (ii) the Second ATPR Funding Rate.

**Funding Rate** means, in respect of a Concurrent Lease and a Settlement Period, an annual interest rate equivalent to the average of BMO Prime for the 30 days in effect prior to each Closing Date plus 1.3% per annum, provided that from and after the 5<sup>th</sup> anniversary of each Closing Date, BMO Prime for the related Concurrent Leases and the calculation Funding Costs shall be adjusted to BMO Prime in effect on such 5<sup>th</sup> anniversary plus 1.3% per annum.

**GAAP** means generally accepted accounting principles from time to time approved by the Chartered Professional Accountants of Canada or any successor body, applicable as at the date in question and applied on a consistent basis.

**Governmental Authority** means any federal, state, provincial, regional, local or foreign court or governmental agency, authority, instrumentality or regulatory body.

**GST/HST** means the goods and services tax, harmonized sales tax, and all other amounts payable under the ETA or pursuant to any similar value added tax legislation in any other jurisdiction of Canada or is similar thereto.

**Initial Additional Term Prepaid Rent** means, at any time, the aggregate, for each ATPR Scheduled Lease, of the product of (i) the Advance Rate and (ii) the sum of the net present values of each unpaid rental payments coming due over the entire term, ending on the last day of the Additional Term, of the related ATPR Scheduled Lease, excluding all Scheduled Payments, but including all escalations in the rental payments the Lessor is entitled to, discounted to the date of determination at the Discount Rate.

**Insolvency Event** means, in respect of any Person, such Person shall generally not pay its debts as they become due, or shall admit in writing its inability to pay its debts generally, or shall make a general assignment for the benefit of creditors; or any proceedings shall be instituted by or against, as the case may be, seeking to adjudicate it as bankrupt or insolvent or seeking liquidation, winding up, reorganization arrangement, adjustment, protection, relief or composition of it or its debts under any law relating to bankruptcy, insolvency, reorganization or relief of insolvent debtors, or seeking the entry of an order for relief by the appointment of a receiver, trustee, custodian or similar official for its or a substantial part of its property and, if such proceeding has been instituted against such Person, while being contested in good faith by such Person, such proceeding has not been stayed or dismissed within 45 days or a receiver, trustee, custodian or other similar official is appointed for it or any substantial part of its property; or a receiver being privately appointed in respect of a substantial part of the assets of such Person; or such Person, takes any corporate action to authorize any of the actions described above.

**Investment** means at any time the sum of all Prepaid Rent paid (or deemed to have been made) by the Concurrent Lessee to the Lessor, less (i) the sum of all amounts paid to the Concurrent Lessee on account of the Concurrent Lessee's Proportionate Share allocable to the Investment, less (ii) any Funding Costs allocable to the Investment, less (iii) the Rent Rebate allocable to the Investment paid by the Lessor in respect of all Concurrent Leases terminated from time to time.

**ITA** means the *Income Tax Act* (Canada) and includes any corresponding, applicable provincial income tax statute, and for greater certainty, where this Agreement refers to a specific provision of the ITA, such reference includes a reference to any corresponding provision of an applicable provincial income tax statute.

**Lease** means a lease or rental agreement or similar agreement (including a sub-metering agreement) for the lease or sale of Approved Equipment originated by an Originator.

**Lease Asset** means a Lease together with the related Rights.

**Lease End Date** means, in respect of any Lease and Concurrent Lease, the Settlement Date immediately following the scheduled date of the last Scheduled Payment under the related Lease.

**Leased Assets** means the Approved Equipment concurrently leased or purported to be concurrently leased by the Concurrent Lessee hereunder (other than Concurrent Leases terminated hereunder).

**Loss Rate** means in respect of a Collection Period, net losses in respect of Leases subject to Concurrent Leases divided by the original outstanding net present value of the Leases subject to Concurrent Leases subject to losses during such Collection Period.

**Low Score Leases** means Leases in respect of which the beacon score of the related Obligor is less than 600 but greater than 500 on the date such Lease is originated.

**Low Value Lease** means a Lease Asset in respect of which the related Approved Equipment is a water heater or other equipment where the original monthly rental amount (excluding taxes) is less than \$45 or a tankless water heater where the original monthly rental amount (excluding taxes) is less than \$65.

**Material Adverse Effect** means, in respect of any Person or any Lease subject to a Concurrent Lease any effect on it which could reasonably be expected to have an adverse impact on (i) in the case of such Person the ability of such Person to perform its obligations hereunder or under any Related Document, or (ii) the enforceability or collectability of such Lease or (iii) the value of such Lease.

**Obligor** means in respect of any Lease, the Person or Persons obligated to make payments thereunder.

**Originator** has the meaning ascribed thereto in the Credit Agreement.

**Outstanding Balance** means, in respect of a Concurrent Lease, the product of (i) the Advance Rate, and (ii) the sum of the net present values of each unpaid Scheduled Payment plus, if applicable, each unpaid regularly scheduled payment to be made by the Obligor during the Additional Term or Second Additional Term under the related Lease, discounted to the date of determination at the applicable Discount Rate.

**Person** means an individual, partnership, corporation, trust, joint venture, unincorporated association, government (or any agency or political subdivision thereof) or other entity.

**Pool Balance** means at any time the aggregate Outstanding Balance of all Concurrent Leases other than in respect of Charged-Off Assets or Lease Assets where the related Concurrent Lease has been terminated.

**Portfolio Report** means a report substantially in the form attached hereto as Schedule "C", delivered by the Lessor to the Concurrent Lessee pursuant to Section 6.2(l)).

**PPSA** means the *Personal Property Security Act* (British Columbia) or the comparable legislation of the other provinces of Canada including, in Québec, the Civil Code of Québec.

**Prepaid Rent** means the lump sum rent required to prepay the original monthly rental amount due under any Concurrent Leases pursuant to Article 2, which shall be equal to the product of (i) the Advance Rate and (ii) the sum of the net present values of each unpaid Scheduled Payment of the applicable Lease Asset, discounted to the related Closing Date at the applicable Discount Rate.

**Prescribed Term** means, in respect of any Lease at any time, the lesser of 10 years and the remaining term of such Lease at such time less one day.

**Program Agreements** has the meaning ascribed thereto in the Credit Agreement.

**PST** means amounts payable under any statute in Canada imposing a single stage retail sales tax.

**Receivables** means, in respect of any Lease, all moneys payable with respect to such Lease Asset including all scheduled periodic payments, principal, interest, interchange, extra charges, fees and penalties and other moneys payable by the related Obligor (exclusive of Administrative Costs) during the period from but excluding the Cut-Off Date, to the date when all amounts have been paid under such Lease.

**Records** means, in respect of any Lease subject to a Concurrent Lease, all contracts (including those evidencing such Lease), books, records, reports and other documents and information (including, to the extent obtainable by way of existing software controlled by the Lessor, hard copies of all data maintained in databases of the Lessor, tapes and disks) maintained by or on behalf of the Lessor in respect of the Lease and the related Obligor.

**Related Documents** means any agreement, document, exhibit, notice or other communication which has at any time been delivered by the Lessor to the Concurrent Lessee pursuant hereto, including all agreements and documents required hereunder.

**Rental Amount** means in respect of a Lease, the original regularly-scheduled monthly rental payment amount of the Obligor thereunder.

**Rent Rebate** means, at any time with respect to any Concurrent Lease in respect of which the Concurrent Lessee made a payment of Prepaid Rent and, if applicable, Initial Additional Term Prepaid Rent or Second Additional Term Prepaid Rent, an amount equal to the product of (i) the Advance Rate and (ii) the sum of the net present values of each unpaid Scheduled Payment plus, if applicable, each unpaid regularly scheduled payment to be made by the Obligor during the Additional Term or Second Additional Term arising under the related Lease, discounted to the date of determination at the applicable Discount Rate.

**Replacement Servicer** means any Person appointed by the Concurrent Lessee to replace the initial or any subsequent Servicer upon the occurrence of a Servicer Termination Event.

**Replacement Servicer Fee** has the meaning given to it in Section 7.3.

**Reporting Date** means in respect of a Collection Period the second Business Day preceding the related Settlement Date.

**Rights** means, in respect of any Lease, the following:

- (a) all rights and benefits accruing to the Lessor under such Lease, including all right, title and interest in and to the related receivables;
- (b) all of the Lessor's right, title and interest in and to the related Approved Equipment;
- (c) all right in or to payments (including both proceeds and, to the extent the Lessor has any rights therein, premium refunds) under any insurance policies maintained by the related Obligor pursuant to the terms of such Lease or by the Lessor in respect of such Lease;
- (d) all claims, demands, actions, damages and indemnities owing to the Lessor under such Lease;
- (e) the right of the Lessor to ask, demand, sue for, collect, receive and enforce any and all sums payable under the Lease and to enforce all other covenants, obligations, rights and remedies thereunder with respect thereto;
- (f) all of the right, title and interest of the Lessor in, to and under all prepayments made after the Cut-Off Date, guarantees, promissory notes and indemnities (including all security

interests and all property subject thereto) from time to time supporting or securing payment or performance of the related Obligor's obligations in respect of the Lease, whether pursuant to the Lease or otherwise;

- (g) the related Records; and
- (h) all proceeds of or relating to any of the foregoing.

**Sales Taxes** means all federal, provincial and other sales, goods and services, value added, use or other transfer taxes, and all other similar taxes whatsoever, including GST/HST and PST.

**Scheduled Payment** means, in respect of a Lease, the Rental Amount payable by the Obligor thereunder during a term not exceeding the lesser of (i) the remaining term of the Lease, (ii) ten years and (iii) the remainder of the Prescribed Term.

**Second Additional Term** means, in respect of a Concurrent Lease, the balance, if any, of the remaining term of the related Lease after the Lease End Date, less one day; provided that the balance of the remaining term may not exceed the lesser of (i) the remaining useful life of the applicable Lease Asset and (ii) 60 months.

**Second Additional Term Investment** means, on any day, the Second Additional Term Prepaid Rent less (i) the sum of all amounts paid to the Concurrent Lessee on account of the Concurrent Lessee's Proportionate Share in respect of the Second Additional Term, less (ii) any Funding Costs allocable to the Second Additional Term Investment, less (iii) the Rent Rebate allocable to the Second Additional Term Investment paid by the Lessor in respect of all Concurrent Leases that are Second ATPR Leases terminated from time to time.

**Second Additional Term Prepaid Rent** means, at any time, the aggregate, for each Second ATPR Scheduled Lease, of the product of (i) the Advance Rate and (ii) the sum of the net present values of each unpaid rental payments coming due over the entire term, ending on the last day of the Second Additional Term, of the related Second ATPR Scheduled Lease, excluding all Scheduled Payments, but including all escalations in the rental payments the Lessor is entitled to, discounted to the date of determination at the Discount Rate.

**Second ATPR Funding Rate** means, in respect of a Concurrent Lease and a Settlement Period, an annual interest rate equivalent to the average of BMO Prime for the 30 days in effect prior to each Closing Date plus 1.7% per annum, provided that from and after each 5th anniversary of the date of this Agreement, BMO Prime for the related Concurrent Leases and the calculation Funding Costs shall be adjusted to BMO Prime in effect on such 5th anniversary plus 1.7% per annum

**Second ATPR Scheduled Leases** means the Leases, the related Approved Equipment of which is the subject of a Concurrent Lease at such time, designated by the Lessor to the Concurrent Lessee by notice in writing on the date of this Agreement.

**Security Agreement** has the meaning ascribed thereto in the Credit Agreement.

**Servicer** means Lessor in its capacity as servicer hereunder and any Replacement Servicer.

**Servicing Fee** means in respect of any Settlement Date, a fee not exceeding 0.40% per annum of the Pool Balance at such time.

**Servicer Termination Event** has the meaning set forth in Section 7.1.

**Settlement Date** means, in respect of a Collection Period, the 15<sup>th</sup> calendar day of the calendar month (or the next Business Day if such day is not a Business Day) following the calendar month related to such Collection Period.

**Settlement Period** means in respect of a Settlement Date, the period commencing on and including the immediately preceding Settlement Date to but excluding such Settlement Date, provided that the first Settlement Period shall commence on and include the date of the Original Agreement and the final Settlement Date shall end on and exclude the Final Collection Date.

**Subsequent Additional Term Prepaid Rent** means, on a Settlement Date, the amount (if any) by which (a) the product of (i) the Advance Rate and (ii) the sum of the net present values of each unpaid rental payments coming due over the entire term, ending on the last day of the Additional Term, of the ATPR Scheduled Leases (as updated on such Settlement Date), excluding all Scheduled Payments, but including all escalations in the rental payments the Lessor is entitled to, discounted to the date of determination at the Discount Rate, exceeds (b) the Additional Term Investment immediately prior to such Settlement Date.

#### 1.2 Extended Meanings

In this Agreement, words importing the singular number include the plural and vice versa and words importing gender include each gender. Unless the context requires otherwise, any reference herein to any Person shall be construed to include such Person's successors and permitted assigns.

#### 1.3 Headings and Table of Contents

The table of contents does not form part of this Agreement. Article and Section headings are not to be considered part of this Agreement, are included solely for convenience of reference and do not define, limit or enlarge the construction or interpretation hereof.

#### 1.4 References to Sections, Articles and Schedules

Unless otherwise provided, all references herein to Sections, Articles or Schedules are references to Sections, Articles and Schedules of or to this Agreement.

#### 1.5 References to Statutes

Unless otherwise provided, all references herein to any statute or any provision thereof shall mean such statute or provision as amended, restated or re-enacted from time to time.

#### 1.6 Certain Phrases

Unless otherwise provided herein, the words "including", "includes" and "include" mean "including (or includes or include) without limitation".

#### 1.7 Governing Law

This Agreement will be governed by and construed in accordance with the laws of the Province of British Columbia and the federal laws of Canada applicable therein (without regard to the conflict of laws rules of the Province of British Columbia).

#### 1.8 Invalidity of Provisions

Save and except for any provision or covenant contained herein which is fundamental to the subject matter of this Agreement (including those that relate to the payment of moneys), the

invalidity or unenforceability of any provision or covenant hereof or herein contained will not affect the validity or enforceability of any other provision or covenant hereof or herein contained and any such invalid or unenforceable provision or covenant will be deemed to be severable.

1.9 Computation of Time Periods

Unless otherwise provided herein, in the computation of a period of time from a specified date to a later specified date, the word "from" means "from and including" and each of the words "to" and "until" means "to but excluding".

1.10 Non-Business Days

Whenever any payment to be made hereunder shall be stated to be due, any period of time would begin or end, any calculation is to be made or any other action to be taken hereunder shall be stated to be required to be taken, on a day other than a Business Day, such payment shall be made, such period of time shall begin or end, such calculations shall be made and such other action shall be taken on the next succeeding Business Day.

1.11 Accounting Principles

Where the character or amount of any asset or liability or item of revenue or expense is required to be determined, or any consolidation or other accounting computation or presentation is required to be made for the purpose of this Agreement, such determination, consolidation, computation or presentation shall, to the extent applicable and except as otherwise specified herein or as otherwise agreed to in writing by the parties, be made in accordance with GAAP applied on a consistent basis. Wherever in this Agreement reference is made to generally accepted accounting principles, such reference shall be deemed to be to GAAP applicable as at the date on which such determination, consolidation, computation or presentation is made or required to be made.

1.12 Currency

Unless otherwise provided, all amounts herein are stated in Canadian Dollars.

1.13 Entire Agreement

This Agreement contains the entire agreement between the parties relative to the subject matter hereof and supersedes all prior and contemporaneous agreements, term sheets, commitments, understandings, negotiations, and discussions, whether oral or written. There are no warranties, representations or other agreements between the parties in connection with the subject matter hereof except as specifically set forth herein.

1.14 Schedules

The following schedules annexed hereto are incorporated herein by reference and are deemed to be part hereof:

Schedule "A" – Form of Concurrent Lease Notice

Schedule "B" – Lessor's Addresses

Schedule "C" – Form of Portfolio Report (or such other format as mutually agreed upon by the parties)

## Article 2 - CONCURRENT LEASE

### 2.1 Grant of Concurrent Lease

- (a) Upon the terms and subject to the conditions set forth herein, the Lessor may from time to time prior to the occurrence of an Amortization Event, by delivering a completed Concurrent Lease Notice, offer to concurrently lease Approved Equipment to the Concurrent Lessee at least 5 Business Days before a proposed Closing Date. The Concurrent Lessee shall indicate its acceptance of the offer to concurrently lease Approved Equipment by countersigning the Concurrent Lease Notice delivered by the Lessor on or before the proposed Closing Date.
- (b) On each Closing Date, Lessor shall hereby lease to Concurrent Lessee, free and clear of all security interests, liens or other adverse claims other than the leasehold interests of the relevant Obligors, and Concurrent Lessee shall hereby lease from Lessor, the Approved Equipment as listed on the related Concurrent Lease Notice delivered by Lessor to Concurrent Lessee) with effect as of the Closing Date. It is hereby expressly acknowledged and agreed that the interest of the Concurrent Lessee under each Concurrent Lease in and to the related Approved Equipment is that of a lessee only, and that title to and ownership in all such Approved Equipment shall, subject to Section 2.6, remain vested in the Lessor. It is hereby further expressly acknowledged and agreed that, as of each Closing Date and until the applicable Final Collection Date, the beneficial ownership of the interest of the Lessor in respect of each Lease relating to Leased Assets and the related Collections will automatically vest in the Concurrent Lessee and the Lessor will hold in trust for the benefit of the Concurrent Lessee the interest of the Lessor under each such Lease and related Collections. It is hereby further expressly acknowledged and agreed that, notwithstanding the grant by the Lessor to the Concurrent Lessee of each Concurrent Lease, the rights of the lessee Obligors with respect to the possession and use of the Approved Equipment shall continue and be the same as under their respective Leases.
- (c) On each Closing Date, the Lessor will pay to the Concurrent Lessee the Credit Monitoring Fee for each Concurrent Lease listed in the applicable Concurrent Lease Notice. The Concurrent Lessee may set off the Credit Monitoring Fee payable for a Concurrent Lease against the Prepaid Rent for that Concurrent Lease paid by the Concurrent Lessee on the Closing Date.
- (d) In its capacity as lessor to the Concurrent Lessee and so that the Concurrent Lessee will not be in violation of its obligation as lessor to the Obligors or any of them, the Lessor hereby covenants and agrees to and in favour of the Concurrent Lessee that at all times during the term of each Concurrent Lease, the Lessor will, in all material respects, comply with and perform each term, condition, representation, warranty and covenant of the lessor contained in each Lease and will not take or omit to take any action in its capacity as owner of the Approved Equipment and lessor under any Concurrent Lease and which would cause any material failure by it to so comply with and perform each term, condition, representation, warranty and covenant required to be complied with or performed by the lessor under each Lease.
- (e) In its capacity as lessee under each Concurrent Lease, the Concurrent Lessee hereby covenants and agrees, to and in favour of the Lessor, to cause and require each Obligor to comply with and perform each term, condition, representation, warranty and covenant required to be complied with or performed by an Obligor under the relevant Lease.

## 2.2 Terms of Concurrent Leases

- (a) The term of each Concurrent Lease in respect of an item of Approved Equipment shall be deemed to commence at the close of business on the related Closing Date and, unless terminated or deemed terminated earlier in accordance with the provisions hereof, shall terminate on the Lease End Date for the related Lease.
- (b) Notwithstanding Section 2.2(a), the Concurrent Lessee shall, by giving the Lessor notice, have the right to extend (i) the term of all Concurrent Leases outstanding on the date of the Amended and Restated Agreement beyond the relevant Lease End Dates to the end of the Additional Term and (ii) the term of all Concurrent Leases outstanding on the date of this Agreement for which a notice has not been previously given pursuant to this section beyond the relevant Lease End Dates to the end of the Second Additional Term.

It is hereby expressly acknowledged and agreed that the Lessor's title and ownership of the Approved Equipment owned by it shall be subject to the rights of the Concurrent Lessee under each Concurrent Lease with respect to such Approved Equipment, and, consequently, except as otherwise provided herein, upon the termination of the Lease relating to any Approved Equipment (whether upon the expiry of the Term thereof, as a result of a default by the Obligor thereunder or otherwise), the Concurrent Lessee shall, until the expiry of the term of the Concurrent Lease relating to such Approved Equipment, have the exclusive right to possess, use and lease such Approved Equipment as provided for in this Article 2. Except as provided herein, neither the Concurrent Lessee nor the Lessor shall be entitled to terminate the Concurrent Lease in respect of any or all of the Approved Equipment.

## 2.3 Rent for Concurrent Lease

In consideration of the grant by the Lessor to the Concurrent Lessee of each Concurrent Lease, the Concurrent Lessee shall pay to the Lessor, on the first day of each calendar month after the Closing Date during the term of each Concurrent Lease, as monthly rent, an amount equal to 99.99% of the sum of all payments forming part of the Scheduled Payments to be made in respect of the Leases of Leased Assets in respect thereof during the related Collection Period. Any Taxes will be added to any amount so paid if applicable.

## 2.4 Prepaid and Deferred Rent

The Lessor acknowledges and agrees that the Concurrent Lessee may satisfy and discharge its obligations to make all monthly rent payments required by Section 2.3 by (a) paying to the Lessor, on the related Closing Date, as a prepayment of rent, a sum equal to the Prepaid Rent, (b) paying to the Lessor the amounts specified pursuant to and in accordance with Section 3.1 as deferred rent (the **Deferred Rent**), each of which payments shall be made without the need on the part of the Lessor to provide the Concurrent Lessee with any invoices. The Concurrent Lessee shall be deemed to have elected to make the payments specified in (a) and (b) if it pays the Prepaid Rent on the related Closing Date. In the event the Concurrent Lessee elects to extend the terms of the Concurrent Leases outstanding on the date of the Amended and Restated Agreement or on the date of this Agreement, as applicable, to the end of the Additional Term or Second Additional Term, as applicable, in accordance with Section 2.2(b), the Concurrent Lessee may pay to the Lessor, upon the exercise of its right to extend the terms, as a prepayment of rent, a sum equal to the Initial Additional Term Prepaid Rent plus the Subsequent Additional Term Prepaid Rent as determined on each Settlement Date thereafter or the Second Additional Term Prepaid Rent, as applicable. Concurrently with the payment of the Initial Additional Term Prepaid Rent for an ATPR Scheduled Lease, or the Second Additional Term Prepaid Rent for a Second ATPR Scheduled Lease, the Lessor will pay to the Concurrent Lessee the Credit Monitoring Fee for that ATPR Scheduled Lease or Second ATPR Scheduled Lease. Any Taxes will be added to any of the foregoing amounts so paid if applicable.

## 2.5 Acknowledgment

The Lessor acknowledges and agrees that, as a consequence of the grant and demise of rights by it to the Concurrent Lessee under this Agreement, and in consideration of the obligation and the liability of the Concurrent Lessee to pay to the Lessor the rent (including any payment by the Concurrent Lessee of Prepaid Rent), as provided for in this Article 2, the Concurrent Lessee shall be entitled, among other things, to receive all Scheduled Payments under the Leases, the Leased Assets relating to which is concurrently leased to the Concurrent Lessee hereunder, as of and from the close of business on the related Closing Date.

## 2.6 Security Interest

As continuing security for the due and timely payment from time to time by the Lessor of all obligations of the Lessor, the Lessor hereby grants, pledges and charges, to and in favour of the Concurrent Lessee, a first charge and security interest in and to all of the Lessor's right, title and interest, both present and future, in, to and under the following:

- (a) all of the Lessor's right, title and interest in, to and under the Leased Assets and the Leases related thereto including, without limitation, all amounts owed to or received by the Lessor in respect of Collections from any Obligor or other Person, including all liquidation proceeds and subsequent recoveries in respect of the Leased Assets and the related Records;
- (b) all of the Lessor's right, title and interest in and to all Collections made on or after the related Closing Date and the right to make Collections in respect of the remaining Term thereof made on or after the Closing Date including, without limitation, rights, if any, under direct debit agreements with Obligors, and all cheques, notes, instruments of payment and other remittances relating thereto;
- (c) all of the Lessor's right, title and interest in and to the related Rights relating to the Leased Assets; and
- (d) all proceeds from any or all of the foregoing;

(all of such property and rights being collectively referred to herein as the **Concurrent Lease Entitlements**). The Lessor and the Concurrent Lessee agree that value has been given for the granting by the Lessor of such charge and security interest, that they have not agreed to postpone the time for attachment with respect thereto and that attachment will occur immediately upon the Lessor acquiring rights to receive any such Collections or other amounts.

## 2.7 Concurrent Lessee Rights

The Lessor hereby acknowledges that, as a consequence of the granting of the Concurrent Leases hereunder, the Concurrent Lessee through the Servicer on its behalf, shall have the right, at any time, to:

- (a) notify any Obligor of the Concurrent Lease by the Concurrent Lessee of the Leased Assets;
- (b) to the extent that the Lessor has such rights, contact any Obligor for any purpose, including for the performance of audits and verification analyses, and the determination of account balances and other data maintained by the Servicer;
- (c) direct any Obligor to make all payments on account of any Leases directly to the Concurrent Lessee at an address designated by the Concurrent Lessee or to such third

party (including the Servicer) or bank or depositary as may be designated by the Concurrent Lessee;

- (d) request any Obligor to change the instructions for any direct debit or electronic funds transfer otherwise payable to the Lessor or the Servicer;
- (e) proceed directly against any Obligor and take any and all other actions, in the Lessor's name or otherwise, necessary or reasonably desirable to collect the Leases, enforce the related Rights or effect any related result; and
- (f) subject to the terms of the related Lease, sell by power of sale any Leased Assets for any price the Concurrent Lessee (or the Servicer on its behalf) deems reasonable in its sole discretion and apply the liquidation proceeds arising from any such sale towards any Rent Rebate arising therefrom.

#### 2.8 Application Fee

The Lessor shall pay to the Concurrent Lessee following the completion of each Concurrent Lease or each extension of a Concurrent Lease for a Second Additional Term, an application fee in respect of such Concurrent Lease in the amount equal to 0.15% of the applicable Prepaid Rent or Second Additional Term Prepaid Rent, as applicable, of the applicable Lease Asset in respect of the concurrent lease or extension by the Concurrent Lessee from the Lessor.

#### 2.9 Limitation

Notwithstanding the foregoing, no Closing Date may occur during the period between December 15 and January 2, inclusive of such dates.

#### 2.10 Payment of GST/HST

The Concurrent Lessee certifies that it is at all relevant times, including at the time of each Concurrent Lease, a registrant under Part IX of the Excise Tax Act (Canada) (the **ETA**) and that its registration number is 10414 3698 RT0001.

#### 2.11 Disqualified Assets

Promptly at any time after a Closing Date upon discovering that an eligibility requirement contained in the definition of "Eligible Asset" was not satisfied with respect to any Leased Asset and Concurrent Lease on the Cut-Off Date where the Concurrent Lessee made a payment of Prepaid Rent, the Lessor shall pay to the Concurrent Lessee an amount equal to the Rent Rebate in respect of the Concurrent Lease. Upon the payment of such amount, the related Concurrent Lease of such Leased Asset will be deemed to have been terminated without the need for any further action. Upon payment of such amount, any incorrectness in any representation or warranty or covenant by the Lessor with respect thereto shall be deemed to have been rectified.

#### 2.12 Limited Exclusivity

For so long as any Loans remain outstanding, under and as defined in the Credit Agreement, the Lessor will not sell, assign or convey any Lease Assets to any other Person provided that in the event that Lessor has requested that the Concurrent Lessee concurrently lease Lease Assets pursuant to this Agreement and the Concurrent Lessee does not accept the related Concurrent Lease Request and complete the related Concurrent Lease, the Lessor shall be free to sell, assign or convey such Lease Assets to any Person that is approved by the Concurrent Lessee, (provided that Concurrent Lessee shall only withhold such approval if it reasonably believes a sale, assignment or conveyance of such Lease Assets to such Person would cause significant

reputational harm to Concurrent Lessee), free and clear of any claim of the Concurrent Lessee hereunder or under the Security Agreement, provided that the proceeds of such purchase, assignment or conveyance are not less than the Outstanding Balance thereof, and such proceeds shall be paid by the Lessor to the Concurrent Lessee, within 5 Business Days of the receipt thereof, as a repayment of the indebtedness owing under the Credit Agreement.

2.13 Termination Rights

Either the Concurrent Lessee or the Lessor may terminate any Concurrent Lease at the end of each calendar year by notice in writing. Upon such termination, in the event Prepaid Rent was paid in respect of the Concurrent Lease, the Lessor shall be obligated to pay the Rent Rebate in respect thereof and shall have a period of up to 180 days to negotiate a repayment schedule with the Concurrent Lessee. Upon payment in full of the Rent Rebate, the related Concurrent Lease of such Leased Asset will be deemed to have been terminated without the need for any further action.

2.14 Intentionally Deleted

2.15 Liquidated Leases

The parties acknowledge that the Servicer is obligated and exclusively entitled, in accordance with this Agreement, to enforce a defaulted Lease by using its normal practices to take actual possession of and sell the Leased Assets forming the subject matter of such Lease and, if necessary, by enforcing the related Rights. The Servicer shall also be entitled to purchase such Leased Assets for a price deemed by the Servicer to be reasonable for such Leased Assets. Upon the Servicer's enforcement in respect of the Leased Assets which are subject to a Concurrent Lease, the Concurrent Lessee shall, subject to the following sentence, require the Lessor to terminate the related Concurrent Lease. The Concurrent Lease shall be terminated with respect to such Leased Assets as of the date on which the Servicer completes the sale of the Leased Assets to a purchaser thereof. Upon such termination, the Lessor shall be obligated to pay to the Concurrent Lessee, on the date such sale is effected, as a refund of a portion of the Prepaid Rent and, if applicable, the Initial Additional Term Prepaid Rent and any Subsequent Additional Term Prepaid Rent, or any Second Additional Term Prepaid Rent, paid by the Concurrent Lessee in respect of such Leased Assets, by payment to the Collections Account, the liquidation proceeds from the related Leased Assets and any recoveries against the related Obligor received by the Servicer, and recourse against the Lessor shall be limited to the liquidation proceeds from the related Leased Assets and recoveries against the related Obligor received by the Servicer, and the Lessor irrevocably directs the Servicer to apply such amounts as Collections in accordance with Article 3.

2.16 Sale of Leased Assets

Each party hereto acknowledges that the Servicer may, in accordance with the terms of the related Lease, allow other Persons to purchase the Leased Assets that are subject to a Concurrent Lease hereunder prior to the expiry of a Concurrent Lease. If Leased Assets that are subject to a Concurrent Lease hereunder are sold at any time, then the Concurrent Lease shall be terminated with respect to such Leased Assets as of the date on which the Servicer completes the sale of the Leased Assets to a purchaser thereof. Upon any such termination where the purchaser is the Obligor, the Lessor shall be obligated to pay to the Concurrent Lessee a refund of a portion of the Prepaid Rent and, if applicable, the Initial Additional Term Prepaid Rent and any Subsequent Additional Term Prepaid Rent paid by the Concurrent Lessee in respect of such Leased Assets, by payment into the Collections Account of the proceeds of the sale of the Leased Assets on the date such sale is effected. Upon any such termination where the purchaser is not the Obligor, the Lessor shall be obligated to pay to the Concurrent Lessee a refund of a portion of the Prepaid Rent and, if applicable, the Initial Additional Term Prepaid Rent and any Subsequent Additional Term Prepaid Rent, or any Second Additional Term Prepaid Rent, paid by

the Concurrent Lessee in respect of such Leased Assets, by payment to the Concurrent Lessee of an amount equal to the Rent Rebate relating to such Concurrent Lease on the date such sale is effected. The Servicer will not agree to any purchase of Leased Assets that would result in the termination of a Concurrent Lease, including without limitation as part of a transaction that involves an Obligor agreeing to lease new Approved Equipment under a new lease, without first obtaining the consent of the Concurrent Lessee.

## **Article 3 - APPLICATION OF COLLECTIONS**

### **3.1 Settlement Procedures**

Collections of the Leases subject to Concurrent Leases shall be administered by the Servicer in accordance with the terms of this Agreement. The Lessor shall provide to the Servicer (if other than the Lessor) on a timely basis all information needed for such administration, including notice of the occurrence of any Amortization Event. The Servicer will allocate Collections received from each Obligor in accordance with the related Program Agreements and the Credit and Collection Policies. On each Settlement Date, Collections for the related Collection Period with respect to each Lease subject to a Concurrent Lease, will be applied as follows:

- (a) first, during an Amortization Period only, to the Servicer, the Servicing Fee or following a Servicer Termination Event, to the Replacement Servicer, if any, the Replacement Servicer Fee, in each case to the extent allocable to such Lease;
- (b) second, to be retained by the Concurrent Lessee, the Concurrent Lessee's Proportionate Share of any Collections in respect of the Lease; and
- (c) third, to the Lessor, the remainder as Deferred Rent.

### **3.2 [Reserved]**

### **3.3 Subsequent Additional Term Prepaid Rent**

On each Settlement Date after the Concurrent Lessee has elected to pay the Initial Additional Term Prepaid Rent, the Lessor shall deliver to the Concurrent Lessee an updated schedule of ATPR Scheduled Leases. The amount of any Subsequent Additional Term Prepaid Rent determined following the application of funds pursuant to Section 3.1 and such updated schedule shall be paid by the Concurrent Lessee to the Lessor. The Servicer shall be entitled to net the amount of any such Subsequent Additional Term Prepaid Rent owing by the Concurrent Lessee on a Settlement Date against amounts otherwise due to the Concurrent Lessee pursuant to Section 3.1 and pay such amounts directly to the Lessor.

## **Article 4 - REPRESENTATIONS AND WARRANTIES**

### **4.1 Representations and Warranties of the Lessor**

The Lessor represents and warrants to the Concurrent Lessee as of the date of the Original Agreement and as of each Closing Date (except as otherwise specified below) that:

- (a) it is (i) a trust validly existing under the laws of the Province of Ontario; and (ii) duly qualified to carry on business in each jurisdiction in which the failure to be so qualified would reasonably be expected to have a Material Adverse Effect;
- (b) it has full power and capacity to enter into this Agreement and to do all acts and things as are required or contemplated of it hereunder and thereunder;

- (c) it has taken all necessary action to authorize the execution, delivery and performance of this Agreement and to do all acts and things as are required or contemplated of it hereunder and thereunder;
- (d) there are no actions, suits or proceedings pending or to the knowledge of any officer of the Lessor, threatened against or affecting the Lessor or any of its undertakings and assets at law, in equity or before any arbitrator or before or by any governmental department, body, commission, board, bureau, agency or instrumentality having jurisdiction in the premises in respect of which there is a reasonable possibility of a determination adverse to the Lessor which would reasonably be expected to have a Material Adverse Effect and the Lessor is not in default in respect of any applicable law, rule, regulation, order, judgment, injunction, award or decree as a result of which a Material Adverse Effect would reasonably be expected to occur;
- (e) this Agreement has been duly executed and delivered by the Lessor and constitutes a legally binding obligation of the Lessor enforceable against it in accordance with its terms, subject to applicable bankruptcy, reorganization, insolvency, moratorium or other laws affecting creditors' rights generally and to equitable principles of general application (regardless of whether enforcement is sought in a proceeding at law or in equity);
- (f) the execution and delivery of this Agreement and compliance with its terms and conditions will not (i) result in a violation of the constating documents or by-laws of the Lessor; (ii) result in a violation of any applicable law, rule, regulation, order, judgment, injunction, award or decree; (iii) result in a breach of, or constitute a default under, any loan agreement, indenture, trust deed or any other agreement or instrument to which the Lessor is a party or by which it is bound which would reasonably be expected to have a Material Adverse Effect; or (iv) require any approval or consent of, or any notice to or filing with, any Governmental Authority or agency having jurisdiction except such as has already been given, filed or obtained, as the case may be;
- (g) no default has occurred and is outstanding under any loan agreement, indenture, trust deed or any other agreement or instrument to which the Lessor is a party or by which it is bound which would reasonably be expected to have a Material Adverse Effect;
- (h) its principal place of business, chief executive office and registered office are located at the address set forth under its name on the signature pages hereto and the offices where it keeps all Records held by it are located at the addresses set out in Schedule "B" hereto or such other addresses as the Lessor shall from time to time notify the Concurrent Lessee;
- (i) it is not a non-resident of Canada within the meaning of the ITA;
- (j) the Lessor has delivered to the Concurrent Lessee all financial information received by the Lessor in respect of each Eligible Asset;
- (k) all federal, provincial and local and foreign national, state, provincial, regional and local and all other tax returns of the Lessor required by applicable law to be filed have been duly filed, and all federal, provincial and local and foreign national, state, provincial, regional and local and all other taxes, assessments and other governmental charges or levies upon the Lessor and its property, income, profits and assets which are due and payable have been paid. The charges, accruals and reserves on the books of the Lessor in respect of federal, provincial and local taxes and foreign national, state, provincial, regional and local taxes for all fiscal years and portions thereof since the organization of the Lessor, are in the judgment of the Lessor adequate in all material respect;

- (l) all written information, reports, certificates, financial statements and other papers and data produced by or on behalf of the Lessor and furnished to the Concurrent Lessee, including those in respect of Eligible Assets, were, at the time the same were so furnished, complete and correct in all material respects to the extent necessary to give the recipient a true and accurate knowledge of the subject matter, and, no fact is known to the Lessor which has had, or could reasonably be expected to in the future have, a Material Adverse Effect;
- (m) the Lessor is not an “Insolvent Person” as defined in the *Bankruptcy and Insolvency Act* (Canada), and shall not have unreasonably small capital to carry out its businesses as conducted or as proposed to be conducted;
- (n) each Lease Asset in respect of which the related Equipment is offered to be concurrently leased to the Concurrent Lessee hereunder is an Eligible Asset as of the Cut-Off Date; and
- (o) no Amortization Event or Servicer Termination Event has occurred that is continuing.

#### 4.2 Representations and Warranties of the Concurrent Lessee

The Concurrent Lessee represents and warrants to the Lessor as of the date of the Original Agreement that:

- (a) the Concurrent Lessee is (i) a trust company duly organized and validly existing under the *Trust and Loan Companies Act* (Canada); and (ii) duly qualified to carry on business in each jurisdiction in which the failure to do so would reasonably be expected to have a Material Adverse Effect;
- (b) the Concurrent Lessee has full power and capacity to enter into this Agreement and to do all acts and things as are required or contemplated of it hereunder;
- (c) the Concurrent Lessee has taken all necessary action to authorize the execution, delivery and performance of this Agreement and to do all acts and things as are required or contemplated of it hereunder;
- (d) there are no actions, suits or proceedings pending or to the knowledge of any officer of the Concurrent Lessee, threatened against or affecting the Concurrent Lessee or any of its undertakings and assets at law, in equity or before any arbitrator or before or by any governmental department, body, commission, board, bureau, agency or instrumentality having jurisdiction in the premises in respect of which there is a reasonable possibility of a determination adverse to the Concurrent Lessee which would reasonably be expected to have a Material Adverse Effect and the Concurrent Lessee is not in default in respect of any applicable law, rule, regulation, order, judgment, injunction, award or decree as a result of which a Material Adverse Effect would reasonably be expected to occur;
- (e) this Agreement has been duly executed and delivered by it and constitutes a legally binding obligation of the Concurrent Lessee enforceable against it in accordance with its terms, subject to applicable bankruptcy, reorganization, insolvency, moratorium or other laws affecting creditors’ rights generally and to equitable principles of general application (regardless of whether enforcement is sought in a proceeding at law or in equity);
- (f) the execution and delivery of this Agreement and compliance with its terms and conditions will not (i) result in a violation of its constating documents; (ii) result in a violation of any applicable law, rule, regulation, order, judgment, injunction, award or decree; (iii) result in a breach of, or constitute a default under, any loan agreement,

indenture, trust deed or any other agreement or instrument to which the Concurrent Lessee is a party or by which it is bound which would reasonably be expected to have a Material Adverse Effect; or (iv) require any approval or consent of, or any notice to or filing with, any Governmental Authority or agency having jurisdiction except such as has already been given, filed or obtained, as the case may be; and

- (g) no default has occurred and is outstanding under any loan agreement, indenture, trust deed or any other agreement or instrument to which the Concurrent Lessee is a party or by which it is bound which would reasonably be expected to have a Material Adverse Effect.

#### 4.3 Survival

Representations, warranties and statements of the Lessor and the Concurrent Lessee (or any of them or of any of their respective officers) set forth herein have been relied upon by the Concurrent Lessee, shall not merge on the completion of the execution and delivery of this Agreement or on the completion of any Concurrent Lease and shall survive thereafter.

### **Article 5 - COVENANTS**

#### 5.1 Delivery of Files and Records

The Servicer will hold the Records relating to the applicable Leased Assets on behalf of the Concurrent Lessee, and will provide a copy of such Records to the Concurrent Lessee upon request.

#### 5.2 Further Assurances

- (a) Each of the Lessor and the Concurrent Lessee will from time to time make, do, execute, endorse, acknowledge and deliver or cause and procure to be made, done, executed, endorsed, acknowledged, filed, registered and delivered any and all further acts and assurances, including without limitation, any conveyance, deed, transfer, assignment or other instrument in writing as, in the opinion of either of such Persons, may be necessary or desirable to give effect to this Agreement and the transactions provided for in this Agreement and will take all such other action as may be required or desirable for more effectually and completely vesting all Rights acquired by the Concurrent Lessee.
- (b) Each of the Lessor and Concurrent Lessee from the period commencing on the Closing Date until the termination of this Agreement, shall maintain in force insurance coverage in areas and amounts customary for its industry.

#### 5.3 General Covenants of the Lessor

The Lessor covenants with the Concurrent Lessee:

- (a) to preserve and maintain its existence, rights, franchises and privileges and to qualify and remain qualified to carry on business in each jurisdiction in which the failure to do so would reasonably be expected to have a Material Adverse Effect;
- (b) to not, except as expressly permitted herein (i) sell, assign (by operation of law or otherwise) or dispose of any part of the Leased Assets; (ii) take any action which may cause the validity, effectiveness or enforceability of the Leased Assets or the related Rights to be impaired; or (iii) take or omit to take any action which may cause an Adverse Claim to attach or extend to or otherwise burden any part of the Leased Assets;

- (c) to comply with all laws (including, without limitation, privacy laws) rules, regulations, orders, judgments, injunctions, awards or decrees applicable to the Lessor or the Leased Assets except where the failure to do so would not reasonably be expected to have a Material Adverse Effect;
- (d) to promptly notify the Concurrent Lessee at least twenty (20) Business Days prior to changing its name from that which is stated in its constating documents;
- (e) to promptly notify the Concurrent Lessee at least twenty (20) Business Days prior to changing the jurisdiction in which its principal place of business, chief executive office or registered office is located;
- (f) to promptly notify the Concurrent Lessee of any amendment, limitation or restriction of any license issued to the Lessor by a regulatory authority relating to the carrying on by the Lessor of its business if such amendment, limitation or restriction would have a Material Adverse Effect;
- (g) to notify the Concurrent Lessee forthwith of the occurrence of any Amortization Event or Servicer Termination Event or of any event which, with the giving of notice of the passage of time, or both, could become an Amortization Event or Servicer Termination Event;
- (h) to not amend or waive the Credit and Collection Policies without the prior written consent of the Concurrent Lessee;
- (i) to not establish or maintain a defined benefit pension plan;
- (j) to make notations in its books, records, documents and instruments relating to the Leased Assets to evidence the interest of the Concurrent Lessee therein; and
- (k) to timely and fully perform and comply with all material terms, covenants and other provisions of the contracts relating to the Leased Assets, including without limitation the Leased Assets, required to be performed by and observed by the Lessor thereunder.

