**SUBORDINATION AND STANDSTILL AGREEMENT**

THIS AGREEMENT made as of the \_\_\_ day of \_\_\_\_\_\_\_\_\_\_\_\_, 20\_\_\_

BETWEEN:

**EQUITABLE BANK,**

(hereinafter referred to as the "**Senior Lender**"),

and

●

(hereinafter collectively referred to as the **"Subordinate Lender"**),

**WHEREAS** pursuant to a commitment letter dated ● from the Senior Lender to ● (the “**Borrower**”) (the “**Senior** **Commitment Letter**”), the Senior Lender has agreed to make available to the Borrower a loan in the maximum principal amount of $● (the “**Senior Loan**”) which Senior Loan is secured by, among other things, a mortgage of the lands and premises described in Schedule A attached hereto (the “**Property**”) and all present and after-acquired personal property of the Borrower and ● (the “**Guarantors**”, collectively the Borrower and the Guarantors, the “**Covenantors**” and each a “**Covenantor**”). The Senior Loan and all existing and future indebtedness and other obligations and liabilities relating to or arising from the Property owing by the Covenantors to the Senior Lender pursuant to the Senior Commitment Letter, from time to time, shall be referred to as the “**Senior Indebtedness**”, and the security in respect of the Property and/or the Proceeds (as hereinafter defined), including all amendments, replacements and additions thereto and substitutions therefor, shall be referred to as the “**Senior Security**”.

**AND WHEREAS** pursuant to a commitment letter dated ● from the Subordinate Lender to the Borrower (the “**Subordinate** **Commitment Letter**”), the Subordinate Lender has agreed to make available to the Borrower a loan in the maximum principal amount of $● (the “**Subordinate Loan**”), which Subordinate Loan is secured by, among other things, a mortgage of the Property and all present and after-acquired personal property of the Covenantors. The Subordinate Loan and all existing and future indebtedness and other obligations and liabilities relating to or arising from the Property owing by the Covenantors to the Subordinate Lender pursuant to the Subordinate Commitment Letter, from time to time, shall be referred to as the “**Subordinate Indebtedness**”, and the security in respect of the Property and/or the Proceeds (as hereinafter defined), including all amendments, replacements and additions thereto and substitutions therefor, shall be referred to as the “**Subordinate Security**”.

**AND WHEREAS** the Subordinate Lender has agreed to subordinate and postpone the Subordinate Indebtedness and the Subordinate Security to and in favour of the Senior Indebtedness and the Senior Security on the terms and subject to the conditions set out herein.

**AND WHEREAS** without limiting section 1 hereof, reference herein to the Senior Commitment Letter, the Senior Loan, the Senior Indebtedness, the Senior Security, the Subordinate Commitment Letter, the Subordinate Loan, the Subordinate Indebtedness and the Subordinate Security includes all renewals, extensions, amendments, modifications, and restatements thereof or thereto from time to time.

**NOW THEREFORE** for good and valuable consideration (the receipt and sufficiency of which is hereby acknowledged) the parties agree as follows:

# Subordination and Postponement

The Subordinate Lender hereby subordinates and postpones the Subordinate Indebtedness and the Subordinate Security to the Senior Indebtedness and the Senior Security and agrees with the Senior Lender that the Senior Security shall be a first priority mortgage, security interest, lien and charge against the Property and all present and after-acquired personal property charged by the Senior Security, and all of the right, title and interest of the Covenantors therein, for the full amount of the Senior Indebtedness in full priority to the Subordinate Indebtedness and the Subordinate Security. The foregoing subordination and postponement of the Subordinate Indebtedness and the Subordinate Security to the Senior Indebtedness and the Senior Security shall include the subordination and postponement of the Subordinate Indebtedness to the Senior Indebtedness only to the extent required to make the Senior Security a first priority mortgage, security interest, lien and charge against the Property and all present and after-acquired personal property charged by the Senior Security, and all of the right, title and interest of the Covenantors therein, for the entire amount of the Senior Indebtedness at all times that any of the Senior Indebtedness remains outstanding. No discharge, release or waiver by the Senior Lender of any of the Senior Security against or in respect of any part of the Property or any person shall require notice to or the consent of the Subordinate Lender or otherwise affect the subordination and postponement of the Subordinate Indebtedness and the Subordinate Security hereby granted by the Subordinate Lender other than with respect to the Property or person in respect of which or whom the Senior Security is so discharged, released or waived.