#### 5.4 Amendments to Definition of Eligible Asset

If, at any time, the Concurrent Lessee determines, acting reasonably, that there has been a material change in the information contained in a Portfolio Report from the information contained in any previous Portfolio Report, then the Concurrent Lessee may elect by notice to the Lessor to amend the definition of Eligible Asset so that it contains one or more of the following additional requirements:

- (a) in respect of which there is a parts and labor warranty on the related Leased as issued by a third party insurer that is approved in writing by the Concurrent Lessee (acting reasonably) or the Lessor has otherwise made arrangements with a third party (other than the Obligor or the Lessor) to ensure that any repair and servicing of the related Approved Equipment is conducted and completed as required from time to time;
- (b) if the Lease is a Low Score Lease, the Outstanding Balance of such Lease, together with the Outstanding Balance of all Leases relating to Leased Assets that are Low Score Leases, does not exceed 5% of the Outstanding Balance of all Concurrent Leases at such time; and
- (c) if the Lease is a Low Value Lease, the Outstanding Balance of such Lease, together with the Outstanding Balance of all Leases relating to Leased Assets that are Low Value

Leases, does not exceed 35% of the Outstanding Balance of all Leased Assets at such time;

and the definition of Eligible Asset will be deemed to have been amended from the time of delivery of notice of any such election by the Concurrent Lessee to the Lessor.

## **Article 6 - SERVICING OF PORTFOLIO**

### 6.1 Appointment of the Lessor as Servicer

- (a) The Concurrent Lessee hereby appoints the Servicer to be its exclusive agent for the purposes of servicing the Leased Assets as set out in this Article 6 (it being acknowledged that the Concurrent Lease made hereunder is made on a fully-serviced basis in accordance with this Agreement) and the Lessor hereby accepts such appointment.
- (b) The Lessor may subcontract with a subservicer or sub-originator pursuant to a Program Agreement or otherwise, provided that such subservicer or sub-originator shall be approved by the Concurrent Lessee acting reasonably, for the servicing or subservicing of the Leased Assets; provided, however, that the Lessor will remain liable to the Concurrent Lessee for the performance of the duties and obligations so subcontracted and all other duties and obligations of the Lessor set forth in this Article 6.
- (c) Except as provided hereunder, the Servicer shall have the exclusive right to service the Leased Assets and the Concurrent Lessee shall not contact any Obligor or inform any Obligor of its interests in the Leased Assets or otherwise take any steps to modify any Leased Assets.

### 6.2 Servicing of Leased Assets

During the term of this Agreement, unless a Replacement Servicer is designated by the Concurrent Lessee pursuant to Section 7.2, the Lessor covenants to service the Leased Assets with reasonable care using that degree of skill and attention that it exercises with respect to comparable receivables that it services for itself and others and in accordance with the Credit and Collection Policies, and subject to and in accordance with the provisions of this Agreement. Without limiting the generality of the foregoing, the Lessor, unless a Replacement Servicer is designated by the Concurrent Lessee pursuant to Section 7.2, shall and covenants to:

- (a) deposit Collections to the Collections Account (which will, until remitted, be held in trust for the Concurrent Lessee) in respect of such Settlement Period in accordance with Section 6.3;
- (b) hold the Records in trust for the Concurrent Lessee and at any time and from time to time during regular business hours permit the Concurrent Lessee, its agents or representatives upon five (5) Business Days' prior notice to (i) examine and make copies of all such Records in the possession (or under the control) of the Lessor; and (ii) visit the offices and properties of the Lessor for the purpose of examining such Records and discussing matters relating to the Leased Assets and the Lessor's performance under the Leased Assets or hereunder with any of the Lessor's officers or employees having knowledge of such matters;
- (c) maintain and implement prudent and reasonable administrative and operating procedures (including an ability to recreate the Records in the event of the destruction of the originals thereof) and keep and maintain all books, records, documents and other information reasonably necessary or advisable for the identification and collection of the Leased

Assets (including records adequate to permit all collections of and reductions or adjustments);

- (d) timely and fully perform and comply with all terms, covenants and other provisions of the Leased Assets required to be performed and observed by it or the Concurrent Lessee;
- (e) comply in all respects with the Credit and Collection Policies in regard to each Leased Asset;
- (f) not, without the prior written consent of the Concurrent Lessee, make any change in the Credit and Collection Policies;
- (g) not extend, amend or otherwise modify or waive any term or condition of any Leased Asset unless permitted in accordance with the terms of the Credit and Collection Policies;
- (h) use its commercially reasonable efforts to collect all Receivables payable in respect of the Leased Assets in accordance with all applicable laws, rules and regulations, the provisions hereof and the Credit and Collection Policies;
- (i) make all payments payable by it to government agencies and others where a statutory lien or deemed trust might arise having priority over the Concurrent Lessee's interest in any part of the Leased Assets; provided that the Lessor may protest the payment of any such amounts if it is acting in good faith and it either provides the Concurrent Lessee with cash in an amount sufficient to satisfy the same or otherwise satisfies the Concurrent Lessee, acting reasonably, that its interests are not prejudiced thereby;
- (j) as soon as possible, effect all filings or recordings with respect to the Concurrent Lessee's interest in all Rights necessary by law or reasonably prudent or desirable for the perfection and protection of such interest and all appropriate renewals or amendments thereof;
- (k) promptly, from time to time, furnish to the Concurrent Lessee such documents, records, information or reports in respect of the Leased Assets or the conditions or operations, financial or otherwise, of the Lessor as may be in existence in written form or, if available in databases maintained by the Lessor, as may be produced with existing software as the Concurrent Lessee may from time to time reasonably request;

(l) If the Delinquency Rate

- (i) calculated in respect of Low Score Leases that are Leased Assets exceeds, for any Reporting Period and the two (2) immediately preceding Reporting Periods, 8% (the amount of any excess being the **Excess LS Delinquencies**), the Lessor shall pay to the Concurrent Lessee, for each Reporting Period (that is, each calendar month) during which such excess exists, an amount equal to \$2,500 (the **Excess LS Delinquencies Reimbursement**), which shall represent a reimbursement for the Concurrent Lessee for the costs incurred by the Concurrent Lessee with respect to the monitoring, analyzing and reporting on the Excess LS Delinquencies. The Lessor and the Concurrent Lessee hereby agree that any such Excess LS Delinquencies Reimbursement is not and shall not be deemed to be a penalty or a fee in any way, but a true representation of the costs that the Concurrent Lessee shall incur in respect of the monitoring, analyzing and reporting on the Excess LS Delinquencies; and
- (ii) calculated in respect of Low Value Leases that are Leased Assets exceeds, for any Reporting Period and the two (2) immediately preceding Reporting Periods,

10% (the amount of any excess being the **Excess LV Delinquencies**), the Lessor shall pay to the Concurrent Lessee, for each Reporting Period (that is, each calendar month) during which such excess exists, an amount equal to \$2,500 (the **Excess LV Delinquencies Reimbursement**), which shall represent a reimbursement for the Concurrent Lessee for the costs incurred by the Concurrent Lessee with respect to the monitoring, analyzing and reporting on the Excess LV Delinquencies. The Lessor and the Concurrent Lessee hereby agree that any such Excess LV Delinquencies Reimbursement is not and shall not be deemed to be a penalty or a fee in any way, but a true representation of the costs that the Concurrent Lessee shall incur in respect of the monitoring, analyzing and reporting on the Excess LV Delinquencies.

For greater certainty, both an Excess LS Delinquencies Reimbursement and an Excess LV Delinquencies Reimbursement may be payable by the Lessor to the Concurrent Lessee for the same Reporting Period.

- (m) on or before each Reporting Date, prepare and deliver to the Concurrent Lessee a Portfolio Report relating to the Receivables payable in respect of the Leased Assets as of the close of business on the last day of the immediately preceding Collection Period; and
- (n) to monitor the level of complaints arising from the Leased Assets received by it and take commercially reasonable steps to address such complaints. If, at any given time, the level of unresolved complaints exceeds 1% (being the percentage of active Obligors with unresolved complaints to total active Obligors) or if the level of total complaints (whether resolved or not) exceeds 5% (as the percentage of active Obligors who have made a complaint to total active Obligors), such excess shall be reported to the next meeting of the board of directors of Crown Crest Capital Management Corp. for a discussion on required management actions in respect of the interests of the Obligors.

#### 6.3 Deposit of Collections

All Collections shall be deposited by the Servicer in the Collections Account within two (2) Business Days of the date of receipt by the Servicer (or, in the case of Deemed Collections, on the date of deemed receipt).

#### 6.4 Power of Attorney

The Concurrent Lessee hereby constitutes and appoints the Servicer the true and lawful attorney of the Concurrent Lessee, with full power of substitution, to execute, deliver and register, for and on behalf of and in the name of the Concurrent Lessee, such documents, instruments or agreements which may be necessary or desirable to enable the Servicer to perform its obligations set out in this Agreement. The Servicer agrees that it will not exercise such power of attorney for any other purpose whatsoever. Such power of attorney is coupled with an interest.

#### 6.5 Deemed Collections

If, on any day prior to the date on which all of the Investment, Additional Term Investment and Second Additional Term Investment are reduced to nil, any Receivable payable in respect of any Leased Asset (i) is extended by the Lessor beyond its original term in a manner inconsistent with the Credit and Collection Policies, (ii) has its Scheduled Payment or any other regularly scheduled payment to be made by the Obligor during the Additional Term reduced by the Lessor in a manner inconsistent with the Credit and Collection Policies, (iii) is reduced or cancelled as a result of any breach by the Lessor of the terms of such Leased Asset, (iv) is reduced or cancelled as a result of a set-off in respect of any claim by the applicable Obligor against the Lessor or the Concurrent Lessee other than as a result of an act or omission of the Concurrent

Lessee (whether such claim arises out of the same or a related transaction or an unrelated transaction), (v) is reduced to reflect any adjustment for returns, billing errors, NSF cheques, fraudulent charges and similar payment reconciliations, (vi) is otherwise reduced or cancelled by the Lessor or any subservicer, or (vii) if any fine, penalty, sanction, order or other liability is imposed upon or determined against any of the Lessor, the Concurrent Lessee or any Originator in connection with or relating to any Leased Asset, the Lessor shall be deemed to have received for the Concurrent Lessee's account on the last day of the Collection Period during which such day occurred, a Collection of such Receivable in the amount of such reduction or cancellation, and shall deposit to the Collections Account on the immediately following Settlement Date such amount.

#### 6.6 Payment Terms

- (a) All amounts to be paid or deposited by the Lessor, the Replacement Servicer or the Concurrent Lessee hereunder will be paid or deposited on the day when due in same day funds.
- (b) The Lessor will make all payments required to be made hereunder without deduction or set-off (except as expressly permitted hereunder) regardless of any defense or counterclaim.

## **Article 7 - SERVICER TERMINATION**

#### 7.1 Servicer Termination Events

The happening of any of the following shall constitute a **Servicer Termination Event** hereunder:

- (a) The Lessor defaults in the payment of any amount due to the Concurrent Lessee hereunder and such default remains unremedied for a period of three (3) Business Days after written notice of such default has been given to the Lessor;
- (b) The Lessor defaults in the observance or performance in any manner of any of its covenants or obligations contained in this Agreement in any material respect (other than those obligations referred to in paragraph (a) above) and, if such default is capable of rectification and remains unremedied for a period of thirty (30) days after the earlier of (i) the date on which written notice of such default has been given to the Lessor by the Concurrent Lessee and (ii) the date on which the Lessor has actual notice of such default;
- (c) any representation or warranty made by the Lessor in or pursuant to this Agreement proves to have been false or incorrect when made in any material respect, and, if the circumstances giving rise to such incorrect representation or warranty are capable of rectification, such representation or warranty remains uncorrected for a period of 30 days after the earlier of (i) the date on which written notice has been given to the Lessor by the Concurrent Lessee specifying the incorrectness and demanding that the circumstances giving rise thereto be rectified and (ii) the date on which the Lessor had actual knowledge of such incorrectness;
- (d) an Insolvency Event shall occur in respect of the Lessor; or
- (e) an Event of Default occurs, as such term is defined in the Credit Agreement.

## 7.2 Designation of Replacement Servicer

- (a) If a Servicer Termination Event has occurred and is continuing, the Concurrent Lessee may designate a Replacement Servicer to succeed the Lessor with respect to the Leased Assets on such terms as it may consider reasonable, provided that any such Person so designated shall agree to perform the duties and obligations of the Lessor provided for in Article 6.
- (b) Upon the appointment of a Replacement Servicer pursuant to Section 7.2(a), the Lessor will, on demand and at its expense: (i) assemble all Records and make them available to the Replacement Servicer; (ii) notify all Obligors (x) of the sale, assignment and transfer to the Concurrent Lessee of the Leased Assets; and (iii) segregate, in a manner reasonably acceptable to the Concurrent Lessee, all cash, cheques and other instruments constituting Collections which are received by it from time to time and remit the same to the Replacement Servicer duly endorsed or with duly executed instruments of transfer, if applicable.

## 7.3 Replacement Servicer Fee

A Replacement Servicer appointed pursuant to Section 7.2 shall be entitled to a reasonable fee for services rendered, such fee to be determined by the Concurrent Lessee with the Replacement Servicer to a maximum, in respect of any Collection Period, of 15% of the Collections remitted to the Collections Account during such Collection Period (the **Replacement Servicer Fee**). Such Replacement Servicer Fee and any out-of-pocket expenses incurred by the Replacement Servicer in connection with its duties as Replacement Servicer, together with any applicable Sales Taxes, shall be payable to the Replacement Servicer in accordance with this Agreement.

## 7.4 Leased Assets

If a Servicer Termination Event has occurred and is continuing, the legal right, title and interest to any Leased Assets related to any Leased Asset which are held by the Lessor in trust for the Concurrent Lessee shall automatically transfer to the Concurrent Lessee upon notice from the Concurrent Lessee to the Lessor.

## 7.5 Power of Attorney

- (a) The Lessor hereby grants to the Concurrent Lessee, to become effective immediately upon the occurrence of a Servicer Termination Event, an irrevocable power of attorney and hereby irrevocably appoints the Concurrent Lessee as the Lessor's attorney-in-fact, with full power of substitution, to take in the place and stead of and in the name of the Lessor or in the Concurrent Lessee's own name from time to time at the Concurrent Lessee's discretion, acting reasonably, such actions as the Lessor may be obligated to take hereunder or as the Concurrent Lessee may deem necessary or advisable to collect, endorse, negotiate or otherwise realize on any Leased Asset including any related Receivable, any negotiable instrument, or any other right of any kind, held or owned by the Lessor and transferred, assigned or delivered to or received by the Concurrent Lessee as payment on account or otherwise in respect of any of the Leased Assets, including:
  - (i) to evidence or protect the Concurrent Lessee's interest in the Leased Assets and to execute and file, in the Lessor's name and on the Lessor's behalf, such recording, registration, financing or similar statements (including any amendments, renewals and continuation statements) under applicable laws;

- (ii) to ask, demand, collect, sue for, recover, compound, receive and give acquittances and receipts for moneys due and to become due in connection with the Receivables or otherwise owed to the Concurrent Lessee;
- (iii) to receive, endorse and collect any cheques, drafts or other instruments, documents and chattel paper in connection with moneys due and to become due in connection with the Receivables forming part of the Leased Assets or otherwise owed to the Concurrent Lessee;
- (iv) to file any claims or take any action or institute any proceedings that the Concurrent Lessee may deem to be necessary or desirable for the collection of any Receivable; and
- (v) to prepare, execute, deliver, and/or register in the Lessor's name and on the Lessor's behalf, such instruments and documents (including assignments) necessary or desirable in furtherance of the foregoing.

(b) The power of attorney granted hereby shall be expressly coupled with an interest in favour of the Concurrent Lessee. The powers of attorney and other rights and privileges granted hereby shall survive any dissolution, liquidation or winding-up of the Lessor.

## **Article 8 - CONDITIONS PRECEDENT**

### 8.1 Conditions to Effectiveness

This Agreement shall become effective on the date of the Original Agreement if the following conditions precedent have been satisfied or waived on or prior to such date and/or the Concurrent Lessee shall have received from the Lessor the following documents, in form and substance satisfactory to the Concurrent Lessee:

- (a) a certificate of an officer of the Lessor, dated the date of the Original Agreement certifying (A) that attached thereto is a true and complete copy of the Certificate and Articles of Incorporation and any amendments thereto, and the by-laws of the Lessor, each as in effect on the date of such certificate; (B) that attached thereto is a true and complete copy of a resolution adopted by the Lessor's board of directors authorizing the execution, delivery and performance of this Agreement and the other Related Documents, and that such resolution has not been modified, rescinded or amended and is in full force and effect; and (C) as to the incumbency and true specimen signature of each of the Lessor's officers executing this Agreement or any of the Related Documents, on which certificate the Concurrent Lessee shall be entitled to conclusively rely until such time as the Concurrent Lessee receives from Lessor a replacement certificate meeting the requirements of this Section 8.1(a);
- (b) a certificate of compliance issued in respect of the Lessor in its jurisdiction of incorporation, and an equivalent certificate from the appropriate authority in each other jurisdiction in which qualification is necessary in order for the Lessor to own or lease its property and conduct its business, each to be certified as of a recent date;
- (c) executed copies of this Agreement and copies of the Credit and Collection Policies;
- (d) reports, satisfactory to the Concurrent Lessee acting reasonably, showing the results of searches conducted against the Lessor under applicable personal property security registers in the provinces where the Leased Assets are located, together with executed copies of all discharges or releases of prior security interests relating to Leased Assets that are then to be sold hereunder; provided that the Lessor may establish that any

particular registration does not affect any such Leased Assets by delivering a letter or acknowledgment signed by the applicable secured party;

- (e) a copy of verifications statements or other filings filed in each relevant jurisdiction, that are sufficient to perfect the interests of the Concurrent Lessee as the first priority ownership interest in the Leased Assets as against creditors of the Lessor;
- (f) executed copies of all discharges and releases, if any, necessary to discharge or release all security interest and other rights or interest of any Person in the Rights, previously granted by or through the Lessor and which could constitute an Adverse Claim, together with, where applicable, copies of the relevant financing change statements or other discharge statements with the registration particulars stamped thereon; and/or appropriate intercreditor agreements with such other parties in form and substance as the Concurrent Lessee may require; and
- (g) such other approvals, opinions or documents as the Concurrent Lessee may reasonably request.

## **Article 9 - MISCELLANEOUS**

### 9.1 Amendments and Waivers

- (a) This Agreement may be amended, supplemented, modified, restated or replaced by written instrument only signed by the Lessor and the Concurrent Lessee.
- (b) No waiver of any provision of this Agreement, nor consent to any departure by any party therefrom, shall in any event be effective unless the same shall be in writing signed by such party, and then such waiver or consent shall be effective only in the specific instance and for the specific purpose for which given. No failure on the part of any party to exercise, and no delay in exercising, any right hereunder shall operate as a waiver thereof.

### 9.2 Binding Effect; Assignability

This Agreement shall be binding upon and enure to the benefit of the Lessor and the Concurrent Lessee, and their respective successors and assigns.

The Lessor shall not have the right to assign any interest herein without the consent of the Concurrent Lessee, provided however that the Lessor may grant a security interest in all or a portion of the Deferred Rent.

Each of the other parties hereto agrees that, upon such assignment, the assignee or its further assigns may enforce directly, without joinder of the original Concurrent Lessee, the rights set forth in this Agreement. Each of the Lessor and the Concurrent Lessee agrees to grant to any such assignee or its further assigns or its agents such powers of attorney as may be necessary for the exercise of their rights hereunder.

### 9.3 Notices

Any notice, consent, request, agreement, approval, waiver or other communication required or permitted to be given or delivered hereunder shall, unless otherwise stated herein, be in writing (including photocopy, facsimile, electronic mail or other digital communication) and sent, as to each party hereto, at its address set forth under its name on the signature pages hereto, or at such other address as shall be designated by such party in a written notice to the other parties hereto. All such notices and communications shall be effective when sent.

#### 9.4 Indemnification

(a) The Lessor hereby agrees to indemnify the Concurrent Lessee and each of its directors, officers, employees, trustees, advisors and agents, and to save such Person harmless from and against any and all damages, losses, claims, liabilities, costs and expenses (including reasonable legal fees and disbursements) awarded against or incurred by any such Person arising out of or as a result of:

- (i) any representation or warranty made or deemed to be made by the Lessor in any capacity (whether as Lessor, Servicer or otherwise) (or any of its officers) in or in connection with this Agreement, any of the Leased Assets, or any Related Document, which was incorrect in any material respect when made or deemed made or delivered;
- (ii) the failure of the Lessor in any capacity (whether as Lessor, Servicer or otherwise) or any Originator to perform or observe any of its respective covenants, duties or obligations hereunder, in respect of or relating to any of the Leased Assets or under any of the Related Documents;
- (iii) any claim made against the Lessor in any capacity (whether as Lessor, Servicer or otherwise), the Lender or any Originator by any Obligor arising from, in connection with or relating to the performance of observance of any of the Lessor's or Originator's respective covenants, duties or obligations hereunder, in respect of or relating to any of the Leased Assets or under any of the Related Documents;
- (iv) the failure to vest in and maintain vested in the Concurrent Lessee, the beneficial interest of the Lessor in and to the Leases relating to the Leased Assets and related Collections which are, or are intended to be transferred to the Concurrent Lessee hereunder, free and clear of any Adverse Claim (whether existing at the time of the Concurrent Lease thereof or arising at any time thereafter);
- (v) the failure by the Lessor in any capacity (whether as Lessor, Servicer or otherwise) to comply with any applicable law, rule, regulation, order, judgment, injunction, award or decree with respect to any part of the Leased Assets, or the non-conformity of any Leased Asset with any applicable law, rule, regulation, order, injunction, award or decree; and
- (vi) any fine, penalty, sanction, order, or other liability imposed upon or determined against any of the Lessor in any capacity (whether as Lessor, Servicer or otherwise) the Lender or any Originator by any Governmental Authority in connection with or relating to any Leased Asset;

(b) The Lessor shall not be liable to the Concurrent Lessee hereunder for any damages, losses, claims, liabilities, costs or expenses resulting solely from the failure of any Obligor to discharge its payment obligations (except as specifically provided in Section 9.4(a)).

(c) The Lessor and the Concurrent Lessee each agree to provide reasonable assistance to the other party, at the request of such other party and, in either case, at the Lessor's expense, in any action, suit or proceeding brought by or against, or any investigation involving such requesting party relating to any of the transactions contemplated hereby or to any part of the Leased Assets. If the Lessor has acknowledged its liability under Section 9.4(a) in respect of any damages, losses, claims, liabilities, costs or expenses in connection with any such action, suit, proceeding or investigation, and, in the sole determination of the Concurrent Lessee, acting reasonably, the Lessor has the financial

ability to pay such damages, losses, claims, liabilities, costs and expenses, the Lessor will have the right, on behalf of the Concurrent Lessee but at the Lessor's expense, to defend such action, suit or proceeding, or participate in such investigation, with counsel selected by it, and will have sole discretion as to whether to litigate, appeal or settle.

(d) The obligations of the Lessor under this Section 9.4 will survive this Agreement and remain in full force and effect for a period up to and including the date that is six years from the Final Collection Date.

**9.5 Time of Essence**

Time will be of the essence of this Agreement.

**9.6 Failure to Perform**

If the Lessor fails to perform any of its agreements or obligations hereunder, the Concurrent Lessee may (but will not be required to) itself perform, or cause to be performed, such agreement or obligation at, in the case of any such failure to perform by the Lessor, the cost of the Lessor.

**9.7 Confidentiality**

Each party hereto will maintain on a confidential basis (except as otherwise permitted hereunder or as required by applicable law) all information relating to the other party provided to it hereunder by the other parties; provided, however, that this Section shall not apply to any information which (i) was lawfully in the public domain at the time of communication to the first party, (ii) lawfully enters the public domain through no fault of the first party subsequent to the time of communication to the first party, (iii) was lawfully in possession of the first party free of any obligation of confidence at the time of communication to the first party, (iv) was lawfully communicated to the first party free of any obligation of confidence subsequent to the time of initial communication to the first party or (v) was lawfully communicated to any Person free from any obligation of confidence subsequent to the time of communication to the first party.

**9.8 Further Assurances**

The parties hereto agree, from time to time, to enter into such further agreements and to execute all such further instruments as may be reasonably necessary or desirable to give full effect to the terms of this Agreement and to the ability of the Concurrent Lessee to exercise or enforce any of its rights and remedies hereunder.

**9.9 Remedies**

The remedies herein provided are cumulative and not exclusive of any remedies provided at law.

**9.10 Amendment and Restatement**

This Agreement amends and restates the Second Amended and Restated Agreement as of the date first written above.

**9.11 Execution in Counterparts**

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

[Signature Page Follows]

IN WITNESS WHEREOF the parties hereto have executed this Agreement as of the date first above written.

CROWN CREST FUNDING CORP., in its capacity as trustee of CROWN CREST CAPITAL TRUST, as Lessor and Servicer

By: 

Name: Lyudmila Krimker

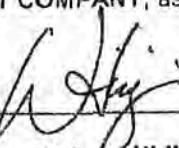
Title: President

Address: 1201-200 Yorkland Street  
Toronto, ON M2J 5C1

Attention: President and CEO

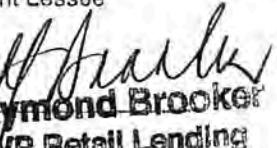
Fax No.: 647-846-7475

PEOPLES TRUST COMPANY, as Concurrent Lessee

By: 

Name: Wahed Hirji

Title: Chief Operations Officer

  
Raymond Brooker

SVP Retail Lending

Address: 1400-888 Dunsmuir Street  
Vancouver, BC V6C 3K4

Attention:

With a copy to General Counsel and  
Executive VP & Chief Financial Officer

Fax No.: 604-331-3469

**SCHEDULE "A"**  
**FORM OF CONCURRENT LEASE NOTICE**

**To: Peoples Trust Company ("Concurrent Lessee")**

**Re: Third Amended and Restated Concurrent Lease Agreement** dated as of April 15, 2019 among Concurrent Lessee and the undersigned (the "**Concurrent Lease Agreement**")

The undersigned hereby gives notice of a concurrent lease pursuant to Section 2.1 of the Concurrent Lease Agreement as follows:

Closing Date:

Cut-Off Date:

Leased Assets: Attached Schedule A

The undersigned hereby represents and warrants that the Lease Assets described in the attached Schedule A are Eligible Assets as of the related Cut-off Date. The undersigned further confirms that all representations and warranties of the Lessor contained in the Concurrent Lease Agreement are true and correct, no Servicer Termination Event has occurred that is continuing, and the Lessor is in compliance with all covenants under the Concurrent Lease Agreement.

Capitalized terms used and not defined in this Concurrent Lease Notice have the meanings set forth in the Concurrent Lease Agreement.

**CROWN CREST FUNDING CORP.** in its capacity as trustee of **CROWN CREST CAPITAL TRUST**, as Lessor and Servicer, by its authorized agent, **CROWN CREST CAPITAL MANAGEMENT CORP.**

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

Name:

Title:

**Accepted:**

**PEOPLES TRUST COMPANY**, as Concurrent Lessee

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

Name:

Title:

Schedule A to Concurrent Lease Notice – Attach list of Lease Assets

**SCHEDULE "B"**

**LESSOR'S ADDRESSES**

Location of Records:

1201-200 Yorkland Street  
Toronto, ON M2J 5C1

**SCHEDULE “C”**  
**FORM OF PORTFOLIO REPORT**

(Form attached.)

**CROWN CREST FINANCIAL CORP.**

as Lessor and Servicer

and

**PEOPLES TRUST COMPANY**

as Concurrent Lessee.

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**THIRD AMENDED AND RESTATED CONCURRENT LEASE AGREEMENT**

April 15, 2019

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### THIRD AMENDED AND RESTATED CONCURRENT LEASE AGREEMENT

**CONCURRENT LEASE AGREEMENT**, dated as of April 15, 2019 (this **Agreement**), between **Crown Crest Financial Corp.**, a company duly incorporated and validly existing under the laws of the Province of Ontario (together with its successors and assigns, the **Lessor**) and **Peoples Trust Company**, a trust company existing under the laws of Canada (**Concurrent Lessee**).

**WHEREAS** the Lessor, the Concurrent Lessee and Simply Green Home Services Inc., as guarantor, entered into a Concurrent Lease Agreement made as of January 19, 2018, as amended by an Amended and Restated Concurrent Lease Agreement made as of November 30, 2018 (the **Amended and Restated Agreement**), and as further amended by a Second Amended and Restated Concurrent Lease Agreement made as of December 31, 2018 (the **Second Amended and Restated Agreement**), pursuant to which the Lessor leases certain Leased Assets from time to time to the Concurrent Lessee and the Concurrent Lessee leases such Leased Assets from the Lessor;

**AND WHEREAS** the Lessor and the Concurrent Lessee wish to further amend and restate the Second Amended and Restated Agreement on and subject to the terms and conditions of this Agreement.

**NOW THEREFORE THIS AGREEMENT WITNESSES** that in consideration of the mutual covenants and agreements of the parties herein contained, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereto agree as follows:

#### Article 1 - DEFINITIONS AND PRINCIPLES OF INTERPRETATION

##### 1.1 Definitions

Words with initial capital letters in this Agreement (including the above recitals) shall have the meanings set out below:

**Additional Term** means, in respect of a Concurrent Lease, the balance, if any, of the remaining term of the related Lease after the Lease End Date, less one day; provided that the balance of the remaining term may not exceed the useful life of the applicable Lease Asset.

**Additional Term Investment** means, at any time, the sum of the Initial Additional Term Prepaid Rent, minus the amount of all ATPR Amortization on any prior Settlement Date, plus the amount of any Subsequent Additional Term Prepaid Rent on any Settlement Date.

**Administrative Costs** means, in respect of any Lease, all late fees, extension fees and other administrative or similar costs, charges and expenses billed to the applicable Obligor in accordance with the Lessor's customary practice and approved by the Concurrent Lessee, acting reasonably.

**Advance Rate** means 90%.

**Adverse Claim** means a security interest, lien, charge, encumbrance or other right or claim, including any filing or registration made in respect thereof, of or through any Person (other than the Concurrent Lessee).

**Agreement** means this agreement, together with the schedules hereto, as the same may be amended, supplemented, modified, restated or replaced from time to time, and the expressions **hereof**, **herein**, **hereunder**, and **hereby** and similar expressions refer to this agreement and not to any specific article, section, paragraph, subparagraph or clause hereof.

**Amortization Event** means the occurrence of any of the following events:

- (a) on any Reporting Date as of the end of the related Collection Period, either:
  - (i) the Average Delinquency Rate exceeds 6.5%;
  - (ii) the Average Loss Rate exceeds 2.75%; or
- (b) a Servicer Termination Event;

**Amortization Period** means the period commencing on the date of occurrence of an Amortization Event and ending on the earlier of (i) the date such Amortization Event is waived by the Concurrent Lessee, in its sole discretion, and (ii) the date on which no further amounts are payable to the Concurrent Lessee hereunder.

**Approved Equipment** shall mean storage water heaters, tankless water heaters, water filtration and/or treatment systems, Heating Recovery Ventilation ('HRV') and/or High-efficiency particulate arrestance ('HEPA') systems, furnace and air conditioning ('HVAC') equipment and boiler systems, smart home products as well as such other types or classes of consumer equipment as may be agreed to by the Lessor and approved by the Concurrent Lessee in writing.

**ATPR Amortization** means, on any Settlement Date, the amount, if any, by which the Additional Term Investment exceeds the product of (i) the Advance Rate and (ii) the sum of the net present values of each unpaid rental payments coming due over the entire term, ending on the last day of the Additional Term, of the ATPR Scheduled Leases on the immediately preceding Settlement Date, excluding all Scheduled Payments, but including all Escalation Amounts, discounted to the date of determination at the Discount Rate.

**ATPR Funding Rate** means, in respect of a Concurrent Lease and a Settlement Period, an annual interest rate equivalent to the average of BMO Prime for the 30 days in effect prior to each Closing Date plus 1.7% per annum, provided that from and after each 5th anniversary of the date of the Amended and Restated Agreement, BMO Prime for the related Concurrent Leases and the calculation Funding Costs shall be adjusted to BMO Prime in effect on such 5th anniversary plus 1.7% per annum

**ATPR Scheduled Leases** means the Leases, the related Approved Equipment of which is the subject of a Concurrent Lease at such time, designated by the Lessor to the Concurrent Lessee by notice in writing on the date of the Amended and Restated Agreement, as such schedule may be amended by the Lessor on any Settlement Date, provided that, for greater certainty, to the extent any Lease that is an ATPR Scheduled Lease ceases to be subject to a Concurrent Lease hereunder, such Lease shall thereafter cease to be an ATPR Scheduled Lease.

**Average Delinquency Rate** means for any Reporting Date, the arithmetic mean of the Delinquency Rates for each of the three Collection Periods immediately prior or (a) in the case of the first Reporting Date, the Delinquency Rate for the first Collection Period and (b) in the case of the second Reporting Date, the arithmetic mean of the Delinquency Rates for each of the two Collection Periods immediately prior.

**Average Loss Rate** means for any Reporting Date, the arithmetic mean of the Loss Rates for each of the three Collection Periods immediately prior or (a) in the case of the first Reporting Date, the Loss Rate for the first Collection Period and (b) in the case of the second Reporting Date, the arithmetic mean of the Loss Rates for each of the two Collection Periods immediately prior.

**Blocked Account Agreement** means the blocked account agreement made as of January 30, 2018 between the Lessor and The Toronto-Dominion Bank, as the same may be amended, restated, supplemented or replaced from time to time.

**BMO Prime** means, at any time, the posted "prime rate" of interest charged by Bank of Montreal for its commercial loans that are made in Canadian dollars.

**Business Day** means any day other than a Saturday, Sunday, or public holiday on which banks are required or permitted to be closed in the Province of Ontario or the Province of British Columbia.

**Charged-Off Asset** means any Lease (i) for which the Servicer has become aware that an Insolvency Event has occurred in respect of the related Obligor or (ii) that is or is required to be charged-off as uncollectible by the Servicer in accordance with the Credit and Collection Policies it being acknowledged that under the Credit and Collection Policies a Lease would be charged-off as uncollectible upon the Servicer becoming aware that an Insolvency Event had occurred in respect of the related Obligor; provided that a Lease will cease to be a Charged-Off Asset if all outstanding amounts are paid in full by the Obligor.

**Closing Date** means, in respect of a Concurrent Lease, the date specified as such in the applicable Concurrent Lease Notice.

**Collection Period** means a calendar month, provided that the initial Collection Period shall commence on the Cut-Off Date in respect of the initial Concurrent Lease and the final Collection Period shall end on (and include) the Final Collection Date.

**Collections** means without duplication (i) in respect of any Leased Asset, all cash collections and other cash proceeds in respect thereof and of the related Rights and Receivables (excluding Administrative Costs and Sales Taxes but including payments of rent, interest and principal) received after the applicable Cut-Off Date, (ii) any Deemed Collections in respect of such Leased Assets, and (iii) the net proceeds of any disposition of the related Leased Asset, except where the proceeds of disposition are payable directly to the Concurrent Lessee.

**Collections Account** means the account established and maintained in the name of the Lessor as the account owner at The Toronto-Dominion Bank (Branch ID: 14822, Account Number: 5266776) or such other account as is designated by notice to the Lessor as the Collections Account for the purposes hereof, which account shall at all times be subject to a Blocked Account Agreement in form and substance acceptable to the Concurrent Lessee.

**Concurrent Lease** means each concurrent lease of Approved Equipment entered into in accordance with Article 2.

**Concurrent Lease Entitlements** has the meaning ascribed thereto in Section 2.6.

**Concurrent Lease Notice** means the offer by the Lessor to lease Lease Assets to the Concurrent Lessee in the form attached hereto as Schedule "A".

**Concurrent Lessee's Proportionate Share** means, in respect of the Collections for a Lease, (i) for a Lease that is a ATPR Scheduled Lease or a Second ATPR Scheduled Lease, a percentage equal to the proportion of the Scheduled Payments plus all regularly scheduled payments to be made by the Obligor during the Additional Term or Second Additional Term, as applicable, for such Lease required to fully amortize the sum of Prepaid Rent, Initial Additional Term Prepaid Rent, Subsequent Additional Term Prepaid Rent and Second Additional Term Prepaid Rent, as applicable, for such Lease over the sum of the Prescribed Term and the Additional Term or Second Additional Term, as applicable, at the weighted average of the Funding Rate and ATPR Funding Rate or Second ATPR Funding Rate, as applicable, and (ii) for a Lease that is not a ATPR Scheduled Lease or a Second ATPR Scheduled Lease, a percentage equal to the proportion of the Scheduled Payments for such Lease required to fully amortize the Prepaid Rent over the Prescribed Term at the Funding Rate.

**Credit and Collection Policies** means the Lessor's credit, collection and administration policies and procedures relating to its portfolio of loans, as represented in the Lessor's operating procedures manual, which for greater certainty, has been reviewed and approved by the Concurrent Lessee.

**Credit Monitoring Fee** means, for a Concurrent Lease on a Closing Date, an amount equal to 3% of the Prepaid Rent plus, if applicable, 3% of the Initial Additional Term Prepaid Rent or Second Additional Term Prepaid Rent.

**Cut-Off Date** means the date specified as such in the Concurrent Lease Notice.

**Deemed Collections** means amounts required to be deposited to the Collections Account pursuant to Section 6.5 hereof.

**Deferred Rent** has the meaning set forth in Section 2.4.

**Delinquency Rate** means, for any Collection Period, the sum of the outstanding principal balances of Leased Assets other than Charged-Off Assets that are Delinquent Assets at the end of such Collection Period, divided by the Pool Balance at the end of such Collection Period.

**Delinquent Asset** means a Lease where any amount payable thereunder or any portion thereof is more than 30 days past due.

**Discount Rate** means, in respect of a Concurrent Lease, a discount rate equivalent to 4% per annum, provided that the Concurrent Lessee may adjust the Discount Rate on January 2 of any calendar year by notice in writing delivered not less than 30 days before such date in respect of Concurrent Leases to be entered into after such date. Any increase in the Discount Rate cannot exceed any net increase in BMO Prime during the calendar year then ended.

**Eligible Asset** means any Lease:

- (a) in respect of which the Obligor thereunder is a Person who is resident in Canada and is not (i) an affiliate of the Lessor or the Concurrent Lessee; (ii) the Government of Canada or any agency or instrumentality thereof or any federal crown corporation other than those listed as exempt under applicable legislation from restrictions or requirements for consent or notice on the assignment of receivables in respect of which they are obligors; or (iii) any provincial government or agency thereof if the enforceability against such government or agency of an assignment of debts owing thereby is subject to any precondition which has not been fulfilled;
- (b) which is not a Charged-Off Asset or a Delinquent Asset;
- (c) that has a fair market value that is greater than or equal to its face value;
- (d) which is payable to an address in Canada only and is denominated and payable in Canadian Dollars and in respect of which the Obligor has been directed to remit payments to the Collections Account;
- (e) which has been duly authorized, executed and delivered by the parties thereto, has been entered into in compliance with all applicable laws (including any licensure laws applicable to Lessor), and, together with all related Rights (including any guarantee, indemnity or agreement referred to in clause (g) of the definition of Rights), is in full force and effect and constitutes the legal, valid and binding obligation of the related Obligor enforceable against such Obligor in accordance with its terms, subject to applicable bankruptcy, reorganization, insolvency, moratorium or similar laws affecting creditors'

rights generally and subject to equitable principles of general application (regardless of whether enforcement is sought in a proceeding at law or in equity);

- (f) which is not subject to any dispute, set-off, counterclaim or defense whatsoever, no prepayments have been made thereunder and which is owned by the Lessor and free of any Adverse Claim and has not been extended or otherwise modified except in the ordinary course of business and in accordance with the Credit and Collection Policies;
- (g) in respect of which the Lessor is not in default in the performance of any of the covenants of the Lessor thereunder;
- (h) the terms of which do not contravene any laws, rules or regulations applicable thereto (including, without limitation, such laws, rules, or regulations relating to usury, truth in lending, credit business practices, cost of borrowing, consumer protection, equal credit opportunity, fair debt collection practices and privacy), except where such contravention would not materially adversely affect the collectability or enforceability of the related Rights;
- (i) in which the perfection of the Lessor's rights complies with the requirements of the Credit and Collection Policies in all material respects it being acknowledged that Lease Assets that are Low Value Leases do not require perfection of the Lessor's rights;
- (j) the related Obligor is not the subject of any Insolvency Event (except where such Insolvency Event occurred prior to the origination of the Receivable and such origination was consistent with the Credit and Collection Policies) or, to the best of the Lessor's knowledge, there are no such proceedings pending against such Obligor;
- (k) in respect of which the related Rights may be assigned in whole or in part without the consent of the related Obligor;
- (l) which is documented pursuant to a form of contract which is similar in all material respects to one of the forms of contract that have previously been delivered to and accepted by the Concurrent Lessee, acting reasonably;
- (m) in respect of which immediately prior to the lease hereunder the Lessor is the legal and beneficial owner of the Lease Asset, the related Receivables and Rights free and clear of any Adverse Claim;
- (n) in respect of which after the Concurrent Lease of the related Equipment to the Concurrent Lessee, the Concurrent Lessee would be the sole legal and beneficial owner of the related Concurrent Lease Entitlements with full right to transfer, sell and encumber such Concurrent Lease Entitlements free and clear of any lien;
- (o) that has not been satisfied, subordinated, waived or rescinded;
- (p) that has not been compromised, adjusted or modified except in accordance with the Credit and Collection Policies;
- (q) that was generated in the ordinary course of business;
- (r) except in the case of Low Value Leases, for which all filings or recordings with respect to the Lessor's interest therein and the related Leases and Rights necessary by law or reasonably prudent and desirable for the perfection and protection of such interests including any further filings, recordings or renewals thereof, have been effected by the Lessor (**Lien Registration**); and

(s) which satisfies such other criteria as may be added by the Concurrent Lessee in accordance with Section 5.4 from time to time.

**Escalation Amount** means in respect of a Lease, all monthly amounts payable as rental payments by an Obligor in excess of the Rental Amount.

**ETA** means Part IX of the *Excise Tax Act* (Canada).

**Excess LS Delinquencies** is defined in Section 6.2(l).

**Excess LS Delinquencies Reimbursement** is defined in Section 6.2(l).

**Excess LV Delinquencies** is defined in Section 6.2(l).

**Excess LV Delinquencies Reimbursement** is defined in Section 6.2(l).

**Final Collection Date** means the date on which all Leases subject to Concurrent Leases have been terminated, fully collected and/or written off as uncollectible pursuant to the Credit and Collection Policies.

**Finance Charge Collections** means Collections in respect of interest and fees (other than Administrative Costs).

**Funding Costs**, means, in respect of a Settlement Period, the sum of (a) the product of (i) the Investment as of the first day of the Settlement Period and (ii) the weighted average Funding Rate for all Concurrent Leases and the related Settlement Period, plus (b) the product of (i) the Additional Term Investment as of the first day of the Settlement Period, and (ii) the ATPR Funding Rate, plus (c) the product of (i) the Second Additional Term Investment as of the first day of the Settlement Period, and (ii) the Second ATPR Funding Rate.

**Funding Rate** means, in respect of a Concurrent Lease and a Settlement Period, an annual interest rate equivalent to the average of BMO Prime for the 30 days in effect prior to each Closing Date plus 1.3% per annum, provided that from and after the 5<sup>th</sup> anniversary of each Closing Date, BMO Prime for the related Concurrent Leases and the calculation Funding Costs shall be adjusted to BMO Prime in effect on such 5<sup>th</sup> anniversary plus 1.3% per annum.

**GAAP** means generally accepted accounting principles from time to time approved by the Chartered Professional Accountants of Canada or any successor body, applicable as at the date in question and applied on a consistent basis.

**Governmental Authority** means any federal, state, provincial, regional, local or foreign court or governmental agency, authority, instrumentality or regulatory body.

**GST/HST** means the goods and services tax, harmonized sales tax, and all other amounts payable under the ETA or pursuant to any similar value added tax legislation in any other jurisdiction of Canada or is similar thereto.

**Initial Additional Term Prepaid Rent** means, at any time, the aggregate, for each ATPR Scheduled Lease, of the product of (i) the Advance Rate and (ii) the sum of the net present values of each unpaid rental payments coming due over the entire term, ending on the last day of the Additional Term, of the related ATPR Scheduled Lease, excluding all Scheduled Payments, discounted to the date of determination at the Discount Rate.

**Insolvency Event** means, in respect of any Person, such Person shall generally not pay its debts as they become due, or shall admit in writing its inability to pay its debts generally, or shall make

a general assignment for the benefit of creditors; or any proceedings shall be instituted by or against, as the case may be, seeking to adjudicate it as bankrupt or insolvent or seeking liquidation, winding up, reorganization arrangement, adjustment, protection, relief or composition of it or its debts under any law relating to bankruptcy, insolvency, reorganization or relief of insolvent debtors, or seeking the entry of an order for relief by the appointment of a receiver, trustee, custodian or similar official for its or a substantial part of its property and, if such proceeding has been instituted against such Person, while being contested in good faith by such Person, such proceeding has not been stayed or dismissed within 45 days or a receiver, trustee, custodian or other similar official is appointed for it or any substantial part of its property; or a receiver being privately appointed in respect of a substantial part of the assets of such Person; or such Person, takes any corporate action to authorize any of the actions described above.

**Investment** means at any time the sum of all Prepaid Rent paid (or deemed to have been made) by the Concurrent Lessee to the Lessor, less (i) the sum of all amounts paid to the Concurrent Lessee on account of the Concurrent Lessee's Proportionate Share allocable to the Investment, less (ii) any Funding Costs allocable to the Investment, less (iii) the Rent Rebate allocable to the Investment paid by the Lessor in respect of all Concurrent Leases terminated from time to time.

**ITA** means the *Income Tax Act* (Canada) and includes any corresponding, applicable provincial income tax statute, and for greater certainty, where this Agreement refers to a specific provision of the ITA, such reference includes a reference to any corresponding provision of an applicable provincial income tax statute.

**Lease** means a lease or rental agreement or similar agreement (including a sub-metering agreement) for the lease or sale of Approved Equipment originated by an Originator.

**Lease Asset** means a Lease together with the related Rights.

**Lease End Date** means, in respect of any Lease and Concurrent Lease, the Settlement Date immediately following the scheduled date of the last Scheduled Payment under the related Lease.

**Leased Assets** means the Approved Equipment concurrently leased or purported to be concurrently leased by the Concurrent Lessee hereunder (other than Concurrent Leases terminated hereunder).

**Loss Rate** means in respect of a Collection Period, net losses in respect of Leases subject to Concurrent Leases divided by the original outstanding net present value of the Leases subject to Concurrent Leases subject to losses during such Collection Period.

**Low Score Leases** means Leases in respect of which the beacon score of the related Obligor is less than 600 but greater than 500 on the date such Lease is originated.

**Low Value Lease** means a Lease Asset in respect of which the related Approved Equipment is a water heater or other equipment where the original monthly rental amount (excluding taxes) is less than \$45 or a tankless water heater where the original monthly rental amount (excluding taxes) is less than \$65.

**Material Adverse Effect** means, in respect of any Person or any Lease subject to a Concurrent Lease any effect on it which could reasonably be expected to have an adverse impact on (i) in the case of such Person the ability of such Person to perform its obligations hereunder or under any Related Document, or (ii) the enforceability or collectability of such Lease or (iii) the value of such Lease.

**Obligor** means in respect of any Lease, the Person or Persons obligated to make payments thereunder.

**Originator** means in respect of any Lease, the original lessor.

**Outstanding Balance** means, in respect of a Concurrent Lease, the product of (i) the Advance Rate, and (ii) the sum of the net present values of each unpaid Scheduled Payment plus, if applicable, each unpaid regularly scheduled payment to be made by the Obligor during the Additional Term or Second Additional Term under the related Lease, discounted to the date of determination at the applicable Discount Rate.

**Person** means an individual, partnership, corporation, trust, joint venture, unincorporated association, government (or any agency or political subdivision thereof) or other entity.

**Pool Balance** means at any time the aggregate Outstanding Balance of all Concurrent Leases other than in respect of Charged-Off Assets or Lease Assets where the related Concurrent Lease has been terminated.

**Portfolio Report** means a report substantially in the form attached hereto as Schedule "C", delivered by the Lessor to the Concurrent Lessee pursuant to Section 6.2(m)).

**PPSA** means the *Personal Property Security Act* (British Columbia) or the comparable legislation of the other provinces of Canada including, in Québec, the Civil Code of Québec.

**Prepaid Rent** means the lump sum rent required to prepay the original monthly rental amount due under any Concurrent Leases pursuant to Article 2, which shall be equal to the product of (i) the Advance Rate and (ii) the sum of the net present values of each unpaid Scheduled Payment of the applicable Lease Asset, discounted to the related Closing Date at the applicable Discount Rate.

**Prescribed Term** means, in respect of any Lease at any time, the lesser of 10 years and the remaining term of such Lease at such time less one day.

**PST** means amounts payable under any statute in Canada imposing a single stage retail sales tax.

**Receivables** means, in respect of any Lease, all moneys payable with respect to such Lease Asset including all scheduled periodic payments, principal, interest, interchange, extra charges, fees and penalties and other moneys payable by the related Obligor (exclusive of Administrative Costs) during the period from but excluding the Cut-Off Date, to the date when all amounts have been paid under such Lease.

**Records** means, in respect of any Lease subject to a Concurrent Lease, all contracts (including those evidencing such Lease), books, records, reports and other documents and information (including, to the extent obtainable by way of existing software controlled by the Lessor, hard copies of all data maintained in databases of the Lessor, tapes and disks) maintained by or on behalf of the Lessor in respect of the Lease and the related Obligor.

**Related Documents** means any agreement, document, exhibit, notice or other communication which has at any time been delivered by the Lessor to the Concurrent Lessee pursuant hereto, including all agreements and documents required hereunder.

**Rental Amount** means in respect of a Lease, the original regularly-scheduled monthly rental payment amount of the Obligor thereunder (excluding any Escalation Amount).

**Rent Rebate** means, at any time with respect to any Concurrent Lease in respect of which the Concurrent Lessee made a payment of Prepaid Rent and, if applicable, Initial Additional Term Prepaid Rent or Second Additional Term Prepaid Rent, an amount equal to the product of (i) the

Advance Rate and (ii) the sum of the net present values of each unpaid Scheduled Payment plus, if applicable, each unpaid regularly scheduled payment to be made by the Obligor during the Additional Term or Second Additional Term arising under the related Lease, discounted to the date of determination at the applicable Discount Rate.

**Replacement Servicer** means any Person appointed by the Concurrent Lessee to replace the initial or any subsequent Servicer upon the occurrence of a Servicer Termination Event.

**Replacement Servicer Fee** has the meaning given to it in Section 7.3.

**Reporting Date** means in respect of a Collection Period the second Business Day preceding the related Settlement Date.

**Rights** means, in respect of any Lease, the following:

- (a) all rights and benefits accruing to the Lessor under such Lease, including all right, title and interest in and to the related receivables;
- (b) all of the Lessor's right, title and interest in and to the related Approved Equipment;
- (c) all right in or to payments (including both proceeds and, to the extent the Lessor has any rights therein, premium refunds) under any insurance policies maintained by the related Obligor pursuant to the terms of such Lease or by the Lessor in respect of such Lease;
- (d) all claims, demands, actions, damages and indemnities owing to the Lessor under such Lease;
- (e) the right of the Lessor to ask, demand, sue for, collect, receive and enforce any and all sums payable under the Lease and to enforce all other covenants, obligations, rights and remedies thereunder with respect thereto;
- (f) all of the right, title and interest of the Lessor in, to and under all prepayments made after the Cut-Off Date, guarantees, promissory notes and indemnities (including all security interests and all property subject thereto) from time to time supporting or securing payment or performance of the related Obligor's obligations in respect of the Lease, whether pursuant to the Lease or otherwise;
- (g) the related Records; and
- (h) all proceeds of or relating to any of the foregoing.

**Sales Taxes** means all federal, provincial and other sales, goods and services, value added, use or other transfer taxes, and all other similar taxes whatsoever, including GST/HST and PST.

**Scheduled Payment** means, in respect of a Lease, (a) the Rental Amount and (b) the Escalation Amount payable by the Obligor thereunder during a term not exceeding the lesser of (i) the remaining term of the Lease, (ii) ten years and (iii) the remainder of the Prescribed Term.

**Second Additional Term** means, in respect of a Concurrent Lease, the balance, if any, of the remaining term of the related Lease after the Lease End Date, less one day; provided that the balance of the remaining term may not exceed the lesser of (i) the remaining useful life of the applicable Lease Asset and (ii) 60 months.

**Second Additional Term Investment** means, on any day, the Second Additional Term Prepaid Rent less (i) the sum of all amounts paid to the Concurrent Lessee on account of the Concurrent

Lessee's Proportionate Share in respect of the Second Additional Term, less (ii) any Funding Costs allocable to the Second Additional Term Investment, less (iii) the Rent Rebate allocable to the Second Additional Term Investment paid by the Lessor in respect of all Concurrent Leases that are Second ATPR Leases terminated from time to time.

**Second Additional Term Prepaid Rent** means, at any time, the aggregate, for each Second ATPR Scheduled Lease, of the product of (i) the Advance Rate and (ii) the sum of the net present values of each unpaid rental payments coming due over the entire term, ending on the last day of the Second Additional Term, of the related Second ATPR Scheduled Lease, excluding all Scheduled Payments, discounted to the date of determination at the Discount Rate.

**Second ATPR Funding Rate** means, in respect of a Concurrent Lease and a Settlement Period, an annual interest rate equivalent to the average of BMO Prime for the 30 days in effect prior to each Closing Date plus 1.7% per annum, provided that from and after each 5th anniversary of the date of this Agreement, BMO Prime for the related Concurrent Leases and the calculation Funding Costs shall be adjusted to BMO Prime in effect on such 5th anniversary plus 1.7% per annum

**Second ATPR Scheduled Leases** means the Leases, the related Approved Equipment of which is the subject of a Concurrent Lease at such time, designated by the Lessor to the Concurrent Lessee by notice in writing on the date of this Agreement.

**Servicer** means Lessor in its capacity as servicer hereunder and any Replacement Servicer.

**Servicing Fee** means in respect of any Settlement Date, a fee not exceeding 0.40% per annum of the Pool Balance at such time.

**Servicer Termination Event** has the meaning set forth in Section 7.1.

**Settlement Date** means, in respect of a Collection Period, the 15<sup>th</sup> calendar day of the calendar month (or the next Business Day if such day is not a Business Day) following the calendar month related to such Collection Period.

**Settlement Period** means in respect of a Settlement Date, the period commencing on and including the immediately preceding Settlement Date to but excluding such Settlement Date, provided that the first Settlement Period shall commence on and include the date of the Original Agreement and the final Settlement Date shall end on and exclude the Final Collection Date.

**Subsequent Additional Term Prepaid Rent** means, on a Settlement Date, the amount (if any) by which (a) the product of (i) the Advance Rate and (ii) the sum of the net present values of each unpaid rental payments coming due over the entire term, ending on the last day of the Additional Term, of the ATPR Scheduled Leases (as updated on such Settlement Date), excluding all Scheduled Payments, but including all Escalation Amounts, discounted to the date of determination at the Discount Rate, exceeds (b) the Additional Term Investment immediately prior to such Settlement Date.

## 1.2 Extended Meanings

In this Agreement, words importing the singular number include the plural and vice versa and words importing gender include each gender. Unless the context requires otherwise, any reference herein to any Person shall be construed to include such Person's successors and permitted assigns.

1.3 Headings and Table of Contents

The table of contents does not form part of this Agreement. Article and Section headings are not to be considered part of this Agreement, are included solely for convenience of reference and do not define, limit or enlarge the construction or interpretation hereof.

1.4 References to Sections, Articles and Schedules

Unless otherwise provided, all references herein to Sections, Articles or Schedules are references to Sections, Articles and Schedules of or to this Agreement.

1.5 References to Statutes

Unless otherwise provided, all references herein to any statute or any provision thereof shall mean such statute or provision as amended, restated or re-enacted from time to time.

1.6 Certain Phrases

Unless otherwise provided herein, the words "including", "includes" and "include" mean "including (or includes or include) without limitation".

1.7 Governing Law

This Agreement will be governed by and construed in accordance with the laws of the Province of British Columbia and the federal laws of Canada applicable therein (without regard to the conflict of laws rules of the Province of British Columbia).

1.8 Invalidity of Provisions

Save and except for any provision or covenant contained herein which is fundamental to the subject matter of this Agreement (including those that relate to the payment of moneys), the invalidity or unenforceability of any provision or covenant hereof or herein contained will not affect the validity or enforceability of any other provision or covenant hereof or herein contained and any such invalid or unenforceable provision or covenant will be deemed to be severable.

1.9 Computation of Time Periods

Unless otherwise provided herein, in the computation of a period of time from a specified date to a later specified date, the word "from" means "from and including" and each of the words "to" and "until" means "to but excluding".

1.10 Non-Business Days

Whenever any payment to be made hereunder shall be stated to be due, any period of time would begin or end, any calculation is to be made or any other action to be taken hereunder shall be stated to be required to be taken, on a day other than a Business Day, such payment shall be made, such period of time shall begin or end, such calculations shall be made and such other action shall be taken on the next succeeding Business Day.

1.11 Accounting Principles

Where the character or amount of any asset or liability or item of revenue or expense is required to be determined, or any consolidation or other accounting computation or presentation is required to be made for the purpose of this Agreement, such determination, consolidation, computation or presentation shall, to the extent applicable and except as otherwise specified

herein or as otherwise agreed to in writing by the parties, be made in accordance with GAAP applied on a consistent basis. Wherever in this Agreement reference is made to generally accepted accounting principles, such reference shall be deemed to be to GAAP applicable as at the date on which such determination, consolidation, computation or presentation is made or required to be made.

1.12 **Currency**

Unless otherwise provided, all amounts herein are stated in Canadian Dollars.

1.13 **Entire Agreement**

This Agreement contains the entire agreement between the parties relative to the subject matter hereof and supersedes all prior and contemporaneous agreements, term sheets, commitments, understandings, negotiations, and discussions, whether oral or written. There are no warranties, representations or other agreements between the parties in connection with the subject matter hereof except as specifically set forth herein.

1.14 **Schedules**

The following schedules annexed hereto are incorporated herein by reference and are deemed to be part hereof:

Schedule "A" – Form of Concurrent Lease Notice

Schedule "B" – Lessor's Addresses

Schedule "C" – Form of Portfolio Report (or such other format as mutually agreed upon by the parties)

## **Article 2 - CONCURRENT LEASE**

2.1 **Grant of Concurrent Lease**

(a) Upon the terms and subject to the conditions set forth herein, the Lessor may from time to time prior to the occurrence of an Amortization Event, by delivering a completed Concurrent Lease Notice, offer to concurrently lease Approved Equipment to the Concurrent Lessee at least 5 Business Days before a proposed Closing Date. The Concurrent Lessee shall indicate its acceptance of the offer to concurrently lease Approved Equipment by countersigning the Concurrent Lease Notice delivered by the Lessor on or before the proposed Closing Date.

(b) On each Closing Date, Lessor shall hereby lease to Concurrent Lessee, free and clear of all security interests, liens or other adverse claims other than the leasehold interests of the relevant Obligors, and Concurrent Lessee shall hereby lease from Lessor, the Approved Equipment as listed on the related Concurrent Lease Notice delivered by Lessor to Concurrent Lessee) with effect as of the Closing Date. It is hereby expressly acknowledged and agreed that the interest of the Concurrent Lessee under each Concurrent Lease is and to the related Approved Equipment is that of a lessee only, and that title to and ownership in all such Approved Equipment shall, subject to Section 2.6, remain vested in the Lessor. It is hereby further expressly acknowledged and agreed that, as of each Closing Date and until the applicable Final Collection Date, the beneficial ownership of the interest of the Lessor in respect of each Lease relating to Leased Assets and the related Collections will automatically vest in the Concurrent Lessee and the Lessor will hold in trust for the benefit of the Concurrent Lessee the interest of the Lessor under each such Lease and related Collections. It is hereby further expressly acknowledged and agreed that, notwithstanding the grant by the Lessor to the

Concurrent Lessee of each Concurrent Lease, the rights of the lessee Obligors with respect to the possession and use of the Approved Equipment shall continue and be the same as under their respective Leases.

- (c) On each Closing Date, the Lessor will pay to the Concurrent Lessee the Credit Monitoring Fee for each Concurrent Lease listed in the applicable Concurrent Lease Notice. The Concurrent Lessee may set off the Credit Monitoring Fee payable for a Concurrent Lease against the Prepaid Rent for that Concurrent Lease paid by the Concurrent Lessee on the Closing Date.
- (d) In its capacity as lessor to the Concurrent Lessee and so that the Concurrent Lessee will not be in violation of its obligation as lessor to the Obligors or any of them, the Lessor hereby covenants and agrees to and in favour of the Concurrent Lessee that at all times during the term of each Concurrent Lease, the Lessor will, in all material respects, comply with and perform each term, condition, representation, warranty and covenant of the lessor contained in each Lease and will not take or omit to take any action in its capacity as owner of the Approved Equipment and lessor under any Concurrent Lease and which would cause any material failure by it to so comply with and perform each term, condition, representation, warranty and covenant required to be complied with or performed by the lessor under each Lease.
- (e) In its capacity as lessee under each Concurrent Lease, the Concurrent Lessee hereby covenants and agrees, to and in favour of the Lessor, to cause and require each Obligor to comply with and perform each term, condition, representation, warranty and covenant required to be complied with or performed by an Obligor under the relevant Lease.

## 2.2 Terms of Concurrent Leases

- (a) The term of each Concurrent Lease in respect of an item of Approved Equipment shall be deemed to commence at the close of business on the related Closing Date and, unless terminated or deemed terminated earlier in accordance with the provisions hereof, shall terminate on the Lease End Date for the related Lease.
- (b) Notwithstanding Section 2.2(a), the Concurrent Lessee shall, by giving the Lessor notice, have the right to extend (i) the term of all Concurrent Leases outstanding on the date of the Amended and Restated Agreement beyond the relevant Lease End Dates to the end of the Additional Term and (ii) the term of all Concurrent Leases outstanding on the date of this Agreement for which a notice has not been previously given pursuant to this section beyond the relevant Lease End Dates to the end of the Second Additional Term.

It is hereby expressly acknowledged and agreed that the Lessor's title and ownership of the Approved Equipment owned by it shall be subject to the rights of the Concurrent Lessee under each Concurrent Lease with respect to such Approved Equipment, and, consequently, except as otherwise provided herein, upon the termination of the Lease relating to any Approved Equipment (whether upon the expiry of the Term thereof, as a result of a default by the Obligor thereunder or otherwise), the Concurrent Lessee shall, until the expiry of the term of the Concurrent Lease relating to such Approved Equipment, have the exclusive right to possess, use and lease such Approved Equipment as provided for in this Article 2. Except as provided herein, neither the Concurrent Lessee nor the Lessor shall be entitled to terminate the Concurrent Lease in respect of any or all of the Approved Equipment.

## 2.3 Rent for Concurrent Lease

In consideration of the grant by the Lessor to the Concurrent Lessee of each Concurrent Lease, the Concurrent Lessee shall pay to the Lessor, on the first day of each calendar month after the

Closing Date during the term of each Concurrent Lease, as monthly rent, an amount equal to 99.99% of the sum of all payments forming part of the Scheduled Payments to be made in respect of the Leases of Leased Assets in respect thereof during the related Collection Period. Any Taxes will be added to any amount so paid if applicable.

#### 2.4 Prepaid and Deferred Rent

The Lessor acknowledges and agrees that the Concurrent Lessee may satisfy and discharge its obligations to make all monthly rent payments required by Section 2.3 by (a) paying to the Lessor, on the related Closing Date, as a prepayment of rent, a sum equal to the Prepaid Rent, (b) paying to the Lessor the amounts specified pursuant to and in accordance with Section 3.1 as deferred rent (the **Deferred Rent**), each of which payments shall be made without the need on the part of the Lessor to provide the Concurrent Lessee with any invoices. The Concurrent Lessee shall be deemed to have elected to make the payments specified in (a) and (b) if it pays the Prepaid Rent on the related Closing Date. In the event the Concurrent Lessee elects to extend the terms of the Concurrent Leases outstanding on the date of the Amended and Restated Agreement or on the date of this Agreement, as applicable, to the end of the Additional Term or Second Additional Term, as applicable, in accordance with Section 2.2(b), the Concurrent Lessee may pay to the Lessor, upon the exercise of its right to extend the terms, as a prepayment of rent, a sum equal to the Initial Additional Term Prepaid Rent plus the Subsequent Additional Term Prepaid Rent as determined on each Settlement Date thereafter or the Second Additional Term Prepaid Rent, as applicable. Concurrently with the payment of the Initial Additional Term Prepaid Rent for an ATPR Scheduled Lease, or the Second Additional Term Prepaid Rent for a Second ATPR Scheduled Lease, the Lessor will pay to the Concurrent Lessee the Credit Monitoring Fee for that ATPR Scheduled Lease or Second ATPR Scheduled Lease. Any Taxes will be added to any of the foregoing amounts so paid if applicable.

#### 2.5 Acknowledgment

The Lessor acknowledges and agrees that, as a consequence of the grant and demise of rights by it to the Concurrent Lessee under this Agreement, and in consideration of the obligation and the liability of the Concurrent Lessee to pay to the Lessor the rent (including any payment by the Concurrent Lessee of Prepaid Rent), as provided for in this Article 2, the Concurrent Lessee shall be entitled, among other things, to receive all Scheduled Payments under the Leases, the Leased Assets relating to which is concurrently leased to the Concurrent Lessee hereunder, as of and from the close of business on the related Closing Date.

#### 2.6 Security Interest

As continuing security for the due and timely payment from time to time by the Lessor of all obligations of the Lessor, the Lessor hereby grants, pledges and charges, to and in favour of the Concurrent Lessee, a first charge and security interest in and to all of the Lessor's right, title and interest, both present and future, in, to and under the following:

- (a) all of the Lessor's right, title and interest in, to and under the Leased Assets and the Leases related thereto including, without limitation, all amounts owed to or received by the Lessor in respect of Collections from any Obligor or other Person, including all liquidation proceeds and subsequent recoveries in respect of the Leased Assets and the related Records;
- (b) all of the Lessor's right, title and interest in and to all Collections made on or after the related Closing Date and the right to make Collections in respect of the remaining Term thereof made on or after the Closing Date including, without limitation, rights, if any, under direct debit agreements with Obligors, and all cheques, notes, instruments of payment and other remittances relating thereto;

(c) all of the Lessor's right, title and interest in and to the related Rights relating to the Leased Assets; and

(d) all proceeds from any or all of the foregoing;

(all of such property and rights being collectively referred to herein as the Concurrent Lease Entitlements). The Lessor and the Concurrent Lessee agree that value has been given for the granting by the Lessor of such charge and security interest, that they have not agreed to postpone the time for attachment with respect thereto and that attachment will occur immediately upon the the Lessor acquiring rights to receive any such Collections or other amounts.

## 2.7 Concurrent Lessee Rights

The Lessor hereby acknowledges that, as a consequence of the granting of the Concurrent Leases hereunder, the Concurrent Lessee through the Servicer on its behalf, shall have the right, at any time, to:

- (a) notify any Obligor of the Concurrent Lease by the Concurrent Lessee of the Leased Assets;
- (b) to the extent that the Lessor has such rights, contact any Obligor for any purpose, including for the performance of audits and verification analyses, and the determination of account balances and other data maintained by the Servicer;
- (c) direct any Obligor to make all payments on account of any Leases directly to the Concurrent Lessee at an address designated by the Concurrent Lessee or to such third party (including the Servicer) or bank or depositary as may be designated by the Concurrent Lessee;
- (d) request any Obligor to change the instructions for any direct debit or electronic funds transfer otherwise payable to the Lessor or the Servicer;
- (e) proceed directly against any Obligor and take any and all other actions, in the Lessor's name or otherwise, necessary or reasonably desirable to collect the Leases, enforce the related Rights or effect any related result; and
- (f) subject to the terms of the related Lease, sell by power of sale any Leased Assets for any price the Concurrent Lessee (or the Servicer on its behalf) deems reasonable in its sole discretion and apply the liquidation proceeds arising from any such sale towards any Rent Rebate arising therefrom.

## 2.8 Application Fee

The Lessor shall pay to the Concurrent Lessee following the completion of each Concurrent Lease or each extension of a Concurrent Lease for a Second Additional Term, an application fee in respect of such Concurrent Lease in the amount equal to 0.15% of the applicable Prepaid Rent or Second Additional Term Prepaid Rent, as applicable, of the applicable Lease Asset in respect of the concurrent lease or extension by the Concurrent Lessee from the Lessor.

## 2.9 Payment of GST/HST

The Concurrent Lessee certifies that it is at all relevant times, including at the time of each Concurrent Lease, a registrant under Part IX of the Excise Tax Act (Canada) (the **ETA**) and that its registration number is 10414 3698 RT0001.

## 2.10 Disqualified Assets

Promptly at any time after a Closing Date upon discovering that an eligibility requirement contained in the definition of "Eligible Asset" was not satisfied with respect to any Leased Asset and Concurrent Lease on the Cut-Off Date where the Concurrent Lessee made a payment of Prepaid Rent, the Lessor shall pay to the Concurrent Lessee an amount equal to the Rent Rebate in respect of the Concurrent Lease. Upon the payment of such amount, the related Concurrent Lease of such Leased Asset will be deemed to have been terminated without the need for any further action. Upon payment of such amount, any incorrectness in any representation or warranty or covenant by the Lessor with respect thereto shall be deemed to have been rectified.

## 2.11 Termination Rights

Either the Concurrent Lessee or the Lessor may terminate any Concurrent Lease at the end of each calendar year by notice in writing. Upon such termination, in the event Prepaid Rent was paid in respect of the Concurrent Lease, the Lessor shall be obligated to pay the Rent Rebate in respect thereof and shall have a period of up to 180 days to negotiate a repayment schedule with the Concurrent Lessee. Upon payment in full of the Rent Rebate, the related Concurrent Lease of such Leased Asset will be deemed to have been terminated without the need for any further action.

## 2.12 Intentionally Deleted

## 2.13 Liquidated Leases

The parties acknowledge that the Servicer is obligated and exclusively entitled, in accordance with this Agreement, to enforce a defaulted Lease by using its normal practices to take actual possession of and sell the Leased Assets forming the subject matter of such Lease and, if necessary, by enforcing the related Rights. The Servicer shall also be entitled to purchase such Leased Assets for a price deemed by the Servicer to be reasonable for such Leased Assets. Upon the Servicer's enforcement in respect of the Leased Assets which are subject to a Concurrent Lease, the Concurrent Lessee shall, subject to the following sentence, require the Lessor to terminate the related Concurrent Lease. The Concurrent Lease shall be terminated with respect to such Leased Assets as of the date on which the Servicer completes the sale of the Leased Assets to a purchaser thereof. Upon such termination, the Lessor shall be obligated to pay to the Concurrent Lessee, on the date such sale is effected, as a refund of a portion of the Prepaid Rent and, if applicable, the Initial Additional Term Prepaid Rent and any Subsequent Additional Term Prepaid Rent or any Second Additional Term Prepaid Rent paid by the Concurrent Lessee in respect of such Leased Assets, by payment to the Collections Account, the liquidation proceeds from the related Leased Assets and any recoveries against the related Obligor received by the Servicer, and recourse against the Lessor shall be limited to the liquidation proceeds from the related Leased Assets and recoveries against the related Obligor received by the Servicer, and the Lessor irrevocably directs the Servicer to apply such amounts as Collections in accordance with Article 3.

## 2.14 Sale of Leased Assets

Each party hereto acknowledges that the Servicer may, in accordance with the terms of the related Lease, allow other Persons to purchase the Leased Assets that are subject to a Concurrent Lease hereunder prior to the expiry of a Concurrent Lease. If Leased Assets that are subject to a Concurrent Lease hereunder are sold at any time, then the Concurrent Lease shall be terminated with respect to such Leased Assets as of the date on which the Servicer completes the sale of the Leased Assets to a purchaser thereof. Upon any such termination where the purchaser is the Obligor, the Lessor shall be obligated to pay to the Concurrent Lessee a refund of a portion of the Prepaid Rent and, if applicable, the Initial Additional Term Prepaid Rent and any Subsequent Additional Term Prepaid Rent paid by the Concurrent Lessee in respect of such

Leased Assets, by payment into the Collections Account of the proceeds of the sale of the Leased Assets on the date such sale is effected. Upon any such termination where the purchaser is not the Obligor, the Lessor shall be obligated to pay to the Concurrent Lessee a refund of a portion of the Prepaid Rent and, if applicable, the Initial Additional Term Prepaid Rent and any Subsequent Additional Term Prepaid Rent or any Second Additional Term Prepaid Rent paid by the Concurrent Lessee in respect of such Leased Assets, by payment to the Concurrent Lessee of an amount equal to the Rent Rebate relating to such Concurrent Lease on the date such sale is effected. The Servicer will not agree to any purchase of Leased Assets that would result in the termination of a Concurrent Lease, including without limitation as part of a transaction that involves an Obligor agreeing to lease new Approved Equipment under a new lease, without first obtaining the consent of the Concurrent Lessee.

## **Article 3 - APPLICATION OF COLLECTIONS**

### **3.1 Settlement Procedures**

Collections of the Leases subject to Concurrent Leases shall be administered by the Servicer in accordance with the terms of this Agreement. The Lessor shall provide to the Servicer (if other than the Lessor) on a timely basis all information needed for such administration, including notice of the occurrence of any Amortization Event. The Servicer will allocate Collections received from each Obligor in accordance with the Credit and Collection Policies. On each Settlement Date, Collections for the related Collection Period with respect to each Lease subject to a Concurrent Lease, will be applied as follows:

- (a) first, during an Amortization Period only, to the Servicer, the Servicing Fee or following a Servicer Termination Event, to the Replacement Servicer, if any, the Replacement Servicer Fee, in each case to the extent allocable to such Lease;
- (b) second, to be retained by the Concurrent Lessee, the Concurrent Lessee's Proportionate Share of any Collections in respect of the Lease; and
- (c) third, to the Lessor, the remainder as Deferred Rent.

### **3.2 [Reserved]**

### **3.3 Subsequent Additional Term Prepaid Rent**

On each Settlement Date after the Concurrent Lessee has elected to pay the Initial Additional Term Prepaid Rent, the Lessor shall deliver to the Concurrent Lessee an updated schedule of ATPR Scheduled Leases. The amount of any Subsequent Additional Term Prepaid Rent determined following the application of funds pursuant to Section 3.1 and such updated schedule shall be paid by the Concurrent Lessee to the Lessor. The Servicer shall be entitled to net the amount of any such Subsequent Additional Term Prepaid Rent owing by the Concurrent Lessee on a Settlement Date against amounts otherwise due to the Concurrent Lessee pursuant to Section 3.1 and pay such amounts directly to the Lessor.

## **Article 4 - REPRESENTATIONS AND WARRANTIES**

### **4.1 Representations and Warranties of the Lessor**

The Lessor represents and warrants to the Concurrent Lessee as of the date of the Original Agreement and as of each Closing Date (except as otherwise specified below) that:

- (a) it is (i) a corporation validly existing under the laws of the Province of Ontario; and (ii) duly qualified to carry on business in each jurisdiction in which the failure to be so qualified would reasonably be expected to have a Material Adverse Effect;
- (b) it has full power and capacity to enter into this Agreement and to do all acts and things as are required or contemplated of it hereunder and thereunder;
- (c) it has taken all necessary action to authorize the execution, delivery and performance of this Agreement and to do all acts and things as are required or contemplated of it hereunder and thereunder;
- (d) there are no actions, suits or proceedings pending or to the knowledge of any officer of the Lessor, threatened against or affecting the Lessor or any of its undertakings and assets at law, in equity or before any arbitrator or before or by any governmental department, body, commission, board, bureau, agency or instrumentality having jurisdiction in the premises in respect of which there is a reasonable possibility of a determination adverse to the Lessor which would reasonably be expected to have a Material Adverse Effect and the Lessor is not in default in respect of any applicable law, rule, regulation, order, judgment, injunction, award or decree as a result of which a Material Adverse Effect would reasonably be expected to occur;
- (e) this Agreement has been duly executed and delivered by the Lessor and constitutes a legally binding obligation of the Lessor enforceable against it in accordance with its terms, subject to applicable bankruptcy, reorganization, insolvency, moratorium or other laws affecting creditors' rights generally and to equitable principles of general application (regardless of whether enforcement is sought in a proceeding at law or in equity);
- (f) the execution and delivery of this Agreement and compliance with its terms and conditions will not (i) result in a violation of the constating documents or by-laws of the Lessor; (ii) result in a violation of any applicable law, rule, regulation, order, judgment, injunction, award or decree; (iii) result in a breach of, or constitute a default under, any loan agreement or any other agreement or instrument to which the Lessor is a party or by which it is bound which would reasonably be expected to have a Material Adverse Effect; or (iv) require any approval or consent of, or any notice to or filing with, any Governmental Authority or agency having jurisdiction except such as has already been given, filed or obtained, as the case may be;
- (g) no default has occurred and is outstanding under any loan agreement or any other agreement or instrument to which the Lessor is a party or by which it is bound which would reasonably be expected to have a Material Adverse Effect;
- (h) its principal place of business, chief executive office and registered office are located at the address set forth under its name on the signature pages hereto and the offices where it keeps all Records held by it are located at the addresses set out in Schedule "B" hereto or such other addresses as the Lessor shall from time to time notify the Concurrent Lessee;
- (i) it is not a non-resident of Canada within the meaning of the ITA;
- (j) the Lessor has delivered to the Concurrent Lessee all financial information received by the Lessor in respect of each Eligible Asset;
- (k) all federal, provincial and local and foreign national, state, provincial, regional and local and all other tax returns of the Lessor required by applicable law to be filed have been duly filed, and all federal, provincial and local and foreign national, state, provincial,

regional and local and all other taxes, assessments and other governmental charges or levies upon the Lessor and its property, income, profits and assets which are due and payable have been paid. The charges, accruals and reserves on the books of the Lessor in respect of federal, provincial and local taxes and foreign national, state, provincial, regional and local taxes for all fiscal years and portions thereof since the organization of the Lessor are in the judgment of the Lessor adequate in all material respect;

- (l) all written information, reports, certificates, financial statements and other papers and data produced by or on behalf of the Lessor and furnished to the Concurrent Lessee, including those in respect of Eligible Assets, were, at the time the same were so furnished, complete and correct in all material respects to the extent necessary to give the recipient a true and accurate knowledge of the subject matter, and, no fact is known to the Lessor which has had, or could reasonably be expected to in the future have, a Material Adverse Effect;
- (m) the Lessor is not an “Insolvent Person” as defined in the *Bankruptcy and Insolvency Act* (Canada), and shall not have unreasonably small capital to carry out its businesses as conducted or as proposed to be conducted;
- (n) each Lease Asset in respect of which the related Equipment is offered to be concurrently leased to the Concurrent Lessee hereunder is an Eligible Asset as of the Cut-Off Date; and
- (o) no Amortization Event or Servicer Termination Event has occurred that is continuing.

#### 4.2 Representations and Warranties of the Concurrent Lessee

The Concurrent Lessee represents and warrants to the Lessor as of the date of the Original Agreement that:

- (a) the Concurrent Lessee is (i) a trust company duly organized and validly existing under the *Trust and Loan Companies Act* (Canada); and (ii) duly qualified to carry on business in each jurisdiction in which the failure to do so would reasonably be expected to have a Material Adverse Effect;
- (b) the Concurrent Lessee has full power and capacity to enter into this Agreement and to do all acts and things as are required or contemplated of it hereunder;
- (c) the Concurrent Lessee has taken all necessary action to authorize the execution, delivery and performance of this Agreement and to do all acts and things as are required or contemplated of it hereunder;
- (d) there are no actions, suits or proceedings pending or to the knowledge of any officer of the Concurrent Lessee, threatened against or affecting the Concurrent Lessee or any of its undertakings and assets at law, in equity or before any arbitrator or before or by any governmental department, body, commission, board, bureau, agency or instrumentality having jurisdiction in the premises in respect of which there is a reasonable possibility of a determination adverse to the Concurrent Lessee which would reasonably be expected to have a Material Adverse Effect and the Concurrent Lessee is not in default in respect of any applicable law, rule, regulation, order, judgment, injunction, award or decree as a result of which a Material Adverse Effect would reasonably be expected to occur;
- (e) this Agreement has been duly executed and delivered by it and constitutes a legally binding obligation of the Concurrent Lessee enforceable against it in accordance with its terms, subject to applicable bankruptcy, reorganization, insolvency, moratorium or other

laws affecting creditors' rights generally and to equitable principles of general application (regardless of whether enforcement is sought in a proceeding at law or in equity);

- (f) the execution and delivery of this Agreement and compliance with its terms and conditions will not (i) result in a violation of its constituting documents; (ii) result in a violation of any applicable law, rule, regulation, order, judgment, injunction, award or decree; (iii) result in a breach of, or constitute a default under, any loan agreement, indenture, trust deed or any other agreement or instrument to which the Concurrent Lessee is a party or by which it is bound which would reasonably be expected to have a Material Adverse Effect; or (iv) require any approval or consent of, or any notice to or filing with, any Governmental Authority or agency having jurisdiction except such as has already been given, filed or obtained, as the case may be; and
- (g) no default has occurred and is outstanding under any loan agreement, indenture, trust deed or any other agreement or instrument to which the Concurrent Lessee is a party or by which it is bound which would reasonably be expected to have a Material Adverse Effect.

#### 4.3 Survival

Representations, warranties and statements of the Lessor and the Concurrent Lessee (or any of them or of any of their respective officers) set forth herein have been relied upon by the Concurrent Lessee, shall not merge on the completion of the execution and delivery of this Agreement or on the completion of any Concurrent Lease and shall survive thereafter.

### **Article 5 - COVENANTS**

#### 5.1 Delivery of Files and Records

The Servicer will hold the Records relating to the applicable Leased Assets on behalf of the Concurrent Lessee, and will provide a copy of such Records to the Concurrent Lessee upon request.

#### 5.2 Further Assurances

- (a) Each of the Lessor and the Concurrent Lessee will from time to time make, do, execute, endorse, acknowledge and deliver or cause and procure to be made, done, executed, endorsed, acknowledged, filed, registered and delivered any and all further acts and assurances, including without limitation, any conveyance, deed, transfer, assignment or other instrument in writing as, in the opinion of either of such Persons, may be necessary or desirable to give effect to this Agreement and the transactions provided for in this Agreement and will take all such other action as may be required or desirable for more effectually and completely vesting all Rights acquired by the Concurrent Lessee.
- (b) Each of the Lessor and Concurrent Lessee from the period commencing on the Closing Date until the termination of this Agreement, shall maintain in force insurance coverage in areas and amounts customary for its industry.

#### 5.3 General Covenants of the Lessor

The Lessor covenants with the Concurrent Lessee:

- (a) to preserve and maintain its existence, rights, franchises and privileges and to qualify and remain qualified to carry on business in each jurisdiction in which the failure to do so would reasonably be expected to have a Material Adverse Effect;

- (b) to not, except as expressly permitted herein (i) sell, assign (by operation of law or otherwise) or dispose of any part of the Leased Assets; (ii) take any action which may cause the validity, effectiveness or enforceability of the Leased Assets or the related Rights to be impaired; or (iii) take or omit to take any action which may cause an Adverse Claim to attach or extend to or otherwise burden any part of the Leased Assets;
- (c) to comply with all laws (including, without limitation, privacy laws) rules, regulations, orders, judgments, injunctions, awards or decrees applicable to the Lessor or the Leased Assets except where the failure to do so would not reasonably be expected to have a Material Adverse Effect;
- (d) to promptly notify the Concurrent Lessee at least twenty (20) Business Days prior to changing its name from that which is stated in its constating documents;
- (e) to promptly notify the Concurrent Lessee at least twenty (20) Business Days prior to changing the jurisdiction in which its principal place of business, chief executive office or registered office is located;
- (f) to promptly notify the Concurrent Lessee of any amendment, limitation or restriction of any license issued to the Lessor by a regulatory authority relating to the carrying on by the Lessor of its business if such amendment, limitation or restriction would have a Material Adverse Effect;
- (g) to notify the Concurrent Lessee forthwith of the occurrence of any Amortization Event or Servicer Termination Event or of any event which, with the giving of notice of the passage of time, or both, could become an Amortization Event or Servicer Termination Event;
- (h) to not amend or waive the Credit and Collection Policies without the prior written consent of the Concurrent Lessee;
- (i) to not establish or maintain a defined benefit pension plan;
- (j) to make notations in its books, records, documents and instruments relating to the Leased Assets to evidence the interest of the Concurrent Lessee therein; and
- (k) to timely and fully perform and comply with all material terms, covenants and other provisions of the contracts relating to the Leased Assets, including without limitation the Leased Assets, required to be performed by and observed by the Lessor thereunder.

#### 5.4 Amendments to Definition of Eligible Asset

If, at any time, the Concurrent Lessee determines, acting reasonably, that there has been a material change in the information contained in a Portfolio Report from the information contained in any previous Portfolio Report, then the Concurrent Lessee may elect by notice to the Lessor to amend the definition of Eligible Asset so that it contains one or more of the following additional requirements:

- (a) in respect of which there is a parts and labor warranty on the related Leased as issued by a third party insurer that is approved in writing by the Concurrent Lessee (acting reasonably) or the Lessor has otherwise made arrangements with a third party (other than the Obligor or the Lessor) to ensure that any repair and servicing of the related Approved Equipment is conducted and completed as required from time to time;
- (b) if the Lease is a Low Score Lease, the Outstanding Balance of such Lease, together with the Outstanding Balance of all Leases relating to Leased Assets that are Low Score

Leases, does not exceed 5% of the Outstanding Balance of all Concurrent Leases at such time; and

(c) if the Lease is a Low Value Lease, the Outstanding Balance of such Lease, together with the Outstanding Balance of all Leases relating to Leased Assets that are Low Value Leases, does not exceed 35% of the Outstanding Balance of all Leased Assets at such time;

and the definition of Eligible Asset will be deemed to have been amended from the time of delivery of notice of any such election by the Concurrent Lessee to the Lessor.

## **Article 6 - SERVICING OF PORTFOLIO**

### **6.1 Appointment of the Lessor as Servicer**

(a) The Concurrent Lessee hereby appoints the Servicer to be its exclusive agent for the purposes of servicing the Leased Assets as set out in this Article 6 (it being acknowledged that the Concurrent Lease made hereunder is made on a fully-serviced basis in accordance with this Agreement) and the Lessor hereby accepts such appointment.

(b) The Lessor may subcontract with a subservicer or sub-originator, provided that such subservicer or sub-originator shall be approved by the Concurrent Lessee acting reasonably, for the servicing or subservicing of the Leased Assets; provided, however, that the Lessor will remain liable to the Concurrent Lessee for the performance of the duties and obligations so subcontracted and all other duties and obligations of the Lessor set forth in this Article 6.

(c) Except as provided hereunder, the Servicer shall have the exclusive right to service the Leased Assets and the Concurrent Lessee shall not contact any Obligor or inform any Obligor of its interests in the Leased Assets or otherwise take any steps to modify any Leased Assets.

### **6.2 Servicing of Leased Assets**

During the term of this Agreement, unless a Replacement Servicer is designated by the Concurrent Lessee pursuant to Section 7.2, the Lessor covenants to service the Leased Assets with reasonable care using that degree of skill and attention that it exercises with respect to comparable receivables that it services for itself and others and in accordance with the Credit and Collection Policies, and subject to and in accordance with the provisions of this Agreement. Without limiting the generality of the foregoing, the Lessor, unless a Replacement Servicer is designated by the Concurrent Lessee pursuant to Section 7.2, shall and covenants to:

(a) deposit Collections to the Collections Account (which will, until remitted, be held in trust for the Concurrent Lessee) in respect of such Settlement Period in accordance with Section 6.3;

(b) hold the Records in trust for the Concurrent Lessee and at any time and from time to time during regular business hours permit the Concurrent Lessee, its agents or representatives upon five (5) Business Days' prior notice to (i) examine and make copies of all such Records in the possession (or under the control) of the Lessor; and (ii) visit the offices and properties of the Lessor for the purpose of examining such Records and discussing matters relating to the Leased Assets and the Lessor's performance under the Leased Assets or hereunder with any of the Lessor's officers or employees having knowledge of such matters;

- (c) maintain and implement prudent and reasonable administrative and operating procedures (including an ability to recreate the Records in the event of the destruction of the originals thereof) and keep and maintain all books, records, documents and other information reasonably necessary or advisable for the identification and collection of the Leased Assets (including records adequate to permit all collections of and reductions or adjustments);
- (d) timely and fully perform and comply with all terms, covenants and other provisions of the Leased Assets required to be performed and observed by it or the Concurrent Lessee;
- (e) comply in all respects with the Credit and Collection Policies in regard to each Leased Asset;
- (f) not, without the prior written consent of the Concurrent Lessee, make any change in the Credit and Collection Policies;
- (g) not extend, amend or otherwise modify or waive any term or condition of any Leased Asset unless permitted in accordance with the terms of the Credit and Collection Policies;
- (h) use its commercially reasonable efforts to collect all Receivables payable in respect of the Leased Assets in accordance with all applicable laws, rules and regulations, the provisions hereof and the Credit and Collection Policies;
- (i) make all payments payable by it to government agencies and others where a statutory lien or deemed trust might arise having priority over the Concurrent Lessee's interest in any part of the Leased Assets; provided that the Lessor may protest the payment of any such amounts if it is acting in good faith and it either provides the Concurrent Lessee with cash in an amount sufficient to satisfy the same or otherwise satisfies the Concurrent Lessee, acting reasonably, that its interests are not prejudiced thereby;
- (j) as soon as possible, effect all filings or recordings with respect to the Concurrent Lessee's interest in all Rights necessary by law or reasonably prudent or desirable for the perfection and protection of such interest and all appropriate renewals or amendments thereof;
- (k) promptly, from time to time, furnish to the Concurrent Lessee such documents, records, information or reports in respect of the Leased Assets or the conditions or operations, financial or otherwise, of the Lessor as may be in existence in written form or, if available in databases maintained by the Lessor, as may be produced with existing software as the Concurrent Lessee may from time to time reasonably request;
- (l) If the Delinquency Rate
  - (i) calculated in respect of Low Score Leases that are Leased Assets exceeds, for any Reporting Period and the two (2) immediately preceding Reporting Periods, 8% (the amount of any excess being the **Excess LS Delinquencies**), the Lessor shall pay to the Concurrent Lessee, for each Reporting Period (that is, each calendar month) during which such excess exists, an amount equal to \$2,500 (the **Excess LS Delinquencies Reimbursement**), which shall represent a reimbursement for the Concurrent Lessee for the costs incurred by the Concurrent Lessee with respect to the monitoring, analyzing and reporting on the Excess LS Delinquencies. The Lessor and the Concurrent Lessee hereby agree that any such Excess LS Delinquencies Reimbursement is not and shall not be deemed to be a penalty or a fee in any way, but a true representation of the costs

that the Concurrent Lessee shall incur in respect of the monitoring, analyzing and reporting on the Excess LS Delinquencies; and

- (ii) calculated in respect of Low Value Leases that are Leased Assets exceeds, for any Reporting Period and the two (2) immediately preceding Reporting Periods, 10% (the amount of any excess being the **Excess LV Delinquencies**), the Lessor shall pay to the Concurrent Lessee, for each Reporting Period (that is, each calendar month) during which such excess exists, an amount equal to \$2,500 (the **Excess LV Delinquencies Reimbursement**), which shall represent a reimbursement for the Concurrent Lessee for the costs incurred by the Concurrent Lessee with respect to the monitoring, analyzing and reporting on the Excess LV Delinquencies. The Lessor and the Concurrent Lessee hereby agree that any such Excess LV Delinquencies Reimbursement is not and shall not be deemed to be a penalty or a fee in any way, but a true representation of the costs that the Concurrent Lessee shall incur in respect of the monitoring, analyzing and reporting on the Excess LV Delinquencies.

For greater certainty, both an Excess LS Delinquencies Reimbursement and an Excess LV Delinquencies Reimbursement may be payable by the Lessor to the Concurrent Lessee for the same Reporting Period.

- (m) on or before each Reporting Date, prepare and deliver to the Concurrent Lessee a Portfolio Report relating to the Receivables payable in respect of the Leased Assets as of the close of business on the last day of the immediately preceding Collection Period; and
- (n) to monitor the level of complaints arising from the Leased Assets received by it and take commercially reasonable steps to address such complaints. If, at any given time, the level of unresolved complaints exceeds 1% (being the percentage of active Obligors with unresolved complaints to total active Obligors) or if the level of total complaints (whether resolved or not) exceeds 5% (as the percentage of active Obligors who have made a complaint to total active Obligors), such excess shall be reported to the next meeting of the board of directors of Crown Crest Capital Management Corp. for a discussion on required management actions in respect of the interests of the Obligors.

#### 6.3 Deposit of Collections

All Collections shall be deposited by the Servicer in the Collections Account within two (2) Business Days of the date of receipt by the Servicer (or, in the case of Deemed Collections, on the date of deemed receipt).

#### 6.4 Power of Attorney

The Concurrent Lessee hereby constitutes and appoints the Servicer the true and lawful attorney of the Concurrent Lessee, with full power of substitution, to execute, deliver and register, for and on behalf of and in the name of the Concurrent Lessee, such documents, instruments or agreements which may be necessary or desirable to enable the Servicer to perform its obligations set out in this Agreement. The Servicer agrees that it will not exercise such power of attorney for any other purpose whatsoever. Such power of attorney is coupled with an interest.

#### 6.5 Deemed Collections

If, on any day prior to the date on which all of the Investment, Additional Term Investment and Second Additional Term Investment are reduced to nil, any Receivable payable in respect of any Leased Asset (i) is extended by the Lessor beyond its original term in a manner inconsistent with the Credit and Collection Policies, (ii) has its Scheduled Payment or any other regularly

scheduled payment to be made by the Obligor during the Additional Term reduced by the Lessor in a manner inconsistent with the Credit and Collection Policies, (iii) is reduced or cancelled as a result of any breach by the Lessor of the terms of such Leased Asset, (iv) is reduced or cancelled as a result of a set-off in respect of any claim by the applicable Obligor against the Lessor or the Concurrent Lessee other than as a result of an act or omission of the Concurrent Lessee (whether such claim arises out of the same or a related transaction or an unrelated transaction), (v) is reduced to reflect any adjustment for returns, billing errors, NSF cheques, fraudulent charges and similar payment reconciliations, (vi) is otherwise reduced or cancelled by the Lessor or any subservicer, or (vii) if any fine, penalty, sanction, order or other liability is imposed upon or determined against any of the Lessor, the Concurrent Lessee or any Originator in connection with or relating to any Leased Asset, the Lessor shall be deemed to have received for the Concurrent Lessee's account on the last day of the Collection Period during which such day occurred, a Collection of such Receivable in the amount of such reduction or cancellation, and shall deposit to the Collections Account on the immediately following Settlement Date such amount.

#### 6.6 Payment Terms

- (a) All amounts to be paid or deposited by the Lessor, the Replacement Servicer or the Concurrent Lessee hereunder will be paid or deposited on the day when due in same day funds.
- (b) The Lessor will make all payments required to be made hereunder without deduction or set-off (except as expressly permitted hereunder) regardless of any defense or counterclaim.

## **Article 7 - SERVICER TERMINATION**

#### 7.1 Servicer Termination Events

The happening of any of the following shall constitute a Servicer Termination Event hereunder:

- (a) The Lessor defaults in the payment of any amount due to the Concurrent Lessee hereunder and such default remains unremedied for a period of three (3) Business Days after written notice of such default has been given to the Lessor;
- (b) The Lessor defaults in the observance or performance in any manner of any of its covenants or obligations contained in this Agreement in any material respect (other than those obligations referred to in paragraph (a) above) and, if such default is capable of rectification and remains unremedied for a period of thirty (30) days after the earlier of (i) the date on which written notice of such default has been given to the Lessor by the Concurrent Lessee and (ii) the date on which the Lessor has actual notice of such default;
- (c) any representation or warranty made by the Lessor in or pursuant to this Agreement proves to have been false or incorrect when made in any material respect, and, if the circumstances giving rise to such incorrect representation or warranty are capable of rectification, such representation or warranty remains uncorrected for a period of 30 days after the earlier of (i) the date on which written notice has been given to the Lessor by the Concurrent Lessee specifying the incorrectness and demanding that the circumstances giving rise thereto be rectified and (ii) the date on which the Lessor had actual knowledge of such incorrectness; or

(d) an Insolvency Event shall occur in respect of the Lessor.

#### 7.2 Designation of Replacement Servicer

- (a) If a Servicer Termination Event has occurred and is continuing, the Concurrent Lessee may designate a Replacement Servicer to succeed the Lessor with respect to the Leased Assets on such terms as it may consider reasonable, provided that any such Person so designated shall agree to perform the duties and obligations of the Lessor provided for in Article 6.
- (b) Upon the appointment of a Replacement Servicer pursuant to Section 7.2(a), the Lessor will, on demand and at its expense: (i) assemble all Records and make them available to the Replacement Servicer; (ii) notify all Obligors (x) of the sale, assignment and transfer to the Concurrent Lessee of the Leased Assets; and (y) to remit all payments due under such Leased Assets to the Replacement Servicer; and (iii) segregate, in a manner reasonably acceptable to the Concurrent Lessee, all cash, cheques and other instruments constituting Collections which are received by it from time to time and remit the same to the Replacement Servicer duly endorsed or with duly executed instruments of transfer, if applicable.

#### 7.3 Replacement Servicer Fee

A Replacement Servicer appointed pursuant to Section 7.2 shall be entitled to a reasonable fee for services rendered, such fee to be determined by the Concurrent Lessee with the Replacement Servicer to a maximum, in respect of any Collection Period, of 15% of the Collections remitted to the Collections Account during such Collection Period (the **Replacement Servicer Fee**). Such Replacement Servicer Fee and any out-of-pocket expenses incurred by the Replacement Servicer in connection with its duties as Replacement Servicer, together with any applicable Sales Taxes, shall be payable to the Replacement Servicer in accordance with this Agreement.

#### 7.4 Leased Assets

If a Servicer Termination Event has occurred and is continuing, the legal right, title and interest to any Leased Assets related to any Leased Asset which are held by the Lessor in trust for the Concurrent Lessee shall automatically transfer to the Concurrent Lessee upon notice from the Concurrent Lessee to the Lessor.

#### 7.5 Power of Attorney

- (a) The Lessor hereby grants to the Concurrent Lessee, to become effective immediately upon the occurrence of a Servicer Termination Event, an irrevocable power of attorney and hereby irrevocably appoints the Concurrent Lessee as the Lessor's attorney-in-fact, with full power of substitution, to take in the place and stead of and in the name of the Lessor or in the Concurrent Lessee's own name from time to time at the Concurrent Lessee's discretion, acting reasonably, such actions as the Lessor may be obligated to take hereunder or as the Concurrent Lessee may deem necessary or advisable to collect, endorse, negotiate or otherwise realize on any Leased Asset including any related Receivable, any negotiable instrument, or any other right of any kind, held or owned by the Lessor and transferred, assigned or delivered to or received by the Concurrent Lessee as payment on account or otherwise in respect of any of the Leased Assets, including:
  - (i) to evidence or protect the Concurrent Lessee's interest in the Leased Assets and to execute and file, in the Lessor's name and on the Lessor's behalf, such

recording, registration, financing or similar statements (including any amendments, renewals and continuation statements) under applicable laws;

- (ii) to ask, demand, collect, sue for, recover, compound, receive and give acquittances and receipts for moneys due and to become due in connection with the Receivables or otherwise owed to the Concurrent Lessee;
- (iii) to receive, endorse and collect any cheques, drafts or other instruments, documents and chattel paper in connection with moneys due and to become due in connection with the Receivables forming part of the Leased Assets or otherwise owed to the Concurrent Lessee;
- (iv) to file any claims or take any action or institute any proceedings that the Concurrent Lessee may deem to be necessary or desirable for the collection of any Receivable; and
- (v) to prepare, execute, deliver, and/or register in the Lessor's name and on the Lessor's behalf, such instruments and documents (including assignments) necessary or desirable in furtherance of the foregoing.

(b) The power of attorney granted hereby shall be expressly coupled with an interest in favour of the Concurrent Lessee. The powers of attorney and other rights and privileges granted hereby shall survive any dissolution, liquidation or winding-up of the Lessor.

## **Article 8 - CONDITIONS PRECEDENT**

### 8.1 Conditions to Effectiveness

This Agreement shall become effective on the date of the Original Agreement if the following conditions precedent have been satisfied or waived on or prior to such date and/or the Concurrent Lessee shall have received from the Lessor the following documents, in form and substance satisfactory to the Concurrent Lessee:

- (a) a certificate of an officer of the Lessor, dated the date of the Original Agreement certifying (A) that attached thereto is a true and complete copy of the Certificate and Articles of Incorporation and any amendments thereto, and the by-laws of the Lessor, each as in effect on the date of such certificate; (B) that attached thereto is a true and complete copy of a resolution adopted by the Lessor's board of directors authorizing the execution, delivery and performance of this Agreement and the other Related Documents, and that such resolution has not been modified, rescinded or amended and is in full force and effect; and (C) as to the incumbency and true specimen signature of each of the Lessor's officers executing this Agreement or any of the Related Documents, on which certificate the Concurrent Lessee shall be entitled to conclusively rely until such time as the Concurrent Lessee receives from Lessor a replacement certificate meeting the requirements of this Section 8.1(a);
- (b) a certificate of compliance issued in respect of the Lessor in its jurisdiction of incorporation, and an equivalent certificate from the appropriate authority in each other jurisdiction in which qualification is necessary in order for the Lessor to own or lease its property and conduct its business, each to be certified as of a recent date;
- (c) executed copies of this Agreement and copies of the Credit and Collection Policies;
- (d) reports, satisfactory to the Concurrent Lessee acting reasonably, showing the results of searches conducted against the Lessor under applicable personal property security

registers in the provinces where the Leased Assets are located, together with executed copies of all discharges or releases of prior security interests relating to Leased Assets that are then to be sold hereunder; provided that the Lessor may establish that any particular registration does not affect any such Leased Assets by delivering a letter or acknowledgment signed by the applicable secured party;

- (e) a copy of verifications statements or other filings filed in each relevant jurisdiction, that are sufficient to perfect the interests of the Concurrent Lessee as the first priority ownership interest in the Leased Assets as against creditors of the Lessor;
- (f) executed copies of all discharges and releases, if any, necessary to discharge or release all security interest and other rights or interest of any Person in the Rights, previously granted by or through the Lessor and which could constitute an Adverse Claim, together with, where applicable, copies of the relevant financing change statements or other discharge statements with the registration particulars stamped thereon; and/or appropriate intercreditor agreements with such other parties in form and substance as the Concurrent Lessee may require; and
- (g) such other approvals, opinions or documents as the Concurrent Lessee may reasonably request.

## **Article 9 - MISCELLANEOUS**

### 9.1 Amendments and Waivers

- (a) This Agreement may be amended, supplemented, modified, restated or replaced by written instrument only signed by the Lessor and the Concurrent Lessee.
- (b) No waiver of any provision of this Agreement, nor consent to any departure by any party therefrom, shall in any event be effective unless the same shall be in writing signed by such party, and then such waiver or consent shall be effective only in the specific instance and for the specific purpose for which given. No failure on the part of any party to exercise, and no delay in exercising, any right hereunder shall operate as a waiver thereof.

### 9.2 Binding Effect; Assignability

This Agreement shall be binding upon and enure to the benefit of the Lessor and the Concurrent Lessee, and their respective successors and assigns.

The Lessor shall not have the right to assign any interest herein without the consent of the Concurrent Lessee, provided however that the Lessor may grant a security interest in all or a portion of the Deferred Rent.

Each of the other parties hereto agrees that, upon such assignment, the assignee or its further assigns may enforce directly, without joinder of the original Concurrent Lessee, the rights set forth in this Agreement. Each of the Lessor and the Concurrent Lessee agrees to grant to any such assignee or its further assigns or its agents such powers of attorney as may be necessary for the exercise of their rights hereunder.

### 9.3 Notices

Any notice, consent, request, agreement, approval, waiver or other communication required or permitted to be given or delivered hereunder shall, unless otherwise stated herein, be in writing (including photocopy, facsimile, electronic mail or other digital communication) and sent, as to

each party hereto, at its address set forth under its name on the signature pages hereto, or at such other address as shall be designated by such party in a written notice to the other parties hereto. All such notices and communications shall be effective when sent.

#### 9.4 Indemnification

- (a) The Lessor hereby agrees to indemnify the Concurrent Lessee and each of its directors, officers, employees, trustees, advisors and agents, and to save such Person harmless from and against any and all damages, losses, claims, liabilities, costs and expenses (including reasonable legal fees and disbursements) awarded against or incurred by any such Person arising out of or as a result of:
  - (i) any representation or warranty made or deemed to be made by the Lessor in any capacity (whether as Lessor, Servicer or otherwise) (or any of its officers) in or in connection with this Agreement, any of the Leased Assets, or any Related Document, which was incorrect in any material respect when made or deemed made or delivered;
  - (ii) the failure of the Lessor in any capacity (whether as Lessor, Servicer or otherwise) or any Originator to perform or observe any of its respective covenants, duties or obligations hereunder, in respect of or relating to any of the Leased Assets or under any of the Related Documents;
  - (iii) any claim made against the Lessor in any capacity (whether as Lessor, Servicer or otherwise), the Lender or any Originator by any Obligor arising from, in connection with or relating to the performance of observance of any of the Lessor's or Originator's respective covenants, duties or obligations hereunder, in respect of or relating to any of the Leased Assets or under any of the Related Documents;
  - (iv) the failure to vest in and maintain vested in the Concurrent Lessee, the beneficial interest of the Lessor in and to the Leases relating to the Leased Assets and related Collections which are, or are intended to be transferred to the Concurrent Lessee hereunder, free and clear of any Adverse Claim (whether existing at the time of the Concurrent Lease thereof or arising at any time thereafter);
  - (v) the failure by the Lessor in any capacity (whether as Lessor, Servicer or otherwise) to comply with any applicable law, rule, regulation, order, judgment, injunction, award or decree with respect to any part of the Leased Assets, or the non-conformity of any Leased Asset with any applicable law, rule, regulation, order, injunction, award or decree; and
  - (vi) any fine, penalty, sanction, order, or other liability imposed upon or determined against any of the Lessor in any capacity (whether as Lessor, Servicer or otherwise) the Lender or any Originator by any Governmental Authority in connection with or relating to any Leased Asset;
- (b) The Lessor shall not be liable to the Concurrent Lessee hereunder for any damages, losses, claims, liabilities, costs or expenses resulting solely from the failure of any Obligor to discharge its payment obligations (except as specifically provided in Section 9.4(a)).
- (c) The Lessor and the Concurrent Lessee each agree to provide reasonable assistance to the other party, at the request of such other party and, in either case, at the Lessor's expense, in any action, suit or proceeding brought by or against, or any investigation involving such requesting party relating to any of the transactions contemplated hereby or

to any part of the Leased Assets. If the Lessor has acknowledged its liability under Section 9.4(a) in respect of any damages, losses, claims, liabilities, costs or expenses in connection with any such action, suit, proceeding or investigation, and, in the sole determination of the Concurrent Lessee, acting reasonably, the Lessor has the financial ability to pay such damages, losses, claims, liabilities, costs and expenses, the Lessor will have the right, on behalf of the Concurrent Lessee but at the Lessor's expense, to defend such action, suit or proceeding, or participate in such investigation, with counsel selected by it, and will have sole discretion as to whether to litigate, appeal or settle.

(d) The obligations of the Lessor under this Section 9.4 will survive this Agreement and remain in full force and effect for a period up to and including the date that is six years from the Final Collection Date.

#### 9.5 Time of Essence

Time will be of the essence of this Agreement.

#### 9.6 Failure to Perform

If the Lessor fails to perform any of its agreements or obligations hereunder, the Concurrent Lessee may (but will not be required to) itself perform, or cause to be performed, such agreement or obligation at, in the case of any such failure to perform by the Lessor, the cost of the Lessor.

#### 9.7 Confidentiality

Each party hereto will maintain on a confidential basis (except as otherwise permitted hereunder or as required by applicable law) all information relating to the other party provided to it hereunder by the other parties; provided, however, that this Section shall not apply to any information which (i) was lawfully in the public domain at the time of communication to the first party, (ii) lawfully enters the public domain through no fault of the first party subsequent to the time of communication to the first party, (iii) was lawfully in possession of the first party free of any obligation of confidence at the time of communication to the first party, (iv) was lawfully communicated to the first party free of any obligation of confidence subsequent to the time of initial communication to the first party or (v) was lawfully communicated to any Person free from any obligation of confidence subsequent to the time of communication to the first party.

#### 9.8 Further Assurances

The parties hereto agree, from time to time, to enter into such further agreements and to execute all such further instruments as may be reasonably necessary or desirable to give full effect to the terms of this Agreement and to the ability of the Concurrent Lessee to exercise or enforce any of its rights and remedies hereunder.

#### 9.9 Remedies

The remedies herein provided are cumulative and not exclusive of any remedies provided at law.

#### 9.10 Amendment and Restatement

This Agreement amends and restates the Second Amended and Restated Agreement as of the date first written above.

#### 9.11 Execution in Counterparts

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

*[Signature Page Follows]*

IN WITNESS WHEREOF the parties hereto have executed this Agreement as of the date first above written.

CROWN CREST FINANCIAL CORP., as Lessor and  
Servicer

By: 

Name: Lawrence Krimker

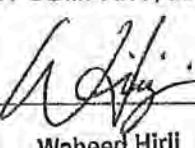
Title: CEO

Address: 1201-200 Yorkland Street  
Toronto, ON M2J 5C1

Attention: President and CEO

Fax No.: 647-846-7475

PEOPLES TRUST COMPANY, as Concurrent Lessee

By:  

Name: Waheed Hirji

Title: Chief Operations Officer

Address: 1400-888 Dunsmuir Street  
Vancouver, BC V6C 3K4

Attention:

With a copy to General Counsel and  
Executive VP & Chief Financial Officer

Fax No.: 604-331-3469

**SCHEDULE "A"**  
**FORM OF CONCURRENT LEASE NOTICE**

**To: Peoples Trust Company ("Concurrent Lessee")**

**Re: Third Amended and Restated Concurrent Lease Agreement** dated as of April 15, 2019 among Concurrent Lessee and the undersigned (the "**Concurrent Lease Agreement**")

The undersigned hereby gives notice of a concurrent lease pursuant to Section 2.1 of the Concurrent Lease Agreement as follows:

Closing Date:

Cut-Off Date:

Leased Assets: Attached Schedule A

The undersigned hereby represents and warrants that the Lease Assets described in the attached Schedule A are Eligible Assets as of the related Cut-off Date. The undersigned further confirms that all representations and warranties of the Lessor contained in the Concurrent Lease Agreement are true and correct, no Servicer Termination Event has occurred that is continuing, and the Lessor is in compliance with all covenants under the Concurrent Lease Agreement.

Capitalized terms used and not defined in this Concurrent Lease Notice have the meanings set forth in the Concurrent Lease Agreement.

**CROWN CREST FINANCIAL CORP.**, as Lessor and Servicer

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

Name:

Title:

**Accepted:**

**PEOPLES TRUST COMPANY**, as Concurrent Lessee

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

Name:

Title:

Schedule A to Concurrent Lease Notice – Attach list of Lease Assets

**SCHEDULE "B"**

**LESSOR'S ADDRESSES**

Location of Records:

1201-200 Yorkland Street  
Toronto, ON M2J 5C1

**SCHEDULE “C”**  
**FORM OF PORTFOLIO REPORT**

(Form attached.)

Schedule "C"

**GREYPOINT CREDIT AGREEMENT**

[to be provided]

## WAREHOUSE LINE OF CREDIT AGREEMENT

This Warehouse Line of Credit Agreement is dated as of August 22, 2019.

This Agreement is entered into by and among Crown Crest Funding Corp. ("Trustee"), in its capacity as trustee of Crown Crest Capital Trust, a trust duly formed and validly subsisting trust under the laws of the Province of Ontario (in such capacity, the "Borrower"), Simply Green Home Services Inc. a corporation incorporated under the laws of the Province of Ontario ("Guarantor") and Greypoint Capital Inc., a corporation existing under the laws of Ontario ("Greypoint").

### RECITALS:

- A. Borrower is a special purpose trust, formed to acquire and hold Leases for the lease and sale of Approved Equipment by the Originators; and
- B. Borrower desires to obtain from Greypoint a line of credit ("Loan") and Greypoint is willing to make the Loan, but only on the terms and conditions hereinafter set forth.

NOW, THEREFORE in consideration of the premises and the mutual promises herein contained and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereto agree as follows:

### 1. DEFINITIONS.

#### 1.1 DEFINITIONS

**"Advance"** has the meaning ascribed to it in Section 2.1.

**"Advance Request"** means an advance request in the form of Schedule A.

**"Adverse Claim"** means a security interest or other lien, charge, encumbrance, right or claim, including any filing or registration made in respect thereof, of or through any Person (other than Greypoint).

**"Agreement"** shall mean this warehouse line of credit agreement and all schedules and exhibits hereto, as it may be amended, restated, supplemented, modified or replaced from time to time.

**"Approved Equipment"** shall mean storage water heaters, tankless water heaters, water filtration and/or treatment systems, Heating Recovery Ventilation ('HRV') and/or High-efficiency particulate arrestance ('HEPA') systems, furnace and air conditioning ('HVAC') equipment and boiler systems, sub-metering equipment as well as such other consumer equipment as may be agreed by the Borrower under Program Agreements.

**"Approved Originator"** means each of the following Originators:

- a) Simply Green Home Services Inc.;
- b) Alberta Water Home Comfort Services Inc.;
- c) HVAC Consulting Corporation;

- d) Ontario HVAC and Water Incorporated;
- e) Applied Energy Incorporated;
- f) Preferred Air Limited;
- g) 4140800 Canada Inc. carrying on business as Cool Heat Comfort;
- h) Penguin Heating & Cooling Incorporated;
- i) 9506888 Canada Incorporated, carrying on business as True North Home Solutions;
- j) National Green Home Services;
- k) Alberta Quality Home Comfort Incorporated;
- l) Canada Green Energy Ltd.; and
- m) Just Green Home Services;

together with any additional Originators approved in writing, where approval by Greypoint is subject to receipt by Greypoint at least five Business Days before any such approval is to be provided of all information required by Greypoint concerning the proposed additional Originator and Greypoint being satisfied, acting reasonably, with the results of its review of that information.

**“BA Equivalent Rate”** means, at the time of determination, a rate per annum equal to the greater of (a) 1.00% per annum and (b) the rate determined by the Lender to be the stated average of the annual rates for Canadian Dollar bankers’ acceptances of Royal Bank of Canada, The Toronto–Dominion Bank, The Bank of Nova Scotia, the Canadian Imperial Bank of Commerce and Bank of Montreal, having a 30-day term (or a term as closely as possible comparable to such term), that is the CDOR closing rate appearing on a Bloomberg terminal on such day (or, if such day is not a Business Day, the CDOR closing rate appearing on a Bloomberg terminal on the immediately preceding Business Day).

**“Blocked Account Agreement”** means the blocked account agreement entered into between the Trustee, PTC and The Toronto–Dominion Bank dated as of December 1, 2016, as the same may be amended, restated, supplemented or replaced from time to time.

**“Borrowing Base”** means at any time, the product of (i) 90%, and (ii) the sum of the present values of all unpaid Scheduled Payments arising under Eligible Assets then owned by the Borrower and discounted to such date at the discount rate established pursuant to Section 1.2, provided that the Scheduled Payments (prior to determining the present value thereof) attributable to commercial contracts included in this Borrowing Base calculation shall not exceed \$3,500,000.

**“Borrowing Base Certificate”** means a certified calculation of the Borrowing Base in the form of Schedule B.

**“Business Day”** means any day that is not a Saturday, Sunday or other day to which commercial banks in Toronto, Ontario are authorized or required by applicable law to remain closed.

**“Change of Control”** means with respect to any Credit Party on or after the date of this Agreement, any change to the legal or organizational structure of the Credit Party or any change in the composition of its shareholders as of the date of this Agreement shall occur which would result in any shareholder or group acquiring 49.9% or more of voting shares of such person, or that any

person (or group of persons acting in concert) shall otherwise acquire, directly or indirectly (including through affiliates), the power to elect a majority of the board of directors of such person or otherwise direct the management or affairs of such person by obtaining proxies, entering into voting agreements or trusts, acquiring securities or otherwise.

**“Charged-Off Asset”** means any Lease Asset (i) for which the Borrower has become aware that an Insolvency Event has occurred in respect of the related Obligor or (ii) that is or is required to be charged-off as uncollectible by the Borrower in accordance with the Credit and Collection Policies it being acknowledged that under the Credit and Collection Policies a Lease Asset would be charged-off as uncollectible upon the Borrower becoming aware that an Insolvency Event had occurred in respect of the related Obligor.

**“Collections”** means, without duplication (i) in respect of any Eligible Asset, all cash collections and other cash proceeds in respect thereof and of the related rights and Leases and (ii) the net proceeds of any disposition of the related Eligible Asset.

**“Collections Account”** means the account established and maintained in the name of the Borrower as the account owner at The Toronto-Dominion Bank (Branch ID: 14822, Account no 14825293714) or such other account as is designated by notice to Greypoint as the Collections Account for the purposes hereof, which account shall at all times be subject to the Blocked Account Agreement.

**“Credit and Collection Policies”** means the Borrower’s credit, collection and administration policies and procedures relating to its portfolio of loans, as represented in the Borrower’s operating procedures manual, which for greater certainty, has been reviewed and approved by Greypoint.

**“Credit Parties”** means, collectively, the Borrower, the Guarantor and the Trustee, and “Credit Party” means any of them.

**“Delinquency Rate”** means, for any Reporting Period, the sum of the Outstanding Balances of Eligible Assets that are Delinquent Assets at the end of such Reporting Period, divided by the Outstanding Balance of all Eligible Assets at the end of such Reporting Period.

**“Delinquent Asset”** means:

- (a) if the Lease Asset is a not a RNC Lease, any amount payable thereunder is more than 30 days past due; or
- (b) if the Lease Asset is a RNC Lease, the RNC Lease Builder has failed or fails to take all steps necessary for the RNC Lease Homeowner to assume all obligations pursuant to the RNC Lease concurrently with the closing of the purchase and sale of the building in which the Approved Equipment under the RNC Lease has been installed; or
- (c) if the Lease Asset is a RNC Lease, either (i) more than 90 days have elapsed since the date on which the RNC Lease Homeowner assumed all obligations under the RNC Lease without the RNC Homeowner making the first payment required under the RNC Lease or, (ii) after the 90-day

period from the date the RNC Homeowner assumed all obligations under the RNC has elapsed, any amount payable under the RNC Lease is more than 30 days past due.

**“Eligible Asset”** means any Lease Asset:

- (a) in respect of which the Obligor thereunder is a Person who is resident in Canada and is not (i) an affiliate of the Borrower; (ii) the Government of Canada or any agency or instrumentality thereof or any federal crown corporation other than those listed as exempt under applicable legislation from restrictions or requirements for consent or notice on the assignment of receivables in respect of which they are obligors; or (iii) any provincial government or agency thereof if the enforceability against such government or agency of an assignment of debts owing thereby is subject to any pre-condition which has not been fulfilled;
- (b) which is not a Charged-Off Asset;
- (c) that has a fair market value (based on monthly payments) that is greater than or equal to its face value;
- (d) which is payable to an address in Canada only and is denominated and payable in Canadian Dollars and in respect of which the Obligor has been directed to remit payments to the Collections Account;
- (e) which has been duly authorized, executed and delivered by the parties thereto, has been entered into in compliance with all applicable laws (including any licensure laws applicable to Borrower), and, together with all related Rights (including any guarantee, indemnity or agreement referred to in clause (g) of the definition of Rights), is in full force and effect and constitutes the legal, valid and binding obligation of the related Obligor enforceable against such Obligor in accordance with its terms, subject to applicable bankruptcy, reorganization, insolvency, moratorium or similar laws affecting creditors' rights generally and subject to equitable principles of general application (regardless of whether enforcement is sought in a proceeding at law or in equity);
- (f) which is not subject to any dispute, set-off, counterclaim or defense whatsoever, no prepayments have been made thereunder and which is owned by the Borrower and free of any Adverse Claim and has not been extended or otherwise modified except in the ordinary course of business and in accordance with the Credit and Collection Policies;
- (g) in respect of which the Borrower or the Originator is not in default in the performance of any of the covenants of the Borrower or the Originator thereunder;
- (h) the terms of which do not contravene any laws, rules or regulations applicable thereto (including, without limitation, such laws, rules, or regulations relating to usury, truth in lending, credit business practices, cost of borrowing, consumer protection, equal credit opportunity, fair debt collection practices and privacy), except where such contravention would not materially adversely affect the collectability or enforceability of the related Rights;

- (i) in which the perfection of the Borrower's rights complies with the requirements of the Credit and Collection Policies in all material respects;
- (j) the related Obligor is not the subject of any Insolvency Event (except where such Insolvency Event occurred prior to the origination of the Lease and such origination was consistent with the Credit and Collection Policies) and there are no such proceedings pending, or to the best of the Borrower's knowledge, threatened against such Obligor;
- (k) in respect of which the related Rights may be assigned in whole or in part without the consent of the related Obligor;
- (l) which is documented pursuant to a form of contract which is similar in all material respects to one of the forms of contract that have previously been delivered to and accepted by Greypoint, acting reasonably;
- (m) in respect of which the Borrower is the legal and beneficial owner of the Lease Asset, the related Leases and Rights free and clear of any Adverse Claim other than as contemplated hereunder;
- (n) that has not been satisfied, subordinated, waived or rescinded;
- (o) that has not been compromised, adjusted or modified except in accordance with the Credit and Collection Policies;
- (p) that was generated in the ordinary course of business;
- (q) for which all filings or recordings with respect to the Borrower's interest therein and the related Leases and Rights necessary by law or reasonably prudent and desirable for the perfection and protection of such interests including any further filings, recordings or renewals thereof, have been effected by the Borrower ("Lien Registration");
- (r) in respect of which there is a parts and labour warranty on the related Leased Equipment as issued by a third party insurer that is approved in writing by Greypoint (acting reasonably) or the Borrower has otherwise made arrangements with a third party (other than the Obligor or the Borrower) to ensure that any repair and servicing of the Leased Equipment is conducted and completed as required from time to time;
- (s) in respect of which the related Originator Reserve required under the terms of the related Program Agreement has been deposited to the Reserve Account and, in the case of a Lease Asset that does not have a parts and labour warranty on the related Leased Equipment, on such warranty terms and with such insurers as may be approved by Greypoint in writing (acting reasonably), the Originator Reserve has been increased by an additional 0.25% of the Outstanding Balance of such Lease Asset; provided, however, that in no event shall the Originator Reserve be required to exceed 4% of the Outstanding Balance of a Lease Asset in order for the Lease Asset to qualify as an Eligible Lease;
- (t) that is not a Non-Performing Asset;

- (u) in respect of which the related Originator is an Approved Originator;
- (v) which is not a Lease Asset specifically excluded by the Borrower in a Borrowing Base Certificate, provided that the Borrower may not exclude any Lease Assets as contemplated hereunder if the aggregate amount of the Advance then outstanding exceeds or would exceed the Borrowing Base at such time;
- (w) the related Obligor's credit score at the time of origination was not less than 500, provided that the related Obligor may have no measured credit score if evidence has been obtained of the related Obligor's ownership of the residential property at which the related Leased Equipment has been installed;
- (x) if the Lease Asset is a RNC Lease, then the Outstanding Balance of such Lease Asset, together with the Outstanding Balances of all Leases relating to Leased Assets that are RNC Leases, does not exceed \$15 million;
- (y) in respect of which PTC has agreed pursuant to the terms of the PTC/GreyPoint Intercreditor Agreement, that the security interest of PTC in such Lease Asset the proceeds thereof and related rights is subordinate to the security interest of GreyPoint in such Lease Asset;
- (z) Leases in respect of which the related Obligor has not been billed for rent within the first 24 months following the installation of the Related Equipment;
- (aa) such other assets as may be approved in writing by GreyPoint from time to time whether or not they otherwise satisfy the eligibility criteria listed above.

“**End Date**” shall have the meaning set forth in Section 2.7.

“**Escalation Amount**” means, in respect of a Lease, all monthly amounts payable as rental payments in excess of the Rental Amount.

“**First Advance Amount**” means \$13,000,000.

“**GAAP**” means at any particular time with respect to any Credit Party, generally accepted accounting principles as in effect at such time in Canada, consistently applied.

“**Governmental Authority**” means any federal, state, provincial, regional, local or foreign court or governmental agency, authority, instrumentality or regulatory body.

“**Guarantee**” has the meaning ascribed to it in Section 4.1.

“**HVAC**” has the meaning ascribed to it in the definition of Approved Equipment.

“**Indemnitee**” has the meaning ascribed to it in Section 14.2.

“**Insolvency Event**” means, in respect of any Person, such Person shall generally not pay its debts as they become due, or shall admit in writing its inability to pay its debts generally, or shall make a general assignment for the benefit of creditors; or any proceedings shall be instituted by or against, as the case may be, seeking to adjudicate it as bankrupt or insolvent or seeking

liquidation, winding up, reorganization arrangement, adjustment, protection, relief or composition of it or its debts under any law relating to bankruptcy, insolvency, reorganization or relief of insolvent debtors, or seeking the entry of an order for relief by the appointment of a receiver, trustee, custodian or similar official for its or a substantial part of its property and, if such proceeding has been instituted against such Person, while being contested in good faith by such Person, such proceeding has not been stayed or dismissed within 45 days, or a receiver, trustee, custodian or other similar official is appointed for it or any substantial part of its property; or a receiver being privately appointed in respect of a substantial part of the assets of such Person; or such Person, takes any corporate action to authorize any of the actions described above.

**“Lease”** means a lease, rental agreement or conditional sales contract or similar agreement (including a sub-metering agreement) for the lease or sale of Approved Equipment originated by an Originator.

**“Lease Asset”** means a Lease together with the related Rights.

**“Leased Equipment”** means in respect of a Lease, the equipment leased to the related Obligor hereunder, including any replacements thereof under the terms of the Lease.

**“Loan”** has the meaning ascribed to it in Recital B.

**“Loan Documents”** has the meaning ascribed to it in Section 5.1(a).

**“Maximum Amount of Loan”** means the amount set forth in Section 15.

**“Non-Performing Asset”** means any Lease Asset that is more than 180 days past due.

**“Note”** has the meaning ascribed to it in Section 2.3.

**“Obligor”** means in respect of any Lease Asset, the Person or Persons obligated to make payments thereunder and, in the case of a RNC Lease, includes the agent of that Person or Persons.

**“Originators”** means Approved Originators and such other Persons who become parties to Program Agreements with the Borrower from time to time.

**“Originator Reserves”** means the cash reserves held by the Borrower under the Program Agreements and available to be applied toward losses or other shortfalls suffered in respect of the Lease Assets acquired under the related Program Agreement.

**“Outstanding Balance”** means at any time in respect of a Lease Asset, the product of (i) 90%, and (ii) the sum of the present values of all unpaid Scheduled Payments arising under such Lease Assets, discounted to such date at the discount rate established pursuant to Section 1.2.

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

**“Program Agreements”** means the program agreements entered into by the Borrower with each Originator pursuant to which the Borrower acquires Leases from time to time.

**“PTC”** means Peoples Trust Company, and is successors and assigns in respect of its rights and obligations in respect of the “PTC Warehouse Agreement”.

**“PTC Assets”** means assets that are included in the borrowing base of the PTC Warehouse Agreement, and for greater certainty shall not include any Eligible Assets.

**“PTC Lease Rights”** has the meaning ascribed thereto in the PTC/GreyPoint Intercreditor Agreement.

**“PTC Securitization Agreement”** means the “Concurrent Lease Agreements”, as such term is defined in the PTC/GreyPoint Intercreditor Agreement.

**“PTC Warehouse Agreement”** means the Warehouse Line of Credit Agreement dated as of May 29, 2019 by and among PTC, the Borrower, as borrower and Crown Crest Capital Management Corp, as guarantor, as the same may be amended modified, restated or replaced from time to time.

**“PTC/GreyPoint Intercreditor Agreement”** means the Priority Agreement between GreyPoint, PTC and the Borrower dated on or about the date of this Agreement as the same may be amended, modified, restated or replaced from time to time.

**“Records”** means, in respect of any Lease Asset, all contracts (including those evidencing such Lease Asset), books, records, reports and other documents and information (including, to the extent obtainable by way of existing software controlled by the Borrower, hard copies of all data maintained in databases of the Borrower, tapes and disks) maintained by or on behalf of the Borrower in respect of the Lease Assets and the related Obligor.

**“Rental Amount”** means in respect of a Lease, the original regularly-scheduled monthly rental payment amount of the Obligor thereunder (excluding any Escalation Amount).

**“Reporting Period”** means a calendar month.

**“Reserve Account”** means the account established and maintained in the name of GreyPoint as the account owner at The Toronto-Dominion Bank (account number is ●) or such other account as is designated by notice to the Borrower as the Reserve Account for the purposes hereof.

**“Reserve Percentage”** means 3% as of the date of this Agreement, which amount shall be subject to change from time to time in accordance with the terms of this Agreement.

**“Rights”** means, in respect of any Lease Asset, the following:

(a) all rights and benefits accruing to the Borrower under such Lease Asset, including all right,

title and interest in and to the related receivables;

(b) all of the Borrower’s right, title and interest in and to the related Leased Equipment;

- (c) all of the Borrower's right, title and interest in the Originator Reserves held under the Program Agreements in respect of the Lease Asset and available to be applied toward the payment of any Lease Asset under the terms of the related Program Agreement;
- (d) all right in or to payments (including both proceeds and, to the extent the Borrower has any rights therein, premium refunds) under any insurance policies maintained by the related Obligor pursuant to the terms of such Lease Asset or by the Borrower in respect of such Lease Asset;
- (e) all claims, demands, actions, damages and indemnities owing to the Borrower under such Lease Asset;
- (f) the right of the Borrower to ask, demand, sue for, collect, receive and enforce any and all sums payable under the Lease Asset and to enforce all other covenants, obligations, rights and remedies thereunder with respect thereto;
- (g) all of the right, title and interest of the Borrower in, to and under all prepayments, guarantees, promissory notes and indemnities (including all security interests and all property subject thereto) from time to time supporting or securing payment or performance of the related Obligor's obligations in respect of the Lease Asset, whether pursuant to the Lease Asset or otherwise;
- (h) the related Records; and
- (i) all proceeds of or relating to any of the foregoing.

**"RNC Lease"** means a Lease Asset for which the original Obligor under the applicable Lease is a RNC Lease Builder.

**"RNC Lease Builder"** means a builder or developer who does not intend to occupy the building in which the Approved Equipment under a RNC Lease is to be installed.

**"RNC Lease Homeowner"** means the first Obligor or Obligors under a RNC Lease who is not a RNC Lease Builder.

**"Sale and Servicing Agreement"** means the sale and servicing agreement dated December 1, 2016 entered into between the Borrower, PTC and the Guarantor, as amended, restated, supplemented, replaced or otherwise modified from time to time.

**"Scheduled Payment"** means, in respect of a Lease Asset, the aggregate of the Rental Amount and any Escalation Payment payable by the Obligor thereunder during a term not exceeding the lesser of (i) the term of the Receivable, (ii) 120 months, and (iii) the remainder of the Prescribed Term, as such term is defined in the related Program Agreement.

**"Security"** has the meaning ascribed to it in Section 3.1.

**“Security Agreement”** means the general security agreement dated the date hereof between the Borrower and Greypoint, as the same may be amended, restated, supplemented, replaced or otherwise modified from time to time;

**“SGHS”** means Simply Green Home Services Inc.

**“Subordinated Debt”** means subordinated debt incurred by the Borrower from time to time to finance or refinance the acquisition of Leases, which debt may be secured but shall be subordinated and postponed to the Loan.

**“Trustee”** means Crown Crest Funding Corp.

## 1.2 DISCOUNT RATE

Any reference to a “discount rate” in the definition of “Borrowing Base” or “Outstanding Balance” means a discount rate equal to 4% per annum, provided that Greypoint may adjust the discount rate on January 2 of any calendar year by notice in writing delivered not less than 30 days before such date in respect of the Advance to be made after such date, but only if the equivalent rate has been adjusted under the PTC Warehouse Agreement. An increase in the discount rate may not exceed the net increase in BA Equivalent Rate during the calendar year during which the notice is given.

## 2. LOAN

### 2.1 LOAN

Subject to the terms and conditions contained in this Agreement and in the other documents, instruments and agreements executed in connection with the Loan, including without limitation, the Security Agreement and the other Loan Documents, Greypoint will establish for the Borrower the Loan as a line of credit against which Greypoint will make multiple advances in accordance with the terms of this Agreement (each an **“Advance”**). The first Advance of the Loan, in an amount equal to the First Advance Amount shall be used solely for the purpose of (a) paying various fees and transaction costs to Greypoint in association with the entering into of this Agreement and (b) refinancing of Eligible Assets that immediately prior to such financing were included in the borrowing base under the PTC Warehouse Agreement and subject to a security interest in favour of PTC (such first advance is referred to herein as the **“First Advance”**). Subsequent Advances may be requested by the Borrower in accordance with Section 5.2 of this Agreement – Request for Advance – and all such subsequent advances shall be used by the Borrower solely for the purpose of purchasing Eligible Assets. Subject to the terms hereof, including without limitation Section 2.2 and in the case of repayment, payment of the Prepayment Amount set out in Section 2.5, the Borrower shall have the right to obtain and repay the Advance. At no time shall the unpaid and outstanding principal balance of the Loan exceed the lesser of (a) the Borrowing Base, and (b) the Maximum Amount of Loan. The First Advance of the Loan shall be made on or about the date of this Agreement.

### 2.2 ADVANCE

Subject to the terms and conditions hereof, the First Advance of the Loan will be in an amount equal to the First Advance Amount, by delivery on the date hereof of an Advance Request together with a current Borrowing Base Certificate.

The procedure for any subsequent advance shall be as follows:

- (A) The Borrower shall submit an Advance Request to Greypoint, on or before 1:00 p.m., Toronto time, on a given Business Day together with a Borrowing Base Certificate that shall be true and accurate as of the time submitted and shall include pro forma calculations showing the Borrowing Base as determined as if the Advance requested in the Advance Request had been made and the Eligible Assets to be purchased with the proceeds of such Advance had been purchased.
- (B) Greypoint may request further information concerning the Eligible Assets that are proposed to be purchased, and assurances concerning Greypoint's priority position in respect of such Eligible Assets.
- (C) Provided that Greypoint is satisfied in its sole and absolute discretion that (i) the assets intended to be purchased are Eligible Assets, (ii) that Greypoint will obtain a first ranking claim in such assets immediately upon the Borrower's purchase thereof, (iii) no Event of Default has occurred and continuing or would occur as a result of such requested Advance, (iv) all other conditions precedent to such Advance set out in Section 5.1 have been satisfied, and (v) such requested Advance is in an amount equal to or greater than \$500,000, such requested Advanced shall be advanced to the Borrower on the next Business Day. Amounts payable to Greypoint shall be deducted from any Advance and an amount equal to the Advance requested multiplied by the Reserve Percentage shall be deposited in the Reserve Account with the residual paid to the Borrower.

The aggregate principal amount of all Advances shall not exceed the Borrowing Base or the Maximum Amount of Loan. In the event that either of these circumstances occurs, the Borrower shall immediately repay the Loan in the amount of the excess.

Cash reserves held by the Borrower in accordance with the Program Agreements shall be held in the Reserve Account and applied by the Borrower to shortfalls in respect of Leases as provided under the related Program Agreements. Without limiting the foregoing, the Borrower shall ensure that the amount on deposit in the Reserve Account shall be no less than the Reserve Percentage of the Outstanding Balances related to all Eligible Assets. The Borrower shall be entitled to the return of the amount of any excess on deposit in the Reserve Account over the Reserve Percentage of the Outstanding Balances related to all Eligible Assets at any time.

## 2.3 NOTE

The Loan shall be evidenced by a promissory note ("Note") of even date herewith in a form prepared and approved by Greypoint in the Maximum Amount of Loan, payable in accordance with the terms thereof.

## 2.4 INTEREST AND PAYMENTS

Subject to the following sentence, Interest on the principal amounts of the Advance outstanding from time to time shall be the per annum rate specified in Section 15 as the "Interest on the Loan" (the "Interest Rate") as adjusted below and should such rates of interest as calculated thereunder exceed that allowed by law, the applicable rate of interest will be the maximum rate of interest allowed by applicable law.

Subject to the following sentence, Interest on the principal amount of the Advance outstanding from time to time will be calculated and compounded monthly, not in advance, at the Interest Rate, both before and after maturity and default, and with interest on overdue interest at the same rate, until payment in full has been made of the principal amount and all accrued interest.

All interest hereunder shall be payable for the actual number of days elapsed (including the first day and the last day).

Accrued interest on the Loan shall be payable in arrears on the last Business Day of each month and upon termination of the commitments hereunder (including upon the occurrence of the End Date).

The Borrower shall pay to Greypoint on the End Date or other date of maturity of the Note or Loan, whether by acceleration or otherwise, the aggregate principal amount of the Advance outstanding on such date, including all outstanding and unpaid interest, fees, reimbursement obligations and all other obligations monetary of the Borrower to Greypoint then outstanding and unpaid.

All payments and prepayments of principal, interest and fees under this Agreement and the Note and Loan shall be made to Greypoint prior to 12:00 p.m. (noon), Toronto time, in immediately available funds and for the ratable benefit of Greypoint.

Subject to Section 14.4, any and all payments by or on account of any obligation of the Borrower hereunder or under any other Loan Document shall be made free and clear of and without reduction or withholding for any taxes (other than taxes imposed on or measured by Greypoint's net income by the jurisdiction in which Greypoint is organized); provided that if the Borrower is required by applicable law to deduct or withhold any taxes from such payments, then:

(a) the amount payable by the Borrower shall be increased so that after making all required deductions or withholdings Greypoint receives an amount equal to the amount it would have received had no such deductions or withholdings been made; and

(b) the Borrower shall make such deductions, timely pay the full amount deducted to the relevant Governmental Authority in accordance with applicable law, and provide to Greypoint official receipts or other evidence satisfactory to Greypoint of each such payment.

For greater certainty, Greypoint hereby represents that it is a Canadian resident for tax purposes. In the event that Greypoint or its assigns takes any action that would cause payments made by the Borrower hereunder to become subject to withholding tax or otherwise increases the liability of the Borrower under this Section 2.4, Greypoint shall immediately notify the Borrower and the Borrower shall thereafter have the right to prepay the Facility without prepayment fee or penalty of any kind.

## 2.5 PREPAYMENTS

If for any reason the aggregate principal amount of the Loan outstanding at any time shall exceed the lesser of (i) the Maximum Amount of the Loan and (ii) the Borrowing Base at such time, the Borrower, without notice or demand, shall immediately make a principal payment to Greypoint in an amount equal to such excess plus accrued and unpaid interest thereon. If any fine, penalty, sanction, order or other liability is imposed upon or determined against any of the Borrower, Greypoint or any Originator in connection with or relating to any Eligible Asset the purchase of which was financed by an Advance hereunder, such Lease Asset shall cease to be an Eligible Asset and the Borrower shall immediately, make a principal payment to Greypoint in an amount equal to the Advance made in connection with the relevant Eligible Asset.

The Facility may be prepaid in full or partially at any time without any fee or penalty provided that except as provided in Section 2.8, the Borrower shall deliver an irrevocable prepayment notice to Greypoint (the “**Prepayment Notice**”) ninety (90) days prior to the proposed prepayment date (the “**Prepayment Date**”) setting forth the amount being prepaid (the “**Prepayment Amount**”) and provided that the Borrower pays the full Prepayment Amount on the Prepayment Date. Should the Borrower wish to prepay the Facility in full or partially without having to provide Greypoint with the required ninety (90) days prior notice, the Borrower shall pay to Greypoint an amount calculated in accordance with the formula set out below and which shall be due and payable as of the date the prepayment is made:

$$\frac{I}{365} \times (90 - N) \times M$$

Where:

I = the Interest Rate on the date the Prepayment Notice was given or, if no Prepayment Notice was given, on the date the prepayment is made;

N = where a Prepayment Notice was given, the number of days between the date the Prepayment Notice is given and the date of prepayment, provided that if no Prepayment Notice was given, N shall equal 0; and

M = the Prepayment Amount.

In the event that the Prepayment Amount is not paid in full on the Prepayment Date, then Greypoint shall have the option, in its discretion, to declare and consider the Prepayment Notice to be null and void such that any prepayment shall thereafter only be permitted by the delivery of a new Prepayment Notice in compliance with this Section.

**Mandatory Prepayments.** If the Borrower shall receive any cash not in the ordinary course of business, including, without limitation, proceeds of insurance, condemnation awards, expropriation proceeds, and similar payments, or indemnity payments, and such cash receipts result in the aggregate principal amount of the Loan exceeding the Borrowing Base, then, in each case, no later than five (5) Business Days after the Borrower receives the cash proceeds therefrom (less any reasonable transaction fees), Advances under the Loan shall, unless otherwise agreed by Greypoint in writing, be prepaid by an amount equal to the amount required to reduce the amount of the Loan to equal the Borrowing Base.

## 2.6 REMITTANCE ACCOUNT AND BLOCKED ACCOUNT

The Collections received by Borrower from its collection of Leases shall be remitted to the Collections Account and subject to the terms of the Blocked Account Agreement. The Blocked Account Agreement not be amended without providing prior notice thereof to Greypoint, and in the event that PTC no longer has or desires a Blocked Account Agreement, the Borrower shall promptly establish a blocked account agreement in respect of the Collection Account in favour of Greypoint.

## 2.7 END DATE / RENEWAL

The Loans shall mature and be repayable on the End Date specified in Section 15. Notwithstanding the foregoing, the End Date may be extended by Greypoint for an additional 6 months by written notice to the Borrower, such notice to be sent no earlier than 6 months prior to the scheduled End Date and no later than 4 months prior to the scheduled End Date. Upon such extension, the End Date shall be deemed to be such date 6 months following the scheduled End Date for all purposes hereunder until further extended by Greypoint pursuant to this Section 2.7.

## 2.8 REMOVAL OF ELIGIBLE ASSETS

The Borrower may from time to time remove Eligible Assets from the Borrowing Base through (i) designating them under the PTC Securitization Agreement, (ii) designating them as PTC Assets under the PTC Warehouse Agreement, or (iii) otherwise selling such Eligible Assets to third parties provided, however, that at the time of such removal or prior, the Borrower has repaid the Facility in the amount necessary to ensure that the Loan will not exceed the Borrower Base as a result thereof. Any repayment of the Facility in connection with this Section 2.8 shall not require a Prepayment Notice or require the payment of any prepayment fee or penalty of any kind. The Lender agrees to execute such releases and discharges as may be necessary to release its interests in any Eligible Assets removed from the Borrower Base as contemplated hereunder.

### 3. SECURITY

#### 3.1 Security

As security for the payment of the Note, the Loan, and all other liabilities and obligations of Borrower to Greypoint, now existing or hereafter created, Borrower shall grant a security interest in and set over to Greypoint, all of the Borrower's present and after-acquired personal property, including without limitation, all of the Borrower's rights, titles and interests in all of Borrower's Lease Assets but excluding all PTC Lease Rights ("Security"); and any cash flow and proceeds therefrom. Such assignment, pledge and security interest shall be granted by way of the Security Agreement and such other instruments or specific assignments, by way of security, and shall be registered and perfected under applicable personal property security legislation in all required jurisdictions, in each case, as determined by Greypoint in its sole discretion.

#### 3.2 RESTRICTIONS

Except as set out herein (including without limitation the right to designate assets into the PTC Securitization Agreement), the Borrower may not grant or assign, pledge or set over any of its rights, titles or interests in an Eligible Asset to any third party except as contemplated in Section 2.8.

#### 3.3 ADDITIONAL DOCUMENTS

Borrower or the Trustee as applicable shall execute from time to time upon the request of Greypoint, a standard blocked account agreement in respect of the Collections Account (should the Collections Account not be covered by the Blocked Account Agreement) and such financing statements or other documents as reasonably required by Greypoint to perfect or continue Greypoint's rights, titles and interests in the Leases. If an Event of Default shall have occurred and be continuing all cash proceeds of Eligible Assets, or assets that were previously included in the Borrowing Base but have thereafter ceased to be Eligible Assets shall, unless otherwise agreed by Greypoint, be promptly upon receipt thereof, paid to Greypoint to repay outstanding obligations in respect of the Loan.

### 4. GUARANTEE

#### 4.1 GUARANTOR

Guarantor shall grant and execute in favour of Greypoint a guarantee (the "Guarantee") whereby the Guarantor shall irrevocably and unconditionally guarantee to Greypoint the due and punctual payment in full of the Note, Loan, and all other liabilities and obligations of Borrower to Greypoint hereunder when the same shall become due, and such Guarantee shall be in form and content satisfactory to Greypoint in its sole discretion.

### 5. CONDITIONS PRECEDENT

#### 5.1 CONDITIONS PRECEDENT TO ADVANCE

In addition to the conditions set out in Section 2.2, Greypoint shall have no obligation to make any Advance until the conditions set forth in the following subparagraphs and elsewhere herein have been satisfied at the expense of the Borrower, as determined by Greypoint in its sole and absolute discretion:

- (a) each Credit Party shall have delivered, or cause to be delivered, to Greypoint, in form and substance satisfactory to Greypoint, this Agreement, the Note, the Security Agreement, and the Guarantee, and such other documents, instruments, financing statements, certificates, legal opinions, and agreements as Greypoint may reasonably request (collectively, the "Loan Documents");
- (b) each Credit Party shall have delivered, or cause to be delivered, to Greypoint, in form and substance satisfactory to Greypoint in its sole and absolute discretion certified copies of resolutions of such Credit Party's trustees, directors or partners, as the case may be, authorizing such Credit Party to execute, deliver, honour and perform the Agreement, the Note, the Security Agreement and a certificate of incumbency certifying the names and signatures of the trustees, officers or partners, as the case may be, of each Credit Party authorized to sign the Loan Documents;
- (c) Greypoint shall have received a release or subordination in accordance with the PTC/Greypoint Intercreditor Agreement, of PTC's interest in the Eligible Assets being refinanced by the First Advance and Greypoint's security interests securing the Note, Loan, and all other liabilities and obligations of Borrower to Greypoint shall have been validly perfected and be a first charge in favour of Greypoint over all such Eligible Assets and the proceeds thereof, a second charge (subject only to the interest of PTC) over the PTC Assets excluding the PTC Lease Rights, and a security interest in the Guarantor and all other assets of the Borrower pari passu with the interests of PTC.
- (d) Greypoint shall have a perfected security interest in the personal property of the Guarantor;
- (e) Greypoint shall have received evidence of, or undertakings from the Borrower's solicitors in relation to, the discharge of any indebtedness or Adverse Claims, except as permitted in accordance with Section 8.1(g), as determined satisfactory in the reasonably exercised opinion of Greypoint's solicitors;
- (f) No material adverse change shall have occurred in the business or financial condition of Borrower since the date of the latest financial statements given to Greypoint by or on behalf of Borrower;
- (g) Each of the warranties and representations made by Borrower in this Agreement shall be true and correct as of the date of each Advance;
- (h) Borrower shall have kept and performed the various covenants, obligations and agreements on its part to be kept and performed under this Agreement and no Event of Default, or act or event which with the giving of notice or the passage of time, or both, would constitute an Event of Default hereunder shall have occurred and be continuing;

(j) All fees payable to Greypoint pursuant to this Agreement and all reasonable third party costs of Greypoint required to be paid by the Borrower or reimbursed to Greypoint up to and including the time of the First Advance shall have been paid in full or will be paid in full from the proceeds of the First Advance.

(k) There shall have been no material adverse change in the business, affairs or prospects of the Borrower from the date of date of this Agreement to the time of such First Advance that were not disclosed to and agreed to by Greypoint in writing.

In addition, all of the following conditions shall be applicable to each Advance subsequent to the First Advance:

- a. Greypoint shall, in its sole and absolute discretion, be satisfied with the results of Borrower due diligence in respect of the additional Eligible Assets in respect of which the requested Advance relates;
- b. The requested Advance shall not cause the outstanding principal amount of the Loan to exceed the Borrowing Base.
- c. There shall have been no material adverse change in the business, affairs or prospects of the Borrower from the date of date of this Agreement to the time of such requested Advance that were not disclosed and agreed to by Greypoint in writing.
- d. No Event of Default has occurred and is continuing;
- e. No Change of Control has occurred; and
- f. All fees payable to Greypoint pursuant to this Agreement and all reasonable third party costs of Greypoint required to be paid by the Borrower or reimbursed to Greypoint up to and including the time of requested Advance shall have been paid in full or will be paid in full from the proceeds of the Advance.

## 5.2 REQUEST FOR ADVANCE

The Advance may be made by Greypoint upon receipt of an Advance Request (including a calculation of the current Borrowing Base) executed by the Persons named in Section 15 hereof, either one acting alone, who are authorized to request the Advance and direct disposition of any such Advance, for and on behalf of the Borrower, until written notice of the revocation of such authority is received from Borrower by Greypoint. Each request by Borrower for an Advance shall constitute a reaffirmation, as of the date of such request, of all of the representations and warranties of Borrower contained in this Agreement.

## 5.3 NO WAIVER

No Advance, or any waiver of a condition in connection therewith, shall constitute a waiver of any of the conditions to the Advance.

## 6. FEES

## 6.1 FEES

As additional consideration for Greypoint's commitments herein, Borrower agrees to pay to Greypoint the following fees, which shall be fully earned and non-refundable to Borrower, shall be held and retained by Greypoint as its sole property and shall not be applied to any payments due under the Loan Documents or Note other than this Section 6:

- (a) a commitment fee in the amount set forth in Section 15 hereof, payable on or before the date hereof and in each instance where the Maximum Amount of Loan is increased or renewed for a new term;
- (b) a non-utilization fee computed at the rate per annum set forth in Section 15 hereof on the unused portion of the Maximum Amount of Loan and payable quarterly in arrears to be calculated from the date hereof, where the phrase 'unused portion of the Maximum Amount of Loan' means the average difference between (i) the Maximum Amount of Loan and (ii) the outstanding principal balance of the Loan on each day during such period;
- (c) an inspection fee in the amount per inspection set forth in Section 15 hereof, payable within ten (10) days of Borrower being billed therefor by Greypoint. For greater certainty the inspection fee is intended to address, amongst other things and without limitation, field audits which are anticipated to occur no more frequently than twice annually, provided that there shall be no limit on the number of such field audits during the continuance of an Event of Default; and
- (d) a closing fee in an amount previously agreed to amongst Greypoint and the Borrower.

## 7. REPRESENTATIONS AND WARRANTIES

### 7.1 REPRESENTATIONS AND WARRANTIES

Each Credit Party confirms that it made the following representations and warranties to Greypoint as of the date hereof, which representations and warranties survived the execution of this Agreement:

- (a) Legal Status. Borrower is a trust that has been duly formed and is validly existing under the laws of Ontario and is qualified to transact business in Ontario and in every other jurisdiction in which the nature of its business requires such qualifies; and each of the Trustee and the Guarantor is a corporation that has been duly organized and is validly existing under the laws of Ontario and is qualified to transact business, and has made all filings and is in good standing, in Ontario and in every other jurisdiction in which the nature of its business requires such qualifies;
- (b) No Violation. The making and performance by the Credit Parties of the Loan Documents do not violate any provision of law, nor any provision of such Credit Party's formation documents, including, without limitation, articles of incorporation or any partnership agreement or trust indenture, or result in a breach of, or constitute a default under, any agreement, indenture or other instrument to which such Credit Party is a party or by which such Credit Party may be bound;

(c) Authorization. This Agreement and the other Loan Documents have been duly authorized, executed and delivered, and are legal, valid and binding agreements of the Credit Parties who are party thereto enforceable against such Credit Party in accordance with their terms, except as enforceability may be limited by bankruptcy, solvency, reorganization, moratorium or similar laws effecting creditors' rights generally and by general principles of equity;

(d) Financial Statements. All financial statements and reports (including Borrowing Base Certificates) that have heretofore been presented to Greypoint in conjunction with the transaction which is the subject of this Agreement, have been prepared in conformity with GAAP consistently applied, fairly and accurately present the financial condition and income of the subject thereof, as of the date given, and neither contain any untrue statement of a material fact nor fail to state a material fact required in order to make such financial statements not misleading. Since the date of such financial statements, there has been no adverse material change in the financial condition or operations of the subject thereof;

(e) Consent and Licences. No consent, approval or authorization of, or registration or filing with, any governmental body or authority, or any other Person, firm or entity not a party hereto, is or will be required as a condition to the valid execution, delivery, performance or enforceability of documents contemplate herein, or the transactions contemplated hereby or thereby, or to the conduct of the business of the Borrower;

(f) Litigation. There is no material litigation either pending or, to the best of its knowledge, threatened against the Credit Parties before any court or administrative agency, or before any arbitrator, which may have a material adverse effect on the assets, business, financial conditions or operations of the Credit Parties, or which would prevent or hinder the performance of the obligations of the Credit Parties under the Agreement, and, furthermore, each Credit Party has not violated any law in any material respect and, to the best of its knowledge, is not the subject of any investigation by a governmental agency that could reasonably be expected to result in an indictment or a forfeiture or seizure of any of its assets; and

(g) Environmental Matters. Each Credit Party, to the best of its knowledge after due investigation, is in compliance in all material respects with all applicable environmental, health and safety statutes and regulations and each Credit Party does not have any material contingent liability in connection with any improper treatment, storage, disposal or release into the environment of any hazardous or toxic waste or substance.

(h) PTC Credit Agreement: Subject to the redactions specifically requested by PTC, the copy of PTC Warehouse Agreement provided by counsel to the Borrower to the counsel to Greypoint attached to an email of Thursday, June 20, 2019 3:32 PM, is a true copy.

## 8. COVENANTS OF THE CREDIT PARTIES

### 8.1 COVENANTS

Until the payment in full of the Loan and until the fulfillment of all of its obligations hereunder, each Credit Party shall comply with the following covenants:

(a) Books and Records. Each Credit Party shall at all times keep accurate and complete books, records and accounts of all of such Credit Party's business activities, prepared in accordance with GAAP consistently applied, and each Credit Party shall permit Greypoint, or any Persons designated by Greypoint, at any reasonable time, to inspect, audit and examine such books, records and accounts and to make copies or extracts thereof;

(b) Statements and Reports. Each Credit Party shall furnish to Greypoint:

(i) within the number of days set forth in Section 15 hereof after the end of each fiscal year of such Credit Party, financial statements of such Credit Party, which shall include a balance sheet, an income statement showing the results of operations for such a fiscal year and a change in financial position statement for such fiscal year, together, in each case, with the comparable figures for the immediately preceding fiscal year, all in reasonable detail and prepared in accordance with GAAP, consistently applied, which statements shall contain the certification requirements set forth in Section 15 hereof;

(ii) within the number of days set forth in Section 15 hereof after the end of each of the fiscal periods of the Borrower and Guarantor set forth in Section 15 hereof, financial reports of the Borrower and Guarantor, which shall include a balance sheet, an income statement showing the results of operations for such fiscal period and a change in financial position statement for such fiscal period, together, in each case, with the comparable figures for the immediately preceding corresponding fiscal period, and management operating reports in respect of the Borrower and Guarantor, all in reasonable detail and prepared in accordance with GAAP, consistently applied, and containing the certifications required pursuant to Section 15 hereof;

(iii) within 20 days after the end of each month, a Borrowing Base Certificate which shall include the following:

(A) An aging and listing of all accounts receivable prepared in accordance with GAAP which itemizes each account debtor, including each Lease, by name and addresses and which states the total amount payable to Borrower and contains a breakdown indicating future amounts due and when due, current amounts due, amounts thirty (30) days past due, sixty (60) days past due, and ninety (90) or more days past due, and reflecting any credit adjustments, returns and allowances; and

(B) An aging and listing of all accounts payable—trade prepared in a similar manner, together with a reporting of Delinquency Rate in respect of such Reporting Period;

(iv) promptly, from time to time, upon request of Greypoint, such other information concerning the financial condition, business and affairs of each Credit Party as shall be reasonably requested by Greypoint;

(c) Notices. Each Credit Party shall promptly notify Greypoint in writing of the occurrence of any Event of Default or any act or event which, with the giving of notice or the passage of time, or

both, would be such an Event of Default and of any legal action, proceeding or investigation threatened or instituted against such Credit Party that might have a material adverse effect upon the operations, financial condition or business of the Credit Parties or the Borrower's ability to repay the Loan, or Greypoint's security interest in the Leases or any of them, and from time to time, at Greypoint's request, each Credit Party will furnish to Greypoint a summary of the status of all such actions, proceedings or investigation;

(d) **Maintain Business.** Each Credit Party shall maintain in full force and effect all material licenses, permits, authorizations, bonds, franchises and other rights necessary or desirable to the profitable conduct of its business, shall continue in, and limit its operations to, the same general lines of business as are presently conducted and shall comply with all applicable laws, orders, regulations and ordinances of all governmental authorities, in all material respects and shall maintain its corporate existence;

(e) **Mergers, Sale of Assets.** Borrower will not, without Greypoint's prior written consent: (i) sell, lease, transfer or dispose of substantially all of its assets to another entity; or (ii) consolidate with or merge into another entity, permit any other entity to merge into it or consolidate with it. Any Change of Control of the Borrower, without the prior written consent of Greypoint shall be an immediate Event of Default and shall require immediate repayment of the Loan (including without limitation, all outstanding interest, principal, fees, and reimbursement and indemnity obligations) in full, together with any Prepayment Amount associated with such early prepayment.

(f) **Dividends and Other Distributions.** Borrower will not, without Greypoint's prior written consent, declare, order, pay or make, directly or indirectly any dividend or other distribution or other payment or loan during the continuance of any Event of Default, or event that with the giving of notice or passage of time would be an Event of Default, provided that the Borrower may make payments in respect of the PTC Warehouse Agreement and the PTC Securitization Agreement.

(g) **Indebtedness.** Borrower will not, without Greypoint's prior written consent,

- (i) incur, create, assume or permit to exist any obligation or indebtedness, except
  - (A) existing indebtedness disclosed on financial statements previously delivered to Greypoint;
  - (B) obligations under the PTC Securitization Agreement and indebtedness and obligations in relation to the PTC Warehouse Facility;
  - (C) the Loan;
  - (D) other indebtedness and trade obligations and normal accruals in the ordinary course of business including indebtedness to Originators arising under Program Agreements;

- (E) other indebtedness subordinated to the Facility that is subject to a subordination agreement that is in form and content satisfactory to Greypoint, acting reasonably;
- (ii) become liable, directly, or indirectly, as guarantor or otherwise, for any obligation of any other Person, except existing obligations of such kind previously disclosed to Greypoint in writing and other than the indebtedness set out in Section 8.1(g)(i) above, in excess of the amount set forth in Section 15;
- (h) Lien. Borrower will not, without Greypoint's prior written consent, agree for any Person, to have the benefit of or recourse to the Borrower's assets other than PTC in respect of obligations pursuant to the PTC Warehouse Agreement and the PTC Securitization Agreement and otherwise except to the extent fully subordinated to the security interest, claims, and liens of Greypoint under the Security Agreement;
- (i) Insurance. Each Credit Party shall maintain and keep in force insurance of the types and amounts customarily carried in its lines of business, including, without limitation, fire, public liability, product liability, property damage, directors and officers' liability, and workers' compensation, such insurance to be carried with companies and in amounts satisfactory to Greypoint, in its reasonable discretion, and each Credit Party shall deliver to Greypoint from time to time as Greypoint may request, schedules setting forth all insurance then in effect and copies of the policies;
- (j) Debts. Each Credit Party shall pay all permitted debts, legal awards, taxes, levies, penalties, interest and any other obligation, immediately upon such obligation coming due;
- (k) Underwriting. Borrower has and will undertake all appropriate underwriting of the Leases and is holding and will hold written proof of the same, on behalf of Greypoint; and
- (l) Environmental Matters. Each Credit Party will take all reasonable actions to prevent the occurrence of any material violation of any applicable environmental, health and safety statutes and regulations, or any order or judgment of any court with respect to environmental pollution or contamination, hazardous waste disposal or any other environmental matter and each Credit Party shall promptly give written notice to Greypoint of the following occurrences and of the steps being taken by such Credit Party, with respect thereto:
  - (i) notice that such Credit Party's operations are not in full compliance with the requirements of applicable environmental, health and safety statutes and regulations;
  - (ii) notice that such Credit Party is subject to a governmental investigation evaluating whether any remedial action is needed to respond to the release of any hazardous or toxic waste or substance into the environment; or
  - (iii) notice that any properties or assets of such Credit Party are subject to any environmental lien.

(m) Monitoring. The Borrower shall monitor the level of complaints received by it arising from all Eligible Assets acquired by the Borrower and take commercially reasonable steps to address such complaints. If, at any given time, the level of unresolved complaints exceeds 1% (being the percentage of active Obligors with unresolved complaints to total active Obligors) or if the level of total complaints (whether resolved or not) exceeds 5% (as the percentage of active Obligors who have made a complaint to total active Obligors), the Borrower shall promptly give notice thereof to Greypoint together with any additional information related thereto requested by Greypoint.

(n) Amendments to PTC Agreements. Borrower shall provide notice to Greypoint of any amendment of the PTC Warehouse Agreement or the PTC Securitization Agreement.

(o) Investments. The Borrower shall not grant a loan or make an investment in or provide financial assistance to a third party (including, the Guarantor) by way of a suretyship, guarantee or otherwise.

(p) Interest Coverage Covenant. For each month and the two preceding months, the sum of pre-tax rental payment in respect of Eligible Assets collected during such months must be greater than the outstanding balance of the Loan at the time of determination multiplied by the Interest Rate pro rata for the reporting period. For greater certainty, this calculation should exclude all non-billing leases.

## 8.2 Non-Performing Receivable

If any Eligible Asset, (other than a Lease Asset sold to Greypoint pursuant to the Sale and Servicing Agreement), becomes a Non-Performing Asset, the Borrower shall (i) notify Greypoint in writing of such event and (ii) repay any amount by which the aggregate outstanding amount of the Advance hereunder exceeds the Borrower Base as a result of such Eligible Asset becoming a Non-Performing Asset.

## 9. EVENTS OF DEFAULT

9.1 EVENTS OF DEFAULT. The occurrence of one or more of the following events shall constitute an Event of Default under this Agreement:

(a) The Borrower defaults in the repayment of any of the amounts payable hereunder, under the Note or any of the Loan Documents and such default is not remedied within 3 Business Days following notice from Greypoint;

(b) There shall occur a material event of default under any of the Security Agreement, the other Loan Documents and if such event of default is capable of being cured or remedied, such event of default is not cured or remedied within 30 days following notice from Greypoint.

(c) Any Credit Party fails to observe or perform any of the covenants, obligations (including payments) conditions and agreements on the part of the Credit Parties contained herein in any material respect and if such failure is capable of being cured or remedied, such failure is not

cured or remedied within 30 days following notice from Greypoint or, in the case of Section 8.1(p), 60 days.

(d) If any representation or warranty made by the Credit Parties to Greypoint contained herein or any other document proves to have been untrue in any material respect when made, and if capable of being remedied, is not so remedied within 30 days following notice from Greypoint;

(e) Any Credit Party shall be in default in the payment or performance of any material obligation under any indenture, contract, mortgage, law, deed of trust or other agreement or instrument to which such Credit Party is a party or by which it is bound, and if such default is capable of being cured or remedied, is not so cured or remedied within 30 days of notice from Greypoint;

(f) Any Loan Document shall fail to be enforceable against the Credit Parties party thereto;

(g) The dissolution, termination of existence, insolvency, bankruptcy or business failure of any Credit Party, as applicable, or upon the appointment of a receiver, receiver-manager or receiver and manager of any part of the property of any Credit Party, or the commencement by or against any Credit Party of any proceeding under any bankruptcy, arrangement, reorganization, dissolution, liquidation, insolvency or similar law for the relief of or otherwise affecting creditors of any Credit Party, or by or against any guarantor or surety for any Credit Party which is not dismissed within 45 days, or upon the issue of any writ of execution, warrant, attachment, sequestration, levy, third party demand, notice of intention to enforce security or garnishment or similar process against any Credit Party;

(h) Any Credit Party commits or threatens in writing to commit an act of bankruptcy (as defined in the *Bankruptcy and Insolvency Act*);

(i) The institution by any Credit Party of any formal or informal proceeding for the dissolution or liquidation of, settlement of claims against or winding up of affairs of any Credit Party;

(j) there shall exist any act, omission, event or undertaking which would, or would reasonably be expected to, singly or in the aggregate, have a materially adverse effect upon (a) the ability of the Credit Parties taken as a whole to perform their respective obligations under this Agreement or any other Loan Document in any material respect, (b) the legality, validity, binding effect, enforceability or admissibility into evidence of any Loan Document the ability of Greypoint to enforce any rights or remedies under or in connection with any Loan Document or (c) the perfection or priority of the Security granted pursuant to the Security Agreement;

(k) a writ, execution or attachment or similar process is issued or levied against any property of the Borrower in connection with any judgement against it in an amount which exceeds \$2,000,000 in aggregate and is not released, bonded, satisfied, discharged, vacated, or stayed within 60 days or which the Borrower is not contesting in good faith and not made adequate reserves therefor;

(l) any event of default or breach occurs in respect of the PTC Warehouse Agreement or the PTC Securitization Agreement, or any such agreement is terminated or materially amended in a

manner that could reasonably be expected to materially impair the business or credit-worthiness of the Borrower;

(m) Greypoint in good faith believes the prospect of repayment of the Loan or performance of the obligations hereunder is or is about to be impaired;

(n) The average Delinquency Rate for any Reporting Period and the two immediately preceding Reporting Periods exceeds 8% at any time before the first anniversary of the date of this Agreement, or thereafter exceeds 4%, such average Delinquency Rate to be reviewed and mutually agreed upon by the parties upon or promptly following the first anniversary of this Agreement; or

(o) The amount on deposit in the Reserve Account is less than 50% of the aggregate required "Cash Reserve Amount" specified under each Program Agreement or as otherwise required under the terms of this Agreement.

## 10. REMEDIES OF GREYPOINT UPON DEFAULT

10.1 REMEDIES. At any time after any Event of Default has occurred, Greypoint may, without presentment, demand, protest or further notice of any kind (all of which are hereby expressly waived) and, notwithstanding the provisions contained in any other document or instrument executed or to be executed by the Credit Parties to Greypoint hereunder or contained in any other agreement, take any one or more of the following actions:

(a) Declare the entire principal and any accrued interest on the Loan, together with all costs and expenses, to be immediately due and payable, and to enforce payment thereof by any means permitted by law or in equity;

(b) Without accelerating payment, enforce the payment of sums of principal and interest then due (including any penalty interest or late payment charges);

(c) Require the Credit Parties to take or refrain from taking any action which may be necessary to cure such Event of Default and to obtain affirmative or negative injunctions or restraining orders with respect thereto;

(d) File suit for any sums owing or for damages; and

(e) Exercise any other remedy or right provided in law or in equity or permitted under this Agreement, the Security Agreement or any other Loan Document, including without limitation, the activation of the Blocked Account Agreement in respect of the Collections Account.

## 10.2 REMEDIES CUMULATIVE

Any and all remedies conferred upon Greypoint shall be deemed cumulative with, and nonexclusive of any other remedy conferred hereby or by law, and Greypoint in the exercise of any one remedy shall not be precluded from the exercise of any other.

## 11. FEES AND EXPENSES

In addition to interest and principal as stated in the Note, Borrower shall pay all costs of closing the Loan and all expenses of Greypoint with respect thereto, including, but not limited to, inspection fees, due diligence costs and in-house and outside legal fees (including legal fees incurred by Greypoint subsequent to the closing of the Loan in connection with the ongoing management and enforcement of the Loan), filing fees and similar items. Greypoint will provide a reasonably detailed summary of such costs and expenses prior to the closing of the Loan. Said costs and expenses may, at Greypoint's option, be deducted from the disbursements of Loan proceeds hereunder. In addition to any liability Borrower may have under applicable law, Borrower shall pay Greypoint's attorneys' fees and costs incurred in the collection of any indebtedness hereunder, or in enforcing this Agreement, whether or not suit is brought, and any attorneys' fees and costs incurred by Greypoint in any proceeding under bankruptcy law in order to collect any indebtedness hereunder or to preserve, protect or realize upon any security for such indebtedness.

## 12. WAIVER

Any waiver of any of the terms of this Agreement by Greypoint shall not be construed as a waiver of any other terms of this Agreement, and no waiver shall be effective unless made in writing. The failure of Greypoint to exercise any right with respect to the declaration of any default shall not be deemed or construed to constitute a waiver by, or to preclude Greypoint from exercising any right with respect to such default at a later date or with respect to any subsequent default by Borrower.

## 13. NOTICES

Any notices required or permitted to be given pursuant to this Agreement shall be in writing and shall be given by personal delivery or by mailing the same, postage prepaid, to the address set forth in Section 15 hereof. Any such notice shall be deemed received for purposes of this Agreement upon delivery if given by personal delivery or three (3) days after the mailing thereof if given by mail. If either party desires to change the address to which notices are to be sent it shall do so in writing and deliver the same to the other party in accordance with the notice provisions set forth above.

## 14. MISCELLANEOUS

### 14.1 PARTIES

This Agreement is made solely among Borrower, the Guarantor and Greypoint, no other Person shall have any right of action hereunder. The parties expressly agree that no Person shall be a third-party beneficiary to this Agreement.

### 14.2 INDEMNITY

Borrower agrees to indemnify Greypoint and each of its directors, officers, employees, trustees, advisors and agents (each such Person being called an "Indemnitee") against, and to hold each Indemnitee harmless from, any and all losses, claims, damages, liabilities and related expenses,

including reasonable legal fees (on a solicitor and own client basis), disbursements and other charges, incurred by or asserted or awarded against any Indemnitee arising out of, in any way connected with, or as a result of (i) the execution or delivery of this Agreement, any other Loan Document or any agreement or instrument contemplated hereby or thereby, the performance by the parties hereto or thereto of their respective obligations hereunder or thereunder or the consummation of the transactions contemplated hereby or thereby, (ii) any claim, litigation, investigation or proceeding relating to any of the foregoing, whether or not any Indemnitee is a party thereto, (iii) any claim made against the Borrower in any capacity, any Indemnitee or any Originator by any Obligor arising from, in connection with or relating to the performance of observance of any of the Borrower's or Originator's respective covenants, duties or obligations hereunder, in respect of or relating to any of the Lease Assets, (iv) the failure of the Borrower in any capacity or any Originator to perform or observe any of its respective covenants, duties or obligations hereunder, in respect of or relating to any of the Lease Assets or (v) any fine, penalty, sanction, order, or other liability imposed upon or determined against any of the Borrower, in any capacity, any Indemnitee or any Originator by any Governmental Authority in connection with or relating to any Lease Asset; provided that such indemnity shall not, as to any Indemnitee, be available to the extent that such losses, claims, damages, liabilities or related expenses have resulted from the gross negligence or wilful misconduct of any Indemnitee. The provisions of this Section 14.2 shall remain operative and in full force and effect regardless of the expiration of the term of this Agreement, the consummation of the transactions contemplated hereby, the repayment of the Loan, the invalidity or unenforceability of any term or provision of this Agreement or any other Loan Document, or any investigation made by or on behalf of Greypoint. All amounts due under this Section 14.2 shall be payable promptly after written demand therefor.

#### 14.3 ENTIRE AGREEMENT

This Agreement including the Schedules attached hereto and by this reference incorporated herein, together with all other documents hereto, constitutes the entire agreement of the parties hereto and thereto, and no prior agreement or understanding with respect to the Loan, whether written or oral and including, but not limited to, any loan commitment issued by Greypoint to Borrower, shall be of any further force or effect, all such other prior agreements and commitments having been superseded in their entirety by this Agreement.

#### 14.4 ASSIGNMENT

This Agreement shall enure to the benefit of and be binding upon the parties hereto and their respective successors and permitted assigns; provided, however, that neither this Agreement nor any rights or obligations hereunder shall be assignable by either party without the prior express written consent of the other party first having been obtained, and any purported assignment made in contravention hereof shall be void. Only after the occurrence and during the continuance of an Event of Default, Greypoint may assign (without the consent of the Borrower) any part of or all of the Loan and its rights and obligations hereunder in its sole discretion, provided that no such assignment shall increase the liability of the Borrower for any taxes under pursuant to Section 2.4. Greypoint may participate all or any portion of the Loan to such other party or parties

as Greypoint shall select provided that any disclosure of information provided to any participant shall be subject to Section 14.10.

#### 14.5 GOVERNING LAW

This Agreement shall be construed in accordance with and governed by the laws of the Province of Ontario and the federal laws of Canada applicable therein (without regard to the conflicts of laws rules of the Province of Ontario).

#### 14.6 TIME

Time is of the essence hereof.

#### 14.7 AMENDMENT TO PTC WAREHOUSE AGREEMENT

Greypoint may, following any amendment to the PTC Warehouse Agreement, unilaterally amend the terms of this Agreement relating to the calculation of the Borrowing Base, definition of Eligible Asset, and the discount rate at any time and from time to time to precisely match amendments made to the PTC Warehouse Agreement occurring after the date of this Agreement by giving written notice to the Borrower of such amendment, provided the term amended in the PTC Warehouse Agreement matches the term being amended under this Agreement on the date hereof.

#### 14.8 SURVIVAL

The representations and warranties hereunder shall survive the closing of the Loan and Greypoint may enforce such representations and warranties at any time. The covenants of the Credit Parties shall survive the closing of the Loan and shall be performed fully and faithfully by the Credit Parties at all times. The indemnities of Borrower shall survive repayment of the Loan.

#### 14.9 SEVERABILITY

If any term or provision of this Agreement or any other document, or the application thereof to any circumstance, shall be invalid, illegal or unenforceable to any extent, such term or provision shall not invalidate or render unenforceable any other term or provision of this Agreement or any other Loan Document, or the application of such term or provision to any other circumstance. To the extent permitted by law, the parties hereto hereby waive any provision of law that renders any term or provision hereof invalid or unenforceable in any respect.

#### 14.10 CONFIDENTIALITY

Each party hereto will maintain on a confidential basis (except as otherwise permitted hereunder or as required by applicable law) all information relating to the other party provided to it hereunder by the other parties; provided, however, that this Section shall not apply to any information which (i) was lawfully in the public domain at the time of communication to the first party, (ii) lawfully enters the public domain through no fault of the first party subsequent to the time of communication to the first party, (iii) was lawfully in possession of the first party free of

any obligation of confidence at the time of communication to the first party, (iv) was lawfully communicated to the first party free of any obligation of confidence subsequent to the time of initial communication to the first party or (v) was lawfully communicated to any Person free from any obligation of confidence subsequent to the time of communication to the first party.

## 15. STATEMENT OF TERMS

15.1 Maximum Amount of Loan (Section 1): \$15,000,000 (Canadian)

15.2 [reserved]

15.3 Interest on the Loan (Section 2.4): BA Equivalent Rate plus 7.25% per annum, provided that during the continuance of an Event of Default the then applicable Interest on the Loan shall be increased by 3% per annum.

15.4 End Date (Section 2.7): August 22, 2021.

15.5 Persons Authorized to Request Advance (Section 5.2): Lawrence Krimker, Luda Krimker, Liam Coates, Sean Milne and Nishant Shah and such others as designated by notice in writing

15.6 Commitment Fee (Section 6.1(a)): 100 bps of Maximum Amount of Loan

15.7 Non-Utilization Fee (Section 6.1(b)): 25 bps of the undrawn amount

15.8 Inspection Fee (Section 6.1(c)): Reasonable charges billed by qualified contractors, along with their related expenses.

15.9 Audited Statements due within 120 days of each fiscal year end (Section 8.1(b)(i))

15.10 Statements due within 45 days of each month end (Section 8.1(b)(ii))

15.11 Maximum amount of indebtedness, liabilities or other contingent obligations (Section 8.1(g)(ii)): \$25,000

15.12 Addresses for Notices (Section 13):

To Borrower:

Crown Crest Capital Trust  
1201-200 Yorkland Blvd.  
Toronto, ON  
M2J 5C1

Attention: President

To Greypoint:

Greypoint Capital Inc.  
77 Bloor Street West, Suite 1704  
Toronto, Ontario

IN WITNESS WHEREOF the parties hereto have executed this Agreement as of the date first above written.

CROWN CREST FUNDING CORP., in its capacity as trustee of CROWN CREST CAPITAL TRUST

By:



Name: Lyudmila Krimker

Title: President

SIMPLY GREEN HOME SERVICES INC.

By:



Name: Lawrence Krimker

Title: CEO

GREYPOINT CAPITAL INC.

By:

Name:

Title:

IN WITNESS WHEREOF the parties hereto have executed this Agreement as of the date first above written.

**CROWN CREST FUNDING CORP., in its capacity as trustee of CROWN CREST CAPITAL TRUST**

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

Name:

Title:

**SIMPLY GREEN HOME SERVICES INC.**

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

Name:

Title:

**GREYPOINT CAPITAL INC.**

By:

Name:  Andrew Spinner

Title: VP

**NOTICE OF ADVANCE REQUEST**

\_\_\_\_\_, 20\_\_

**77 Bloor Street West, Suite 1704**  
**Toronto, Ontario**  
**M5S 1M2**

**Attention:**

**Email:**

**BORROWING NOTICE**

We refer to the Warehouse Line of Credit Agreement dated as of August 22, 2019 (the “**Agreement**”; capitalized terms used herein but not otherwise defined shall have the meanings set forth in the Agreement), entered into by and among Crown Crest Funding Corp., in its capacity as trustee of Crown Crest Capital Trust (“**Borrower**”), and Peoples Trust Company (“**Greypoint**”).

We hereby instruct and authorize Greypoint to make the Advance to our disbursement account(s), subject to and in accordance with the terms and provisions of the Agreement to the TD Bank account #[NUMBER], Transit # [NUMBER] and to charge Borrower’s loan account with such Advance.

Borrower hereby request an advance (the “**Advance**”) be made as follows:

**A. The date of Advance:** ● [NTD: Must be at least one Business Day after request]

**B. Type/amount of Advance:** CAD: \$ Amount

**Borrower hereby confirms as follows:**

(a) Each of the representations and warranties made by each of the Credit Parties in or pursuant to the Agreement and the other Loan Documents are true and correct in all material respects on and as of the date hereof as if made on and as of such date, except as Greypoint may have otherwise agreed to herein or in a separate writing.

(b) No Event of Default has occurred as of the date hereof or will occur after the making of the Advance requested hereunder.

(c) Each Credit Party is in compliance with each of the covenants set forth in Section 8.1 of the Agreement.

(d) The Advance requested hereunder will not cause the aggregate principal amount of the Advance under the Agreement to exceed the Borrowing Base or the Maximum Amount of the Loan.

**DATED ●.**

**BORROWER: Crown Crest Capital Trust, by its trustee Crown Crest Funding Corp. by its authorized agent, Crown Crest Capital Management Corp.**

**By:**

**Name:**

**Title:**

**SCHEDULE B**  
**BORROWING BASE CERTIFICATE**

<b>Date:</b>	<b>Warehouse</b>	<b>Purchase</b>
WH		PCH
<b>Eligible monthly rental rate</b>		-\$
<b>Borrowing base</b>		-\$

[Attach spreadsheet]

 <b>CROWN CREST CAPITAL</b>			
	<b>Rental Rate</b>	<b>Warehouse PV</b>	<b>Purchase PV</b>
Amount in purchase facility	-	-	-
Amount in warehouse facility	-	-	-
Warehouse (current batch)	-	-	-

Schedule "D"

**ASSET PURCHASE AGREEMENT**

[to be provided]

**ASSET PURCHASE AGREEMENT**

between

**SIMPLY GREEN HOME SERVICES CORP.**

**as Vendor**

and

**SIMPLY GREEN HOME SERVICES INC.**

**as Purchaser**

and

**SGHS MANAGEMENT HOLDCO INC.**

**as Guarantor**

and

**2775996 ONTARIO INC.**

**as Topco**

and

**SIMPLY GROUP ACQUISITION CORP.**

**as Dealnet Acquireco**

dated as of

October 13, 2020

**MILLER THOMSON LLP**

## ASSET PURCHASE AGREEMENT

This Asset Purchase Agreement (this "Agreement"), dated as of October 13, 2020, is entered into between **SIMPLY GREEN HOME SERVICES CORP.** (formerly known as Simply Green Home Services Inc.), a corporation incorporated pursuant to the laws of the Province of Ontario ("Vendor"), **SGHS MANAGEMENT HOLDCO INC.**, a corporation incorporated pursuant to the laws of the Province of Ontario ("Guarantor"), **SIMPLY GREEN HOME SERVICES INC.** (formerly known as 2775153 Ontario Inc.), a corporation incorporated pursuant to the laws of the Province of Ontario ("Purchaser"), **2775996 ONTARIO INC.**, a corporation incorporated pursuant to the laws of the Province of Ontario ("Topco") and **SIMPLY GROUP ACQUISITION CORP.**, a corporation incorporated pursuant to the laws of the Province of Ontario ("Dealnet Acquireco").

### Recitals

WHEREAS, Vendor, as of the date hereof, carries on a business which includes, among other things, (a) the origination of consumer lease Contracts (as defined below) and other financial products in accordance with Applicable Law (as defined below) and (b) the administration and servicing of such Contracts (the "Business");

AND WHEREAS Vendor owns the Purchased Assets (as defined herein);

AND WHEREAS Vendor, subject to the terms and conditions hereof, has agreed to sell and assign to Purchaser, and Purchaser has agreed to purchase and acquire from Vendor, all of the Vendor's right, title and interest in the Purchased Assets, being all of the assets of Vendor used in connection with the Business, excluding all Intellectual Property (as defined below) and Intellectual Property Rights (as defined below) owned, or purported to be owned, by Vendor (collectively, the "Owned IP") and the Contracts relating exclusively to consumer lease receivable assets originated, acquired and/or serviced by, Vendor or any of its subsidiaries prior to the date hereof (the "Excluded Receivables");

AND WHEREAS, concurrently with the entering into of this Agreement, Vendor, Guarantor, Purchaser and Topco are entering into an intellectual property license agreement with the Purchaser in respect of the Owned IP, a copy of which is annexed hereto as Schedule "A" (the "IP License Agreement");

AND WHEREAS, concurrently with the entering into of this Agreement, Vendor is assigning its interest as lessee of the premises currently serving as the head office for the Business (the "Leased Property") pursuant to a lease dated October 21, 2019 annexed hereto as Schedule "B" (the "Office Lease") to Purchaser as a permitted assignee, with the consent of the landlord thereunder (the "Office Lease Assignment");

AND WHEREAS Topco desires to accept from Vendor, and Vendor wishes to assign and transfer to Topco, the Topco Transferred Employees (as defined herein), the whole upon the terms and subject to the conditions hereinafter set forth;

AND WHEREAS Purchaser desires to accept from Vendor, and Vendor wishes to assign and transfer to Purchaser, the Purchaser Transferred Employees (as defined herein), the whole upon the terms and subject to the conditions hereinafter set forth;

AND WHEREAS Vendor's wholly owned subsidiary, Simply Group Financial Corp. (the "Home Trust Subsidiary"), holds certain receivable assets (the "Home Trust Assets") acquired from Home Trust Company pursuant to an asset purchase agreement (the "Home Trust

**Agreement")** dated September 2, 2020 between Home Trust Company and the Home Trust Subsidiary;

AND WHEREAS Vendor entered into a support agreement (the "**Dealnet Support Agreement**") with Dealnet Capital Corp. ("**Dealnet**") on August 22, 2020 pursuant to which Vendor made an offer to purchase all of the issued and outstanding common shares of Dealnet and the Board of Directors of Dealnet agreed to support such offer; and prior to the date hereof the Dealnet Support Agreement was assigned (the "**Dealnet Assignment**") in accordance with the terms of the Dealnet Support Agreement by Vendor to Dealnet Acquireco, a wholly owned subsidiary of Topco, and Dealnet Acquireco delivered a written notice to Dealnet confirming the assignment (the "**Dealnet Assignment Notice**" and collectively with the Dealnet Support Agreement and the Dealnet Assignment, the "**Dealnet Agreements**").

NOW, THEREFORE, in consideration of the mutual covenants and agreements hereinafter set forth and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereto agree as follows:

## **ARTICLE I** **Purchase and Sale**

**Section 1.01 Purchase and Sale of Assets.** Subject to the terms and conditions hereof, Vendor hereby agrees to sell, assign, transfer, convey and deliver to Purchaser, and Purchaser hereby agrees to purchase from Vendor, all of Vendor's right, title and interest in the property and assets of Vendor set forth in Schedule 1.01 attached hereto (collectively, the "**Purchased Assets**"), free and clear of any and all encumbrance, mortgage, hypothec, pledge, assignment, lien (statutory or otherwise), charge, security interest, claim, liability, easement, title retention agreement or arrangement, conditional sale, deemed or statutory trust, restrictive covenant or other encumbrance of any nature (each, an "**Encumbrance**"). For greater certainty, the Purchased Assets shall not include the rights, title and interest of Vendor or any of its subsidiaries in and to any of (i) the Owned IP, (ii) the Excluded Receivables, (iii) the Excluded Subsidiaries, (iv) the Replaced Contracts, (v) the Unrelated Contracts (vi) the lease agreements for two Lexmark copier machines held at Vendors office to be dealt with in the Transition Services Agreement (as defined below), (vii) the lease agreements for the two Honda CR-V's to be dealt with in the Transition Services Agreement and (viii) the Employee Plans (subject to Section 7.06) (collectively, the "**Excluded Assets**").

**Section 1.02 No Assumption of Liabilities.** Purchaser and Topco shall not and do not hereby assume, and shall not have any obligation to discharge, perform or fulfil:

- (a) any liabilities or obligations of Vendor and the Excluded Subsidiaries of any kind, whether known or unknown, direct, indirect, absolute, contingent, matured or otherwise, whether currently existing or hereinafter created, including any such liabilities or obligations related to the Excluded Assets;
- (b) any liabilities or obligations in respect of the Purchased Assets (including the Acquired Subsidiaries) of any kind, whether known or unknown, direct, indirect, absolute, contingent, matured or otherwise, whether currently existing or hereinafter created (other than, in each case, any liabilities or obligations in respect of the Purchased Assets accruing after Closing and not arising out or related to any event, circumstance, matter or default which occurred or existed at, prior to or as a result of the execution of this Agreement or the consummation of the transactions contemplated hereby); and

(c) notwithstanding that the Purchaser Transferred Employees will become employees of Purchaser and the Topco Transferred Employees will become employees of Topco, as of the applicable Employee Start Time (as defined herein), any and all employment related costs, obligations and liabilities of Vendor and its subsidiaries arising out of or related to any event, circumstance, matter or default which occurred or existed at or prior to the applicable Employee Start Time or as a result of the execution of this Agreement or the consummation of the transactions contemplated hereby, whether known or unknown, direct, indirect, absolute, contingent, matured or otherwise, whether currently existing or hereinafter created, the whole as set forth in Section 7.06 and Section 7.07(a).

(collectively, the "**Excluded Liabilities**").

**Section 1.03 Purchase Price.** The aggregate consideration payable by Purchaser for the Purchased Assets shall be \$533,321 (the "**Purchase Price**"). At Closing (as defined herein), Purchaser shall pay, or cause the Purchase Price to be paid to Vendor's solicitor in trust for Vendor (in accordance with Vendor's written instructions) by way of wire transfer, certified cheque or bank draft.

**Section 1.04 Allocation of Purchase Price.** Vendor and Purchaser hereby agree to allocate the Purchase Price in accordance with the provisions of Schedule 1.04 attached hereto. Purchaser and Vendor shall file all tax returns (including amended returns and claims for refunds) together with any elections required to be filed under the *Income Tax Act* (Canada) (the "**Tax Act**") in a manner consistent with such allocation.

**Section 1.05 No Adjustment of Purchase Price.** There shall be no adjustment to the Purchase Price, subject to adjustment in accordance to Section 8.06.

**Section 1.06 GST/HST.**

(a) Purchaser and Vendor shall jointly make the elections provided for under section 167(1.1) of the *Excise Tax Act* (Canada) (the "**GST/HST Act**") such that no goods and services tax and harmonized sales tax ("**GST/HST**"), as applicable, will be payable in respect of the transactions contemplated by this Agreement.

(b) Purchaser shall file such elections no later than the due date for Purchaser's GST/HST return for the first reporting period in which the GST/HST would, in the absence of filing such elections, become payable in connection with the transactions contemplated by this Agreement on Closing.

**Section 1.07 Closing.** The closing of the transactions contemplated by this Agreement (the "**Closing**") shall take place simultaneously with the execution of this Agreement on the date of this Agreement (the "**Closing Date**") electronically. The consummation of the transactions contemplated by this Agreement shall occur at the time of the day on the Closing Date that the parties hereto agree upon.

**Section 1.08 Deliveries.** At the Closing, Vendor shall deliver the following to Purchaser in form and substance satisfactory to Purchaser, acting reasonably, which deliveries are for the exclusive benefit of Purchaser and may be waived, in whole or in part, by Purchaser in its sole discretion:

- (i) a bill of sale and general conveyance duly executed by Vendor, transferring the Purchased Assets to Purchaser;
- (ii) a certificate of an officer of Vendor certifying (A) the charter documents and by-laws of Vendor; (B) the requisite resolutions of the shareholders and the board of directors of Vendor duly authorizing the execution, delivery and performance of this Agreement and the transactions contemplated hereby; and (C) the names and signatures of the officers of Vendor authorized to sign this Agreement and the documents to be delivered hereunder. The receipt of such certificate and the Closing will not constitute a waiver of the covenants of Vendor which are contained in this Agreement;
- (iii) a certificate of an officer of Vendor certifying the charter documents, by-laws and share register of each of the Acquired Subsidiaries. The receipt of such certificate and the Closing will not constitute a waiver of the covenants of Vendor which are contained in this Agreement;
- (iv) a certificate of an officer of Guarantor certifying (A) the charter documents and by-laws of Guarantor; (B) the requisite resolutions of the shareholders and the board of directors of Guarantor duly authorizing the execution, delivery and performance of this Agreement and the transactions contemplated hereby; and (C) the names and signatures of the officers of Guarantor authorized to sign this Agreement and the documents to be delivered hereunder. The receipt of such certificate and the Closing will not constitute a waiver of the covenants of Guarantor which are contained in this Agreement;
- (v) a certificate of an officer of Purchaser certifying (A) the charter documents and by-laws of Purchaser; (B) the requisite resolutions of the shareholders and the board of directors of Purchaser duly authorizing the execution, delivery and performance of this Agreement and the transactions contemplated hereby; and (C) the names and signatures of the officers of Purchaser authorized to sign this Agreement and the documents to be delivered hereunder. The receipt of such certificate and the Closing will not constitute a waiver of the covenants of Purchaser which are contained in this Agreement;
- (vi) a certificate of an officer of Topco certifying (A) the charter documents and by-laws of Topco; (B) the requisite resolutions of the shareholders and the board of directors of Topco duly authorizing the execution, delivery and performance of this Agreement and the transactions contemplated hereby; and (C) the names and signatures of the officers of Topco authorized to sign this Agreement and the documents to be delivered hereunder. The receipt of such certificate and the Closing will not constitute a waiver of the covenants of Topco which are contained in this Agreement;
- (vii) a certificate of status, compliance, good standing or like certificate with respect to Vendor, Guarantor, Purchaser, Topco, each of the Acquired Subsidiaries (as defined herein), the Home Trust Subsidiary and Dealnet Acquireco issued in accordance with Applicable Law in its jurisdiction of incorporation;

- (viii) evidence that each of the Required Consents (as defined herein) have been obtained by Vendor, unamended, on terms acceptable to Purchaser, acting reasonably;
- (ix) evidence that each of the Replaced Contracts, other than in respect of the Contracts addressed in the Transition Services Agreement, have been replaced by Vendor in accordance with Section 7.08
- (x) a Purchase Certificate issued by the Ontario Workplace Safety and Insurance Board in respect of the Vendor, and (ii) documentation in a form acceptable to Purchaser from the workers' compensation boards in the other jurisdictions in which the Vendor has employees and carries on the Business, confirming that as at the date of such certificate or documentation, the relevant authorities in such jurisdictions have no claim against Vendor for which Purchaser or Topco, as applicable, will be or could be liable in respect of any amounts payable pursuant to the relevant workers compensation legislation of such jurisdiction in respect of the Business;
- (xi) the IP License Agreement, duly executed by Vendor and Guarantor, and assignments of the IP License Agreement duly executed from Guarantor to Topco and from Topco to Purchaser;
- (xii) complete, true and correct copies of the Books and Records; and
- (xiii) sub-servicing and administration agreement duly executed by Vendor, Purchaser, Guarantor and Topco;
- (xiv) transition services agreement (the "**Transition Services Agreement**") duly executed by Vendor and Purchaser;
- (xv) (A) the Office Lease Assignment, duly executed by Vendor and Purchaser on terms acceptable to Purchaser, acting reasonably, (B) evidence of the consent of landlord in respect of such assignment, on terms acceptable to Purchaser, acting reasonably, (C) evidence of registration of notice of the Office Lease in the applicable Land Titles Office, and (D) if the property to which the Office Lease relates is subject to a mortgage or other secured debt, a non-disturbance agreement with the holder of such mortgage or debt;
- (xvi) a certificate of an officer of Vendor certifying (A) the charter documents, by-laws and share register of the Home Trust Subsidiary; (B) the requisite resolutions of the shareholders and the board of directors of the Home Trust Subsidiary duly authorizing the execution, delivery and performance of the Home Trust Agreement and the transactions contemplated thereby; and (C) an executed copy the Home Trust Agreement, together with all schedules and material ancillary agreements related thereto (including the promissory note issued in favour of 2392979 Ontario Inc.);
- (xvii) a certificate of an officer of Vendor certifying (A) the charter documents, by-laws and share register of Dealnet Acquireco; (B) the requisite resolutions

of the shareholders and the board of directors of Dealnet Acquireco duly authorizing the execution, delivery and performance of the Dealnet Agreements (as defined below) and the transactions contemplated thereby; and (C) executed copies of each of the Dealnet Agreements, together with, in each case, all schedules and material ancillary agreements related thereto, as well as proof of delivery of the Dealnet Assignment Notice to Dealnet; and

- (xviii) necessary deeds, conveyances, assurances, transfers and assignments and any other instruments necessary or reasonably required to transfer the Purchased Assets to Purchaser, in each case with a good and valid title, free and clear of all Encumbrances.

## **ARTICLE II** **Representations and Warranties of Vendor**

Vendor represents and warrants to each of Purchaser, Topco and Dealnet Acquireco that the statements contained in this ARTICLE II hereof are true and correct as of the date hereof, and acknowledges and agrees that Purchaser, Topco and Dealnet Acquireco are each relying upon such representations and warranties in connection with its acquisition of the Purchased Assets.

For the purposes of this ARTICLE II, "Vendor's Knowledge", "Knowledge of Vendor" and any similar such phrases shall mean the actual knowledge of any shareholder, director or officer of Vendor, after due and diligent inquiry.

**Section 2.01 Incorporation and Authorization of Vendor and Enforceability of Agreements.** Vendor is a corporation incorporated and validly existing under the laws of the Province of Ontario that has not been discontinued or dissolved under such laws. Vendor has the requisite corporate power and capacity to (a) own the Purchased Assets, (b) carry on the Business, (c) enter into this Agreement and the documents to be delivered hereunder, (d) carry out its obligations under this Agreement and (e) consummate the transactions contemplated hereby. Vendor is qualified, licensed or registered to carry on the Business in all jurisdictions in which the nature of the Purchased Assets or the Business makes such qualification necessary or where Vendor owns or leases any material properties or assets or conducts any material business relating to the Purchased Assets or the Business. The execution, delivery and performance and the documents to be delivered hereunder and the consummation of the transactions contemplated hereby have been duly authorized by all requisite corporate action on the part of Vendor. This Agreement and the documents to be delivered hereunder have been duly executed and delivered by Vendor, and (assuming due authorization, execution and delivery by Purchaser, Guarantor, Topco and Dealnet Acquiror), this Agreement and the documents to be delivered hereunder constitute legal, valid and binding obligations of Vendor enforceable against Vendor in accordance with their respective terms.

**Section 2.02 No Conflicts; Consents.** The execution, delivery and performance by Vendor of this Agreement and the documents to be delivered hereunder, and the consummation of the transactions contemplated hereby, do not and will not (with or without notice or lapse of time or both):

- (a) violate, breach or conflict with, or allow any person to exercise any rights under, the articles of incorporation, by-laws or any unanimous shareholder agreement of Vendor or any of its subsidiaries;
- (b) violate, breach or conflict with any Permit (as defined herein) or Applicable Law to which Vendor, the Purchased Assets, any of its subsidiaries or the operation of the Business may be subject;
- (c) conflict with, constitute or result in any violation or breach of, or default under, or give rise to any rights (including a right of termination, acceleration or modification) or any obligation or loss of any benefit under any Contract or other instrument to which Vendor or any of its subsidiaries is a party or to which any of the Purchased Assets are subject; or
- (d) result in the creation or imposition of any Encumbrance on, or in respect of, the Purchased Assets.

**Section 2.03 Required Consents.** All consents, approvals, waivers or authorizations required to be obtained by Vendor and each of its subsidiaries from any person or entity (including any Governmental Authority (as defined below), creditors, secured parties or other third parties) in connection with the lawful transfer of the Business and the Purchased Assets, including the grant of rights under and pursuant to the IP License Agreement, the assignment of the Office Lease, the Dealnet Assignment, the Replaced HCSI Agreements (as defined in Schedule 2.09(c) attached hereto), the execution, delivery and performance by Vendor of this Agreement and the IP License Agreement and consummation of the transactions contemplated hereby (collectively, the "**Required Consents**") have been obtained by Vendor. Schedule 2.03 attached hereto contains a true and complete list of all Required Consents. The Assigned Contracts (as defined below) are assignable to Purchaser without payment of penalties or impositions of restrictions or other adverse effects, obligations or liabilities of any kind.

For purposes of this Agreement, "**Governmental Authority**" means (i) any governmental or public department, central bank, court, minister, governor-in-council, cabinet, commission, tribunal, board, bureau, agency, commissioner or instrumentality, whether international, multinational, national, federal, provincial, state, county, municipal, local, or other; (ii) any subdivision or authority of any of the above; (iii) any stock exchange; and (iv) any quasi-governmental or private body exercising any regulatory, expropriation or taxing authority under or for the account of any of the above.

**Section 2.04 Required Permits.** No permits, licenses, franchises, approvals, authorizations, registrations, filings, certificates, variances and similar rights or notices granted by, or given to, any Governmental Authorities (collectively, "**Permits**") are required in connection with, or as a condition of, the lawful transfer of the Business (as contemplated by this Agreement) or the Purchased Assets, the execution, delivery and performance by Vendor of this Agreement and the consummation of the transactions contemplated hereby.

**Section 2.05 Title to Purchased Assets.** Vendor or an Acquired Subsidiary has legal and beneficial ownership of, and good and valid title to, the Purchased Assets, free and clear of all Encumbrances. The property and assets included in the Purchased Assets, together with the Owned IP (as herein defined), constitute all of the assets used by Vendor or useful in carrying on the Business. No other person owns any property or assets which are being used in the Business

except for the real property leased pursuant to the Office Lease and the personal property leased or licensed by Vendor and the Acquired Subsidiaries pursuant to the Assigned Contracts.

**Section 2.06 No Options, etc. in respect of Purchased Assets.** Except for Purchaser and Topco under this Agreement, no person has any written or oral agreement, option, warrant, understanding or commitment, or any right or other privilege (whether by Law or by Contract) capable of becoming such for the purchase or other acquisition of any of (i) the Purchased Assets or (ii) the Owned IP. There are no outstanding options or notes held by any person convertible or exchangeable for any shares or other securities of any of the Acquired Subsidiaries.

**Section 2.07 Condition of Assets.** The Purchased Assets are in good operating condition and repair subject to ordinary course wear and tear in relation to tangible assets and are adequate and fit for their intended purpose and for the uses to which they are being put in the Business. None of such Purchased Assets are in need of maintenance or repair except for ordinary, routine maintenance and repairs in the ordinary course that are not material in nature or cost.

**Section 2.08 Assigned Contracts.** All Contracts, including Software Applications, supplier Contracts and vehicle, equipment and other tangible property subject to leases, being assigned to, and assumed by, Purchaser as part of the Purchased Assets (either directly or indirectly as a result of the acquisition of any Acquired Subsidiary), as set forth in Schedule 1.01 attached hereto (the "Assigned Contracts" and, individually, an "Assigned Contract"), and each of the Replaced Contracts, are valid and binding on, and enforceable by, Vendor in accordance with their terms and in full force and effect, unamended. Neither Vendor nor, to Vendor's Knowledge, any other party thereto is in breach of or default under (or is alleged to be in breach of or default under) or has provided or received any notice of any intention to terminate, any Assigned Contract or Replaced Contract. No event or circumstance has occurred, or condition or act (including the purchase of the Purchased Assets) exists or has occurred, that, with or without notice or lapse of time or both, would constitute a default or an event of default under any Assigned Contract or Replaced Contract or result in a termination thereof or would cause or permit the acceleration or other changes of any right or obligation or the loss of any benefit thereunder. Complete, true and correct copies of each Assigned Contract and Replaced Contract have been made available to Purchaser. There are no disputes pending or threatened under any Assigned Contract or Replaced Contract. Vendor has performed all of the obligations required to be performed by it and is entitled to all benefits under the Assigned Contracts and the Replaced Contracts.

### **Section 2.09 Contracts.**

- (a) Except for (i) the Assigned Contracts and (ii) the Replaced Contracts and (iii) the Unrelated Contracts, neither Vendor nor any of its subsidiaries is a party to or bound by any Contract required or relevant for the operation of the Business (as it is and has been conducted by the Vendor) following the Closing.
- (b) Schedule 2.09(b) attached hereto sets forth a correct and complete list of the Assigned Contracts as well as the amount of all payables, outstanding liabilities or amounts due under each such Contract as of 11:59 p.m. (Toronto time) on October 7, 2020 (provided that, as soon as reasonably practicable after the Closing, Vendor will provide a revised Schedule 2.09(b) as of 11:59 p.m. (Toronto time) on the business day prior to the Closing). Except for changes in the ordinary course of Business, as of the Closing there have been no changes to the Assigned Contracts and such payables, outstanding liabilities and amounts due described on Schedule 2.09(b) attached hereto.

(c) Schedule 2.09(c) attached hereto sets forth a correct and complete list of Vendor's and its subsidiaries' Contracts that are excluded from the Purchased Assets on the basis that Vendor believes in good faith that such Contracts can be easily replaced in a timely manner by Purchaser or any of its affiliates (other than any shareholders of Topco), on substantially the same terms and conditions without the incurrence of any liability or obligation (other than *de minimis* expenses) (the "**Replaced Contracts**".)

(d) Schedule 2.09(d) attached hereto sets forth a correct and complete list of Vendor's Contracts that are excluded from the Purchased Assets on the basis that they are not required or relevant for the operation of the Business (as it is and has been conducted by the Vendor) following the Closing (the "**Unrelated Contracts**".)

(e) Except for the Assigned Contracts and as disclosed on Schedule 2.09(e) attached hereto, neither Vendor nor any of its subsidiaries is a party to, bound by or has the benefit of in connection with the Business:

- (i) any distributor, sales, advertising, agency or manufacturer's representative Contract involving aggregate consideration in excess of \$25,000;
- (ii) any continuing Contract for the purchase of materials, supplies, equipment or services involving aggregate consideration in excess of \$25,000 and any purchase orders entered into in the ordinary course of Business consistent with past practice not yet fulfilled on the Closing Date;
- (iii) any Contract that expires or may be renewed at the option of any person other than Vendor or any of its subsidiaries so as to expire more than one year after the date of this Agreement involving aggregate consideration in excess of \$25,000;
- (iv) any trust indenture, mortgage, promissory note, loan agreement or other Contract for the borrowing of money, any currency exchange, interest rate, commodities or other hedging arrangement or any leasing transaction of the type required to be capitalized in accordance with ASPE (as defined below);
- (v) any Contract for capital expenditures in excess of \$15,000 in the aggregate;
- (vi) any Contract under which amounts are payable by Vendor or any of its subsidiaries in connection with the Business involving consideration in excess of \$25,000 and which in each case cannot be cancelled without penalty;
- (vii) any confidentiality, secrecy or non-disclosure Contract or any Contract limiting the freedom of Vendor to engage in any line of business, compete with any other person, solicit any persons for any purpose, operate its assets at maximum production capacity or otherwise conduct the Business;

- (viii) any Contract pursuant to which Vendor is a lessor of any machinery, equipment, motor vehicles, office furniture, fixtures or other personal property;
- (ix) any Contract with any person with whom Vendor does not deal at arm's length within the meaning of the Tax Act;
- (x) any agreement of guarantee, support, indemnification, assumption or endorsement of, or any similar commitment with respect to, the obligations, liabilities (whether accrued, absolute, contingent or otherwise) or indebtedness of any other person;
- (xi) any Contract with any Governmental Authority;
- (xii) any written employment Contract;
- (xiii) any Contract in respect of Intellectual Property and Intellectual Property Rights owned by, licensed to or used by Vendor;
- (xiv) any Contract made out of the Ordinary Course; or
- (xv) any Contract that is material to the Business.

For the purposes of this Agreement, "**Contract**" means any agreement, contract, licence, undertaking, engagement, order, purchase order or commitment of any nature, written or oral.

**Section 2.10 Excluded Receivables.** Schedule 2.10 attached hereto contains generic descriptions of the Excluded Receivables, the Contracts governing such receivables as well as the legal entities in which such Excluded Receivables are located. As of the close of business on October 6, 2020, the Excluded Receivables represented C\$367,221,119 in the aggregate. For greater certainty, Excluded Receivables shall: (a) include (i) receivables relating to equipment delivered and installed by SGHS to customers other than home builders prior to 11:59 p.m. (Toronto time) (the "**Cut-Off Time**") on the day prior to the date hereof and (ii) receivables relating to equipment delivered by SGHS to customers that are home builders prior to the Cut-Off Time; and (b) exclude (i) receivables relating to equipment to be delivered and installed by SGHS to customers other than home builders after the Cut-Off Time and (ii) receivables relating to equipment to be delivered by SGHS to customers that are home builders after the Cut-Off Time. For purposes of this Agreement, the receivables described in sub-paragraphs (b)(i) and (b)(ii) of this Section 2.10 shall collectively be referred to as the "**Transferred Receivables**".

**Section 2.11 Permits.** Vendor and each of the Acquired Subsidiaries owns, holds, possesses and lawfully uses in the operation of the Business all Permits which are necessary for it not only to conduct the Business as presently or previously conducted and to own and use the Purchased Assets and Owned IP in compliance with Applicable Law. All Permits relating to the Business, the Purchased Assets and the Owned IP are listed in Schedule 2.11 attached hereto (the "**Assigned Permits**"). Each Assigned Permit is valid, subsisting and in good standing. Neither Vendor nor any of the Acquired Subsidiaries is in default or breach of any Assigned Permit and, to the Vendor's Knowledge, no proceeding is pending or threatened to revoke or limit any Assigned Permits. All Assigned Permits are assignable to Purchaser and renewable by their terms or in the ordinary course of business without the need for Vendor, any of the Acquired Subsidiaries or

Purchaser to comply with any special rules or procedures, agree to any materially different terms or conditions or pay any amounts other than routine filing fees.

**Section 2.12 Residence and Registration.** Vendor is not a non-resident of Canada within the meaning of the Tax Act and is duly registered for purposes of the GST/HST Act.

**Section 2.13 Taxes.** Vendor and each of the Acquired Subsidiaries has, in accordance with Applicable Law, invoiced, collected, withheld, reported, paid and remitted to the appropriate taxing authority (within the time prescribed) all sales, transfer, use customs, goods and services and other taxes which are due and payable by Vendor with respect to the Purchased Assets.

**Section 2.14 Compliance with Applicable Law.** Vendor and each of its subsidiaries has complied, and is now complying, with all Applicable Law in the operation of the Business and the ownership and use of the Purchased Assets.

For the purposes of this Agreement, "**Applicable Law**" means all applicable principles of common law and all applicable (i) laws, regulations, constitutions, treaties, statutes, codes, ordinances, orders, decrees, rules and by-laws (ii) judgments, orders, writs, injunctions, decisions, awards and directives of any Governmental Authority and (iii) policies, guidelines, notices and protocols of any Governmental Authority.

### **Section 2.15 Legal Proceedings.**

- (a) Except as disclosed in Schedule 2.15(a) attached hereto, there are no claims, actions, suits, grievances, arbitrations, alternative dispute resolution processes, proceedings or governmental investigations (each, an "**Action**") of any nature pending or, to Vendor's Knowledge, threatened against or by Vendor or any of its subsidiaries relating to or affecting the Business, the Purchased Assets or the Owned IP which involve or could reasonably be expected to involve (i) the payment of monetary damages exceeding \$35,000, on an individual basis, (ii) a regulatory or enforcement Action by a Governmental Authority with respect to any non-compliance of the Business with Applicable Laws, (iii) consumer contractual Actions which, in the aggregate, are material and adverse to the Business, (iv) the non-arms' length affiliation of plaintiffs in multiple Actions, (v) the certification of multiple Actions as a class proceeding, or (vi) the consolidation of multiple Actions commenced by the same plaintiff. There is no Action of any nature pending or, to Vendor's Knowledge, threatened against or by Vendor or any of its subsidiaries that challenges or seek to prevent, enjoin or otherwise delay the transactions contemplated by this Agreement. To the Vendor's Knowledge, no event has occurred or circumstances exist that may give rise to, or serve as a basis for, any such Action. Neither Vendor nor any of its subsidiaries is subject to any judgment, order or decree entered in any lawsuit or proceeding.
- (b) Except as disclosed in Schedule 2.15(b) attached hereto, in the last three (3) years, neither Vendor nor any of its subsidiaries has settled any material claim, in excess of \$35,000, prior to being prosecuted in respect of it. No amounts in connection with or relating to any such settlement (of any amount) remain payable by any Acquired Subsidiary.

**Section 2.16 Sufficiency of Assets.** The Purchased Assets, together with the Owned IP, include all property and rights necessary to enable Purchaser to carry on the Business after the Closing substantially in the same manner as it was conducted by Vendor prior to the Closing.

**Section 2.17 Books and Records.** All books and records of Vendor relating to the Business and each of the Acquired Subsidiaries have been fully, properly and accurately kept and completed in all material respects including all books of account, personnel records, sales and purchase records, customer and supplier lists, lists of potential customers, referral sources, research and development reports and records, production reports and records, equipment logs, operating guides and manuals, business reports, plans and projections, marketing and advertising materials (collectively, the "**Books and Records**"). The Books and Records and other data and or information relating to the Business are not recorded, stored, maintained, operated or otherwise wholly or partly dependent upon or held by any means (including any electronic, mechanical or photographic process, whether computerized or not) which will not be available to Purchaser in the ordinary course.

**Section 2.18 Financial Statements.** Attached as Schedule 2.18 hereto are complete, true and complete copies of (i) the unaudited consolidated balance sheet dated June 30, 2020 and the accompanying consolidated statement of profit and loss of Vendor with respect to the Business for the nine-month period ended June 30, 2020 and (ii) the audited consolidated financial statements of Vendor for the fiscal year ending October 30, 2019, consisting of a consolidated balance sheet and the accompanying consolidated statement of deficit, consolidated statement of income (loss) and consolidated statements of cash flows and all notes to them, together with a report of the auditors, Ernst & Young LLP, Chartered Professional Accountants (collectively, the "**Financial Statements**").

**Section 2.19 Customers and Suppliers.** Schedule 2.19 attached hereto contains a true and complete list setting forth the 15 largest customers and the 15 largest suppliers of the Business by dollar amount as at the date of this Agreement. Vendor has no reason to believe that the benefits of any relationship with any of such major customers or suppliers of the Business will not continue after the Closing Date in substantially the same manner as prior to the date of this Agreement.

## **Section 2.20 Intellectual Property.**

- (a) Schedule 2.20 attached hereto includes a complete and accurate list of (i) all registered patents, trademarks industrial designs, copyrights and domain names owned by Vendor and its subsidiaries, and all such registrations are subsisting, valid and enforceable and (ii) all material unregistered Intellectual Property and Intellectual Property Rights owned by Vendor and its subsidiaries.
- (b) Except for the Software Applications (as defined below), Vendor is the sole and exclusive legal and beneficial owner of the entire right, title, and interest in and to the Business IP, free and clear of all Encumbrances. Vendor is the legal and beneficial rights holder of right and interest in and to the Software Applications, free and clear of all Encumbrances.
- (c) The Owned IP and software licensed to Vendor from third parties, all of which software licenses are disclosed in Schedule 2.20(c) ("**Software Applications**") comprise all of the Intellectual Property and Intellectual Property Rights used by Vendor in the operation of the Business (collectively, the "**Business IP**").

- (d) Neither Vendor nor any of its subsidiaries has granted any licenses, liens, security interests, or other encumbrances in, to, or under the Business IP.
- (e) The use of the Business IP in the conduct of the Business has not infringed, misappropriated or resulted in passing-off, or otherwise violate, encroach upon or conflict with the rights of any other person.
- (f) No person has filed a written claim or given Vendor or any of its subsidiaries notice prior to the date hereof alleging that the use of the Business IP in association with the conduct of the Business has infringed on, misappropriated, passed-off or otherwise violated, encroached upon or was in conflict with the rights of such person.
- (g) Vendor is not aware of any person who is currently infringing, misappropriating, passing-off, or otherwise violating, encroaching upon or in conflict with the Business IP.
- (h) Vendor has not received any legal opinion that advises that any of the trademarks included in the Business IP are unregistrable, and to Vendor's Knowledge, there are no impediments to registering the trademarks included in the Business IP.
- (i) For the purposes of this Agreement, "**Intellectual Property**" shall mean all intellectual property in any jurisdiction including:
  - (i) trade-marks, design marks, logos, service marks, certification marks, official marks, trade names, business names, corporate names, service names, trade dress, distinguishing guises, slogans, meta tags, keywords, adwords and other characters, brand elements or other distinguishing features used in association with wares or services and other identifiers of origin, whether or not registered or the subject of an application for registration and whether or not registrable, and associated goodwill;
  - (ii) inventions, invention disclosures, arts, processes, machines, articles of manufacture, compositions of matter, business methods, formulae, developments, discoveries and improvements, whether or not patented or the subject of an application for patent and whether or not patentable and whether or not reduced to practice, methods and processes for making any of them, and related documentation (whether in written or electronic form) and know-how;
  - (iii) writings, designs, data, website content, webpages, marketing materials, and other works of authorship and databases (or other collections or compilations of information, data, works or other materials), software, documentation, literary works, artistic works, pictorial works, graphic works, musical works, dramatic works, audio visual works, performances, sound recordings and signals, including their content, and any compilations of any of them, whether or not registered or the subject of an application for registration, or capable of being registered, including, and all moral rights;
  - (iv) internet domain names, whether registered primary domain names or secondary or other higher level domain names;

- (v) utility models, industrial designs and all variants of industrial designs, whether or not registered or the subject of an application for registration and whether or not registrable;
- (vi) rights of publicity and other rights to use the names and likeness of individuals; and
- (vii) confidential proprietary information, including technical information and including trade secrets (including those trade secrets defined in the United States Uniform Trade Secrets Act and under corresponding other Applicable Laws), business, marketing, technical and know-how information, procedures, research records, test information, market surveys, specifications, product designs, plans, compositions, algorithms, research and development data, technical data, tools, other non-public or confidential information and rights to limit the use or disclosure thereof by any person, in each case, that derive independent economic value, actual or potential, from not being generally known to, or not readily ascertainable through proper means by, other persons.

(j) For the purposes of this Agreement, "**Intellectual Property Rights**" means any common law principle or statutory provision in any jurisdiction of the world which may provide a right in or to Intellectual Property, including any and all common law rights and registrations (including domain name registrations), pending applications for registration and rights to file applications, and all rights to enforce the rights and obtain remedies for a violation of any such rights, and all claims, causes of action and defenses relating to the enforcement of any of the foregoing.

(k) The information technology assets used in the Business, including the Software Applications (the "**Business IT Assets**"), are in an operating condition sufficient for the use to which such assets are put, having regard to the age thereof and normal wear and tear, and have not failed in any material respect since January 1, 2019. The Vendor has taken all precautions to preserve the availability, security and integrity of the Business IT Assets and the data and information stored on the Business IT Assets, and, to the Knowledge of the Seller, the Business IT Assets have not been compromised or breached since the commencement of the Business. The Vendor has disaster recovery plans in place that are appropriate, in accordance with industry practice, to minimize the disruption of the Business in the event of any failure of all or part of the Business IT Assets.

## Section 2.21 Employees.

- (a) Vendor and each of its subsidiaries is in compliance with all terms and conditions of employment and Applicable Law respecting employment, including pay equity, wages, hours of work, overtime, human rights and occupational health and safety, and there are no outstanding claims, complaints, investigations or orders under any such Applicable Law and, to Vendor's Knowledge, there is no basis for such claim.
- (b) Vendor and each of its subsidiaries have not and are not engaged in any unfair labour practice and no unfair labour practice complaint, grievance or arbitration

proceeding is pending or, to Vendor's Knowledge, threatened against Vendor or any of its subsidiaries.

- (c) There is no collective agreement in force with respect to the Business or those individuals listed in Schedule 2.21(g) attached hereto (the "**Employees**"). Nor is there any Contract with any employee association in respect of the Business or the Employees.
- (d) No trade union, council of trade unions, employee bargaining agency or affiliated bargaining agent holds bargaining rights with respect to any of the Employees by way of certification, interim certification, voluntary recognition, or succession rights, or has applied or, to Vendor's Knowledge, threatened to apply to be certified as the bargaining agent of the Employees. To Vendor's Knowledge, there are no threatened or pending union organizing activities involving any Employees. There is no labour strike, dispute, work slowdown or stoppage pending or involving or, to Vendor's Knowledge, threatened against Vendor or its subsidiaries in respect of the Business and no such event has occurred within the last five (5) years.
- (e) No trade union has applied to have Vendor or any of its subsidiaries declared a common or related employer pursuant to the *Labour Relations Act* (Ontario) or any similar legislation in any jurisdiction in which Vendor or its subsidiaries carries on business.
- (f) All amounts due or accrued due for all salary, wages, bonuses, commissions, vacation with pay, sick days and benefits under the Employee Plans (as defined below) have either been paid or are accurately reflected in the Books and Records.
- (g) Schedule 2.21(g) attached hereto contains a correct and complete list of each Employee and independent contractor/consultant of Vendor and its subsidiaries employed or retained in connection with the Business, as of five (5) business days prior to closing, whether actively at work or not, showing without names or employee numbers their salaries, wage rates, commissions and consulting fees, bonus arrangements, benefits, positions, status as full-time or part-time employees, location of employment, cumulative length of service with the Business and whether they are subject to a written employment agreement. Schedule 2.21(g) attached hereto contains for each Employee their annual vacation entitlement in days, their accrued and unused vacation days as of two (2) weeks prior to Closing, any other annual paid time off entitlement in days and their accrued and unused days or such other paid time off as of two (2) weeks prior to Closing. Schedule 2.21(g) attached hereto lists any Employee currently on leave, together with the type of leave and their expected date of return to work if known.
- (h) Except as disclosed in Schedule 2.21(g) attached hereto, no Employee has any agreement as to length of notice or severance payment required to terminate his or her employment that is greater than six (6) months, other than such as results by Applicable Law from the employment of an employee without an agreement as to notice or severance.
- (i) Each independent contractor who is disclosed in Schedule 2.21(g) attached hereto has been properly classified by Vendor and its subsidiary as an independent contractor and neither Vendor nor any of its subsidiaries has, to the Vendor's

Knowledge, received any notice from any Governmental Authority disputing such classification.

- (j) Except as disclosed in Schedule 2.21(g) attached hereto, no Employee is employed pursuant to a work permit issued by Canada Immigration. Schedule 2.21(g) attached hereto discloses in respect of each Employee who is employed pursuant to a work permit the expiry date of such work permit and whether Vendor or any of its subsidiaries has made any attempts to renew such work permit.
- (k) There are no outstanding assessments, penalties, fines, liens, charges, surcharges, or other amounts due or owing pursuant to any workplace safety and insurance legislation in respect of the Business and neither Vendor nor any of its subsidiaries has been reassessed in any material respect under such legislation during the past three (3) years and, to Vendor's knowledge, no audit of the Business is currently being performed pursuant to any applicable workplace safety and insurance legislation. There are no claims or potential claims which may materially adversely affect Vendor's or any of its subsidiaries' accident cost experience in respect of the Business.
- (l) Vendor has provided to Purchaser all orders and inspection reports under applicable occupational health and safety legislation ("OHSA") relating to the Business. There are no charges pending under OHSA in respect of the Business. Vendor and each of its subsidiaries has complied in all material respects with any orders issued under OHSA in respect of the Business and there are no appeals of any orders under OHSA currently outstanding.
- (m) Schedule 2.21(m) attached hereto contains a correct and complete list of each employee benefit, fringe benefit, supplemental unemployment benefit, bonus, incentive, profit sharing, termination, change of control, pension, retirement, savings, stock option, stock purchase, stock appreciation, health, welfare, medical, dental, disability, life insurance and similar plans, programmes, arrangements or practices relating to Employees, former employees, officers or directors of Vendor or its subsidiaries maintained, sponsored or funded by Vendor or its subsidiaries, whether written or oral, funded or unfunded, insured or self-insured, registered or unregistered under which Vendor or any of its subsidiaries may have any liability contingent or otherwise, other than benefit plans established pursuant to statute (the "**Employee Plans**"). Vendor has furnished to Purchaser true, correct and complete copies of all the Employee Plans as amended as of the date hereof, together with all related documentation. No changes have occurred or are expected to occur which would materially affect the information required to be provided to Purchaser pursuant to this provision.
- (n) No Employee Plan is or is intended to be a "registered pension plan", "deferred profit sharing plan", or a "retirement compensation arrangement" as such terms are defined in the *Income Tax Act* (Canada). None of the Employee Plans provide for benefits to retired or terminated employees or to the beneficiaries or dependents of retired or terminated employees.
- (o) All Employee Plans have been registered and administered in material compliance with Applicable Law and the Employee Plan terms. The Acquired Subsidiaries

have made all contributions and paid all premiums in respect of each Employee Plan in a timely fashion in accordance with the terms of each Employee Plan and Applicable Laws. All Employee Plans that provide group benefits are established through a contract of insurance, and no retroactive increase in premiums is permitted thereunder.

- (p) None of the Acquired Subsidiaries has any Employees.

### **Section 2.22 Acquired Subsidiaries.**

- (a) Except for the Acquired Subsidiaries and the subsidiaries set out in Schedule 2.22(a) attached hereto (the "**Excluded Subsidiaries**"), Vendor has no subsidiaries, directly or indirectly, and does not own, hold or control any shares or other ownership, equity or other proprietary interests in any other person. Vendor is the registered and beneficial owner of all of the issued and outstanding shares of the Acquired Subsidiaries, as set out in Schedule 1.01 attached hereto, which shares have been duly and validly issued and are outstanding as fully paid and non-assessable and issued in compliance with Applicable Laws, with good and legal title thereto, free and clear of all Encumbrances.
- (b) Except as set forth on Schedule 2.22(b) attached hereto, (i) each of the Acquired Subsidiaries is duly incorporated and validly existing under the laws of its jurisdiction of incorporation and has not been discontinued or dissolved under such law, (ii) the Acquired Subsidiaries have no subsidiaries, directly or indirectly, and do not own, hold or control any shares or other ownership, equity or other proprietary interests in any other person, (iii) since their respective date of incorporation, none of the Acquired Subsidiaries has ever conducted any business or owned any assets, had any employees, held any property or assets or any interests therein of any nature or kind whatsoever (including any Intellectual Property), or entered into or became a party to any Contract or agreement of any nature or kind whatsoever other than as contracting agent for purposes of complying with Applicable Laws in certain jurisdictions on behalf of the Vendor in the operation of the Business prior to the Closing in accordance with Applicable Law, and (iv) at the Closing, the Acquired Subsidiaries have no obligations, liabilities (whether actual, contingent or otherwise) or indebtedness to any person.

**Section 2.23 Inventory.** The inventory included in the Purchased Assets is good and usable and is capable of being processed and sold or leased in the ordinary course at normal profit margins. The inventory levels of the Business have been maintained at levels sufficient for the continuation of the Business in the ordinary course. All the inventories of the Business have been determined and valued in accordance with ASPE and consistent with past practice.

For purposes of this Agreement, "**ASPE**" means accounting principles generally accepted in Canada for private enterprises as issued by the Chartered Professional Accountants of Canada at the relevant time as applied by the relevant person on a basis consistent with the past practice of such person.

### **Section 2.24 Real Property.**

- (a) Vendor and each of the Acquired Subsidiaries is not the owner of, has never owned, and is not subject to any agreement or option to own, any real property or

any interest in any real property which is used or to be used in or connection with the Business or the Purchased Assets.

(b) Vendor and each of the Acquired Subsidiaries is not a party to, or under any agreement to become a party to, any leases with respect to real property which is used or to be used in or in connection with the Business or the Purchased Assets, other than the Office Lease. The Office Lease is in good standing, creates a good and valid leasehold estate in the Leased Property thereby demised and is in full force and effect without amendment. With respect to the Office Lease (i) the Office Lease (or a notice in respect of the Office Lease) has been properly registered in the appropriate land registry office, (ii) all rents and additional rents have been paid by Vendor, (iii) no waiver, indulgence or postponement of Vendor's obligations has been granted by the lessor, (iv) there exists no event of default or event, occurrence, condition or act which, with the giving of notice, the lapse of time or the happening of any other event or condition, would become a default under the Office Lease, and (v) to the knowledge of Vendor, all of the covenants to be performed by any other party under the Office Lease have been fully performed.

**Section 2.25 Solvency.** Immediately after giving effect to the transactions contemplated hereby, Vendor will be able to pay its liabilities as they become due and will own assets which have a fair saleable value greater than the amounts required to pay its liabilities (including a reasonable estimate of the amount of all contingent liabilities). Immediately after giving effect to the transactions contemplated hereby, Vendor will have adequate capital to carry on its businesses. No transfer of property is being made and no obligation is being incurred in connection with the transactions contemplated by this Agreement with the intent to hinder, delay or defraud either present or future creditors of Vendor.

**Section 2.26 Insurance.** Vendor and each of the Acquired Subsidiaries maintains insurance policies with recognized insurers as are appropriate in respect of the Business and the Purchased Assets in such amounts and against such risks as are customarily carried and insured against by prudent owners of comparable assets. All such policies of insurance coverage are in full force and effect. Neither Vendor nor any of the Acquired Subsidiaries is in default with respect to any of the provisions contained in any such insurance policy or give any notice or present any claim under any such insurance policy in due and timely fashion. To the Vendor's Knowledge, there are no circumstances in respect of which any person could make a claim under any insurance policy. Complete, true and correct copies of all such insurance policies have been delivered to Purchaser.

**Section 2.27 Brokers.** Except as disclosed on Section 2.27, no broker, finder or investment banker is entitled to any brokerage, finder's or other fee or commission in connection with the transactions contemplated by this Agreement or the IP License Agreement based upon arrangements made by or on behalf of Vendor or any of the Acquired Subsidiaries.

**Section 2.28 Full Disclosure.** No representation or warranty by Vendor in this Agreement or any certificate or other document furnished or to be furnished to Purchaser under or pursuant to this Agreement contains any untrue statement of a material fact, or omits to state a material fact necessary to make the statements contained therein, in light of the circumstances in which they are made, not misleading. There is no fact known to Vendor which materially and adversely affects the affairs, operations or condition of Vendor, the Business, the Purchased Assets or the Owned IP which has not been set forth in this Agreement.

## **ARTICLE III** **Representations and Warranties of Guarantor**

Guarantor represents and warrants to Purchaser and Topco that the statements contained in this ARTICLE III are true and correct as of the date hereof. For the purposes of this ARTICLE III, "Guarantor's Knowledge" and any similar phrases shall mean the actual knowledge of any shareholder, director or officer of Guarantor, after due and diligent inquiry.

**Section 3.01 Incorporation and Authority Guarantor; Enforceability.** Guarantor is a corporation incorporated and validly existing under the laws of the Province of Ontario that has not been discontinued or dissolved under such laws. Guarantor has the requisite corporate power and capacity to enter into this Agreement and the documents to be delivered hereunder, to carry out its obligations hereunder and to consummate the transactions contemplated hereby. The execution, delivery and performance by Guarantor of this Agreement and the documents to be delivered hereunder and the consummation of the transactions contemplated hereby have been duly authorized by all requisite corporate action on the part of Guarantor. This Agreement and the documents to be delivered hereunder have been duly executed and delivered by Guarantor, and (assuming due authorization, execution and delivery by Vendor, Purchaser, Topco and Dealnet Acquiror) Guarantor hereby acknowledges that this Agreement and the documents to be delivered hereunder constitute legal, valid and binding obligations of Guarantor enforceable against it in accordance with their respective terms.

**Section 3.02 No Conflicts; Consents.** The execution, delivery and performance by Guarantor of this Agreement and the documents to be delivered hereunder, and the consummation of the transactions contemplated hereby, do not and will not (with or without notice or lapse of time or both):

- (a) violate, breach or conflict with, or allow any person to exercise any rights under, the articles of incorporation, by-laws or any unanimous shareholder agreement of Guarantor; or
- (b) violate or conflict with or result any judgment, order, decree, statute, Applicable Law, ordinance, rule or regulation applicable to Guarantor.

No consent, approval, waiver or authorization is required to be obtained by Guarantor from any person or entity (including any Governmental Authority) in connection with the execution, delivery and performance by Guarantor of this Agreement and the consummation of the transactions contemplated hereby.

**Section 3.03 Legal Proceedings.** There is no Action of any nature pending or, to Guarantor's Knowledge, threatened against or by Guarantor that challenges or seeks to prevent, enjoin or otherwise delay the transactions contemplated by this Agreement. To the extent of Guarantor's Knowledge, no event has occurred or circumstances exist that may give rise to, or serve as a basis for, any such Action.

**Section 3.04 Brokers.** No broker, finder or investment banker is entitled to any brokerage, finder's or other fee or commission in connection with the transactions contemplated by this Agreement or the IP License Agreement based upon arrangements made by or on behalf of Guarantor.

### **Section 3.05 GST/HST Registration.**

- (a) Guarantor is duly registered for purposes of the GST/HST Act.
- (b) Guarantor is, in turn, acquiring under this Agreement all or substantially all of the property that can reasonably be regarded as being necessary for it to operate the Business.

## **ARTICLE IV** **Representations and Warranties of Purchaser**

Purchaser represents and warrants to Vendor that the statements contained in this ARTICLE IV are true and correct as of the date hereof. For the purposes of this ARTICLE IV, "Purchaser's Knowledge" and any similar phrases shall mean the actual knowledge of any director (excluding, for greater certainty, any director to be appointed effective as of Closing) or officer of Purchaser, after due and diligent inquiry.

**Section 4.01 Incorporation and Authority of Purchaser; Enforceability.** Purchaser is a corporation incorporated and validly existing under the laws of the Province of Ontario that has not been discontinued or dissolved under such laws. Purchaser has the requisite corporate power and capacity to enter into this Agreement and the documents to be delivered hereunder, to carry out its obligations hereunder and to consummate the transactions contemplated hereby. The execution, delivery and performance by Purchaser of this Agreement and the documents to be delivered hereunder and the consummation of the transactions contemplated hereby have been duly authorized by all requisite corporate action on the part of Purchaser. This Agreement and the documents to be delivered hereunder have been duly executed and delivered by Purchaser, and (assuming due authorization, execution and delivery by Vendor, Guarantor, Topco and Dealnet Acquireco) Purchaser hereby acknowledges that this Agreement and the documents to be delivered hereunder constitute legal, valid and binding obligations of Purchaser enforceable against it in accordance with their respective terms.

**Section 4.02 No Conflicts; Consents.** The execution, delivery and performance by Purchaser of this Agreement and the documents to be delivered hereunder, and the consummation of the transactions contemplated hereby, do not and will not (with or without notice or lapse of time or both):

- (a) violate, breach or conflict with, or allow any person to exercise any rights under, the articles of incorporation, by-laws or any unanimous shareholder agreement of Purchaser; or
- (b) violate or conflict with or result any judgment, order, decree, statute, Applicable Law, ordinance, rule or regulation applicable to Purchaser.

No consent, approval, waiver or authorization is required to be obtained by Purchaser from any person or entity (including any Governmental Authority) in connection with the execution, delivery and performance by Purchaser of this Agreement and the consummation of the transactions contemplated hereby.

**Section 4.03 Legal Proceedings.** There is no Action of any nature pending or, to Purchaser's Knowledge, threatened against or by Purchaser that challenges or seeks to prevent, enjoin or otherwise delay the transactions contemplated by this Agreement. To the extent of Purchaser's Knowledge, no event has occurred or circumstances exist that may give rise to, or serve as a basis for, any such Action.

**Section 4.04 Brokers.** No broker, finder or investment banker is entitled to any brokerage, finder's or other fee or commission in connection with the transactions contemplated by this Agreement or the IP License Agreement based upon arrangements made by or on behalf of Purchaser.

## **ARTICLE V** **Representations and Warranties of Topco**

Topco represents and warrants to Vendor that the statements contained in this ARTICLE V are true and correct as of the date hereof. For the purposes of this ARTICLE V, "Topco's Knowledge" and any similar phrases shall mean the actual knowledge of any director (excluding, for greater certainty, any director to be appointed effective as of Closing) or officer of Topco, after due and diligent inquiry.

**Section 5.01 Incorporation and Authority of Topco; Enforceability.** Topco is a corporation incorporated and validly existing under the laws of the Province of Ontario. Topco has the corporate power and capacity to enter into this Agreement and the documents to be delivered hereunder, to carry out its obligations hereunder and to consummate the transactions contemplated hereby. The execution, delivery and performance by Topco of this Agreement and the documents to be delivered hereunder and the consummation of the transactions hereby have been duly authorized by all requisite corporate action on the part of Topco. This Agreement and the documents to be delivered hereunder have been duly executed and delivered by Topco, and (assuming due authorization, execution and delivery by Vendor, Purchaser, Guarantor and Dealnet Acquireco) Topco hereby acknowledges that this Agreement and the documents to be delivered hereunder constitute legal, valid and binding obligations of Topco enforceable against it in accordance with their respective terms.

**Section 5.02 No Conflicts; Consents.** The execution, delivery and performance by Topco of this Agreement and the documents to be delivered hereunder, and the consummation of the transactions contemplated hereby, do not and will not (with or without notice or lapse of time or both):

- (a) violate, breach or conflict with, or allow any person to exercise any rights under, the articles of incorporation, by-laws or any unanimous shareholder agreement of Topco; or
- (b) violate or conflict with or result any judgment, order, decree, statute, Applicable Law, ordinance, rule or regulation applicable to Topco.

No consent, approval, waiver or authorization is required to be obtained by Topco from any person or entity (including any Governmental Authority) in connection with the execution, delivery and performance by Topco of this Agreement and the consummation of the transactions contemplated hereby.

**Section 5.03 Legal Proceedings.** There is no Action of any nature pending or, to Topco's Knowledge, threatened against or by Topco that challenges or seeks to prevent, enjoin or otherwise delay the transactions contemplated by this Agreement. To the extent of Topco's Knowledge, no event has occurred or circumstances exist that may give rise to, or serve as a basis for, any such Action.

**Section 5.04 Brokers.** No broker, finder or investment banker is entitled to any brokerage, finder's or other fee or commission in connection with the transactions contemplated by this Agreement or the IP License Agreement based upon arrangements made by or on behalf of Topco.

**Section 5.05 GST/HST Registration.**

- (a) Topco is duly registered for purposes of the GST/HST Act.
- (b) Topco is, in turn, acquiring under this Agreement all or substantially all of the property that can reasonably be regarded as being necessary for it to operate the Business.

**ARTICLE VI**  
**Representations and Warranties of Dealnet Acquireco**

Dealnet Acquireco represents and warrants to Purchaser and Topco that the statements contained in this ARTICLE VI are true and correct as of the date hereof. For the purposes of this ARTICLE VI, "Dealnet Acquireco's Knowledge" and any similar phrases shall mean the actual knowledge of any director (excluding, for greater certainty, any director to be appointed effective as of Closing) or officer of Dealnet Acquireco, after due and diligent inquiry.

**Section 6.01 Incorporation and Authority of Dealnet Acquireco; Enforceability.** Dealnet Acquireco is a corporation incorporated and validly existing under the laws of the Province of Ontario. Dealnet Acquireco has the corporate power and capacity to enter into this Agreement and the documents to be delivered hereunder, to carry out its obligations hereunder and to consummate the transactions contemplated hereby. The execution, delivery and performance by Dealnet Acquireco of this Agreement and the documents to be delivered hereunder and the consummation of the transactions hereby have been duly authorized by all requisite corporate action on the part of Dealnet Acquireco. This Agreement and the documents to be delivered hereunder have been duly executed and delivered by Dealnet Acquireco, and (assuming due authorization, execution and delivery by Vendor, Purchaser, Guarantor and Topco) Dealnet Acquireco hereby acknowledges that this Agreement and the documents to be delivered hereunder constitute legal, valid and binding obligations of Dealnet Acquireco enforceable against it in accordance with their respective terms.

**Section 6.02 No Conflicts; Consents.** The execution, delivery and performance by Dealnet Acquireco of this Agreement and the documents to be delivered hereunder, and the consummation of the transactions contemplated hereby, do not and will not (with or without notice or lapse of time or both):

- (a) violate, breach or conflict with, or allow any person to exercise any rights under, the articles of incorporation, by-laws or any unanimous shareholder agreement of Dealnet Acquireco; or
- (b) violate or conflict with or result any judgment, order, decree, statute, Applicable Law, ordinance, rule or regulation applicable to Dealnet Acquireco.

No consent, approval, waiver or authorization is required to be obtained by Dealnet Acquireco from any person or entity (including any Governmental Authority) in connection with the execution, delivery and performance by Dealnet Acquireco of this Agreement and the consummation of the transactions contemplated hereby.

**Section 6.03 Legal Proceedings.** There is no Action of any nature pending or, to Dealnet Acquireco's Knowledge, threatened against or by Dealnet Acquireco that challenges or seeks to prevent, enjoin or otherwise delay the transactions contemplated by this Agreement. To the extent of Dealnet Acquireco's Knowledge, no event has occurred or circumstances exist that may give rise to, or serve as a basis for, any such Action.

**Section 6.04 Brokers.** No broker, finder or investment banker is entitled to any brokerage, finder's or other fee or commission in connection with the transactions contemplated by this Agreement based upon arrangements made by or on behalf of Dealnet Acquireco.

**Section 6.05 GST/HST Registration.**

- (a) Dealnet Acquireco is duly registered for purposes of the GST/HST Act.
- (b) Dealnet Acquireco is, in turn, acquiring under this Agreement all or substantially all of the property that can reasonably be regarded as being necessary for it to operate the Business.

**ARTICLE VII**  
**Additional Covenants**

**Section 7.01 Further Assurances.** Following the Closing, each of the parties hereto shall execute and deliver such additional documents, instruments, conveyances and assurances and take such further actions as may be reasonably required to carry out the provisions hereof and give effect to the transactions contemplated by this Agreement and the documents to be delivered hereunder.

**Section 7.02 Transfer of the Purchased Assets.** Vendor shall take all necessary steps and proceedings to permit good and valid title to the Purchased Assets be duly and validly transferred and assigned to Purchaser at the Closing in compliance with Applicable Laws, free and clear of all Encumbrances.

**Section 7.03 Full Benefit of Purchased Assets.** In order for Purchaser to realize the full benefit of the Purchased Assets: (a) Vendor will, at the request and direction of Purchaser and in the name of Vendor or otherwise as Purchaser may specify, take all action and do or cause to be done all things that are, in the opinion of Purchaser, necessary or proper in order for the obligations of Vendor to be performed in accordance with this Agreement and in such a manner that the value of the Purchased Assets are preserved and enure to the benefit of Purchaser, and

that the collection of moneys due and payable to Purchaser in and under the Purchased Assets are received by Purchaser; (b) Vendor will promptly pay over to Purchaser all moneys collected by or paid to Vendor in respect of every Purchased Asset; and (c) in the event that there are any Purchased Assets for which good and valid title is not duly and validly transferred and assigned to Purchaser at the Closing, Vendor will (i) continue to use its best efforts to transfer the Purchased Assets to Purchaser with good and valid title, free and clear of all Encumbrances and (ii) hold such Purchased Assets in trust for the benefit of Purchaser. For greater certainty, Purchaser shall be entitled to specific performance with respect to the transfer of any such Purchased Assets with good and valid title, free and clear of all Encumbrances, in addition to all other remedies available under this Agreement.

**Section 7.04 Non-Assigned Contracts.** In the event that (i) there are any Assigned Contracts which are not assignable in whole or in part without the consent, approval or waiver of another party or parties to them, (ii) such consents, approvals or waivers have not yet been obtained as of the Closing Date on terms satisfactory to Purchaser, acting reasonably and (iii) Purchaser has waived the closing condition relating to such consents, approvals and waivers, then:

- (a) nothing in this Agreement nor any document delivered hereunder will be construed as an assignment of any such Assigned Contract (the "**Non-assigned Contract**");
- (b) Vendor will:
  - (i) continue to use its best efforts to obtain the consents, approvals and waivers that are required to assign the Non-assigned Contracts to Purchaser, on terms satisfactory to Purchaser, acting reasonably and Purchaser will co-operate in obtaining such consents, approvals and waivers;
  - (ii) hold the Non-assigned Contracts in trust for the benefit of Purchaser;
  - (iii) take all actions described in Section 7.03 in respect of the Non-Assigned Contracts; and
- (c) once the consent, approval or waiver to the assignment of a Non-assigned Contract is obtained, such Non-assigned Contract is deemed to be assigned to Purchaser and Purchaser is deemed to assume the obligations under such Non-assigned Contract.

**Section 7.05 Employee Offers.**

- (a) Subject to the Closing and the terms of this Section 7.05, Purchaser agrees to offer employment effective as of the Closing Date to all of the individuals listed on Part A of Schedule 7.05 attached hereto and Topco agrees to offer employment effective as of the Closing Date to all of the individuals listed on Part B Schedule 7.05 attached hereto (collectively, the "**Designated Employees**"). Despite the foregoing, Purchaser and Topco will not be obliged to offer employment to any Designated Employee who is absent from work on the Closing Date unless he or she is able to resume active employment within twelve months of the Closing Date, in which case Purchaser or Topco, as applicable, shall make an offer of employment in accordance with this Section 7.05(a) effective as of the date on

which such Designated Employee commences active employment with Purchaser or Topco, as applicable.

- (b) Vendor shall not attempt in any way to discourage Designated Employees from accepting the offer of employment made by Purchaser.
- (c) In this Agreement, "**Transferred Employees**" means those Designated Employees who have accepted either Purchaser's offer of employment (the "**Purchaser Transferred Employees**") or Topco's offer of employment (the "**Topco Transferred Employees**") made pursuant to Section 7.05(a) and "**Employee Start Time**" means the Closing or such later time as of which a Transferred Employee commences active employment with Purchaser.

#### **Section 7.06 Employee Plan Liability.**

- (a) Except as specifically requested by Purchaser or Topco in writing to Vendor, neither the Purchaser nor Topco shall assume any of the Employee Plans or liability for accrued benefits or any other liability under or in respect of any of the Employee Plans.
- (b) Subject to Section 7.06(a), the Transferred Employees shall, as of their applicable Employee Start Time or such other date as may be specified in the Transition Services Agreement, cease to accrue further benefits under the Employee Plans. Each of Purchaser and Topco agrees that it shall permit the Transferred Employees to participate in any benefit plans sponsored by Purchaser or Topco, as applicable (such plans to be called the "**Replacement Plans**").

#### **Section 7.07 Employee Liability.**

- (a) Without limiting Vendor's obligations in respect of persons employed in the Business prior to the Closing Date, Vendor shall be responsible for:
  - (i) all liabilities for salary, wages, bonuses, commissions, vacation pay and other compensation relating to employment of all persons in the Business prior to the Closing Date and all liabilities under or in respect of the Employee Plans;
  - (ii) all severance payments, damages for wrongful dismissal and all related costs in respect of the termination by Vendor of the employment of any employee of Vendor, including all Designated Employees and Transferred Employees;
  - (iii) all liabilities for claims for injury, disability, death or workers' compensation arising from or related to employment in the Business prior to the Closing Date; and
  - (iv) all employment-related claims, penalties and assessments in respect of Vendor and the Business arising out of matters which occurred prior to the Closing Date or as a result of the execution of this Agreement or consummation of the transactions contemplated hereby, whether currently existing or hereinafter created, including those liabilities, obligations and

costs relating to or arising out of any employment agreement, severance rights of employees of Vendor, employment discrimination, unfair labour practices, wage and hour laws, health and safety, workers compensation, wrongful discharge, compensation, fringe benefits, insurance, employee benefit plans, pensions, retiree medical, vacations, bonuses, torts, accidents, disabilities, injuries, sickness, exposure to harmful conditions, breach of oral or written employment Contracts or collective bargaining agreements, or breach of law, statute, judgment, decree, injunction, order, write, rule or regulation of any Governmental Authority.

- (b) Without limiting Purchaser's or Topco's obligations in respect of the Transferred Employees, as applicable, after the Closing, Purchaser and Topco, as applicable, shall be responsible for:
  - (i) all liabilities for salary, wages, bonuses, commissions, vacation pay, and other compensation relating to the employment of all Transferred Employees on and after the applicable Employee Start Time and all liabilities under or in respect of the Replacement Plans arising out of matters which occur on or after the applicable Employee Start Time;
  - (ii) all liabilities for claims for injury, disability, death or workers' compensation arising from or related to employment of the Transferred Employees in the Business arising out of matters which occur on or after the applicable Employee Start Time; and
  - (iii) all employment-related claims, penalties and assessments in respect of the Business arising out of matters which occur on or subsequent to the Closing.
- (c) For purposes of Sections 7.07(a)(i) and (iii) and Sections 7.07(b)(i) and (ii), the date on which a benefit claim arises, occurs or is incurred will be:
  - (i) in the case of a death claim, the date of death;
  - (ii) in the case of a short term disability claim, long term disability claim or a life insurance premium waiver claim, the date of the first incidence of disability, illness, injury or disease that first qualifies an individual for benefits or to commence a qualifying period for benefits;
  - (iii) in the case of extended health care benefits, including dental and medical treatments, the date of treatment or the date of purchase of eligible medical or dental supplies; and
  - (iv) in the case of a claim for drug or vision benefits, the date the prescription was filled.

**Section 7.08 Replaced Contracts.** Vendor shall, and Guarantor shall cause Vendor to, use its best efforts to arrange for the execution of new Contracts with Purchaser or any of its affiliates (other than any shareholders of Topco), as instructed by Purchaser, in replacement of each of the Replaced Contracts in a timely manner and on terms and conditions substantially the same

as the Replaced Contracts, without the incurrence of any liability or obligation (other than *de minimis* legal expenses), and acceptable to Purchaser, acting reasonably.

## **ARTICLE VIII** **Indemnification**

**Section 8.01 Survival.** All representations, warranties, covenants and agreements contained herein and all related rights to indemnification shall survive the Closing indefinitely.

**Section 8.02 Indemnification by Vendor.** Subject to the other terms and conditions of this ARTICLE VIII, Vendor shall defend, indemnify and hold harmless each of Purchaser, Topco, their respective affiliates and their respective shareholders (other than the Guarantor), directors, officers and employees from and against all claims, judgments, damages, liabilities, settlements, losses, costs and expenses, including legal fees, disbursements and charges, arising from or relating to:

- (a) any inaccuracy in or breach of any of the representations or warranties of Vendor contained in this Agreement or any document to be delivered hereunder;
- (b) any breach or non-fulfillment of any covenant, agreement or obligation to be performed by Vendor under this Agreement or any document to be delivered hereunder; or
- (c) any Excluded Liabilities or any Excluded Assets.

**Section 8.03 Indemnification by Guarantor.** Subject to the other terms and conditions of this ARTICLE VIII, Guarantor shall defend, indemnify and hold harmless Purchaser and Topco, their affiliates and their respective shareholders (other than the Guarantor), directors, officers and employees from and against all claims, judgments, damages, liabilities, settlements, losses, costs and expenses, including legal fees, disbursements and charges, arising from or relating to:

- (a) any inaccuracy in, or breach of, any of the representations or warranties of Guarantor set out in this Agreement or in any document to be delivered hereunder;
- (b) any breach or non-fulfillment of any covenant, agreement or obligation to be performed by Guarantor under this Agreement or any document to be delivered hereunder; or
- (c) a claim arising under or in accordance with Section 10.08.

**Section 8.04 Indemnification by Purchaser and Topco.** Subject to the other terms and conditions of this ARTICLE VIII, Purchaser and Topco, as applicable, shall defend, indemnify and hold harmless Vendor, its affiliates and their respective shareholders, directors, officers and employees from and against all claims, judgments, damages, liabilities, settlements, losses, costs and expenses, including legal fees, disbursements and charges, arising from or relating to:

- (a) any inaccuracy in, or breach of, any of the representations or warranties made by it and set out in this Agreement or in any document to be delivered hereunder; or

(b) any breach or non-fulfillment of any covenant, agreement or obligation to be performed by it under this Agreement or any document to be delivered hereunder.

**Section 8.05 Effect of Investigation.** The representations, warranties and covenants of the Indemnifying Party, and the Indemnified Party's right to indemnification with respect thereto, shall not be affected or deemed waived by reason of any investigation made by or on behalf of the Indemnified Party (including by any of its representatives) or by reason of the fact that the Indemnified Party or any of its representatives knew or should have known that any such representation or warranty is, was or might be inaccurate or by reason of the Indemnified Party's waiver of any condition set forth in ARTICLE II or ARTICLE III, as the case may be.

**Section 8.06 Tax Treatment of Indemnification Payments.** All indemnification payments made by Vendor under this Agreement shall be treated by the parties as an adjustment to the Purchase Price for tax purposes, unless otherwise required by Applicable Law.

**Section 8.07 Effect of Investigation.** Purchaser or Topco's right to indemnification or other remedy based on the representations, warranties, covenants and agreements of Vendor and Guarantor set forth herein will not be affected by any investigation conducted by Purchaser or Topco, or any knowledge acquired by Purchaser or Topco at any time, with respect to the accuracy or inaccuracy of, or compliance with, any such representation, warranty, covenant or agreement.

**Section 8.08 Cumulative Remedies.** The rights and remedies provided in this ARTICLE VIII are cumulative and are in addition to, and not in substitution for, any other rights and remedies available at law or in equity or otherwise.

**Section 8.09 Recovery.** Purchaser and Topco shall not be entitled to double recovery in respect of the same Damages from any source or sources of recourse that are available to Purchaser or Topco under this Agreement or the IP License Agreement.

**Section 8.10 Notice.** Whenever any claim shall arise for indemnification hereunder, the party entitled to indemnification (the "**Indemnified Party**") shall promptly provide written notice of such claim to the other party (the "**Indemnifying Party**"). Notwithstanding the foregoing, the omission to so notify the Indemnifying Party does not relieve the Indemnifying Party from any duty to indemnify and hold harmless which otherwise might exist with respect to such cause.

## **ARTICLE IX** **Home Trust Option**

**Section 9.01** Purchaser shall have an option (the "**HT Purchase Option**"), exercisable by providing notice thereof at any time prior to the date that is six months following the Closing Date, to acquire from Vendor (the "**Home Trust Subsequent Acquisition**") all of the issued and outstanding shares of the Home Trust Subsidiary or all of the Home Trust Assets at a purchase price equal to the purchase price under the Home Trust Agreement, being \$69,319,977, plus all reasonable fees and expenses incurred by the Vendor and the Home Trust Subsidiary (in the case of an acquisition of the Home Trust Assets) in connection with the acquisition of the Home Trust Assets by the Home Trust Subsidiary and the Home Trust Subsequent Acquisition. The Home Trust Subsequent Acquisition shall be completed pursuant to a purchase agreement that shall include customary representations, warranties, covenants and agreements (including indemnification rights) in respect of the Home Trust Subsidiary, and the Home Trust Assets as

required by the Purchaser, acting reasonably, which, in any case, shall include at least such representations, warranties, covenants and agreements (including indemnification rights) set out in the Home Trust Agreement for the benefit of the Home Trust Subsidiary.

## ARTICLE X Miscellaneous

**Section 10.01 Expenses.** Except as otherwise expressly provided in this Agreement, all costs and expenses incurred in connection with this Agreement and the transactions contemplated hereby shall be paid by the party incurring such costs and expenses.

**Section 10.02 Notices.** All notices, requests, consents, claims, demands, waivers and other communications hereunder shall be in writing and shall be deemed to have been given:

- (a) when delivered by hand (with written confirmation of receipt);
- (b) when received by the addressee if sent by a nationally recognized overnight courier (receipt requested);
- (c) on the date sent by facsimile or email of a PDF document (with confirmation of transmission) if sent during normal business hours of the recipient, and on the next business day if sent after normal business hours of the recipient; or
- (d) on the third day after the date mailed, by certified or registered mail, return receipt requested, postage prepaid.

Such communications must be sent to the respective parties at the following addresses (or at such other address for a party as shall be specified in a notice given in accordance with this Section 10.02):

If to Vendor or Guarantor at:	Simply Green Home Services Corp.  Address: 2225 Sheppard Avenue East, Suite 800 North York, ON M2J 5C2 Email: lawrence.krimker@mysimplygroup.com Attention: Lawrence Krimker
with a copy to:	Miller Thomson LLP  Email: aapps@millerthomson.com Attention: Alfred Apps
If to Purchaser, TopCo or Dealnet Acquireco, at:	Simply Green Home Services Inc.  Address: 2225 Sheppard Avenue East, Suite 800 North York, ON M2J 5C2 Email: lawrence.krimker@mysimplygroup.com

Attention: Lawrence Krimker

with a copy to: Magnetar Financial LLC  
Email: ACFI-Ops@Magnetar.com and Legal@Magnetar.com.  
Attention: Hin-King Thai and Mike Butler

with a copy to: Stikeman Elliott LLP  
Email: dtardif@stikeman.com and apelland@stikeman.com  
Attention: David Tardif and Aniko Pelland

with a copy to: Miller Thomson LLP  
Email: aapps@millerthomson.com  
Attention: Alfred Apps

**Section 10.03 Headings.** The headings in this Agreement are for reference only and shall not affect the interpretation of this Agreement.

**Section 10.04 Severability.** If any term or provision of this Agreement is invalid, illegal or unenforceable in any jurisdiction, such invalidity, illegality or unenforceability shall not affect any other term or provision of this Agreement or invalidate or render unenforceable such term or provision in any other jurisdiction.

**Section 10.05 Non-Merger.** Except as otherwise expressly provided in this Agreement, the covenants, representations and warranties will not merge on and will survive the Closing. Notwithstanding the Closing and any investigation made by or on behalf of any party, the covenants, representations and warranties will continue in full force and effect. Closing will not prejudice any right of one party against any other party hereto in respect of anything done or omitted under this Agreement or in respect of any right to damages or other remedies.

**Section 10.06 Entire Agreement.** This Agreement and the documents to be delivered hereunder, together with the IP License Agreement and the documents to be delivered thereunder, constitute the sole and entire agreement of the parties to this Agreement with respect to the subject matter contained herein and therein, and supersede all prior and contemporaneous understandings and agreements, both written and oral, with respect to such subject matter. In the event of any inconsistency between the statements in the body of this Agreement and documents to be delivered hereunder, the schedules attached hereto (other than an exception expressly set forth as such in such schedules), the statements in the body of this Agreement will control.

**Section 10.07 Successors and Assigns.** This Agreement shall be binding upon and shall enure to the benefit of the parties hereto and their respective successors and permitted assigns. Except as provided in this Section 10.07, no party to this Agreement may assign its rights or obligations hereunder without the prior written consent of Vendor, in the case of Purchaser and Topco, or Purchaser, in the case of Vendor and Guarantor, which consent shall not be unreasonably withheld or delayed. No assignment shall relieve the assigning party of any of its obligations hereunder. Notwithstanding the foregoing, upon giving notice to Vendor, Purchaser is entitled to assign this Agreement or any of its rights or obligations under this Agreement in whole or in part to (i) any of its affiliates (excluding, for greater certainty, any shareholder of Topco), (ii) a

purchaser of all or substantially all of the assets of Purchaser or (iii) any lender, creditor or financier of Purchaser.

**Section 10.08 Guarantee.** Guarantor hereby agrees to (i) guarantee the timely performance and fulfillment by Vendor of its obligations under this Agreement and (ii) be jointly and severally liable with Vendor to and in favour of each of Purchaser and Topco, as principal obligor and not as a surety, with respect to all of the representations, warranties, covenants, indemnities and agreements of Vendor contained in this Agreement, including under ARTICLE VIII, and in each document delivered hereunder (collectively, the "**Guaranteed Obligations**"). Guarantor's guarantee under this Section 10.08 shall be a continuing, absolute, unconditional and irrevocable guarantee of all Guaranteed Obligations and shall apply to and secure all present and future Guaranteed Obligations. Guarantor hereby agrees that its obligations hereunder shall be unconditional, irrespective of, and not in any way affected by, (A) the validity or enforceability of this Agreement against Vendor or any other Person, (B) any waiver, change, modification, or amendment of this Agreement, (C) the absence of any action or proceeding by or on behalf of Purchaser or Topco to enforce this Agreement, (D) the recovery of any judgment, order or ruling against Vendor or any other Person or any action or proceeding to ensure the same, (E) any bankruptcy, insolvency, dissolution, liquidation, or reorganization of, or similar proceedings involving Vendor or any related party, (G) Purchaser or Topco's exercise or non-exercise or delay in exercising any of its rights under this Section 10.08, (H) any assignment of this Agreement, (I) the existence of any claim, set-off or other right that Purchaser or Topco may have against any other entity, or (J) any other circumstance, occurrences or events which may otherwise constitute a legal or equitable discharge or defense of Guarantor of which may otherwise limit recourse against Guarantor other than the defense that the obligations guaranteed under this section have been paid or satisfied in full. For greater certainty, Purchaser or Topco, as applicable, shall not be required to first bring an action against Vendor to establish its right to payment or performance under this Agreement, and Guarantor acknowledges and agrees that Purchaser and Topco shall be entitled to enforce directly against it any of the guaranteed obligations under this Agreement.

**Section 10.09 Unanimous Shareholders' Agreement.** Purchaser and Topco hereby acknowledge and agree that any decision or action or exercising any right under this Agreement, including with respect to any claim for indemnification under Section 10.09 or any exercise of the HT Purchase Option under Section 9.01 of this Agreement, shall be subject to the terms and conditions set forth in Sections 2.7(b) and 3.7(c) of the unanimous shareholder agreement of Topco, including the right of certain shareholders of Topco to approve certain matters and transactions.

**Section 10.10 No Third-Party Beneficiaries.** Except as provided in ARTICLE VIII, this Agreement and the documents to be delivered hereunder is for the sole benefit of the parties hereto and their respective successors and permitted assigns and nothing herein, express or implied, is intended to or shall confer upon any other person or entity any legal or equitable right, benefit or remedy of any nature whatsoever under or by reason of this Agreement.

**Section 10.11 Amendment and Modification.** This Agreement may only be amended, modified or supplemented by an agreement in writing signed by each party hereto.

**Section 10.12 Waiver.** No waiver by any party of any of the provisions of this Agreement or the documents to be delivered hereunder shall be effective unless explicitly set forth in writing and signed by the party so waiving. No waiver by any party shall operate or be construed as a waiver in respect of any failure, breach or default not expressly identified by such written waiver, whether of a similar or different character, and whether occurring before or after that waiver. No failure to

exercise, or delay in exercising, any right, remedy, power or privilege arising from this Agreement shall operate or be construed as a waiver thereof; nor shall any single or partial exercise of any right, remedy, power or privilege hereunder preclude any other or further exercise thereof or the exercise of any other right, remedy, power or privilege.

**Section 10.13 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.

**Section 10.14 Forum Selection.** Any action or proceeding arising out of or based upon this Agreement or the transactions contemplated hereby may be brought in the courts of the Province of Ontario, and each party irrevocably submits and agrees to attorn to the exclusive jurisdiction of such courts in any such action or proceeding.

**Section 10.15 Time of the Essence.** Time is of the essence in this Agreement.

**Section 10.16 Choice of Language.** The parties confirm that it is their express wish that this Agreement, as well as any other documents relating to this Agreement, including notices, schedules and authorizations, have been and shall be drawn in the English language only. *Les parties aux présentes confirment leur volonté expresse que cette convention, de même que tous les documents s'y rattachant, y compris tous avis, annexes et autorisations s'y rattachant, soient rédigés en langue anglaise seulement.*

**Section 10.17 Specific Performance.** The parties agree that irreparable damage would occur if any provision of this Agreement were not performed in accordance with the terms hereof and that the parties shall be entitled to specific performance of the terms hereof, in addition to any other remedy to which they are entitled at law or in equity.

**Section 10.18 Counterparts.** This Agreement may be executed in counterparts, each of which shall be deemed an original, but all of which together shall be deemed to be one and the same agreement. A signed copy of this Agreement delivered by facsimile, email or other means of electronic transmission shall be deemed to have the same legal effect as delivery of an original signed copy of this Agreement.

**[Signature page immediately follows.]**

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

**VENDOR**

**SIMPLY GREEN HOME SERVICES CORP. (formerly known as Simply Green Home Services Inc.)**

Per:



Name: Lawrence Krimker  
Title: President

I have the authority to bind the corporation.

**GUARANTOR**

**SGHS MANAGEMENT HOLDCO INC.**

Per:



Name: Lawrence Krimker  
Title: President

I have authority to bind the corporation.

**PURCHASER**

**SIMPLY GREEN HOME SERVICES INC.**

Per:



Name: Lawrence Krimker  
Title: President

I have authority to bind the corporation.

**2775996 ONTARIO INC.**

**TOPCO**

Per:



Name: Lawrence Krimker  
Title: President

I have authority to bind the corporation.

**DEALNET ACQUIRECO**

**SIMPLY GROUP ACQUISITION CORP.**

Per:

Name: Lawrence Krimker  
Title: President



I have authority to bind the  
corporation.

**Schedule "A"**

**IP LICENSE AGREEMENT**

(See attached)

**Schedule "B"**

**OFFICE LEASE**

(See attached)

**Schedule 1.01**  
**Purchased Assets**

1. **Shares** – all of the issued and outstanding shares in the following entities (collectively, the "Acquired Subsidiaries"):
  - a. Simply Green Home Services (BC) Inc.;
  - b. Simply Green Home Services (AB) Inc.;
  - c. Simply Green Home Services (SK) Inc.;
  - d. Simply Green Home Services (MB) Inc.;
  - e. Simply Holdings USA, LLC;
    - i. Crown Crest USA, LLC;
    - ii. Simply Green USA, LLC;
  - f. Simply Green Retail Services Inc.
2. **Furniture and Equipment** – all of the below-listed furniture and equipment owned by Vendor, including:
  - a. All office furniture and equipment located at Vendor's head office (2225 Sheppard Avenue East, Suite 800, North York, ON), including desks, chairs, tables, cabinets, and any other moveables not affixed to the real property or otherwise comprising real property;
  - b. All computers, telephones and computer equipment owned by Vendor, which may be held at its premises or in the possession of its employees, including computers, printers, servers, networking equipment, telephones and any other related peripherals;
  - c. All inventory owned by Vendor (other than inventory relating to Excluded Receivables);
  - d. Three (3) 2015 Jeep Cherokees, bearing the following serial numbers:
    - i. 1C4PJLAB3FW617184;
    - ii. 1C4PJLABXFW760035;
    - iii. 1C4PJLAB1FW737503;
  - e. One (1) 2016 Mercedes Benz Sprinter, serial number: WD3BE7DDXGP322611; and
  - f. The Transferred Receivables.

3. **Assigned Contracts:**

The Assigned Contracts listed in Schedule 2.09(b) (*Assigned Contracts Liabilities*).

4. **Claims** - all claims of Vendor relating to the Purchased Assets described on this Schedule 1.01, whether choate or inchoate, known or unknown, contingent or otherwise, including any prepaid expenses.
5. **Permits** – all Permits, owned, held or used by Vendor in connection with the Purchased Assets, being the "Assigned Permits" set forth on Schedule 2.11 **attached hereto**.
6. **Other** – all other assets required to operate the Business and rights held or owned by Vendor and used in the operation of the Business, including the assets associated with the origination of new receivables in the operation of the Business, other than (i) the Owned IP, (ii) the Excluded Receivables, (iii) the Excluded Subsidiaries, (iv) the Replaced Contracts and (v) the Unrelated Contracts.

**Schedule 1.04**  
**Allocation of the Purchase Price**

Computers & Equipment	\$157,869
Furniture & Fixtures	\$85,452
Vehicles	\$40,000
Inventory	\$250,000
<b>TOTAL</b>	<b>\$533,321</b>

**Schedule 2.03**  
**Required Consents**

1. Lease of Office Space Agreement between Dorsay Development Corporation and Ontari Holdings Ltd, and Vendor, dated October 21, 2019, for certain premises located at 2225 Sheppard Avenue East, Suite 800, North York, Ontario;
2. BroadConnect Telecom Agreement between Simply Green Home Services and BroadConnect Telecom dated June 20, 2016;
3. Master Services Agreement between ONX Managed Services Inc. and Simply Green Home Services dated February 9, 2017;
4. Master Services Agreement between Equifax and Vendor, as subscriber, dated June 1, 2020, as supplemented by the FICO Score Subscriber Agreement between Equifax and Vendor, dated June 1, 2020;
5. Master Services Agreement between Equifax and Vendor, as customer, dated June 1, 2020;
6. Amended and Restated Open Bill Access Billing and Collection Services Agreement between Enbridge Gas Distribution Inc. and Vendor dated January 1, 2019;
7. Software Licence Agreement between NGUTech Inc. and Crown Crest Corporation dated December 31, 2017;
8. The Replaced HCSI Agreements;
9. Fifth Amended and Restated Shareholders' Agreement of Vendor made as of March 11, 2020;
10. General Security Agreement between Vendor and Peoples Trust Company dated January 19, 2018;
11. General Security Agreement between Vendor and Greypoint Capital Inc. dated August 22, 2019.
12. The following Software Applications:
  - a) Formstack Master Services Agreement; and
  - b) Formstack Documents Terms of Use.
13. DealNet Assignment.

**Schedule 2.09(b)**  
**Assigned Contracts Liabilities**

<b>Assigned Contract</b>	<b>Amount Payable, Outstanding Liability or Amount Due</b>
1. Lease of Office Space Agreement between Dorsay Development Corporation, Ontari Holdings Ltd. and <b>Vendor</b> dated October 21, 2019, for certain premises located at 2225 Sheppard Avenue East, Suite 800, North York, Ontario.	Nil
2. BroadConnect Telecom Agreement between Simply Green Home Services and BroadConnect Telecom dated June 20, 2016.	Nil
3. Master Services Agreement between ONX Managed Services Inc. and Simply Green Home Services dated February 9, 2017, which includes: <ul style="list-style-type: none"> <li>• Microsoft E3</li> <li>• Microsoft Dynamics 365</li> <li>• Microsoft Dynamics GP</li> <li>• Microsoft 365 Audio Conferencing</li> <li>• Microsoft Communication Credits</li> <li>• Microsoft Visio</li> </ul>	\$137,754
4. Master Services Agreement between Equifax Canada Co., ("Equifax") and Vendor, as subscriber, dated June 1, 2020, as supplemented by the FICO Score Agreement, between Equifax and Subscriber, dated June 1, 2020.	\$109,028
5. Master Services Agreement between Equifax and Vendor, as customer, dated June 1, 2020.	Nil
6. Amended and Restated Open Bill Access Billing and Collection Services Agreement between Enbridge Gas Distribution Inc. and Vendor dated January 1, 2019.	Nil
7. Software Licence Agreement between NGUTech Inc. and Crown Crest Corporation dated December 31, 2017.	\$18,457
8. Verbal agreement between Vendor and SinglePoint, the terms of which are evidenced by an email exchange dated April 30, 2018.	\$224,395

9.	RainSoft Dealer Agreement between ACQUION Inc. and Vendor dated November 4, 2019;	Nil
10.	Limited Trademark License Agreement between Vendor and ACQUION dated August 6, 2019;	Nil
11.	Master Service Provider Agreement between Home Depot of Canada Inc. and Vendor dated December 20, 2019 as amended on July 20, 2020, September 3, 2020 and September 16, 2020;	Nil
12.	Partnership Agreement between Wolseley Canada Inc. and <b>Vendor</b> dated August 30, 2018.	Nil
13.	The agreements entered into with the independent contractors listed in Schedule 2.21(g) attached hereto.	Ordinary course accrued and unpaid salary in accordance with rate in Schedule 2.21(g)
14.	The employment Contracts with the Transferred Employees.	Ordinary course accrued and unpaid salary in accordance with rate in Schedule 2.21(g)
15.	<b>The Software Applications:</b> <ul style="list-style-type: none"> <li>• Agreement between TCN and Crown Crest Capital dated March 25, 2019</li> <li>• Jira Software License Agreement</li> <li>• Smartsheet Software License Agreement</li> <li>• DocuSign eSignature Agreement between DocuSign and Crown Crest Capital dated June 5, 2020</li> <li>• Uber Conference Software License Agreement</li> <li>• Datto RMM Software License Agreement</li> <li>• G Suite (Online) Agreement</li> </ul>	Nil
16.	Any Contracts relating to the Transferred Receivables.	Nil

**Schedule 2.09(c)**  
**Replaced Contracts**

1. Agreement between First Data Canada Ltd. and Lawrence Krimker, dated August 16, 2017;
2. Global Master Services Agreement (Payroll) between ADP Canada Co. and Vendor dated October 18, 2019;
3. Business Services Master Agreement between Crown Crest Billing Corp, and The Toronto-Dominion Bank dated November 23, 2018;
4. Home Energy Equipment Installation and Repair Services Agreement between Smile HVAC Service and Installation and Vendor and its affiliates and subsidiaries dated June 2018;
5. All agreements entered into with HCSI Home Comfort Inc. (collectively, the "**Replaced HCSI Agreements**"):
  - (a) The Supply Agreement between Home Corp Services Inc., HCSI Home Comfort Inc. and Vendor dated August 14, 2017;
  - (b) Master Assignment and Program Agreement between HCSI Home Comfort Inc. and Crown Crest Funding Corp., as trustee of Crown Crest Capital Trust, dated August 1, 2017, as amended on July 23, 2018; and
  - (c) Unanimous Shareholders Agreement of HCSI Home Comfort Inc. among Vendor, Rolene Holdings Inc., Lawrence Krimker and Robert Teti, dated August 14, 2017.
6. The following Software Applications:
  - (a) Apple Cloud Services Agreement;
  - (b) Adobe Pro Agreement;
  - (c) Formstack Master Services Agreement; and
  - (d) Formstack Documents Terms of Use.
7. Totten Group Commercial Insurance Policy
8. Benson Kearley IFG Commercial Crime Insurance
9. Benson Kearley IFG Cyber Liability Insurance
10. Benson Kearley IFG Errors & Omissions Liability Binder
11. AIG Directors & Officers Liability Insurance Policy

**Schedule 2.09(d)**  
**Unrelated Contracts**

1. Finance Loan Enrolment and Dealer Agreement between Vendor and EcoHome Financial Inc. dated August 28, 2013;
2. Amended and Restated Open Bill Access Billing and Collection Services Agreement between Enbridge Gas Distribution Inc. and Simply Green Home Services (Ontario) Inc. (O/A "Simply Billing Services") dated January 1, 2019;
3. Amended and Restated Open Bill Access Billing and Collection Services Agreement between Enbridge Gas Distribution Inc. and 2659675 Ontario Inc. (O/A "Viva Financial Corporation") dated January 1, 2019;
4. Amended and Restated Open Bill Access Billing and Collection Services Agreement between Enbridge Gas Distribution Inc. and Crown Crest Financial Corp. (O/A. "Simply Comfort") dated January 1, 2019;
5. Amended and Restated Open Bill Access Billing and Collection Services Agreement between Enbridge Gas Distribution Inc. and HCSI Home Comfort Inc. dated January 1, 2019;
6. Amended and Restated Open Bill Access Billing and Collection Services Agreement between Enbridge Gas Distribution Inc. and Crown Crest Capital Corp. dated January 1, 2019;
7. Amended and Restated Open Bill Access Billing and Collection Services Agreement between Enbridge Gas Distribution Inc. and Crown Crest Financial Corp. (O/A. "OCHS") dated January 1, 2019;
8. Concurrent Lease Agreement between Crown Crest Financial Corp., Peoples Trust Company, and Vendor dated January 19, 2012;
9. Guarantee granted by Vendor to Peoples Trust Company dated November 30, 2018;
10. Guarantee granted by Crown Crest Management Corp. to Peoples Trust Company dated May 29, 2019;
11. Guarantee granted by Vendor to Greypoint Capital Inc. dated August 22, 2018;
12. Guarantee granted by Vendor to Peoples Trust Company dated January 19, 2018;
13. Guarantee granted by Crown Crest Financial Corp. to Peoples Trust Company dated March 21, 2019;
14. Guarantee granted by Crown Crest Financial Corp. to Peoples Trust Company dated January 19, 2018;
15. Guarantee granted by Crown Crest Financial Corp. to Peoples Trust Company dated March 16, 2018;
16. Amended and Restated Warehouse Line of Credit Agreement between Crown Crest Funding Corp., in its capacity as trustee of Crown Crest Capital Trust, as Borrower, and Crown Crest Capital Management Corp., as Guarantor, and Peoples Trust Company dated April 27, 2018, as amended by way of amendment agreements made as of September 10, 2018, March 21, 2019 and May 29, 2019.

17. Third Amended and Restated Concurrent Lease Agreement between Crown Crest Funding Corp., in its capacity as trustee of Crown Crest Capital Trust, and Peoples Trust Company dated April 15, 2019;
18. Second Amended and Restated Concurrent Lease Agreement between Crown Crest Funding Corp., in its capacity as trustee of Crown Crest Capital Trust, and Peoples Trust Company dated April 15, 2019;
19. Concurrent Lease Agreement between Crown Crest Funding Corp., in its capacity as trustee of Crown Crest Capital Trust, and Peoples Trust Company dated May 29, 2019;
20. Third Amended and Restated Concurrent Lease Agreement between Crown Crest Financial Corp. and Peoples Trust Company dated April 15, 2019;
21. Warehouse Line of Credit Agreement between Crown Crest Capital Financial Corp., as borrower, Vendor, as guarantor, and Peoples Trust Company dated January 19, 2018, as amended by way of amendment agreements made as of March 16, 2018, September 10, 2018 and October 31, 2018;
22. Warehouse Line of Credit Agreement between Crown Crest Funding Corp., in its capacity as trustee of Crown Crest Capital Trust, as borrower, Crown Crest Capital Management Corp., as guarantor, and Peoples Trust Company dated May 29, 2019, as amended , as further amended, and as further amended by way of a Third Amendment to Warehouse Line of Credit Agreement dated October 31, 2018;
23. Warehouse Line of Credit Agreement between Crown Crest Funding Corp., in its capacity as trustee of Crown Crest Capital Trust, as borrower, Vendor, as guarantor, and Greypoint Capital Inc. dated August 22, 2019,
24. Fifth Amended and Restated \$1,467,162.88 principal amount Convertible Debenture issued to Peoples Trust Company dated June 23, 2020;
25. \$10,000,000 principal amount Convertible Debenture issued to Peoples Trust Company dated January 19, 2018;
26. Priority Agreement between Greypoint Capital Inc., Peoples Trust Company, Crown Crest Funding Corp., in its capacity as trustee of Crown Crest Capital Trust, and Vendor dated August 22, 2019;
27. General Security Agreement by Crown Crest Funding Corp. in its personal capacity and in its capacity as trustee of Crown Crest Capital Trust Inc. in favour of Peoples Trust Company, dated May 29, 2019;
28. General Security Agreement by Crown Crest Financial Corp. in favour of Peoples Trust Company, dated January 19, 2018;
29. General Security Agreement by Vendor in favour of Peoples Trust Company, dated January 19, 2018;
30. General Security Agreement by Vendor in favour of Greypoint Capital Inc., dated August 22, 2019;
31. Further Amended and Restated Cross-Default, Cross-Collateralization, Cross-Guarantee Agreement between Crown Crest Financial Corp., Vendor, Crown Crest Funding Corp., in its

capacity as trustee of Crown Crest Capital Trust, Crown Crest Capital Management Corp., and Peoples Trust Company dated as of November 30, 2018;

32. Empire Life Health Benefit Plan (subject to Section 7.06 of the APA).
33. Fifth Amended and Restated Shareholders' Agreement of Vendor made as of March 11, 2020.
34. Second Amended and Restated Stock Option Plan of Vendor, effective as of January 1, 2019.
35. Customer Retention and Collection Services Agreement between A-1 Credit Recovery and Collection Services Inc. and Vendor, Crown Crest Capital Management Corp, and Crown Crest Financial Corp, dated June 11, 2020.
36. Liberty Mutual Insurance Excess Advantage Follow Form Policy.
37. Sovereign Excess Directors and Officers Liability Insurance Policy.

**Schedule 2.09(e)**  
**Material Contracts**

(i)

**Nil.**

(ii)

1. Agreement between First Data Canada Ltd. and Lawrence Krimker, dated August 16, 2017;
2. Customer Retention and Collection Services Agreement between A-1 Credit Recovery and Collection Services Inc. and Vendor, Crown Crest Capital Management Corp, and Crown Crest Financial Corp, dated June 11, 2020;
3. Global Master Services Agreement (Payroll) between ADP Canada Co. and Vendor dated October 18, 2019;
4. Business Services Master Agreement between Crown Crest Billing Corp, and The Toronto-Dominion Bank dated November 23, 2018;
5. Home Energy Equipment Installation and Repair Services Agreement between Smile HVAC Service and Installation and Vendor and its affiliates and subsidiaries dated June 2018.

(iii)

**Nil.**

(iv)

	<i>1<sup>st</sup> shareholder loan</i>	1,564,365.87
Lawrence Krimker	<i>2<sup>nd</sup> shareholder loan</i>	1,481,250.00
	<i>Home Trust loan</i>	4,000,000.00
		<b>7,045,615.87</b>
Joseph Krimker	<i>1<sup>st</sup> shareholder loan</i>	197,500.00
		<b>197,500.00</b>
Marcos Soberano	<i>1<sup>st</sup> shareholder loan</i>	758,242.41
	<i>2<sup>nd</sup> shareholder loan</i>	296,250.00
		<b>1,054,492.41</b>
Sean Milne	<i>1<sup>st</sup> shareholder loan</i>	25,000.00
		<b>25,000.00</b>
<b>TOTAL</b>		<b>8,322,608.28</b>

(v)

**Nil.**

(vi)

**Nil.**

(vii)

**Nil.**

(viii)

Lease agreements with respect to two (2) 2017 Honda CR-Vs, bearing respectively the serial numbers (i) 2HKRM4H37GH135653, and (ii) 2HKRM4H32GH135656.

Lease agreement with respect to two (2) Lexmark copier machines held at Vendor's office.

(ix)

**Nil.**

(x)

1. Finance Loan Enrolment and Dealer Agreement between Vendor and EcoHome Financial Inc. dated August 28, 2013;
2. Amended and Restated Open Bill Access Billing and Collection Services Agreement between Enbridge Gas Distribution Inc. and Simply Green Home Services (Ontario) Inc. (O/A "Simply Billing Services") dated January 1, 2019;
3. Amended and Restated Open Bill Access Billing and Collection Services Agreement between Enbridge Gas Distribution Inc. and 2659675 Ontario Inc. (O/A "Viva Financial Corporation") dated January 1, 2019;
4. Amended and Restated Open Bill Access Billing and Collection Services Agreement between Enbridge Gas Distribution Inc. and Crown Crest Financial Corp. (O/A. "Simply Comfort") dated January 1, 2019;
5. Amended and Restated Open Bill Access Billing and Collection Services Agreement between Enbridge Gas Distribution Inc. and HCSI Home Comfort Inc. dated January 1, 2019;
6. Amended and Restated Open Bill Access Billing and Collection Services Agreement between Enbridge Gas Distribution Inc. and Crown Crest Capital Corp. dated January 1, 2019;
7. Amended and Restated Open Bill Access Billing and Collection Services Agreement between Enbridge Gas Distribution Inc. and Crown Crest Financial Corp. (O/A. "OCHS") dated January 1, 2019;
8. Concurrent Lease Agreement between Crown Crest Financial Corp., Peoples Trust Company, and Vendor dated January 19, 2012;
9. Guarantee granted by Vendor to Peoples Trust Company dated November 30, 2018;
10. Guarantee granted by Crown Crest Management Corp. to Peoples Trust Company dated May 29, 2019;

11. Guarantee granted by Vendor to Greypoint Capital Inc. dated August 22, 2018;
12. Guarantee granted by Vendor to Peoples Trust Company dated January 19, 2018;
13. Guarantee granted by Crown Crest Financial Corp. to Peoples Trust Company dated March 21, 2019;
14. Guarantee granted by Crown Crest Financial Corp. to Peoples Trust Company dated January 19, 2018;
15. Guarantee granted by Crown Crest Financial Corp. to Peoples Trust Company dated March 16, 2018;
16. Amended and Restated Warehouse Line of Credit Agreement between Crown Crest Funding Corp., in its capacity as trustee of Crown Crest Capital Trust, as Borrower, and Crown Crest Capital Management Corp., as Guarantor, and Peoples Trust Company dated April 27, 2018, as amended by way of amendment agreements made as of September 10, 2018, March 21, 2019 and May 29, 2019.
17. Third Amended and Restated Concurrent Lease Agreement between Crown Crest Funding Corp., in its capacity as trustee of Crown Crest Capital Trust, and Peoples Trust Company dated April 15, 2019;
18. Second Amended and Restated Concurrent Lease Agreement between Crown Crest Funding Corp., in its capacity as trustee of Crown Crest Capital Trust, and Peoples Trust Company dated April 15, 2019;
19. Concurrent Lease Agreement between Crown Crest Funding Corp., in its capacity as trustee of Crown Crest Capital Trust, and Peoples Trust Company dated May 29, 2019;
20. Third Amended and Restated Concurrent Lease Agreement between Crown Crest Financial Corp. and Peoples Trust Company dated April 15, 2019;
21. Warehouse Line of Credit Agreement between Crown Crest Capital Financial Corp., as borrower, Vendor, as guarantor, and Peoples Trust Company dated January 19, 2018, as amended by way of amendment agreements made as of March 16, 2018, September 10, 2018 and October 31, 2018;
22. Warehouse Line of Credit Agreement between Crown Crest Funding Corp., in its capacity as trustee of Crown Crest Capital Trust, as borrower, Crown Crest Capital Management Corp., as guarantor, and Peoples Trust Company dated May 29, 2019, as amended , as further amended, and as further amended by way of a Third Amendment to Warehouse Line of Credit Agreement dated October 31, 2018;
23. Warehouse Line of Credit Agreement between Crown Crest Funding Corp., in its capacity as trustee of Crown Crest Capital Trust, as borrower, Vendor, as guarantor, and Greypoint Capital Inc. dated August 22, 2019,
24. Fifth Amended and Restated \$1,467,162.88 principal amount Convertible Debenture issued to Peoples Trust Company dated June 23, 2020;
25. \$10,000,000 principal amount Convertible Debenture issued to Peoples Trust Company dated January 19, 2018;

26. Priority Agreement between Greypoint Capital Inc., Peoples Trust Company, Crown Crest Funding Corp., in its capacity as trustee of Crown Crest Capital Trust, and Vendor dated August 22, 2019;
27. General Security Agreement by Crown Crest Funding Corp. in its personal capacity and in its capacity as trustee of Crown Crest Capital Trust Inc. in favour of Peoples Trust Company, dated May 29, 2019;
28. General Security Agreement by Crown Crest Financial Corp. in favour of Peoples Trust Company, dated January 19, 2018;
29. General Security Agreement by Vendor in favour of Peoples Trust Company, dated January 19, 2018;
30. General Security Agreement by Vendor in favour of Greypoint Capital Inc., dated August 22, 2019;
31. Further Amended and Restated Cross-Default, Cross-Collateralization, Cross-Guarantee Agreement between Crown Crest Financial Corp., Vendor, Crown Crest Funding Corp., in its capacity as trustee of Crown Crest Capital Trust, Crown Crest Capital Management Corp., and Peoples Trust Company dated as of November 30, 2018;

(xi)

**Nil.**

(xii)

1. Empire Life Health Benefit Plan (subject to Section 7.06 of the APA).
2. Second Amended and Restated Stock Option Plan of Vendor, effective as of January 1, 2019.

(xiii)

**The following Software Applications:**

1. Formstack Master Services Agreement;
2. Formstack Documents Terms of Use;
3. Adobe Pro Agreement; and
4. Apple Cloud Services Agreement.

(xiv)

1. Home Trust Agreement and ancillary documents pursuant thereto;
2. Share Purchase Agreement dated October 5, 2020 between Vendor and Simply Smart Solutions Inc. with respect to the acquisition of Utilebill Home Services Inc. and the ancillary documents pursuant thereto.

(xv)

1. Fifth Amended and Restated Shareholders' Agreement of Vendor made as of March 11, 2020.

2. The Replaced HCSI Agreements;
3. Totten Group Commercial Insurance Policy;
4. Benson Kearley IFG Commercial Crime Insurance;
5. Benson Kearley IFG Cyber Liability Insurance;
6. Benson Kearley IFG Errors & Omissions Liability Binder;
7. Liberty Mutual Insurance Excess Advantage Follow Form Policy;
8. AIG Directors & Officers Liability Insurance Policy; and
9. Sovereign Excess Directors and Officers Liability Insurance Policy.

**Schedule 2.10**  
**Excluded Receivables**

Consumer lease receivables for equipment such as Furnaces, Water Heaters, Air Conditioners, Water Filtration, Air Filtration, Heat Pumps and other related products will be excluded from the purchase price. Approximate book value of excluded receivables by legal entity is as follows:

Crown Crest Capital Trust	\$210,977,204
Crown Crest Financial Corp	\$73,339,730
Vendor	\$14,172,927
Simply Group Financial Corp	\$68,731,258
<b><i>Total</i></b>	<b>\$367,221,119</b>

**Schedule 2.11**  
**Assigned Permits**

1. Ontario Registration of a Fuels Safety Contractor, Registration Number 000226528, delivered by the Technical Standards and Safety Authority pursuant to the *Technical Standards and Safety Act, 2000* (Ontario).

**Schedule 2.15(a)**  
**Legal Proceedings<sup>1</sup>**

1. Chris Thompson v. Simply Green Home Services Inc., in the amount of \$193,787;
2. Simply Green Home Services Inc. v. Mitchell et al., in the amount of \$44,234.82;
3. Home Air Support Inc et al v. Simply Green Home Services Inc., in the amount of \$233,608.34;
4. Fermo v. Crown Crest Capital Corp., in the amount of \$68,252;
5. MNP Corporate Finance Inc. v. Simply Green Home Services Inc. et al., in the amount of \$3,000,000.

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<sup>1</sup> For purposes of this Schedule 2.16(a) and (b), all references to "Simply Green Home Services Inc." shall be references to "Simply Green Home Services Corp.", and not to Simply Green Home Services Inc. (formerly 2775153 Ontario Inc.).

**Schedule 2.15(b)**  
**Settlements**

1. George Konstantopoulos and Welch International Management Consulting Group Inc. v Simply Green Home Services Inc. and Crown Crest Capital Management Inc., which settled for an amount of \$100,000.
2. Guan v. Spence et al., which settled for an amount of \$150,000.

**Schedule 2.18**  
**Financial Statements**

(see attached)

**Simply Green Home Services Inc.**  
 Consolidated Statement of Profit and Loss (unaudited)  
 in \$CAD

For the 9 Months  
 Ended  
 June 30, 2020  
**YTD 2020**

**REVENUE**

HVAC sales and rental	10,795,413
LED sales and retrofit	1,761,960
Finance lease revenue	27,118,957

**COST OF SALES**

Cost of goods sold	9,447,715
Service expense	893,982
Credit adjudication	1,423,829
<b>Total Cost of Sales</b>	<b>11,765,527</b>

<b>GROSS PROFIT</b>	<b>27,910,804</b>
---------------------	-------------------

**OTHER INCOME (LOSS)**

Gain on buyouts of lease contracts	4,998,595
Other	544,070
<b>Total Other Income (Loss)</b>	<b>5,542,665</b>

**EXPENSES**

Salaries, benefits and third-party call centre	8,551,466
Professional fees	1,706,884
Occupancy costs	651,926
Advertising and promotion	2,378,060
General and administrative	653,205
Vehicle, travel and selling	471,157
Technology and telecommunications	724,371
Training and education	247,110
<b>Total Expenses</b>	<b>15,996,421</b>

Interest, financing fees	16,101,757
Amortization	757,541

<b>Net income for the period</b>	<b>597,750</b>
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**Simply Green Home Services Inc.**Consolidated Balance Sheet (unaudited)  
in \$CADAs at  
**June 30, 2020****ASSETS****Current**

Cash and cash equivalents	13,973,797
Accounts Receivable	22,431,757
Inventory	450,108
Work in progress	146,785
Prepaid expenses	387,123
Due to related parties	16,329,956
Current portion of finance receivable	4,915,097
<b>Total current assets</b>	<b>58,634,624</b>
Finance receivable	269,820,813
Reserve receivable	1,341,031
Property and equipment	1,839,109
Prepaid warranty	430,828
Intangible assets	2,005,828
<b>TOTAL ASSETS</b>	<b>336,347,697</b>

**Liabilities and shareholders' equity****Current**

Accounts payable	3,999,158
Accrued liabilities	7,858,877
Sales taxes payable	177,324
Current portion of secured finance payable	14,774,549
Current portion of loans payable	30,634,950
<b>Total current liabilities</b>	<b>60,483,381</b>
Secured finance payable	302,538,064
Loans payable	17,683,649
<b>Total liabilities</b>	<b>388,895,934</b>
<b>Shareholders' equity</b>	
Share capital	1,978,826
Retained earnings	(54,527,064)
<b>Total shareholders' equity</b>	<b>(52,548,237)</b>

# Simply Green Home Services Inc.

Consolidated financial statements

September 30, 2019

Confidential  
pdimerin@millerthomson.com  
2020-07-11 14:51:29 +0000



Building a better  
working world

## Independent auditor's report

To the Shareholders of  
**Simply Green Home Services Inc.**

### Opinion

We have audited the consolidated financial statements of **Simply Green Home Services Inc.** [the "Company"], which comprise the consolidated balance sheet as at September 30, 2019, and the consolidated statement of deficit, consolidated statement of income (loss) and consolidated statement of cash flows for the year then ended, and notes to the consolidated financial statements, including a summary of significant accounting policies.

In our opinion, the accompanying consolidated financial statements present fairly, in all material respects, the consolidated financial position of the Company as at September 30, 2019, and its consolidated results of operations and its consolidated cash flows for the year then ended in accordance with Canadian accounting standards for private enterprises.

### Basis for opinion

We conducted our audit in accordance with Canadian generally accepted auditing standards. Our responsibilities under those standards are further described in the *Auditor's responsibilities for the audit of the consolidated financial statements* section of our report. We are independent of the Company in accordance with the ethical requirements that are relevant to our audit of the consolidated financial statements in Canada, and we have fulfilled our other ethical responsibilities in accordance with these requirements. We believe that the audit evidence we have obtained is sufficient and appropriate to provide a basis for our opinion.

### Responsibilities of management and those charged with governance for the consolidated financial statements

Management is responsible for the preparation and fair presentation of the consolidated financial statements in accordance with Canadian accounting standards for private enterprises, and for such internal control as management determines is necessary to enable the preparation of consolidated financial statements that are free from material misstatement, whether due to fraud or error.

In preparing the consolidated financial statements, management is responsible for assessing the Company's ability to continue as a going concern, disclosing, as applicable, matters related to going concern and using the going concern basis of accounting unless management either intends to liquidate the Company or to cease operations, or has no realistic alternative but to do so.

Those charged with governance are responsible for overseeing the Company's financial reporting process.

### Auditor's responsibilities for the audit of the consolidated financial statements

Our objectives are to obtain reasonable assurance about whether the consolidated financial statements as a whole are free from material misstatement, whether due to fraud or error, and to issue an auditor's report that includes our opinion. Reasonable assurance is a high level of assurance, but is not a guarantee that an audit conducted in accordance with Canadian generally accepted auditing standards will always detect a material misstatement when it exists. Misstatements can arise from fraud or error and are considered material if, individually or in the aggregate, they could reasonably be expected to influence the economic decisions of users taken on the basis of these consolidated financial statements.

As part of an audit in accordance with Canadian generally accepted auditing standards, we exercise professional judgment and maintain professional skepticism throughout the audit. We also:

- Identify and assess the risks of material misstatement of the consolidated financial statements, whether due to fraud or error, design and perform audit procedures responsive to those risks, and obtain audit evidence that is sufficient and appropriate to provide a basis for our opinion. The risk of not detecting a material misstatement resulting from fraud is higher than for one resulting from error, as fraud may involve collusion, forgery, intentional omissions, misrepresentations, or the override of internal control.
- Obtain an understanding of internal control relevant to the audit in order to design audit procedures that are appropriate in the circumstances, but not for the purpose of expressing an opinion on the effectiveness of the Company's internal control.
- Evaluate the appropriateness of accounting policies used and the reasonableness of accounting estimates and related disclosures made by management.
- Conclude on the appropriateness of management's use of the going concern basis of accounting and, based on the audit evidence obtained, whether a material uncertainty exists related to events or conditions that may cast significant doubt on the Company's ability to continue as a going concern. If we conclude that a material uncertainty exists, we are required to draw attention in our auditor's report to the related disclosures in the consolidated financial statements or, if such disclosures are inadequate, to modify our opinion. Our conclusions are based on the audit evidence obtained up to the date of our auditor's report. However, future events or conditions may cause the Company to cease to continue as a going concern.
- Evaluate the overall presentation, structure and content of the consolidated financial statements, including the disclosures, and whether the consolidated financial statements represent the underlying transactions and events in a manner that achieves fair presentation.

We communicate with those charged with governance regarding, among other matters, the planned scope and timing of the audit and significant audit findings, including any significant deficiencies in internal control that we identify during our audit.

Toronto, Canada  
March 25, 2020

Chartered Professional Accountants  
Licensed Public Accountants

*Ernst & Young LLP*

# Simply Green Home Services Inc.

## Consolidated balance sheet

As at September 30

	2019 \$	2018 \$
<b>Assets</b>		
<b>Current</b>		
Cash and cash equivalents	24,887,725	10,908,168
Accounts receivable	14,802,131	7,915,450
Receivable from sale of portfolio [note 16]	2,081,500	—
Inventory [note 3]	135,637	242,087
Prepaid expenses and other assets	824,685	648,354
Current portion of finance receivable [notes 4 and 10]	4,915,097	5,699,235
<b>Total current assets</b>	<b>47,646,775</b>	<b>25,413,294</b>
Finance receivable [notes 4 and 10]	249,028,146	301,360,790
Reserve receivable [note 5]	1,970,952	9,477,948
Property and equipment, net [note 6]	1,166,478	975,551
Prepaid warranty, net	495,162	580,940
Intangible assets, net [note 7]	2,035,823	2,151,831
Goodwill	2,275,463	2,275,463
Due from shareholders [note 8]	16,182,938	—
	<b>320,801,737</b>	<b>342,235,817</b>
<b>Liabilities and shareholders' deficiency</b>		
<b>Current</b>		
Accounts payable	3,064,758	4,612,914
Accrued liabilities	5,458,731	4,294,859
Income taxes payable	4,112,910	—
Sales taxes payable	825,507	579,354
Unearned revenue	3,048,335	2,486,579
Due to shareholders [note 8]	5,192,277	2,414,500
Current portion of loans payable [note 9]	31,696,827	105,406,941
Current portion of secured finance payable [note 10]	14,774,549	24,530,301
<b>Total current liabilities</b>	<b>68,173,894</b>	<b>144,325,448</b>
Service liability	7,759,648	9,776,140
Secured finance payable [note 10]	281,709,074	188,525,586
Loans payable [note 9]	20,418,019	—
<b>Total liabilities</b>	<b>378,060,635</b>	<b>342,627,174</b>
Contingencies [note 14]		
<b>Shareholders' deficiency</b>		
Capital stock [note 11]	1,978,826	10,205,751
Contributed surplus [note 12]	—	2,260,639
Deficit	(59,237,724)	(12,857,747)
<b>Total shareholders' deficiency</b>	<b>(57,258,898)</b>	<b>(391,357)</b>
	<b>320,801,737</b>	<b>342,235,817</b>

See accompanying notes

On behalf of the Board:

**Simply Green Home Services Inc.**

**Consolidated statement of deficit**

Year ended September 30

	<b>2019</b> \$	<b>2018</b> \$
<b>Deficit, beginning of year</b>	<b>(12,857,747)</b>	(6,881,670)
Reduction of stated capital [note 11]	<b>8,116,662</b>	—
	<b>(4,741,085)</b>	(6,881,670)
Net income (loss) for the year	<b>19,168,974</b>	(5,976,077)
Dividends paid	<b>(26,894,995)</b>	—
Premium paid on redemption of shares [note 11]	<b>(46,770,618)</b>	—
<b>Deficit, end of year</b>	<b>(59,237,724)</b>	(12,857,747)

*See accompanying notes*

**Simply Green Home Services Inc.**

**Consolidated statement of income (loss)**

Year ended September 30

	<b>2019</b>	<b>2018</b>
	\$	\$
<b>Revenue</b>		
HVAC sales and rental	15,577,350	22,684,997
LED sales and retrofit	3,646,749	3,978,172
Finance lease	43,746,633	40,306,231
Other	1,025,606	570,403
	<b>63,996,338</b>	<b>67,539,803</b>
<b>Expenses</b>		
Interest, financing fees and bank charges [notes 8, 9 and 10]	27,576,790	34,168,477
Cost of sales [notes 3 and 8]	15,201,430	22,056,066
Salaries and benefits [note 12]	9,962,321	8,931,627
Provision for impairment of finance receivable [note 4]	2,837,385	2,598,801
General and administrative	1,785,048	1,038,619
Service	1,718,407	1,078,490
Advertising and promotion	1,246,971	498,260
Professional fees	962,081	884,460
Vehicle, travel and selling	882,861	353,447
Amortization	784,288	659,837
Telecommunications	665,394	530,548
Credit adjudication	538,988	346,918
Occupancy costs	395,764	370,330
	<b>64,557,728</b>	<b>73,515,880</b>
Loss before the undernoted items and income taxes	<b>(561,390)</b>	<b>(5,976,077)</b>
Other income (expenses)		
Gain on portfolio disposition [note 16]	32,482,196	—
Transaction expenses and stock option buyouts	(6,870,333)	—
Transaction professional fees	(1,693,001)	—
	<b>23,918,862</b>	<b>—</b>
Income (loss) before income taxes	23,357,472	(5,976,077)
Provision for income taxes [note 13]	4,188,498	—
<b>Net income (loss) for the year</b>	<b>19,168,974</b>	<b>(5,976,077)</b>

See accompanying notes

# Simply Green Home Services Inc.

## Consolidated statement of cash flows

Year ended September 30

	2019 \$	2018 \$
<b>Operating activities</b>		
Net income (loss) for the year	19,168,974	(5,976,077)
Add (deduct) items not involving cash		
Amortization of property and equipment	203,788	171,505
Amortization of prepaid warranty	85,778	85,778
Amortization of intangible assets	494,722	402,554
Amortization of financing fees	3,100,489	1,901,460
Stock-based compensation expense [note 12]	1,567,614	41,208
Gain on portfolio disposition [note 16]	(32,482,196)	—
	(7,860,831)	(3,373,572)
Net changes in non-cash working capital balances related to operations	1,540,228	(45,689,114)
<b>Cash used in operating activities</b>	<u>(6,320,603)</u>	<u>(49,062,686)</u>
<b>Investing activities</b>		
Proceeds on portfolio disposition [note 16]	102,790,037	—
Purchases of property and equipment	(394,715)	(96,738)
Purchases of prepaid warranty	—	(21,311)
Addition of intangible assets	(378,714)	(624,445)
Acquisition of finance receivable	(17,741,563)	—
<b>Cash provided by (used) in investing activities</b>	<u>84,275,045</u>	<u>(742,494)</u>
<b>Financing activities</b>		
Advances to shareholders	(16,182,938)	—
Repurchase of stock options [note 12]	(1,850,173)	—
Proceeds from loans payable [note 9]	34,508,015	187,688,002
Repayment of loans payable [note 9]	(88,594,384)	(284,572,881)
Advances of secured finance payable	180,472,453	223,042,496
Repayment of secured finance payable	(88,006,530)	(76,541,327)
Proceeds from advances due to shareholders	2,777,777	(1,099,037)
Repurchase of capital stock [note 11]	(53,859,708)	—
Issuance of capital stock [note 11]	5,000,000	—
Dividends paid	(26,894,995)	—
Financing fees paid	(11,344,402)	(2,618,870)
<b>Cash provided by (used in) financing activities</b>	<u>(63,974,885)</u>	<u>45,898,383</u>
<b>Net increase (decrease) in cash during the year</b>	13,979,557	(3,906,797)
Cash and cash equivalents, beginning of year	10,908,168	14,814,965
<b>Cash and cash equivalents, end of year</b>	<u>24,887,725</u>	<u>10,908,168</u>

See accompanying notes