No amendment, renewal, extension, replacement, modification, supplement or restatement of any Senior Indebtedness and/or the Senior Security (each, a "**Modification**") shall require the consent of the Subordinate Lender or otherwise affect the subordination and postponement of the Subordinate Indebtedness and the Subordinate Security hereby granted by the Subordinate Lender.

No amendment, renewal, extension, replacement, modification, supplement or restatement of any Subordinate Indebtedness and/or the Subordinate Security (each, a "**Subordinate Modification**") shall require the consent of the Senior Lender or otherwise affect the subordination and postponement of the Subordinate Indebtedness and the Subordinate Security hereby granted by the Subordinate Lender, except for any Subordinate Modification which is intended to increase the amount of the Subordinate Indebtedness (either by increasing the principal amount of the Subordinate Indebtedness or a change in the interest rate or the method of calculating the interest rate applicable thereto which results in an increase in the amount of interest payable during the term of the Subordinate Loan or to accelerate the final repayment of the Subordinate Indebtedness by a time period greater than three (3) months, (each, a "**Material Subordinate Modification**") in which case, the prior written consent of the Senior Lender shall only be required with respect to, and only to the extent of, such Material Subordinate Modification. To the extent that any consent of the Senior Lender is required hereunder, the Senior Lender shall have five (5) Business Days to respond to the Subordinate Lender, failing which, it shall be deemed to have granted its consent.

The subordinations and postponements contained herein shall apply in all events and circumstances regardless of:

1. the date of execution, delivery, attachment, filing, registration, perfection or enforcement of any of the Senior Security or the Subordinate Security;
2. the date of any loan, advance, advances or other accommodation under the Senior Indebtedness or under the Subordinate Indebtedness;
3. the date of any default under or in respect of any of the Senior Indebtedness or the Senior Security or the Subordinate Indebtedness or the Subordinate Security, or the date of any crystallization of any floating charges constituted by the Senior Security or the Subordinate Security;
4. any priority granted by any applicable principle of law or statute;
5. the failure of the Senior Lender to register, maintain, renew or keep current any registration of or pertaining to the Senior Security ; or
6. any exercise or non-exercise of any right or remedy in respect of the Senior Security .

Any insurance proceeds received in respect of the Property or the collateral or assets, which are the subject of the Senior Security granted by the Covenantor in respect thereof, shall be dealt with in accordance with the preceding provisions as though such insurance proceeds were paid or payable as proceeds of realization of the collateral for which they compensate.

# Subordinate Lender Purchase Option

The Senior Lender may deliver to the Subordinate Lender copies of (i) any notice (a "**Default Notice**") of an event of default under the Senior Commitment Letter or the Senior Security (an "**Event of Default**") pursuant to which the Senior Lender may accelerate and/or demand repayment of the Senior Indebtedness prior to the maturity of the Senior Loan concurrently with its delivery of such Default Notice to the Borrower; and (ii) any notice of acceleration or demand for payment (a "**Demand Notice**") delivered pursuant to an Event of Default which occurred prior to the giving of such Demand Notice where a copy of the Default Notice had not previously been delivered to the Subordinated Lender, concurrently with its delivery of such Demand Notice to the Borrower.

In the event that the Senior Lender does deliver a Default Notice relating to an Event of Default where the Senior Lender is accelerating or demanding repayment of the Senior Indebtedness, the Subordinate Lender of shall have the right to request from the Senior Lender a notice (a "**Purchase Option Notice**") which sets out an amount (the "**Purchase Price**") being equal to the sum of: (i) the then-outstanding principal balance of the Senior Indebtedness plus (ii) all accrued and unpaid fees and interest owing to the Senior Lender then outstanding in respect of the Senior Indebtedness and fees (including for greater certainty any exit fees, prepayment fees, yield maintenance payments, liquidated damages amounts and legal fees and other costs reasonably incurred in respect of matters relating to the Senior Loan, but excluding any amounts charged in violation of applicable law). Upon receipt of a Purchase Option Notice, the Subordinate Lender shall have the option, exercisable by the Subordinate Lender by delivering a notice (the "**Exercise Notice**") to the Senior Lender within ten (10) Business Days after the receipt of such Purchase Option Notice, to purchase the Senior Indebtedness from the Senior Lender for the Purchase Price (the "**Purchase Option**"). If the Subordinate Lender fails to deliver the Exercise Notice to the Senior Lender within such ten (10) Business Day period, the Subordinate Lender shall be deemed to have elected not to exercise the Purchase Option with respect to the applicable Default Notice, provided that such election shall not prejudice the Subordinate Lender's right to exercise the Purchase Option in the event of the delivery of any subsequent Default Notices. The Senior Lender and the Subordinate Lender shall close the sale of the Senior Indebtedness as soon as practicable after and, in any event no later than thirty (30) days following, the delivery of the Exercise Notice unless they mutually agree to an extension of such thirty (30) day period. At the closing, the Senior Lender shall deliver to the Subordinate Lender original execution copies of the Senior Commitment Letter, the Senior Security and all other documents relating to the Senior Indebtedness and shall execute and deliver to the Subordinate Lender assignment documentation in form and substance acceptable to the Senior Lender and to the Subordinate Lender, acting reasonably, to effectuate the transfer of all of the Senior Lender's right, title and interest under, in and to the Senior Commitment Letter, the Senior Security and all related contracts, deeds, instruments and other documents.

In the event that the Senior Lender delivers Default Notice relating to an Event of Default where the Senior Lender is not accelerating or demanding repayment of the Senior Indebtedness, the provisions of this Section shall apply following receipt by the Subordinate Lender of such Default Notice.

# Payments

The Subordinate Lender agrees that forthwith upon its receipt of a Default Notice from the Senior Lender:

1. all rents, revenue, income, cash flow and other proceeds arising from or relating to the Property (the "**Proceeds**") shall not be applied to any payment on account of the Subordinate Indebtedness until the Senior Indebtedness is paid in full or the Event of Default has been cured in accordance with the terms of the Senior Commitment Letter and the Senior Security ; and
2. the Subordinate Lender shall not accept any payment on account of the Subordinate Indebtedness which the Subordinate Lender knows or reasonably ought to know is a payment made from the Proceeds, and if any such payments are received, the Subordinate Lender shall hold such payments in trust for the Senior Lender and immediately pay such amount to the Senior Lender without deduction. All insurance, expropriation and condemnation proceeds relating to the Property shall be dealt with and applied, whether before or after any Event of Default under or in respect of the Senior Indebtedness or the Subordinate Indebtedness, in accordance with the provisions of the Senior Commitment Letter and/or the Senior Security notwithstanding any provision to the contrary in the Subordinate Security.

The Senior Lender and the Subordinate Lender shall provide reasonable cooperation to each other following the giving of such Default Notice to ensure the provisions of this section are complied with.

# Consent

The Senior Lender hereby irrevocably consents to the Subordinate Indebtedness and the Subordinate Security. The Subordinate Lender hereby irrevocably consents to the Senior Indebtedness and the Senior Security.

# Assignment

1. The Subordinate Lender agrees that it shall not sell, transfer, assign or otherwise dispose of any interest in the Subordinate Indebtedness or the Subordinate Security to any person or persons (the "**Assignee**"), and that no such sale, transfer, assignment or other disposition shall in any way be effective unless, in each such case:

1. such Assignee executes and delivers to the Senior Lender an assumption agreement directly with the Senior Lender pursuant to which such Assignee agrees to be bound by all of the terms and conditions hereof including without limitation all of the obligations of the Subordinate Lender hereunder and affirms all of the respective rights, remedies and priorities set forth herein (including, without limitation, an express covenant from such Assignee against any further sale, transfer, assignment or other disposition except in accordance with this section); and
2. a corresponding transfer in favour of the Assignee of any registered notice of this Agreement has been registered against title to the Property in accordance with this Agreement. The Senior Lender shall be required to act reasonably and in good faith in entering into any such assumption agreement with the Assignee.
3. The Senior Lender agrees that it shall not sell, transfer, assign or otherwise dispose of any interest in the Senior Indebtedness or the Senior Security to any Assignee, and no such sale, transfer, assignment or other disposition shall in any way be effective unless, in each such case:
4. such Assignee executes and delivers to the Subordinate Lender an assumption agreement directly with the Subordinate Lender pursuant to which such Assignee agrees to be bound by all of the obligations of the Senior Lender hereunder and affirms all of the respective rights, remedies and priorities set forth herein (including, without limitation, an express covenant from such Assignee against any further sale, transfer, assignment or other disposition except in accordance with this section); and
5. corresponding transfers in favour of the Assignee of the registered postponement and any registered notice of this Agreement have been registered against title to the Property in accordance with this Agreement. The Subordinate Lender shall be required to act reasonably and in good faith in entering into any such assumption agreement with the Assignee.

# **Standstill by Subordinate Lender**

As long as there is any Senior Indebtedness owing to the Senior Lender under the Senior Commitment Letter and/or the Senior Security, the Subordinate Lender shall not take any Enforcement Action (as hereinafter defined) under or in respect of the Subordinate Security or the Subordinate Indebtedness with respect to all or any part of the Property, or the right, title and interest of the Borrower therein, or against a Covenantor unless and until the Subordinate Lender has given the Senior Lender not less than ninety (90) days’ prior written notice that a default has occurred under the Subordinate Security and/or Subordinate Indebtedness or the Senior Lender has provided written consent, which consent may be given or withheld by the Senior Lender in its sole discretion. It is the express intention of the parties that the words “sole discretion” mean the exercise of the applicable right, determination, approval, consent or discretion in a manner that is completely and absolutely subjective in all respects and does not create or imply a duty or obligation of any kind on the part of the Senior Lender to act objectively or to apply any objective criteria or to conform to any other standard, it being the intention that the exercise of “sole discretion” by the Senior Lender will not be subject to any restriction, limitation, challenge or review of any kind whatsoever at any time by the Subordinate Lender, the Borrower or any court or any other person. The Subordinate Lender shall not challenge, contest or bring into question the validity, priority or perfection of the Senior Security or any enforcement action taken by the Senior Lender under or in respect of the Senior Security against any Covenantor or against all or any part of the Property and related personal property.

For greater certainty, the Subordinate Lender shall not challenge, contest or bring into question:

1. the validity, priority or perfection of the Senior Security; or
2. any Enforcement Action taken by the Senior Lender under or in respect of the Senior Security or Senior Indebtedness against the Covenantors or against all or any part of the Property, or the right, title and interest of a Covenantor therein, except for a challenge of an Enforcement Action (but for greater certainty not the validity, priority or perfection of the Senior Security ) in circumstances where non-compliance with laws or any provision of this Agreement applicable to such Enforcement Action is alleged by the Subordinate Lender.

In this Agreement, "**Enforcement Action**" means the commencement of any realization (including seizure) proceedings, power of sale, foreclosure or other judicial or private sale proceedings, appointing or obtaining the appointment of a receiver, a manager or a receiver and manager or other person having similar powers in respect of any person or property, attornment of rents, taking possession or control of any property or undertaking, commencing, giving or making any demand for payment, any notice of intention to enforce security (other than a notice to the Covenantors of the default) or any action or proceeding seeking payment or recovery of all or any part of any indebtedness or damages in lieu thereof, or accepting a transfer of any property in lieu of foreclosure, or the exercise of any other rights or remedies available to a creditor under its security or otherwise at law or in equity, including without limitation, any bankruptcy proceedings.

The Subordinate Lender shall deliver to the Senior Lender copies of any notice of an event of default under the Subordinate Commitment Letter or the Subordinate Security pursuant to which the Subordinate Lender may accelerate and/or demand repayment of the Subordinate Indebtedness prior to the maturity of the Subordinate Loan concurrently with its delivery of such notice to a Covenantor.

# Further Assurances

Upon the request of the other party, the Senior Lender and the Subordinate Lender shall each execute such further documents or instruments and take such further action as the requesting party reasonably requires from time to time to carry out the intent of this Agreement, including, without limitation, executing and delivering any short-form subordination and postponement agreement or instrument to register or record or file notice of the subordination and postponement of the Subordinate Security and the Subordinate Indebtedness on title to the Property and/or in any other office of public record and to give notice to third parties of the provisions of this Agreement. The Senior Lender shall not register a postponement against title to the Property in connection with this Agreement unless (i) such registered instrument is expressly subject to the terms and conditions of this Agreement and (ii) either a copy of this Agreement is attached to such registered instrument or a notice of this Agreement is registered separately against title to the Property.

# Notice

Any notice, demand or other communication which any party may desire or may be required to give to any other party shall be in writing and may be made or given by personal delivery, by registered mail or by facsimile transmission to the address for service of the recipient set forth below. Any demand, notice or communication given by personal delivery shall be conclusively deemed to have been given on the day of actual delivery thereof, and if given by registered mail, on the third Business Day following the deposit thereof in the mail, and if given by electronic transmission, on the first Business Day following the transmittal thereof. The address for service for each party is as follows:

|  |  |
| --- | --- |
| (i) | if to the Senior Lender, to |
|  |  |

Equitable Bank

30 St. Clair Avenue West, Suite 700

Toronto, Ontario M4V 3A1

Fax No. (416) 515-7001

Attention: Director, Commercial Credit

Copy to: Vice President and General Counsel

|  |  |
| --- | --- |
| (ii) | if to the Subordinate Lender, to |
|  |  |

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If any party giving any demand, notice or other communication knows or reasonably ought to know of any difficulties with the postal system that might affect delivery of mail, such demand, notice or other communication shall not be mailed, but shall be given by personal delivery or by electronic transmission. Any party hereto may change its address for service to which notices hereunder are required to be made or given by notice to other parties in accordance herewith.

# Time

Time shall be of the essence of this Agreement. If anything herein is to be done on a day, which is not a Business Day, the same shall be done on the next succeeding Business Day. Unless otherwise provided hereto, all references to time shall mean Toronto time. As used in this Agreement, "Business Day" means any day other than a Saturday, Sunday or a statutory holiday in Toronto.

# Governing Law

This Agreement shall be governed by and construed in accordance with the laws of the Province in which the lands and premises described in Schedule A are located and the federal laws of Canada applicable therein without application of any principle of conflict of laws which may result in laws other than the laws in force in such Province applying to this Agreement. Each party hereto consents to the jurisdiction of the courts of such Province and irrevocably agrees that all actions or proceedings arising out of or relating to this Agreement shall be litigated in such courts and each party hereto unconditionally accepts the non-exclusive jurisdiction of the said courts and waives any defence of forum non-conveniens, and irrevocably agrees to be bound by any judgment rendered thereby in connection with this Agreement, provided nothing herein shall affect the right to serve process in any other manner permitted by law.

# Conflict

To the extent that there is any inconsistency or discrepancy between the provisions of this Agreement and the terms and conditions of any registered instrument or other document executed in connection with this Agreement, then the provisions of this Agreement shall govern to the extent of any such inconsistency or discrepancy.

# Successors

The acknowledgements and agreements contained in this Agreement shall extend to, be binding upon and enure to the benefit of the parties hereto and their respective successors and assigns.

# Counterparts

This Agreement may be executed in several counterparts, each of which when so executed shall be deemed to be an original and which counterparts together shall constitute one and the same instrument. A signed counterpart delivered by facsimile or other means of electronic transmission shall be binding upon the parties as an originally signed counterpart.

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

**EQUITABLE BANK**

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Name:

Title:

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Name:

Title:

I/We have authority to bind the Bank.

●

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Name:

Title:

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Name:

Title:

I/We have authority to bind the Corporation.

**SCHEDULE A**

Municipal Address:

# Legal Description: