

# TAB 1



Court File No. CV-13-10331-00CL  
Court of Appeal File No. M44532

**COURT OF APPEAL FOR ONTARIO**

THE HONOURABLE  
JUSTICE CRONK

)  
)

Monday, THE 12<sup>th</sup>  
DAY OF January 2015

8527504 CANADA INC.

Applicant  
(Respondent)

and

SUN PAC FOODS LIMITED

Respondent

APPLICATION UNDER Section 243 of the *Bankruptcy and Insolvency Act*,  
R.S.C. 1985, c.B-3, and Section 101 of the *Courts of Justice Act*, R.S.O. 1990, c.C.43

AND BETWEEN:

Court File No. CV-14-10543-00CL  
Court of Appeal file No. M44533

**COURT OF APPEAL FOR ONTARIO**

BETWEEN:

8527504 CANADA INC.

Applicant  
(Respondent)

and

LIQUIBRANDS INC.

Respondent  
(Moving Party Appellant)

APPLICATION UNDER Section 243 of the *Bankruptcy and Insolvency Act*,  
R.S.C. 1985, c.B-3, and Section 101 of the *Courts of Justice Act*, R.S.O. 1990, c.C.43

**ORDER**

THIS MOTION, made by the moving party creditor and appellant, Liquibrands Inc., was read this day at the court house, Osgoode Hall, 130 Queen Street West, Toronto, Ontario, M5H 2N5.

ON READING the Notices of Motion for Leave to Appeal of Liquibrands Inc. in Court of Appeal File Numbers M44532 and M44533, and on reading the consent of Liquibrands Inc., 8527504 Canada Inc. and BDO Canada Limited, in its capacity as the Court-appointed receiver over the assets and undertakings of Sun Pac Foods Limited, filed,

1. THIS COURT ORDERS that the motions for leave to appeal in Court of Appeal File Numbers M44532 and M44533 be read together.
2. THIS COURT ORDERS that Liquibrands Inc. serve and file one motion record and factum for use in the motions for leave to appeal within 10 days from the date it has received all issued and entered orders of Justice Newbould under appeal;

ENTERED AT / INSCRIT A TORONTO  
ON / BOOK NO:  
LE / DANS LE REGISTRE NO.:

JAN 12 2015

PER / PAR: FC



REGISTRAR (Signature of Judge)



8527504 CANADA INC.  
Applicant (Respondent)  
8527504 CANADA INC.  
Applicant (Respondent)

-and- SUN PAC FOODS LIMITED  
Respondent  
-and- LIQUIBRANDS INC.  
Respondent (Moving Party)

Court File No. CV-13-10331-0000CL/CV-14-10543-00CL  
Court of Appeal File No. M44532/M44533

**COURT OF APPEAL FOR ONTARIO**

**ORDER**

**WIRES JOLLEY LLP**  
Barristers and Solicitors  
90 Adelaide Street West  
Suite 200  
Toronto, Ontario  
M5H 3V9

David E. Wires (LSUC# 18017P)  
Email: [devires@wiresjolleyllp.com](mailto:devires@wiresjolleyllp.com)  
Tel: (416) 366-4006

Krista Bulmer (LSUC# 52198H)  
Email: [kbulmer@wiresjolleyllp.com](mailto:kbulmer@wiresjolleyllp.com)  
Tel: (416) 366-6516

Tel: (416) 366-0000  
Fax: (416) 366-0002

Lawyers for the moving party creditor and appellant,  
Liquibrands Inc.



TAB 2



M44532

Court File No. CV-13-10331-00CL  
Court of Appeal File No.

**COURT OF APPEAL FOR ONTARIO**

BETWEEN:

8527504 CANADA INC.

Applicant  
(Respondent)

and

SUN PAC FOODS LIMITED

Respondent

APPLICATION UNDER Section 243 of the *Bankruptcy and Insolvency Act*, R.S.C. 1985, c.B-3, and Section 101 of the *Courts of Justice Act*, R.S.O. 1990, c.C.43

**NOTICE OF MOTION FOR LEAVE TO APPEAL**

The moving party creditor, Liquibrands Inc. ("Liquibrands"), will make a motion in writing to the Court of Appeal, pursuant to Rule 61.03.1 of the Rules of Civil Procedure, R.R.O. 1990, Reg. 194. The Court of Appeal will hear the motion in writing 36 days after service of the moving party's motion record, factum and transcripts, if any, or on the filing of the moving party's reply factum, if any, whichever is earlier.

**PROPOSED METHOD OF HEARING:**

The Motion is to be heard in writing under subrule 61.03.1(1) and the moving party requests that this motion be heard together with the motion for leave to appeal in Court File No.: CV-14-10543-00CL, which is the companion appeal to the within appeal.

**THE MOTION IS FOR THE FOLLOWING RELIEF:**

1. An order, if necessary, to extend the time to serve and file the moving party's motion record and factum to 30 days after the parties receive a signed, issued and entered order from The Honourable Justice Newbould of the Ontario Superior Court of Justice.
2. An order granting the moving party leave to appeal to the Court of Appeal from the Order of Justice Newbould dated December 4, 2014, in which he failed:
  - (a) to direct the trial of an issue for a declaration that 8527504 Canada Inc. ("852") and Bridging Capital Inc. ("Bridging") breached the terms of a "Forbearance Agreement" (defined below) among those parties, Sun Pac Foods Limited ("Sun Pac") and Liquibrands as herein described; and
  - (b) to require Sun Pac's current receiver, BDO Canada Limited ("BDO"), to pay the proceeds of realization of the assets of Sun Pac payable to 852 and/or Bridging into Court, or alternatively to be held in trust by counsel to BDO, pending a final decision of the Court on the declaration and the action thereafter, if any, or pending further Court order.
3. If the order for leave to appeal be granted, an order that this appeal and the appeal from the order in Court File No. CV-14-10543-00CL be consolidated or heard together.
4. An order granting the moving party its costs of the motion.
5. Such further and other relief as to this Honourable Court may seem just.

**THE GROUNDS FOR THE MOTION ARE:**

**The Appeal**

1. The moving party cannot proceed until there is a signed, issued and entered order in its motion record from which leave to appeal is sought.

2. Justice Newbould heard the Liquibrands motion on November 28, 2014 and released his endorsement on December 4, 2014.

3. The motion was brought by Liquibrands in its capacity as a creditor within an Application under Section 243 of the *Bankruptcy and Insolvency Act*. Leave to appeal to the Court of Appeal is required pursuant to section 193(e) of the *Bankruptcy and Insolvency Act*.

4. Liquibrands seeks leave to appeal the decision made by Justice Newbould in three matters heard together on November 28, 2014 and in respect of which a single endorsement was released December 4, 2014:

(a) a motion brought by Liquibrands in Court File No: CV-13-10331-00CL for, *inter alia*, an order for the trial of an issue to determine whether 852 and Bridging (collectively the “Lenders”) were in breach of a Forbearance and Amending Agreement between 852, Liquibrands and Sun Pac dated September 11, 2013 (“Forbearance Agreement) and, if so, appointing a receiver over the litigation commenced by Sun Pac and Liquibrands against 852 and Bridging and for leave to continue the litigation;

(b) a motion brought by BDO in Court File No: CV-13-10331-00CL for approval of receiver’s reports and for distribution of liquidation proceeds; and

(c) an application brought by 852 in Court File No. CV-14-10543-00CL for an order appointing a receiver over Liquibrands.

5. The appeals are closely related and the orders arise from a single written endorsement as a result of the motions and application being heard together, so it would be inappropriate for this motion or for the appeals to be determined independently.

6. The issues raised in the proposed appeal are of general importance to the practice in bankruptcy/insolvency matters and to the administration of justice as a whole; are *prima facie* meritorious; and the appeal will not unduly hinder the progress of the insolvency proceeding since the liquidation is complete and the majority of liquidation proceeds have been disbursed, with the exception of the disbursement to 852.

7. Sections 182(2), 193 and 195 of the *Bankruptcy and Insolvency Act*; Rules 61.03.1(1), 61.16(1), 63.02(1) of the *Rules of Civil Procedure*; and sections 6(1)(b), 6(2) of the *Courts of Justice Act*.

#### **Applicable Law**

8. This appeal will address four points of law:

**I. Whether the organizing principle of good faith and the common law duty of honesty is implied in a lending agreement and guarantee and is preserved by the terms of the agreement and guarantee**

9. The moving party asserts that under the rule in *Bhasin v. Hrynew*, 2014 SCC 71 (CanLII) a duty of honesty applies to the lending agreements and the guarantee, and the Lenders breached the duty.



10. The moving party asserts that a duty of good faith arises when necessary to ensure that the parties do not act in a way that defeats the objects of the very contract the parties have entered. An implied a duty of good faith with a view to securing the performance and enforcement of the contract made by the parties is implied to ensure that parties do not act in a way that eviscerates or defeats the objectives of the agreement that they have entered into. *Barclays Bank PLC v. Devonshire Trust*, 2013 ONCA 494 (CanLII); *Nareerux Import Co. Ltd. v. Canadian Imperial Bank of Commerce*, 2009 ONCA 764 (CanLII).

11. The Motions Judge erred in finding the Forbearance Agreement and the Liquibrands guarantee excluded those duties.

**II. Whether an action by a debtor against a lender forms part of the lender's security and can be sold as part of the security transferred to a receiver**

12. The moving party adopts the rule in *239745 Ontario LTD v. Bank of America Canada*, 1999 CarswellOnt. 2665 (S.C.J.) that it is “absurd and manifestly unfair” if a security agreement gives the lender the right, upon default, to pursue causes of action belonging to the debtor against the lender itself. To avoid the absurdity, a security agreement applies only to causes of action against third parties and not the debtor.

13. The Motions Judge erred in directing BDO to auction the Sun Pac Action.

**III. Whether an event of default under a loan agreement caused by a lender's breach of contract to advance funds is actionable**

14. The appellant adopts the principle and rule in *Barclays Bank PLC v. Devonshire Trust*, 2013 ONCA 494 that a party is precluded from taking advantage of and benefitting from a state of affairs produced by its own wrong. A party who seeks to obtain a benefit under a continuing

contract on account of his breach is just as much taking advantage of his own wrong as is a party who relies on his breach to avoid a contract and thereby escape his obligations.

**IV. Whether the appellants as second secured lenders must show a proprietary interest in the proceeds of realization of a first security lender for the proceeds to be paid into court under Rule 45.02 pending determination of the threshold issue whether the lender's breach of contract caused a default.**

15. The appellants adopt the rule in *Sadie Moranis Realty Corporation v. 1667038 Ontario Inc.*, 2012 ONCA 475 (CanLII) that rule 45.02 requires that the legal right to the specific fund claimed by the plaintiff need not be a proprietary right.

**Background Facts and the Decision of Newbould J. (Note: These mirror the Background Facts in the Notice of Motion for Leave to Appeal in Court File No. CV-14-10543-00CL)**

16. Bridging provided financing to Sun Pac.

17. Bridging assigned the loan to 852.

18. 852 is a shell corporation.

19. Liquibrands is second secured creditor of Sun Pac. Liquibrands is also the sole shareholder of Sun Pac.

20. Liquibrands asserts that the Lenders relied upon an Event of Default created by their own wrong to place Sun Pac into receivership.

21. Pursuant to the Forbearance Agreement, 852 agreed, among other things, to advance a Facility D loan calculated to be \$1.15 million on or about October 1, 2013, and agreed not to

take any steps to enforce any loan agreement or security prior to the earlier of: (a) December 9, 2013; or (b) the occurrence of an Event of Default.

22. The purpose of the loan was to finance Sun Pac while it sold its "Breadcrumb Division" and while it refinanced.

23. The Forbearance Agreement is underpinned by the general organizing principle of good faith and honest performance.

24. Liquibrands is a party to the Forbearance Agreement.

25. Liquibrands gave additional security for the Forbearance Agreement.

26. On October 4, 2013 the Lenders refused to advance the Facility D Loan.

27. Failure to advance the Facility D loan made continued operation of Sun Pac impossible while it refinanced to execute a new advantageous contract to supply Loblaws.

28. Between October 4, 2013 and November 12, 2013 Sun Pac solicited interim financing to repay the defendants. The defendants refused to postpone their security to facilitate the financing notwithstanding their failure to satisfy their obligation to fund the Facility D loan.

29. Between October 4, 2013 and November 12, 2013 Sun Pac was unable to find alternative financing.

30. Liquibrands and Sun Pac issued a Statement of Claim on November 12, 2013 (the "Action") against 852 and Bridging prior to the Order of Justice Mesbur dated November 12, 2013 placing Sun Pac into receivership (the "Receivership Order"). The Action asserted the defendants breached an agreement to fund the Facility D loan.

31. Liquibrands and Sun Pac asserted in the Action:



(a) it within the reasonable contemplation of the parties to the Forbearance Agreement that if the lenders breached their obligations to fund the Facility D loan Sun Pac would be to unable to continue as a going concern, complete anticipated replacement equity financing and sell the Breadcrumb Division to satisfy the lender's loan.

(b) 852 owed a duty of honesty and good faith in the performance of the Forbearance Agreement, in funding the Facility D loan and facilitating the financing necessary to repay the lenders and perform the Loblaws contract.

32. 852's breach of contract eviscerated the purpose of the Forbearance Agreement. 852 acted in a way that defeated the objectives of the agreement that the parties entered into.

33. On November 12, 2013, 852 applied for the appointment of a receiver on the ground Sun Pac defaulted in its obligation to 852 to continue operating.

34. Justice Mesbur appointed a Receiver of "the assets, undertakings and properties of the Sun Pac acquired for, or used in relation to a business carried on by the Debtor, including all proceeds thereof (the "Property")".

35. Justice Mesbur ordered that "no Proceeding in respect of Sun Pac be continued except with the written consent of the Receiver or with leave of the Court and any and all Proceedings under way in respect of Sun Pac were stayed and suspended pending further Order of Court."

36. The Action was outstanding on the date of the Receivership. Liquibrands concluded the Action was stayed.

37. The order authorized BDO to continue prosecution of proceedings. BDO declined to continue the Action against 852 and Bridging.



38. Liquibrands sought leave to appoint a receiver to continue the Action on behalf of Sun Pac.
39. 852 sought to put Liquibrands into receivership as a guarantor of Sun Pac.
40. The Motions Judge found:
  - (a) In August 2013 Sun Pac decided to sell the Breadcrumbs Division for \$3.1 million and requested additional funding to continue operating.
  - (b) On September 11, 2013, 852, Sun Pac and Liquibrands signed a Forbearance and Amending Agreement to provide Sun Pac with a temporary bridge loan pending obtaining equity and debt financing for an anticipated Loblaws contract; to complete a sale of a Breadcrumbs Division to repay the bridge loan.
  - (c) 852 agreed not to take any steps to enforce any of the loans or its security prior to the earlier of December 9, 2013 or the occurrence of an Event of Default.
  - (d) On November 11, 2013, 852's lawyers were informed by Sun Pac's insolvency lawyers that Sun Pac's operations had been shut down on November 7, 2013, at which time all but a few employees were terminated. As a result, 852 commenced a receivership application heard on November 12, 2013.
  - (e) BDO was appointed as receiver of Sun Pac on November 12, 2013.
41. Liquibrands applied for an Order directing the trial of an issue for a declaration that the lenders breached the terms of the Forbearance Agreement and, if the declaration be given, an Order:
  - (a) lifting the stay of proceedings in the Action and for leave for Sun Pac and Liquibrands to continue the Action against 852 and Bridging;

- (b) declaring Liquibrands entitled to claim under its general security agreement in priority to claims by 852 and Bridging;
- (c) appointing msi Spergel Inc. ("Spergel") as receiver of the remaining assets of Sun Pac for the purposes of advancing the litigation and disposing of the proceeds of realization and litigation; and
- (d) declaring that Liquibrands' guarantee of Sun Pac debt is unenforceable; and an Order requiring BDO to pay the proceeds of realization of the assets of Sun Pac payable to 852 and/or Bridging into Court, or alternatively to be held in trust by counsel to BDO, pending a final decision of the Court on the declaration and the action thereafter, if any, or pending further Court order.

42. Liquibrands argued that there was a threshold issue of whether the lenders breached their duty of honest performance and their obligation to advance the Facility D loan.

43. The Motions Judge acknowledged there was a dispute among the parties as to whether 852 was in breach of the Forbearance Agreement in failing to advance the loan but he erred in concluding, "I do not intend to get into that issue, although I was invited to do so."

44. Liquibrands took the position the order of Mesbur J. stayed the Action and, as BDO declined to advance the Action, Liquibrands sought an order appointing a receiver to advance Sun Pac's Action.

45. The Motions Judge found BDO and Liquibrands was entitled to continue the Action on behalf of Sun Pac without the necessity of obtaining leave to do so.

46. Liquibrands sought an order that the remaining proceeds of Sun Pac's liquidation be paid into Court pending determination of the threshold issue.



47. The Motions Judge erred in finding that Liquibrands was not entitled to an order for payment of the proceeds of the Liquidation into Court as it did not have a proprietary claim against specific funds beyond the funds utility to satisfy the plaintiffs claim against the defendant. Liquibrands, as a second creditor, has security over the assets of Sun Pac second to the security of 852.

48. The Motions Judge erred in finding there is no question that the security of 852 is valid and what Liquibrands was doing is attempting to secure before judgment its claim for damages against 852 and Bridging and the claim amounted to a collateral attack on the order of Mesbur J.

49. Liquibrands asserted there was a serious issue to be tried on the lenders breach of contract and if the contract was breached the lenders claim on the proceeds of realization.

50. The Motions Judge erred in finding there was no serious issue to be tried regarding Liquibrands' claim to the proceeds of the sale of Sun Pac's assets held by BDO and that 852 has the right to those proceeds.

51. The Motions Judge found there may be a serious issue to be tried regarding the Action for damages by Sun Pac and Liquibrands against 852 and Bridging.

52. Liquibrands asserted that its guarantee included a duty of honesty and good faith pursuant to section 16 of the *Personal Property Security Act* and as repeated in the lenders' responding affidavit.

53. The provisions of the Guarantee provided:

(7) Due Execution, etc. This Guarantee has been duly executed and delivered by or on behalf of the Guarantor and constitutes a valid and binding obligation of the Guarantor enforceable in accordance with its terms, except as enforceability may be limited by ..... general principals of equity (regardless of whether enforcement is sought in a proceeding in equity or at law.

54. The Motions Judge erred in finding Liquibrands contracted out of the equitable rules regarding guarantees and the terms of the guarantee precluded Liquibrands from contending that the guaranteed may be unenforceable if it succeeded in its action against 852.

55. The Motions Judge erred in finding that the Action was collateral.

56. The Motions Judge erred in ordering BDO to conduct a marketing process for the sale of the Action.

57. The Motions Judge erred in approving the distribution of the proceeds of realization to pay fees and disbursements and to make a distribution to 852 and/or Bridging.

58. A party is precluded from taking advantage of and benefitting from a state of affairs produced by its own wrong. A party cannot use its own breach or default in satisfying a condition precedent as a basis for being relieved of its contractual obligations.... *Southcott Estates Inc. v. Toronto Catholic District School Board*, 2010 ONCA 310 (CanLII), 2010 ONCA 310, 104 O.R. (3d) 784, at para. 13:

59. [N]o man can take advantage of his own wrong.... A party who seeks to obtain a benefit under a continuing contract on account of his breach is just as much taking advantage of his own wrong as is a party who relies on his breach to avoid a contract and thereby escape his obligations. *Alghussein Establishment v. Eton College*, [1991] 1 W.L.R. 587 H.L. (Eng.), at p. 594.

60. 852's default put Sun Pac in the position that it could not pay employees. That, in turn, caused 852 to declare a default by Sun Pac ceasing business operations. 852 impermissibly

benefited by its own breach or wrong by relying on the cessation of business operations as an Event of Default.

61. 852's failure to make the Facility D loan payments was a material contributing cause of Sun Pac's insolvency. 852 is barred by its own wrong from relying on Sun Pac's cessation of operations as a basis for terminating the transaction.

62. A commercial contract is to be interpreted: (a) as a whole, in a manner that gives meaning to all of its terms and avoids an interpretation that would render one or more of its terms ineffective; (b) by determining the intention of the parties in accordance with the language they have used in the written document and based upon the "cardinal presumption" that they have intended what they have said; (c) with regard to objective evidence of the factual matrix underlying the negotiation of the contract, but without reference to the subjective intention of the parties; and (to the extent there is any ambiguity in the contract); (d) in a fashion that accords with sound commercial principles and good business sense, and that avoid a commercial absurdity. *Ventas, Inc. v. Sunrise Senior Living Real Estate Investment Trust*, 2007 ONCA 205 (CanLII) at para. 24

63. 852's conduct breached the common law duty to perform the terms of the Forbearance Agreement honestly, and specifically: (i) 852 unilaterally accelerated the date for Sun Pac to present a contract for the sale of its breadcrumbs division; (ii) 852 misled Sun Pac about its intention to place Sun Pac into receivership; and (iii) 852 refused to advance funds it was obliged to advance contrary to the terms of the Agreement knowing that the failure to advance funds would result in the termination of Sun Pac's operations and the inability to finance an advantageous contract with Loblaws.

64. Contracting parties must be able to rely on a minimum standard of honesty from their contracting partner in relation to performing a contract.

65. The motions judge erred by declining to direct the trial of an issue with respect to 852's breach of contract by failing to advance a loan.

66. Security agreements are interpreted so as to avoid commercial absurdity.

67. The motions judge erred in finding that Sun Pac and Liquibrands claim is a collateral attack on the Sun Pac Receivership. The Action was issued and counsel to 852 was notified of the Action prior to obtaining the receivership order against Sun Pac on November 12, 2014.

68. The Motions judge erred by failing to find that the Liquibrands guarantee was subject to the laws of equity and by finding that the terms preclude Liquibrands from contending that the guarantee may be unenforceable.

69. It would be an absurd commercial result for a guarantee to remain enforceable despite the demand being made on the guarantee as a consequence of the lender's wrongful and dishonest conduct.

70. The motions judge erred in finding that the Subordination, Assignment, Postponement and Standstill Agreement dated October 1, 2012, precluded Liquibrands from challenging or objecting to any act taken or proceeding commenced by 852 in connection with the enforcement of 852's security. If enforcement is 852's security is upheld despite the lenders' wrongful and dishonest conduct, this creates a commercially absurd result.

71. The motions judge failed to inquire into the substance of the motion to determine whether 852 was in breach of the Forbearance Agreement and breached its common law duty of honesty in the performance of the Forbearance Agreement.

72. The motions judge erred in finding that Liquibrands must have a proprietary claim against the specific funds to satisfy its motion under Rule 45.

73. The motions judge erred in determining that it was just and convenient to appoint a receiver over Liquibrands.

74. Such further and other grounds as the lawyers may advise.

**THE FOLLOWING DOCUMENTARY EVIDENCE** will be used at the hearing of the Motion:

- (a) The endorsement of Justice Newbould dated December 4, 2014;
- (b) The Order of Justice Newbould dated December 4, 2014;
- (c) Relevant portions of the record from the proceedings below; and
- (d) Such further and other evidence as the lawyers may advise and this Honourable Court may permit.

December 15, 2014

**WIRES JOLLEY LLP**  
Barristers and Solicitors  
90 Adelaide Street West  
Suite 200  
Toronto, Ontario  
M5H 3V9

David E. Wires (LSUC# 18017P)  
Email: dewires@wiresjolleyllp.com  
Tel: (416) 366-4006

Krista Bulmer (LSUC# 52198H)  
Email: kbulmer@wiresjolleyllp.com  
Tel: (416) 366-6516

Tel: (416) 366-0000  
Fax: (416) 366-0002

Lawyers for the moving party respondent,  
Liquibrands Inc.

TO: **CHAITONS LLP**  
Barristers and Solicitors  
5000 Yonge Street, 10th Floor  
Toronto, Ontario  
M2N 7E9

Harvey Chaiton (LSUC# 21592F)  
Email: harvey@chaitons.com  
Tel: (416) 218-1129  
Fax: (416) 218-1849

Sam Rappos (LSUC# 51399S)  
Email: samr@chaitons.com  
Tel: (416) 218-1137  
Fax: (416) 218-1837

Tel: (416) 222-8888  
Fax: (416) 222-8402

Lawyers for the responding party, applicant,  
8527504 Canada Inc.

AND TO: **LIPMAN, ZENER & WAXMAN LLP**  
Barristers & Solicitors  
1220 Eglinton Avenue West  
Toronto, Ontario  
M6C 2E3

Anthony J. O'Brien (LSUC#27440E)  
Email: [aobrien@lzwlaw.com](mailto:aobrien@lzwlaw.com)

Tel: (416) 789-0652  
Fax: (416) 789-9015

Lawyers for the Receiver,  
BDO Canada Limited

8527504 CANADA INC.  
Applicant

-and- LIQUIBRANDS INC.  
Respondent

Court File No. CV-13-10331-00CL  
Court of Appeal File No:

---

**COURT OF APPEAL FOR ONTARIO**

PROCEEDING COMMENCED AT  
TORONTO

---

**NOTICE OF MOTION**

---

**WIRES JOLLEY LLP**  
Barristers and Solicitors  
90 Adelaide Street West  
Suite 200  
Toronto, Ontario  
M5H 3V9

David E. Wires (LSUC# 18017P)  
Email: [dewires@wiresjolleyllp.com](mailto:dewires@wiresjolleyllp.com)  
Tel: (416) 366-4006

Krista Bulmer (LSUC# 52198H)  
Email: [kbulmer@wiresjolleyllp.com](mailto:kbulmer@wiresjolleyllp.com)  
Tel: (416) 366-6516

Tel: (416) 366-0000  
Fax: (416) 366-0002

Lawyers for the moving party, creditor, Liquibrands Inc.



TAB 3



M44533

Court File No. CV-14-10543-00CL

Court of Appeal File No.

**COURT OF APPEAL FOR ONTARIO**

BETWEEN:

8527504 CANADA INC.

Applicant  
(Respondent)

and

LIQUIBRANDS INC.

Respondent  
(Moving Party)

APPLICATION UNDER Section 243 of the *Bankruptcy and Insolvency Act*, R.S.C. 1985, c.B-3, and Section 101 of the *Courts of Justice Act*, R.S.O. 1990, c.C.43

**NOTICE OF MOTION FOR LEAVE TO APPEAL**

The moving party/ respondent, Liquibrands Inc. ("Liquibrands"), will make a motion in writing to the Court of Appeal, pursuant to Rule 61.03.1 of the Rules of Civil Procedure, R.R.O. 1990, Reg. 194. The Court of Appeal will hear the motion in writing 36 days after service of the Moving Party's motion record, factum and transcripts, if any, or on the filing of the Moving Party's reply factum, if any, whichever is earlier.

**PROPOSED METHOD OF HEARING:**

The Motion is to be heard in writing under subrule 61.03.1(1) and the moving party requests that this motion be heard together with the motion for leave to appeal in Court File No.: CV-13-10331-00CL, which is the companion appeal to the within appeal.

**THE MOTION IS FOR:**

1. An order, if necessary, to extend the time to serve and file the moving party's motion record and factum to 30 days after the parties receive a signed, issued and entered order from The Honourable Justice Newbould of the Ontario Superior Court of Justice.
2. An order granting the moving party leave to appeal to the Court of Appeal from the Order of The Honourable Justice Newbould dated December 4, 2014, appointing BDO Canada Limited ("BDO") receiver over the assets of Liquibrands (the "Liquibrands Receivership Order").
3. If the order for leave to appeal be granted:
  - (i) an order to stay the Liquibrands Receivership Order pending appeal;
  - (ii) an order that the appeal from the order in Court File No. CV-13-10331-00CL and the within appeal be consolidated or heard together.
4. An order granting the moving party its costs of the motion.
5. Such further and other relief as to this Honourable Court may seem just.

**THE GROUNDS FOR THE MOTION ARE:**

1. Pursuant to the decision of the Ontario Court of Appeal in *Business Development Bank of Canada v. Pine Tree Resorts Inc.*, 2013 ONCA 282 (CanLII), the appeal of a receivership order is not as of right and leave to appeal to the Court of Appeal is required.

2. If leave to appeal is not granted and the Liquibrands Receivership Order is not stayed pending appeal, the companion appeal (in Court File No. CV-13-10331-00CL) shall also come to an end.
3. The moving party does not anticipate that BDO will proceed with any appeal on behalf of Liquibrands.
4. Liquibrands seeks leave to appeal the decision made by Justice Newbould in three related matters heard together on November 28, 2014 and in respect of which a single endorsement was released December 4, 2014:
  - (a) a motion brought by Liquibrands in Court File No: CV-13-10331-00CL for, *inter alia*, an order for the trial of an issue to determine whether 8527504 Canada Inc. ("852") and Bridging Canada Inc. ("Bridging") were in breach of a Forbearance and Amending Agreement between 852, Liquibrands and Sun Pac Foods Limited ("Sun Pac") dated September 11, 2013 ("Forbearance Agreement) and, if so, appointing a receiver over the litigation commenced by Sun Pac and Liquibrands against 852 and Bridging and for leave to continue the litigation;
  - (b) a motion brought by BDO Canada Limited ("BDO"), the Receiver of Sun Pac Foods Limited in Court File No: CV-13-10331-00CL for approval of receiver's reports and for distribution of liquidation proceeds; and
  - (c) an application brought by 852 in Court File No. CV-14-10543-00CL for an order appointing a receiver over Liquibrands.

5. The appeals are companion appeals. The orders arise from a single written endorsement as a result of the motions and application being heard together, so it would be inappropriate for this motion or the appeals to be determined independently.
6. The proposed appeal raises an issue that is of general importance to the practice in bankruptcy/insolvency matters or to the administration of justice as a whole; is *prima facie* meritorious; and will not unduly hinder the progress of the insolvency proceeding.
7. The only assets of Liquibrands are its shares of Sun Pac so the sale of its tax losses is the only step to be taken by BDO in the receivership.
8. A stay of the Liquibrands Receivership Order is appropriate pending appeal since:
  - (a) there is a serious issue to be determined on appeal;
  - (b) the moving party would suffer irreparable harm if the stay were refused as it would lose the ability to continue the appeal without the consent and participation of BDO; and
  - (c) the balance of convenience favours the granting of a stay since the stay would have minimal adverse impact to 852 pending appeal whereas failure to grant a stay would end the appeal for Liquibrands altogether.
9. Sections 182(2), 193 and 195 of the *Bankruptcy and Insolvency Act*; Rules 61.03.1(1), 61.16 (1), 63.02(1) of the *Rules of Civil Procedure*; and sections 6(1)(b), 6(2) of the *Courts of Justice Act*.

**Background Facts and the Decision of Newbould J. (Note: These mirror the Background Facts in the Notice of Motion for Leave to Appeal in Court File No. CV-13-10331-00CL)**

1. Bridging provided financing to Sun Pac.
2. Bridging assigned the loan to 852.
3. 852 is a shell corporation.
4. Liquibrands is second secured creditor of Sun Pac. Liquibrands is also the sole shareholder of Sun Pac.
5. Liquibrands asserts that the Lenders relied upon an Event of Default created by their own wrong to place Sun Pac into receivership.
6. Pursuant to the Forbearance Agreement, 852 agreed, among other things, to advance a Facility D loan calculated to be \$1.15 million on or about October 1, 2013, and agreed not to take any steps to enforce any loan agreement or security prior to the earlier of: (a) December 9, 2013; or (b) the occurrence of an Event of Default.
7. The purpose of the loan was to finance Sun Pac while it sold its "Breadcrumb Division" and while it refinanced.
8. The Forbearance Agreement is underpinned by the general organizing principle of good faith and honest performance.
9. Liquibrands is a party to the Forbearance Agreement.
10. Liquibrands gave additional security for the Forbearance Agreement.
11. On October 4, 2013 the Lenders refused to advance the Facility D Loan.

12. Failure to advance the Facility D loan made continued operation of Sun Pac impossible while it refinanced to execute a new advantageous contract to supply Loblaws.

13. Between October 4, 2013 and November 12, 2013 Sun Pac solicited interim financing to repay the defendants. The defendants refused to postpone their security to facilitate the financing notwithstanding their failure to satisfy their obligation to fund the Facility D loan.

14. Between October 4, 2013 and November 12, 2013 Sun Pac was unable to find alternative financing.

15. Liquibrands and Sun Pac issued a Statement of Claim on November 12, 2013 (the "Action") against 852 and Bridging prior to the Order of Justice Mesbur dated November 12, 2013 placing Sun Pac into receivership (the "Receivership Order"). The Action asserted the defendants breached an agreement to fund the Facility D loan.

16. Liquibrands and Sun Pac asserted in the Action:

(a) it within the reasonable contemplation of the parties to the Forbearance Agreement that if the lenders breached their obligations to fund the Facility D loan Sun Pac would be to unable to continue as a going concern, complete anticipated replacement equity financing and sell the Breadcrumb Division to satisfy the lender's loan.

(b) 852 owed a duty of honesty and good faith in the performance of the Forbearance Agreement, in funding the Facility D loan and facilitating the financing necessary to repay the lenders and perform the Loblaws contract.

17. 852's breach of contract eviscerated the purpose of the Forbearance Agreement. 852 acted in a way that defeated the objectives of the agreement that the parties entered into.



18. On November 12, 2013, 852 applied for the appointment of a receiver on the ground Sun Pac defaulted in its obligation to 852 to continue operating.
19. Justice Mesbur appointed a Receiver of "the assets, undertakings and properties of the Sun Pac acquired for, or used in relation to a business carried on by the Debtor, including all proceeds thereof (the "Property")".
20. Justice Mesbur ordered that "no Proceeding in respect of Sun Pac be continued except with the written consent of the Receiver or with leave of the Court and any and all Proceedings under way in respect of Sun Pac were stayed and suspended pending further Order of Court."
21. The Action was outstanding on the date of the Receivership. Liquibrands concluded the Action was stayed.
22. The order authorized BDO to continue prosecution of proceedings. BDO declined to continue the Action against 852 and Bridging.
23. Liquibrands sought leave to appoint a receiver to continue the Action on behalf of Sun Pac.
24. 852 sought to put Liquibrands into receivership as a guarantor of Sun Pac.
25. The Motions Judge found:
  - (a) In August 2013 Sun Pac decided to sell the Breadcrumbs Division for \$3.1 million and requested additional funding to continue operating.
  - (b) On September 11, 2013, 852, Sun Pac and Liquibrands signed a Forbearance and Amending Agreement to provide Sun Pac with a temporary bridge loan pending obtaining equity and debt financing for an anticipated Loblaws contract; to complete a sale of a Breadcrumbs Division to repay the bridge loan.

- (c) 852 agreed not to take any steps to enforce any of the loans or its security prior to the earlier of December 9, 2013 or the occurrence of an Event of Default.
- (d) On November 11, 2013, 852's lawyers were informed by Sun Pac's insolvency lawyers that Sun Pac's operations had been shut down on November 7, 2013, at which time all but a few employees were terminated. As a result, 852 commenced a receivership application heard on November 12, 2013.
- (e) BDO was appointed as receiver of Sun Pac on November 12, 2013.

26. Liquibrands applied for an Order directing the trial of an issue for a declaration that the lenders breached the terms of the Forbearance Agreement and, if the declaration be given, an Order:

- (a) lifting the stay of proceedings in the Action and for leave for Sun Pac and Liquibrands to continue the Action against 852 and Bridging;
- (b) declaring Liquibrands entitled to claim under its general security agreement in priority to claims by 852 and Bridging;
- (c) appointing msi Spergel Inc. ("Spergel") as receiver of the remaining assets of Sun Pac for the purposes of advancing the litigation and disposing of the proceeds of realization and litigation; and
- (d) declaring that Liquibrands' guarantee of Sun Pac debt is unenforceable; and an Order requiring BDO to pay the proceeds of realization of the assets of Sun Pac payable to 852 and/or Bridging into Court, or alternatively to be held in trust by counsel to BDO, pending a final decision of the Court on the declaration and the action thereafter, if any, or pending further Court order.

27. Liquibrands argued that there was a threshold issue of whether the lenders breached their duty of honest performance and their obligation to advance the Facility D loan.
28. The Motions Judge acknowledged there was a dispute among the parties as to whether 852 was in breach of the Forbearance Agreement in failing to advance the loan but he erred in concluding, "I do not intend to get into that issue, although I was invited to do so."
29. Liquibrands took the position the order of Mesbur J. stayed the Action and, as BDO declined to advance the Action, Liquibrands sought an order appointing a receiver to advance Sun Pac's Action.
30. The Motions Judge found BDO and Liquibrands was entitled to continue the Action on behalf of Sun Pac without the necessity of obtaining leave to do so.
31. Liquibrands sought an order that the remaining proceeds of Sun Pac's liquidation be paid into Court pending determination of the threshold issue.
32. The Motions Judge erred in finding that Liquibrands was not entitled to an order for payment of the proceeds of the Liquidation into Court as it did not have a proprietary claim against specific funds beyond the funds utility to satisfy the plaintiffs claim against the defendant. Liquibrands, as a second creditor, has security over the assets of Sun Pac second to the security of 852.
33. The Motions Judge erred in finding there is no question that the security of 852 is valid and what Liquibrands was doing is attempting to secure before judgment its claim for damages against 852 and Bridging and the claim amounted to a collateral attack on the order of Mesbur J.
34. Liquibrands asserted there was a serious issue to be tried on the lenders breach of contract and if the contract was breached the lenders claim on the proceeds of realization.

35. The Motions Judge erred in finding there was no serious issue to be tried regarding Liquibrands' claim to the proceeds of the sale of Sun Pac's assets held by BDO and that 852 has the right to those proceeds.

36. The Motions Judge found there may be a serious issue to be tried regarding the Action for damages by Sun Pac and Liquibrands against 852 and Bridging.

37. Liquibrands asserted that its guarantee included a duty of honesty and good faith pursuant to section 16 of the *Personal Property Security Act* and as repeated in the lenders' responding affidavit.

38. The provisions of the Guarantee provided:

(7) Due Execution, etc. This Guarantee has been duly executed and delivered by or on behalf of the Guarantor and constitutes a valid and binding obligation of the Guarantor enforceable in accordance with its terms, except as enforceability may be limited by ..... general principals of equity (regardless of whether enforcement is sought in a proceeding in equity or at law.

39. The Motions Judge erred in finding Liquibrands contracted out of the equitable rules regarding guarantees and the terms of the guarantee precluded Liquibrands from contending that the guaranteed may be unenforceable if it succeeded in its action against 852.

40. The Motions Judge erred in finding that the Action was collateral.

41. The Motions Judge erred in ordering BDO to conduct a marketing process for the sale of the Action.

42. The Motions Judge erred in approving the distribution of the proceeds of realization to pay fees and disbursements and to make a distribution to 852 and/or Bridging.

43. A party is precluded from taking advantage of and benefitting from a state of affairs produced by its own wrong. A party cannot use its own breach or default in satisfying a condition precedent as a basis for being relieved of its contractual obligations.... *Southcott Estates Inc. v. Toronto Catholic District School Board*, 2010 ONCA 310 (CanLII), 2010 ONCA 310, 104 O.R. (3d) 784, at para. 13:

44. [N]o man can take advantage of his own wrong.... A party who seeks to obtain a benefit under a continuing contract on account of his breach is just as much taking advantage of his own wrong as is a party who relies on his breach to avoid a contract and thereby escape his obligations. *Alghussein Establishment v. Eton College*, [1991] 1 W.L.R. 587 H.L. (Eng.), at p. 594.

45. 852's default put Sun Pac in the position that it could not pay employees. That, in turn, caused 852 to declare a default by Sun Pac ceasing business operations. 852 impermissibly benefited by its own breach or wrong by relying on the cessation of business operations as an Event of Default.

46. 852's failure to make the Facility D loan payments was a material contributing cause of Sun Pac's insolvency. 852 is barred by its own wrong from relying on Sun Pac's cessation of operations as a basis for terminating the transaction.

47. A commercial contract is to be interpreted: (a) as a whole, in a manner that gives meaning to all of its terms and avoids an interpretation that would render one or more of its terms ineffective; (b) by determining the intention of the parties in accordance with the language they have used in the written document and based upon the "cardinal presumption" that they have intended what they have said; (c) with regard to objective evidence of the factual matrix underlying the negotiation of the contract, but without reference to the subjective intention of the

parties; and (to the extent there is any ambiguity in the contract); (d) in a fashion that accords with sound commercial principles and good business sense, and that avoid a commercial absurdity. *Ventas, Inc. v. Sunrise Senior Living Real Estate Investment Trust*, 2007 ONCA 205 (CanLII) at para. 24

48. 852's conduct breached the common law duty to perform the terms of the Forbearance Agreement honestly, and specifically: (i) 852 unilaterally accelerated the date for Sun Pac to present a contract for the sale of its breadcrumbs division; (ii) 852 misled Sun Pac about its intention to place Sun Pac into receivership; and (iii) 852 refused to advance funds it was to obliged to advance contrary to the terms of the Agreement knowing that the failure to advance funds would result in the termination of Sun Pac's operations and the inability to finance an advantageous contract with Loblaws.

49. Contracting parties must be able to rely on a minimum standard of honesty from their contracting partner in relation to performing a contract.

50. The motions judge erred by declining to direct the trial of an issue with respect to 852's breach of contract by failing to advance a loan.

51. Security agreements are interpreted so as to avoid commercial absurdity.

52. The motions judge erred in finding that Sun Pac and Liquibrands claim is a collateral attack on the Sun Pac Receivership. The Action was issued and counsel to 852 was notified of the Action prior to obtaining the receivership order against Sun Pac on November 12, 2014.

53. The Motions judge erred by failing to find that the Liquibrands guarantee was subject to the laws of equity and by finding that the terms preclude Liquibrands from contending that the guarantee may be unenforceable.

54. It would be an absurd commercial result for a guarantee to remain enforceable despite the demand being made on the guarantee as a consequence of the lender's wrongful and dishonest conduct.

55. The motions judge erred in finding that the Subordination, Assignment, Postponement and Standstill Agreement dated October 1, 2012, precluded Liquibrands from challenging or objecting to any act taken or proceeding commenced by 852 in connection with the enforcement of 852's security. If enforcement is 852's security is upheld despite the lenders' wrongful and dishonest conduct, this creates a commercially absurd result.

56. The motions judge failed to inquire into the substance of the motion to determine whether 852 was in breach of the Forbearance Agreement and breached its common law duty of honesty in the performance of the Forbearance Agreement.

57. The motions judge erred in determining that it was just and convenient to appoint a receiver over Liquibrands before the issue has been determined of whether 852 and Bridging breached the Forbearance Agreement and breached their common law duty to perform their contractual obligations honestly, despite finding that there may be a serious issue to be tried in that regard.

58. The Receiver will not continue the Action and has been ordered to market the Action. The Action will come to an end.

59. Such further and other grounds as the lawyers may advise.

**THE FOLLOWING DOCUMENTARY EVIDENCE** will be used at the hearing of the Motion:

- (a) The endorsement of Justice Newbould dated December 4, 2014;
- (b) The Order of Justice Newbould dated December 4, 2014;
- (c) Relevant portions of the record from the proceedings below; and
- (d) Such further and other evidence as the lawyers may advise and this Honourable Court may permit.

December 15, 2014

**WIRES JOLLEY LLP**  
Barristers and Solicitors  
90 Adelaide Street West  
Suite 200  
Toronto, Ontario  
M5H 3V9

David E. Wires (LSUC# 18017P)  
Email: dewires@wiresjolleyllp.com  
Tel: (416) 366-4006

Krista Bulmer (LSUC# 52198H)  
Email: kbulmer@wiresjolleyllp.com  
Tel: (416) 366-6516

Tel: (416) 366-0000  
Fax: (416) 366-0002

Lawyers for the moving party creditor,  
Liquibrands Inc.



TO: **CHAITONS LLP**  
Barristers and Solicitors  
5000 Yonge Street, 10th Floor  
Toronto, Ontario  
M2N 7E9

Harvey Chaiton (LSUC# 21592F)  
Email: [harvey@chaitons.com](mailto:harvey@chaitons.com)  
Tel: (416) 218-1129  
Fax: (416) 218-1849

Sam Rappos (LSUC# 51399S)  
Email: [samr@chaitons.com](mailto:samr@chaitons.com)  
Tel: (416) 218-1137  
Fax: (416) 218-1837

Tel: (416) 222-8888  
Fax: (416) 222-8402

Lawyers for the responding party, applicant,  
8527504 Canada Inc.

AND TO: **LIPMAN, ZENER & WAXMAN LLP**  
Barristers & Solicitors  
1220 Eglinton Avenue West  
Toronto, Ontario  
M6C 2E3

Anthony J. O'Brien (LSUC#27440E)  
Email: [aobrien@lzwlaw.com](mailto:aobrien@lzwlaw.com)

Tel: (416) 789-0652  
Fax: (416) 789-9015

Lawyers for the Receiver,  
BDO Canada Limited

8527504 CANADA INC.  
Applicant

-and- LIQUIBRANDS INC.  
Respondent

Court File No. CV-14-10543-00CL  
Court of Appeal File No:

---

**COURT OF APPEAL FOR ONTARIO**

PROCEEDING COMMENCED AT  
TORONTO

---

**NOTICE OF MOTION FOR LEAVE TO APPEAL**

---

**WIRES JOLLEY LLP**

Barristers and Solicitors  
90 Adelaide Street West  
Suite 200  
Toronto, Ontario  
M5H 3V9

David E. Wires (LSUC# 18017P)  
Email: [dewires@wiresjolleylp.com](mailto:dewires@wiresjolleylp.com)  
Tel: (416) 366-4006

Krista Bulmer (LSUC# 52198H)  
Email: [kbulmer@wiresjolleylp.com](mailto:kbulmer@wiresjolleylp.com)  
Tel: (416) 366-6516

Tel: (416) 366-0000  
Fax: (416) 366-0002

Lawyers for the moving party, respondent, Liquibrands Inc.

TAB 4



**CITATION:** 8527504 Canada Inc. v. Liquibrands Inc., 2014 ONSC 7015  
**COURT FILE NO.:** CV-14-10543-00CL  
**DATE:** 20141204

**ONTARIO  
SUPERIOR COURT OF JUSTICE  
COMMERCIAL LIST**

**BETWEEN:**

**8527504 CANADA INC.**

Applicant

- and -

**LIQUIBRANDS INC.**

Respondent

Court File No. CV-13-10331-00CL

**AND BETWEEN:**

**8527504 CANADA INC.**

Applicant

- and -

**SUN PAC FOODS LIMITED**

Respondent

APPLICATIONS UNDER Section 243 of the *Bankruptcy and Insolvency Act*, R.S.C 1985, c. B-3, and Section 101 of the *Courts of Justice Act*, R.S.O. 1990, c. C.43.

**BEFORE:** Newbould J.

**COUNSEL:** *Harvey Chaiton and Sam Rappos*, for the Applicant

*David E. Wires and Krista Bulmer*, for the Respondents Liquibrands Inc. and Sun Pac Foods Limited

*Anthony J. O'Brien*, for the BDO Canada Limited, receiver of Sun Pac Foods Limited

**HEARD:** November 28, 2014

**ENDORSEMENT**

[1] The applicant 8527504 Canada Inc. ("852") applies for the appointment of a receiver of the assets of the respondent Liquibrands Inc. ("Liquibrands") under security granted by Liquibrands to Bridging Canada Inc. ("Bridging") and assigned to 852.

[2] Liquibrands applies for an order lifting a stay of proceedings in the receivership order of Sun Pac Foods Limited ("Sun Pac") to permit an action commenced by Sun Pac and Liquibrands against 852 and Bridging to proceed and to appoint a receiver of the remaining assets of Sun Pac for the purpose of advancing the litigation. Liquibrands is a secured creditor of Sun Pac in second place after 852 and requests an order directing the receiver to pay into court the balance of funds held by the receiver of Sun Pac from the sale of its assets pending the completion of the law suit. The receiver applies for an order to pay the funds it holds to 852.

[3] Sun Pac was a Canadian manufacturer of private label and branded beverage products, and a manufacturer of croutons and bread crumbs and other private label brands (the "Breadcrumbs Division").

[4] Sun Pac was acquired by Liquibrands in November 2011. Liquibrands is the sole shareholder of Sun Pac. Mr. Csaba Reider is the sole shareholder, officer and director of Liquibrands. He was also the sole officer and director of Sun Pac.

[5] Bridging provides middle-market commercial customers with alternative financing solutions to borrowers who are unable to obtain financing from traditional lenders. 852 is a company related to Bridging and took an assignment of the loans and security for loans made by Bridging to Sun Pac.

[6] On October 1, 2012, Bridging advanced a revolving loan of up to \$5 million based on a lending formula under Facility A, \$500,000.00 (before facility fees) on January 18, 2013 under a Facility B term loan on equipment, and the balance of the facility B loan, \$1,182,524.00 (before facility fees), was advanced on January 31, 2013. The loans were secured on the assets of Sun Pac. Liquibrands guaranteed \$1 million of the Sun Pac Facility A loan and provided security over all of its assets to support the guarantee.

[7] Mr. Reider was in discussion with Loblaws to produce private label drinks for Loblaws. However Sun Pac was running short of working capital and in August 2013 was in default of its loan obligations to 852. He decided to sell the Breadcrumbs Division for \$3.1 million and he requested additional funding to continue operating.

[8] On September 11, 2013 852, Sun Pac and Liquibrands signed a Forbearance and Amending Agreement dated September 11, 2013. The Forbearance Agreement was entered into to provide Sun Pac with a temporary bridge loan in the hopes of obtaining equity and debt financing for the anticipated Loblaws contract and to complete a sale of the Breadcrumbs Division to repay the bridge loan. In the Forbearance Agreement, Sun Pac acknowledged that it was in default of the terms of its loans.

[9] Notwithstanding the default, 852 agreed not to take any steps to enforce any of the loans or its security prior to the earlier of December 9, 2013 or the occurrence of an Event of Default.

[10] In the Forbearance Agreement, 852 agreed to extend a temporary bridge loan to Sun Pac in two tranches. Facility C was a demand non-revolving loan in the amount of \$500,000 less fees. Facility C was advanced to Sun Pac in the amount of \$475,000 on or about September 13, 2013.

[11] Facility D was a demand non-revolving loan in the maximum amount of 2 times EBITDA of the Breadcrumbs Division as determined by a report from BDO Canada Limited, less the amount advanced under Facility C. Paragraph 13 of the Forbearance Agreement provided:

Provided that 852 has received and is satisfied with the report to be prepared by BDO at the expense of Sun Pac, 852 shall, promptly following the execution of this Agreement, advance to Sun Pac as a Facility D Loan advance a single advance in an amount equal to 2 times EBITDA of the Breadcrumbs Division (as defined below) (as determined by BDO in its report to Sun Pac and 852 in its sole discretion), less the Facility C Principal Amount...Each advance shall be conditional on there being no Event of Default under this Agreement and the Loan Agreement.

[12] One event of default contained in the Forbearance Agreement was if Sun Pac failed to have a binding agreement for the sale of the Breadcrumbs Division by November 6, 2013 that was acceptable to 852 in its sole and absolute discretion and failed to close it by December 6, 2013.

[13] BDO prepared a report dated September 25, 2013, which it delivered to Sun Pac and 852 on September 30, 2013. Based on the report, the Facility D loan was to be approximately \$1.15 million. 852 took no issue with the amount of the EBITDA as reported by BDO.

[14] 852 did not advance the Facility D loan. There is a dispute among the parties as to whether 852 was in breach of the Forbearance Agreement in failing to advance the loan. I do not intend to get into that issue, although was invited to do so.

[15] On October 4, 2013, 852 informed Mr. Reider that it was not prepared to advance Facility D without certain matters being addressed. According to 852, they were not addressed.

[16] On November 11, 2013, 852's lawyers were informed by Sun Pac's insolvency lawyers that Sun Pac's operations had been shut down on November 7, 2013, at which time all but a few employees were terminated. As a result, 852 commenced an urgent receivership application heard on November 12, 2013. Sun Pac and Liquibrands had counsel attend the hearing but did not oppose the receivership application. BDO was appointed as receiver of Sun Pac on November 12, 2013.

[17] On the morning of November 12, 2013, Liquibrands and Sun Pac commenced an action against 852 and Bridging seeking, *inter alia*, general damages of \$100 million for breach of the Forbearance Agreement by not advancing Facility D in the amount of approximately \$1.15



million. Sun Pac had signed an agreement with Loblaws made as of September 18, 2013 containing terms regarding the sale of drink products by Sun Pac to Loblaws, and the damage claim is for alleged lost profits that would have been earned under that agreement.

**Issues and analysis**

**(a) Need for leave to continue the action by Sun Pac**

[18] Sun Pac and Liquibrands say that the receivership order of November 12, 2013 in which BDO was appointed receiver of Sun Pac has stayed the action commenced that day by Liquibrands and Sun Pac against 852 and Bridging, and asks leave to proceed with that action. This request is based on a misreading of the receivership order, which followed the standard form used in the Commercial List and approved by the Commercial List Users Committee.

[19] Mr. Wires said that he reads paragraph 7 of the order as staying the action. However, paragraph 7 deals with actions against the debtor or its property and states that “no proceeding against or in respect of the debtor or its property shall be commenced or continued” without the consent of the receiver or leave of the court. To read a proceeding “in respect of the debtor or its property” as applying to an action commenced by the debtor would be to ignore the heading in the order for paragraph 7 “NO PROCEEDING AGAINST THE DEBTOR OR THE PROPERTY”. It would also ignore paragraph 3(j) of the order which gives the receiver the power “to initiate, prosecute and continue the prosecution of any and all proceedings...now pending or hereafter instituted”.

[20] The receiver of Sun Pac is quite entitled to continue the action commenced by Sun Pac against 852 and Liquibrands without the necessity of obtaining leave to do so.

**(b) Proceeds of the sale of Sun Pac’s assets**

[21] The receiver has realized on the assets of Sun Pac and has proposed an interim distribution of \$383,381 from the proceeds of Sun Pac’s assets to 852 on account of its first

ranking security interest. 852 is owed approximately \$4.0 million and will suffer a substantial shortfall on its loans to Sun Pac.

[22] Liquibrands holds security from its wholly owned subsidiary Sun Pac to secure \$2.54 million loaned to Sun Pac. Its security ranks second after the security held by 852. Liquibrands asserts that the proceeds held by the receiver of Sun Pac should be paid into court pending the determination of the action by Sun Pac and Liquibrands against 852 and Bridging. It claims that based on the claims in the action, there is a serious issue to be tried regarding 852's claim to the fund. It relies on rule 45.02 that provides:

45.02 Where the right of a party to a specific fund is in question, the court may order the fund to be paid into court or otherwise secured on such terms as are just.

[23] I do not see that the rule assists Liquibrands. The test for granting an order preserving a specific fund is threefold: (1) the plaintiff claims a right to the specific fund; (2) there is a serious issue to be tried regarding the plaintiff's claim to the fund; and (3) the balance of convenience favours granting the relief sought. The plaintiff must have a proprietary claim against the specific funds beyond the funds utility to satisfy the plaintiff's claim against the defendant. See *DIRECT TV v. Gillot* (2007), 84 O.R. (3d) 595 at paras. 44 and 59.

[24] Liquibrands cannot meet this test. The money in question results from the proceeds of the sale of the assets of Sun Pac. Liquibrands as a second creditor has security over the assets of Sun Pac second to the security of 852. There is no question that the security of 852 is valid and what Liquibrands is essentially doing is attempting to secure before judgment its claim for damages against 852 and Bridging.

[25] The law suit was started on the morning of November 12, 2013 before the receivership order was made later that day. The court had to be satisfied that the loan to Sun Pac was owed in order to make the receivership order. Sun Pac and Liquibrands were represented in court that day by experienced insolvency counsel and no objection was made to the request for the receivership order. Sun Pac and Liquibrands cannot now contend that the money is not owing to 852 and that Liquibrands has a claim to it. That would amount to a collateral attack on the order.

[26] There is no serious issue to be tried regarding Liquibrands' claim to the proceeds of the sale of Sun Pac's assets held by the receiver. 852 has the right to those proceeds. There may be a serious issue to be tried regarding the claim for damages by Sun Pac and Liquibrands against 852 and Bridging, although I make no such finding, but that is a different matter.

[27] The funds held by the receiver of Sun Pac may be paid out to 852.

**(c) Should a receiver of Liquibrands be appointed?**

[28] Under the GSA security from Liquibrands to 852, Liquibrands may appoint a receiver over all of the property of Liquibrands upon an event of default. Demand under the guarantee of Liquibrands was made in April, 2014 and no payment was made. Thus there has been an event of default. There is no issue as to the validity of the security.

[29] A receiver may be appointed under section 243(1) of the BIA if it is considered just or convenient to do so. The principles applicable are referred to in *Bank of Montreal v. Carnival National Leasing Ltd.* (2011), 74 C.B.R. (5<sup>th</sup>) 300.

[30] Liquibrands contends that there should be no receiver appointed pending the outcome of its lawsuit against 852 and Bridging, and relies on *Bank of Montreal v. Wilder*, [1986] 2 S.C.R. 551. In that case the bank breached an agreement not to call the loan for a period of time if guarantees were provided and an injection of capital was made into the customer company, which happened. The guarantors were relieved of liability because of the wrong doing of the Bank. The bank relied on a provision in the guarantee that it could deal with the customer "as the Bank may see fit". It was held that this did provision did not protect the bank. Wilson J. for the Court stated:

The Bank under the umbrella agreement could have decided to make the business decision to stop financing the Company at any time prior to the June agreement. After that agreement this option was closed to it. It agreed with the Company and with the guarantors that it would continue to finance the Company at least until it had completed the Alberta road projects. It failed to do so despite the fact that the Wilders kept their part of the bargain. The Bank's breach not only increased the guarantors' risk in a way which was "not plainly unsubstantial" and impaired their

security; it put the principal debtor out of business and into bankruptcy. Such conduct on the part of the Bank cannot, in my opinion, be viewed as within the purview of the clause in the guarantee contracts permitting the Bank to deal with the Company and the guarantors as it "may see fit". I agree with Lambert J.A. that such a clause must be construed as extending to lawful dealings only.

[31] In this case, however, the guarantee given by Liquibrands was much broader than in *Bank of Montreal v. Wilder*. Section 2 of the guarantee provided:

2. **Guarantee Unconditional.** The obligations of the guarantor under this guarantee are continuing, unconditional and absolute and...will not be released, discharged, diminished, limited or otherwise affected by (and the Guarantor hereby waives, to the fullest extent permitted by applicable law) *inter alia*:

(e) the existence of any claim, set-off or other rights which the Guarantor may have at any time against the Debtor, the Creditor, or any other person, whether in connection herewith or any unrelated transactions;

(p) any dealing whatsoever with the Debtor or other person or any security, whether negligently or not, or any failure to do so; ...

(r) any other act or omission to act or delay of any kind by the Debtor, the Creditor, or any other person or any other circumstances whatsoever, whether similar or dissimilar to the foregoing, which might, but for the provisions of this Section 2, constitute a legal or equitable discharge, limitation or reduction of the Guarantor's obligations hereunder (other than the payment or extinguishment in full of all of the Obligations).

The foregoing provisions apply (and the foregoing waivers will be effective) even if the effect of any action (or failure to take action) by the Creditor is to destroy or diminish the Guarantor's subrogation rights, the Guarantor's right to proceed against the Debtor for reimbursement, the Guarantor's right to recover contribution from any other guarantor or any other right or remedy.

[32] A party may contract out of an equitable rule regarding guarantees. See *Bauer v. Bank of Montreal*, [1980] 2 S.C.R. 102. Liquibrands was represented by counsel at the time it signed the guarantee and there is no reason why the terms are not enforceable. The terms of the guarantee preclude Liquibrands from contending that the guarantee may be unenforceable if it succeeds in its action against 852.

[33] Moreover, in a Subordination, Assignment, Postponement and Standstill Agreement made by Liquibrands and Sun Pac with Bridging at the same time as the guarantee, Liquibrands agreed not to take any steps whereby the priority or rights of 852 might be delayed, defeated, impaired or diminished and agreed not to challenge, object to, compete with or impede in any manner any act taken or proceeding commenced by 852 in connection with the enforcement of 852's security.

[34] Liquibrands also claims that as second secured creditor of Sun Pac, it should have priority over the security of 852 because of the breach by 852 of the Forbearance Agreement. I am not in a position to say that there has been a breach of that agreement and in any event the Subordination, Assignment, Postponement and Standstill Agreement precludes that contention. It provides that Liquibrands consents to the security granted to Bridging by Sun Pac and acknowledges that notwithstanding any priority provided by any principle of law or equity, the security of Liquibrands is unconditionally subordinated to the security held by Bridging. Liquibrands also agreed in that agreement that it would not take any steps whereby the priority of Bridging might be defeated and that it would not challenge any proceeding to enforce that security. 852 holds those rights as assignee from Bridging.

[35] I find that it is just and convenient that a receiver of Liquibrands be appointed and BDO is appointed as receiver of all of its property, assets and undertakings in the form contained at tab 3 of the Application Record.

**(d) Procedure for the litigation**

[36] The action by Liquibrands and Sun Pac against 852 and Bridging for breach of the Forbearance Agreement is outstanding. Liquibrands requests an order that a different receiver from BDO be appointed as receiver of "the remaining assets" of Sun Pac for the purposes of advancing the litigation. The reason is that BDO, the receiver of Sun Pac, has indicated that it does not wish to spend money on the law suit.

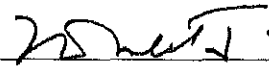
[37] BDO is prepared to market the right to commence the action. There is precedent for such a procedure. In *Central 1 Credit Union v. UM Financial Inc.*, 2012 ONSC 1893 it was held that a

lawsuit by the debtor in receivership constituted collateral that was subject to the existing receivership proceeding. The court appointed receiver subsequently brought a motion seeking court approval to conduct a marketing process for the sale of the claim and that relief was granted by Justice C. Campbell. It seems sensible that now that BDO is the receiver of both Sun Pac and Liquibrands, the two plaintiffs in the action, BDO should be permitted to market the litigation in a marketing process.

[38] No specific marketing process has been proposed. The receiver should propose a marketing process and Sun Pac and Liquibrands can consider whether it is agreeable to the marketing process proposed. If there is agreement to the marketing process, it can be included in the order to be signed reflecting these reasons. If there is no agreement, a further attendance to settle it can be arranged at a 9:30 am conference.

**(e) Receiver's motion**

[39] The receiver has applied for orders approving the Third Supplement to its First Report, approving its Third Report, approving its fees and disbursements of those of its counsel, approving its statement of receipts and disbursements, and authorizing and directing the receiver to make a distribution to 852 and maintain a holdback in accordance with its Third Report. The relief requested is reasonable and is granted.



Newbould J.

**Date:** December 4, 2014

# TAB 5





Court File No. CV-13-10331-00CL

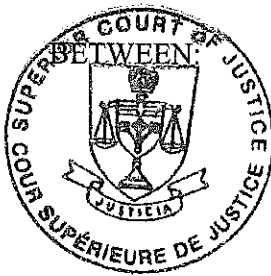
**ONTARIO**  
**SUPERIOR COURT OF JUSTICE**  
**COMMERCIAL LIST**

THE HONOURABLE MR. )

JUSTICE NEWBOULD )

THURSDAY THE 4<sup>TH</sup> DAY

OF DECEMBER, 2014



**8527504 CANADA INC.**

- and -

Applicant

**SUN PAC FOODS LIMITED**

Respondent

APPLICATION UNDER Section 243 of the *Bankruptcy and Insolvency Act*, R.S.C 1985, c. B-3, and Section 101 of the *Courts of Justice Act*, R.S.O. 1990, c. C.43.

**ORDER**

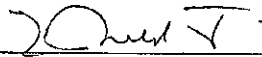
**THIS MOTION** made by Liquibrands Inc. for the Orders described in its notice of motion dated April 28, 2014, was heard on Friday November 28, 2014 at 330 University Avenue, Toronto, Ontario, with an Endorsement released as of the date hereof.

**ON READING** the Affidavit of Csaba Reider sworn April 3, 2014 and the Exhibits thereto, the Supplementary Affidavit of Csaba Reider sworn April 15, 2014 and the Exhibits thereto, the Responding and Reply Affidavit of Csaba Reider sworn May 15, 2014 and the Exhibits thereto, the Affidavit of Michael Petric sworn June 23, 2014 and the Exhibits thereto,

the Affidavit of Natasha Sharpe sworn April 11, 2014 and the Exhibits thereto, and the Affidavit of Natasha Sharpe sworn May 13, 2014 and the Exhibits thereto, and on hearing the submissions of counsel for the Applicant, Liquibrands, and BDO Canada Limited in its capacity as Court-appointed receiver of the Respondent (the "Receiver"),

1. **THIS COURT ORDERS** that Liquibrands' motion is hereby dismissed.
  
2. **THIS COURT ORDERS** that the Applicant's and the Receiver's costs of this motion, up to and including entry and service of this Order, shall be determined by this Court following receipt of any written submissions of the parties as directed by this Court.

ENTERED IN THE COURT OF ONTARIO  
ONLINE REGISTRY  
LEAVE TO APPEAL  
FEB 4 2015

  
\_\_\_\_\_

8517504 CANADA INC.

Applicant

- and -

SUN PAC FOODS LIMITED

Respondent

Court File No. CV-13-10331-00CL

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

Proceedings commenced at TORONTO

**ORDER**

**CHAITONS LLP**

5000 Yonge Street, 10<sup>th</sup> Floor  
Toronto, Ontario M2N 7E9

**Harvey Chaiton (LSUC #21592F)**

Tel: 416-218-1129

Fax: 416-218-1849

E-mail: harvey@chaitons.com

**Sam Rappos (LSUC #51399S)**

Tel: 416-218-1137

Fax: 416-218-1837

E-mail: samr@chaitons.com

**Lawyers for the Applicant**



**TAB 6**



Court File No. CV-13-10331-00CL



**ONTARIO  
SUPERIOR COURT OF JUSTICE  
COMMERCIAL LIST**

THE HONOURABLE  
MR. JUSTICE NEWBOULD

) THURSDAY, THE 4<sup>TH</sup> DAY OF  
)  
) DECEMBER, 2014

BETWEEN:

8527504 CANADA INC.

Applicant

- and -

SUN PAC FOODS LIMITED

Respondent

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

**ORDER**

THIS MOTION, made by BDO Canada Limited in its capacity as the Court-appointed receiver (the "Receiver") of the undertakings, properties and assets of Sun Pac Foods Limited (the "Debtor"), for an Order:

- (a) approving the activities of the Receiver as set out in the Third Supplement to the First Report of the Receiver, dated August 28, 2014 (the "Supplement") and the Third Report of the Receiver, dated November 25, 2014 (the "Third Report");
- (b) approving the fees and disbursements of the Receiver and its counsel, more particularly described in the Third Report;

- (c) approving the Receiver's statement of receipts and disbursements;
- (d) authorizing the Receiver to make an interim distribution with respect to the funds held in connection to the sale of the Debtor's assets, more particularly described in the Third Report;
- (e) approving a sale process with respect to the litigation in which the Debtor and Liquibrands Inc. are parties; and
- (f) such further and other relief as this Honourable Court shall deem just.

ON READING the Supplement, the Third Report and on hearing the submissions of counsel for the Receiver, and such other parties in attendance at the hearing as indicated on the counsel slip.

1. THIS COURT ORDERS that the time for service of the Notice of Motion and Motion Record is hereby abridged so that this motion is properly returnable today and further service thereof is hereby dispensed with.
2. THIS COURT ORDERS that, subject to paragraph 8 below, the Supplement and the activities of the Receiver set out therein be and the same are hereby approved.
3. THIS COURT ORDERS that, subject to paragraph 8 below, the Third Report and the activities of the Receiver set out therein be and the same are hereby approved.
4. THIS COURT ORDERS that the Receiver's statement of receipts and disbursements, attached as Appendix B to the Third Report is hereby approved.
5. THIS COURT ORDERS that the fees and disbursements of the Receiver and its counsel, as set out in the Third Report and the fee affidavits, attached as Appendices E and F of the Third Report, are hereby approved.
6. THIS COURT ORDERS that the Receiver make an interim distribution to 8527504 Canada Inc. in the amount of \$420,495.24.



7. THIS COURT ORDERS that the Receiver retain a reserve in the total sum of \$40,000.00 and the Receiver is hereby authorized to apply the reserve at its discretion to fees and disbursements in this matter and the receivership of Liquibrands Inc. (Court File No. CV-14-10543-OOCL).
8. THIS COURT ORDERS that this Order is without prejudice to the claims of the plaintiffs or any other person or persons that acquires the interests of the plaintiffs in Court File No. CV-13-00492612 (the "Action") pursuant to the sale process set out in paragraph 9 herein and that the plaintiffs or any other person or persons that acquires the interests of the plaintiffs are not estopped from advancing any claims or arguments in the Action.
9. THIS COURT ORDERS that the Receiver conduct a sales process with respect to the Action (more particularly described in paragraphs 48 through 49 of the Second Report of the Receiver dated April 10, 2014) as described below:
  - a) The Receiver shall notify all parties on the service list in this matter, as well as the service list in the Liquibrands Inc. receivership (Court File No.: CV-14-10543-00CL);
  - b) the Receiver shall post a copy of the Statement of Claim in the Action on its website at <http://www.extranets.bdo.ca/SunPac>;
  - c) offers to be made on the Receiver's form of Agreement of Purchase and Sale (the "APS") to be provided to the prospective purchaser or purchasers;
  - d) the Action is being offered for sale subject to the terms and conditions set out in the APS, including, without limitation on a 'as is, where is' basis with no representations, warranties or conditions of any nature or kind whatsoever being made by the Receiver;

e) 8527504 Canada Inc. may be an offeror and may make its offer by way of credit bid

*or otherwise without prejudice to any party to oppose the right of 8527504 Canada Inc. to make an offer or to oppose any offer made.*

f) following the offer deadline, the Receiver will review all offers submitted and may accept a submitted offer by executing the APS, subject to seeking court approval of the offer and the APS; and

g) the sale of the Action shall be conditional upon this Honourable Court's approval of same, which approval is to be sought by the Receiver within three months following the sending of the notice set out in subparagraph (a).

*John T.*

100-1111111111111111  
COURT OF QUEBEC  
100-1111111111111111

FEB 4 2016

NB

8527504 CANADA INC.  
Applicant

-and-

SUN PAC FOODS LIMITED  
Respondent  
Court File No. CV13-10331-00CL

**ONTARIO**  
**SUPERIOR COURT OF JUSTICE**  
**COMMERCIAL LIST**  
Proceeding commenced at  
TORONTO

**ORDER**

**LIPMAN, ZENER & WAXMAN LLP**  
Barristers and Solicitors  
1220 Eglinton Avenue West  
Toronto, Ontario  
M6C 2E3

**JASON D. SPETTER**  
Law Society Registration No. 46105S

**ANTHONY J. O'BRIEN**  
Law Society Registration No. 27440E

Tel.: (416) 789-0652  
Fax: (416) 789-9015  
Emails: [jspetter@lzwlaw.com](mailto:jspetter@lzwlaw.com);  
[tobrien@lzwlaw.com](mailto:tobrien@lzwlaw.com)

Lawyers for the Receiver



**TAB 7**



Court File No. CV-14-10543-00CL

**ONTARIO**

**SUPERIOR COURT OF JUSTICE**

**COMMERCIAL LIST**

THE HONOURABLE MR.

)

THURSDAY THE 4<sup>TH</sup> DAY

JUSTICE NEWBOULD

)

OF DECEMBER, 2014

)



**8527504 CANADA INC.**

Applicant

- and -

**LIQUIBRANDS INC.**

Respondent

APPLICATION UNDER Section 243 of the *Bankruptcy and Insolvency Act*, R.S.C 1985, c. B-3, and Section 101 of the *Courts of Justice Act*, R.S.O. 1990, c. C.43.

**ORDER**  
**(appointing Receiver)**

**THIS APPLICATION** made by the Applicant for an Order pursuant to section 243(1) of the *Bankruptcy and Insolvency Act*, R.S.C. 1985, c. B-3, as amended (the "**BIA**") and section 101 of the *Courts of Justice Act*, R.S.O. 1990, c. C.43, as amended (the "**CJA**") appointing BDO Canada Limited as receiver (the "**Receiver**") without security, of all of the assets, undertakings and properties of Liquibrands Inc. (the "**Debtor**") acquired for, or used in relation to a business carried on by the Debtor, was heard on Friday November 28, 2014 at 330 University Avenue, Toronto, Ontario, with an Endorsement released as of the date hereof.

**ON READING** the affidavit of Natasha Sharpe sworn April 11, 2014 and the Exhibits thereto, the Affidavit of Natasha Sharpe sworn May 13, 2014 and the Exhibits thereto, the

Affidavit of Csaba Reider sworn April 3, 2014 and the Exhibits thereto, the Supplementary Affidavit of Csaba Reider sworn April 15, 2014 and the Exhibits thereto, the Responding and Reply Affidavit of Csaba Reider sworn May 15, 2014 and the Exhibits thereto, and the Affidavit of Michael Petric sworn June 23, 2014 and the Exhibits thereto, and on hearing the submissions of counsel for the Applicant and the Respondent, and on reading the consent of BDO Canada Limited to act as the Receiver,

#### **APPOINTMENT**

1. **THIS COURT ORDERS** that pursuant to section 243(1) of the BIA and section 101 of the CJA, BDO Canada Limited is hereby appointed Receiver, without security, of all of the assets, undertakings and properties of the Debtor acquired for, or used in relation to a business carried on by the Debtor, including all proceeds thereof (the "**Property**").

#### **RECEIVER'S POWERS**

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

- (a) to take possession of and exercise control over the Property and any and all proceeds, receipts and disbursements arising out of or from the Property;
- (b) to receive, preserve, and protect the Property, or any part or parts thereof, including, but not limited to, the changing of locks and security codes, the relocating of Property to safeguard it, the engaging of independent security personnel, the taking of physical inventories and the placement of such insurance coverage as may be necessary or desirable;
- (c) to manage, operate, and carry on the business of the Debtor, including the powers to enter into any agreements, incur any obligations in the ordinary course of business, cease to carry on all or any part of the business, or cease to perform any contracts of the Debtor;



- (d) to engage consultants, appraisers, agents, experts, auditors, accountants, managers, counsel and such other persons from time to time and on whatever basis, including on a temporary basis, to assist with the exercise of the Receiver's powers and duties, including without limitation those conferred by this Order;
- (e) to purchase or lease such machinery, equipment, inventories, supplies, premises or other assets to continue the business of the Debtor or any part or parts thereof;
- (f) to receive and collect all monies and accounts now owed or hereafter owing to the Debtor and to exercise all remedies of the Debtor in collecting such monies, including, without limitation, to enforce any security held by the Debtor;
- (g) to settle, extend or compromise any indebtedness owing to the Debtor;
- (h) to execute, assign, issue and endorse documents of whatever nature in respect of any of the Property, whether in the Receiver's name or in the name and on behalf of the Debtor, for any purpose pursuant to this Order;
- (i) to initiate, prosecute and continue the prosecution of any and all proceedings and to defend all proceedings now pending or hereafter instituted with respect to the Debtor, the Property or the Receiver, and to settle or compromise any such proceedings. The authority hereby conveyed shall extend to such appeals or applications for judicial review in respect of any order or judgment pronounced in any such proceeding;
- (j) to carry out the sale process set out in **Schedule "A"** attached hereto;
- (k) to market any or all of the Property, including advertising and soliciting offers in respect of the Property or any part or parts thereof and negotiating such terms and conditions of sale as the Receiver in its discretion may deem appropriate,;

- (l) to sell, convey, transfer, lease or assign the Property or any part or parts thereof out of the ordinary course of business, with the approval of this Court, and in each such case notice under subsection 63(4) of the Ontario *Personal Property Security Act* shall not be required, and in each case the Ontario *Bulk Sales Act* shall not apply.
- (m) to apply for any vesting order or other orders necessary to convey the Property or any part or parts thereof to a purchaser or purchasers thereof, free and clear of any liens or encumbrances affecting such Property;
- (n) to report to, meet with and discuss with such affected Persons (as defined below) as the Receiver deems appropriate on all matters relating to the Property and the receivership, and to share information, subject to such terms as to confidentiality as the Receiver deems advisable;
- (o) to register a copy of this Order and any other Orders in respect of the Property against title to any of the Property;
- (p) to apply for any permits, licences, approvals or permissions as may be required by any governmental authority and any renewals thereof for and on behalf of and, if thought desirable by the Receiver, in the name of the Debtor;
- (q) to enter into agreements with any trustee in bankruptcy appointed in respect of the Debtor, including, without limiting the generality of the foregoing, the ability to enter into occupation agreements for any property owned or leased by the Debtor;
- (r) to exercise any shareholder, partnership, joint venture or other rights which the Debtor may have; and
- (s) to take any steps reasonably incidental to the exercise of these powers or the performance of any statutory obligations.

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

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

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

4. **THIS COURT ORDERS** that all Persons shall forthwith advise the Receiver of the existence of any books, documents, securities, contracts, orders, corporate and accounting records, and any other papers, records and information of any kind related to the business or affairs of the Debtor, and any computer programs, computer tapes, computer disks, or other data storage media containing any such information (the foregoing, collectively, the "**Records**") in that Person's possession or control, and shall provide to the Receiver or permit the Receiver to make, retain and take away copies thereof and grant to the Receiver unfettered access to and use of accounting, computer, software and physical facilities relating thereto, provided however that nothing in this paragraph 4 or in paragraph 5 of this Order shall require the delivery of Records, or the granting of access to Records, which may not be disclosed or provided to the Receiver due to the privilege attaching to solicitor-client communication or due to statutory provisions prohibiting such disclosure.

5. **THIS COURT ORDERS** that if any Records are stored or otherwise contained on a computer or other electronic system of information storage, whether by independent service provider or otherwise, all Persons in possession or control of such Records shall forthwith give unfettered access to the Receiver for the purpose of allowing the Receiver to recover and fully

copy all of the information contained therein whether by way of printing the information onto paper or making copies of computer disks or such other manner of retrieving and copying the information as the Receiver in its discretion deems expedient, and shall not alter, erase or destroy any Records without the prior written consent of the Receiver. Further, for the purposes of this paragraph, all Persons shall provide the Receiver with all such assistance in gaining immediate access to the information in the Records as the Receiver may in its discretion require including providing the Receiver with instructions on the use of any computer or other system and providing the Receiver with any and all access codes, account names and account numbers that may be required to gain access to the information.

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

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

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

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

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

**NO EXERCISE OF RIGHTS OR REMEDIES**

9. **THIS COURT ORDERS** that all rights and remedies against the Debtor, the Receiver, or affecting the Property, are hereby stayed and suspended except with the written consent of the Receiver or leave of this Court, provided however that this stay and suspension does not apply in respect of any "eligible financial contract" as defined in the BIA, and further provided that nothing in this paragraph shall (i) empower the Receiver or the Debtor to carry on any business which the Debtor is not lawfully entitled to carry on, (ii) exempt the Receiver or the Debtor from compliance with statutory or regulatory provisions relating to health, safety or the environment, (iii) prevent the filing of any registration to preserve or perfect a security interest, or (iv) prevent the registration of a claim for lien.

**NO INTERFERENCE WITH THE RECEIVER**

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

**CONTINUATION OF SERVICES**

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

**RECEIVER TO HOLD FUNDS**

12. **THIS COURT ORDERS** that all funds, monies, cheques, instruments, and other forms of payments received or collected by the Receiver from and after the making of this Order from any source whatsoever, including without limitation the sale of all or any of the Property and the collection of any accounts receivable in whole or in part, whether in existence on the date of this Order or hereafter coming into existence, shall be deposited into one or more new accounts to be opened by the Receiver (the "**Post Receivership Accounts**") and the monies standing to the credit of such Post Receivership Accounts from time to time, net of any disbursements provided for herein, shall be held by the Receiver to be paid in accordance with the terms of this Order or any further Order of this Court.

**EMPLOYEES**

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

**PIPEDA**

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

material respects identical to the prior use of such information by the Debtor, and shall return all other personal information to the Receiver, or ensure that all other personal information is destroyed.

#### **LIMITATION ON ENVIRONMENTAL LIABILITIES**

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

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

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

#### **RECEIVER'S ACCOUNTS**

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

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

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

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

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

20. **THIS COURT ORDERS** that the Receiver be at liberty and it is hereby empowered to borrow by way of a revolving credit or otherwise, such monies from time to time as it may consider necessary or desirable, provided that the outstanding principal amount does not exceed \$200,000 (or such greater amount as this Court may by further Order authorize) at any time, at such rate or rates of interest as it deems advisable for such period or periods of time as it may arrange, for the purpose of funding the exercise of the powers and duties conferred upon the Receiver by this Order, including interim expenditures. The whole of the Property shall be and is hereby charged by way of a fixed and specific charge (the "**Receiver's Borrowings Charge**") as security for the payment of the monies borrowed, together with interest and charges thereon, in priority to all security interests, trusts, liens, charges and encumbrances, statutory or otherwise, in favour of any Person, but subordinate in priority to the Receiver's Charge and the charges as set out in sections 14.06(7), 81.4(4), and 81.6(2) of the BIA.



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

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

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

#### **SERVICE AND NOTICE**

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

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

day following the date of forwarding thereof, or if sent by ordinary mail, on the third business day after mailing.

26. **THIS COURT ORDERS** that the Applicant, the Receiver and their respective counsel are at liberty to serve or distribute this Order, any other materials and orders as may be reasonably required in these proceedings, including any notices, or other correspondence, by forwarding true copies thereof by electronic message to the Debtor's creditors or other interested parties and their advisors. For greater certainty, any such distribution or service shall be deemed to be in satisfaction of a legal or juridical obligation, and notice requirements within the meaning of clause 3(c) of the *Electronic Commerce Protection Regulations*, Reg. 81000-2-175 (SOR/DORS).

#### **GENERAL**

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

28. **THIS COURT ORDERS** that nothing in this Order shall prevent the Receiver from acting as a trustee in bankruptcy of the Debtor.

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

30. **THIS COURT ORDERS** that the Receiver be at liberty and is hereby authorized and empowered to apply to any court, tribunal, regulatory or administrative body, wherever located, for the recognition of this Order and for assistance in carrying out the terms of this Order, and that the Receiver is authorized and empowered to act as a representative in respect of the within proceedings for the purpose of having these proceedings recognized in a jurisdiction outside Canada.



**SCHEDULE "A"**

The Receiver shall conduct a sale process with respect to the action commenced by Liquibrands Inc. and Sun Pac Foods Limited as plaintiffs in Court File No. CV-13-00492612 (the "Action") as described below:

- a) The Receiver shall notify all parties on the service list in this matter, as well as the service list in the Sun Pac Foods Limited receivership (Court File No.: CV-13-10331-00CL);
- b) the Receiver shall post a copy of the Statement of Claim in the Action on its website at [www.bdo.ca/Liquibrands](http://www.bdo.ca/Liquibrands);
- c) offers to be made on the Receiver's form of Agreement of Purchase and Sale (the "APS") to be provided to the prospective purchaser or purchasers;
- d) the Action is being offered for sale subject to the terms and conditions set out in the APS, including, without limitation on a 'as is, where is' basis with no representations, warranties or conditions of any nature or kind whatsoever being made by the Receiver;

e) 8527504 Canada Inc. may be an offeror and may make its offer by way of credit bid

or otherwise, <sup>✓</sup> without prejudice to any party, to oppose the <sup>NT</sup> right of 8527504 Canada Inc to make an offer or to oppose any offer made. ✓

f) following the offer deadline, the Receiver will review all offers submitted and may accept a submitted offer by executing the APS, subject to seeking Court approval of the offer and APS; and

g) the sale of the Action shall be conditional upon this Honourable Court's approval of same, which approval is to be sought by the Receiver within three months following the sending of the notice set out in subparagraph (a).

**SCHEDULE "B"**

**RECEIVER CERTIFICATE**

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

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

1. THIS IS TO CERTIFY that BDO CANADA LIMITED, the receiver (the "**Receiver**") of the assets, undertakings and properties Liquibrands Inc., including all proceeds thereof (collectively, the "**Property**") appointed by Order of the Ontario Superior Court of Justice (Commercial List) (the "**Court**") dated the 4<sup>th</sup> day of December, 2014 (the "**Order**") made in an application having Court file number CV-14-10543-00CL, has received as such Receiver from the holder of this certificate (the "**Lender**") the principal sum of \$ \_\_\_\_\_, being part of the total principal sum of \$ \_\_\_\_\_ which the Receiver is authorized to borrow under and pursuant to the Order.

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

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

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

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

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

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

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

BDO CANADA LIMITED, solely in its capacity  
as Receiver of the Property, and not in its  
personal capacity

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

Name:

Title:

8517504 CANADA INC.

Applicant

- and -

LIQUIBRANDS INC.

Respondent

Court File No. CV-14-10543-00CL

---

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

Proceedings commenced at TORONTO

---

**ORDER  
(appointing Receiver)**

---

**CHAITONS LLP**  
5000 Yonge Street, 10<sup>th</sup> Floor  
Toronto, Ontario M2N 7E9

**Harvey Chaiton (LSUC #21592F)**  
Tel: 416-218-1129  
Fax: 416-218-1849  
E-mail: harvey@chaitons.com

**Sam Rappos (LSUC #51399S)**  
Tel: 416-218-1137  
Fax: 416-218-1837  
E-mail: samr@chaitons.com

**Lawyers for the Applicant**



TAB 8





"Sam P. Rappos"  
<samr@chaitons.com>

11/25/14 04:35 PM

To "jspetter@lzwlaw.com" <jspetter@lzwlaw.com>,  
"kbulmer@wiresjolleyllp.com" <kbulmer@wiresjolleyllp.com>,  
"dewires@wiresjolleyllp.com" <dewires@wiresjolleyllp.com>  
cc "Harvey G. Chaiton" <Harvey@chaitons.com>, Lynn Lee  
<Lynn@chaitons.com>

bcc

Subject RE: 8527504 Canada Inc. v. Liquibrands Inc. (Action No.  
CV-14-10543-00CL) 8527504 Canada Inc. Sun Pac Foods  
Limited (Action No. CV-13-10331-00CL)

2 attachments



DOCS-#3196553-v1-BCI\_Sun\_Pac\_-\_Supplementary\_Factum\_re\_November\_28\_\_2014.pdf



DOCS-#3196975-v1-BCI\_Sun\_Pac\_-\_Supplemental\_Brief\_of\_Authorities.PDF

Please find attached the supplementary factum and brief of authorities of 8527504 Canada Inc., served upon you pursuant to the *Rules of Civil Procedure*.

Please confirm whether you wish hard copies to follow by courier.

Best regards,  
Sam Rappos

---

**Sam P.  
Rappos**

Lawyer | Chaitons LLP | T: 416.218.1137

**From:** Sam P. Rappos

**Sent:** Monday, November 24, 2014 12:35 PM

**To:** jspetter@lzwlaw.com; kbulmer@wiresjolleyllp.com; dewires@wiresjolleyllp.com

**Cc:** Harvey G. Chaiton

**Subject:** RE: 8527504 Canada Inc. v. Liquibrands Inc. (Action No. CV-14-10543-00CL) 8527504 Canada Inc. Sun Pac Foods Limited (Action No. CV-13-10331-00CL)

**Importance:** High

Please find attached the factum and brief of authorities of 8527504 Canada Inc., served upon you pursuant to the *Rules of Civil Procedure*. Hard copies will follow by courier.

Best regards,  
Sam

**From:** mafisher@wiresjolleyllp.com [mailto:mafisher@wiresjolleyllp.com]

**Sent:** Tuesday, November 18, 2014 2:12 PM

**To:** Sam P. Rappos; Harvey G. Chaiton; jspetter@lzwlaw.com

**Cc:** [kbulmer@wiresjolleyllp.com](mailto:kbulmer@wiresjolleyllp.com); [dewires@wiresjolleyllp.com](mailto:dewires@wiresjolleyllp.com)

**Subject:** 8527504 Canada Inc. v. Liquibrands Inc. (Action No. CV-14-10543-00CL) 8527504 Canada Inc. Sun Pac Foods Limited (Action No. CV-13-10331-00CL)

Counsel,

Attached please find the factum and book of authorities of the respondent/moving party, Liquibrands Inc., served upon you pursuant to the Rules of Civil Procedure. Due to the file size of the joint transcript, exhibit and undertaking brief, it will be delivered to you later today.

Mary Ann

Mary Ann Fisher  
Legal Assistant  
Wires Jolley LLP  
Barristers and Solicitors  
90 Adelaide Street West  
Suite 200  
Toronto, Ontario M5H 3V9  
Tel: 416-366-0000 ext 229  
Fax: 416-366-0002  
Email: [mafisher@wiresjolleyllp.com](mailto:mafisher@wiresjolleyllp.com)

This email is confidential and is intended only for the person(s) named above and below. Its contents may also be protected by privilege, and all rights to privilege are expressly claimed and not waived. If you have received this email in error, please call us immediately (collect if necessary) and destroy the entire email. If this email is not intended for you any reading, distribution, copying, or disclosure of this email is strictly prohibited.

Court File No. CV-13-10331-00CL

**ONTARIO  
SUPERIOR COURT OF JUSTICE  
COMMERCIAL LIST**

BETWEEN:

**8527504 CANADA INC.**

Applicant

- and -

**SUN PAC FOODS LIMITED**

Respondent

APPLICATION UNDER Section 243 of the *Bankruptcy and Insolvency Act*, R.S.C 1985, c. B-3,  
and Section 101 of the *Courts of Justice Act*, R.S.O. 1990, c. C.43.

Court File No. CV-14-10543-00CL

**ONTARIO  
SUPERIOR COURT OF JUSTICE  
COMMERCIAL LIST**

BETWEEN:

**8527504 CANADA INC.**

Applicant

- and -

**LIQUIBRANDS INC.**

Respondent

APPLICATION UNDER Section 243 of the *Bankruptcy and Insolvency Act*, R.S.C 1985, c. B-3,  
and Section 101 of the *Courts of Justice Act*, R.S.O. 1990, c. C.43.

**SUPPLEMENTARY FACTUM OF 8527504 CANADA INC.**  
(re receivership application and motions returnable November 28, 2014)

**CHAITONS LLP**

Barristers and Solicitors  
5000 Yonge Street, 10th Floor  
Toronto, Ontario M2N 7E9

**Harvey Chaiton** (LSUC #21592F)

Tel: (416) 218-1129  
Fax: (416) 218-1849  
E-mail: harvey@chaitons.com

**Sam Rappos** (LSUC #51399S)

Tel: (416) 218-1137  
Fax: (416) 218-1837  
E-mail: samr@chaitons.com

**Lawyers for 8527504 Canada Inc.**

**TO: WIRES JOLLEY LLP**  
Barristers and Solicitors  
90 Adelaide Street West, Suite 200  
Toronto, Ontario M5H 3V9

**David E. Wires and Krista Bulmer**  
Tel: (416) 366-4006 / 366-0000  
Fax: (416) 366-0002  
E-mail: dewires@wiresjolleyllp.com /  
kbulmer@wiresjolleyllp.com

**Lawyers for Liquibrands Inc.**

**AND TO: LIPMAN, ZENER, WAXMAN LLP**  
Barristers and Solicitors  
1220 Eglinton Avenue West,  
Toronto, Ontario M6C 2E3

**Jason Spetter**  
Tel: (416) 789-0652 Ext 367  
Fax: (416) 789-9015  
E-mail: jspetter@lzwlaw.com

**Lawyers for the Receiver, BDO Canada Limited**

Court File No. CV-13-10331-00CL

**ONTARIO  
SUPERIOR COURT OF JUSTICE  
COMMERCIAL LIST**

BETWEEN:

**8527504 CANADA INC.**

Applicant

- and -

**SUN PAC FOODS LIMITED**

Respondent

APPLICATION UNDER Section 243 of the *Bankruptcy and Insolvency Act*, R.S.C 1985, c. B-3,  
and Section 101 of the *Courts of Justice Act*, R.S.O. 1990, c. C.43.

Court File No. CV-14-10543-00CL

**ONTARIO  
SUPERIOR COURT OF JUSTICE  
COMMERCIAL LIST**

BETWEEN:

**8527504 CANADA INC.**

Applicant

- and -

**LIQUIBRANDS INC.**

Respondent

APPLICATION UNDER Section 243 of the *Bankruptcy and Insolvency Act*, R.S.C 1985, c. B-3,  
and Section 101 of the *Courts of Justice Act*, R.S.O. 1990, c. C.43.

**SUPPLEMENTARY FACTUM OF 8527504 CANADA INC.**  
(re receivership application and motions returnable November 28, 2014)

1. This factum is filed as a supplement to the factum filed by 8527504 Canada Inc. dated November 24, 2014 (the “**Factum**”). Capitalized terms used and not otherwise defined herein shall have the meanings ascribed to them in the Factum.

2. Liquibrands is seeking an order directing the trial of an issue for a declaration that 852 breached the terms of the Forbearance Agreement by not advancing Facility D to Sun Pac, and an order preventing the Receiver from making any distribution to 852 until the trial of the issue has been determined.

3. In the event that the Court directs the trial of the issue, and at trial a declaration is granted that 852 breached the terms of the Forbearance Agreement by not advancing Facility D to Sun Pac, Liquibrands intends to seek an order, *inter alia*:

- (a) granting leave for Sun Pac and Liquibrands to continue the action commenced by Sun Pac and Liquibrands against 852 and Bridging (the “**Claim**”) and appointing msi Spergel Inc. as receiver for the purposes of advancing the Claim; and
- (b) declaring that the Guarantee granted by Liquibrands in favour of 852 is unenforceable.

4. 852 respectfully submits that, in the event that the Court determines that there is a genuine issue requiring a trial, the appropriate ancillary order is for the Court to authorize and direct the Receiver to conduct a marketing process for the sale of the Claim, as opposed to appointing a new receiver to prosecute the Claim.

5. Additionally, 852 submits that Liquibrands is not entitled to the relief it will be seeking in connection with the Guarantee, as it specifically contracted out of and waived any defence that could result in a court declaring the Guarantee to be unenforceable.

**Receiver Appropriate Party to Market the Claim**

6. A similar issue as to the one before the Court arose in the Commercial List receivership proceeding of UM Financial Inc. and UM Capital Inc. (“**UM**”). In that proceeding, the secured creditor, Central 1 Credit Union (“**Central 1**”), commenced a receivership application against UM. Prior to the hearing of the application, UM commenced an action against Central 1 Credit



Union seeking, *inter alia*, \$50,000,000 in general damages for breach of contract, breach of confidence and bad faith.

7. Central 1 brought a motion in the receivership proceeding seeking a declaration that its security extended over the claim commenced by UM. In reasons dated March 22, 2012, The Honourable Mr. Justice C. Campbell held that the claim constituted collateral that was subject to the existing receivership proceeding.<sup>1</sup>

8. The Court-appointed receiver subsequently brought a motion seeking Court approval to conduct a marketing process for the sale of the claim. Such relief was granted by The Honourable Mr. Justice C. Campbell in an Order dated May 18, 2012.<sup>2</sup>

9. 852 respectfully submits that in the event that the Court is of the view that there is a genuine issue requiring a trial, the appropriate ancillary order is for the Court to authorize and direct the Receiver to conduct a marketing process for the sale of the Claim. This will maximize recovery on the Claim as an asset of the receivership estate for the creditors of Sun Pac in a timely manner, and eliminates the uncertainty and costs that may be incurred by the Sun Pac receivership estate in prosecuting the Claim.

**Liquibrands Contracted Out of and Waived Defenses that Guarantee is Unenforceable**

10. Liquibrands intends to seek an order declaring that the Guarantee is unenforceable in the event that a trial judge determines that 852 breached the Forbearance Agreement. 852 submits that Liquibrands is not entitled to that relief as it expressly contracted out of and waived its rights to seek such relief under the terms of the Guarantee.

11. Pursuant to section 2 of the Guarantee, Liquibrands' obligations as guarantor are continuing, unconditional and absolute and would not be released, discharged, diminished, limited or otherwise affected by (and Liquibrands waived, to the fullest extent permitted by applicable law) *inter alia*:

---

<sup>1</sup> *Central 1 Credit Union v. UM Financial Inc.*, 2012 ONSC 1893; Order of The Honourable Mr. Justice Campbell dated March 22, 2012, Court File No. CV-11-9144-00CL

<sup>2</sup> Notice of Motion (returnable May 18, 2012) of Grant Thornton Limited as Receiver, Court File No. CV-11-9144-00CL; Ninth Report of the Receiver dated May 14, 2012, Court File No. CV-11-9144-00CL; Order of The Honourable Mr. Justice Campbell dated May 18, 2012, Court File No. CV-11-9144-00CL

**“... (b) any modification or amendment of or supplement to the Obligations, including any increase or decrease in the principal, the rates of interest or other amounts payable thereunder...**

**(e) the existence of any claim, set-off or other rights which the Guarantor may have at any time against the Debtor, the Creditor, or any other person, whether in connection herewith or any unrelated transactions; ...**

**(l) any defence arising by reason of any incapacity, lack of authority, or other defence of the Debtor or any other person, or by reason of any limitation, postponement, prohibition on the Creditor’s right to payment of the Obligations or any part thereof, or by reason of the cessation from any cause whatsoever of the liability of the Debtor or any other person with respect to all or any part of the Obligations, or by reason of any act or omission of the Creditor or others which directly or indirectly results in the discharge or release of the Debtor or any other person or all or part of any of the Obligations or any security or guarantee therefor, whether by contract, operation of law or otherwise;...**

**(p) any dealing whatsoever with the Debtor or other person or any security, whether negligently or not, or any failure to do so; ...**

**(q) any defence based upon or arising out of any bankruptcy, insolvency, reorganization, moratorium, arrangement, readjustment of debt, liquidation or dissolution proceeding commenced by or against the Debtor or any other person, including any discharge of, or bar against collecting, any of the Obligations, in or as a result of any such proceeding; or**

**(r) any other act or omission to act or delay of any kind by the Debtor, the Creditor, or any other person or any other circumstances whatsoever, whether similar or dissimilar to the foregoing, which might, but for the provisions of this Section 2, constitute a legal or equitable discharge, limitation or reduction of the Guarantor’s obligations hereunder (other than the payment or extinguishment in full of all of the Obligations).”  
[emphasis added]<sup>3</sup>**

12. Any doubt as to the enforceability of such waivers of rights was removed by the

---

<sup>3</sup> Sharpe Affidavit, Exhibit “D” – Guarantee and Postponement Agreement, s. 2

Supreme Court of Canada in *Bauer v. Bank of Montreal*, where the Supreme Court held that:

“The duty of a creditor holding security for the performance of the obligations of a debtor or a surety is clearly established. The creditor, in the absence of agreement to the contrary with the debtor or the surety, must protect and preserve the security and be in a position, unless excused by other agreement, to return or reassign the security to the debtor or surety on repayment of the debt...

**Despite this rule, it is open to the parties to make their own arrangements, and a surety is competent to contract himself out of the protection of the equitable rule requiring preservation of his security.”<sup>4</sup>**

13. It is respectfully submitted that Liquibrands contracted out of and has waived any defenses that could result in a court declaring the Guarantee to be unenforceable, and thus the contemplated declaration that the Guarantee is unenforceable has no chance of success.

ALL OF WHICH IS RESPECTFULLY SUBMITTED

November 25, 2014



---

Harvey Chaiton and Sam Rappos  
CHAITONS LLP

Lawyers for 8527504 Canada Inc.

---

<sup>4</sup> *Bauer v. Bank of Montreal*, [1980] 2 S.C.R. 102, paras. 5-7

**SCHEDULE "A"**

**CASE AUTHORITIES**

1. *Central 1 Credit Union v. UM Financial Inc.*, 2012 ONSC 1893
2. *Order of The Honourable Mr. Justice Campbell dated March 22, 2012*, Court File No. CV-11-9144-00CL
3. *Notice of Motion (returnable May 18, 2012) of Grant Thornton Limited as Receiver*, Court File No. CV-11-9144-00CL
4. *Ninth Report of the Receiver dated May 14, 2012*, Court File No. CV-11-9144-00CL
5. *Order of The Honourable Mr. Justice Campbell dated May 18, 2012*, Court File No. CV-11-9144-00CL
6. *Bauer v. Bank of Montreal*, [1980] 2 S.C.R. 102

**8527504 CANADA INC.**  
Applicant

- and -

**SUN PAC FOODS LIMITED**  
Respondent

Court File No. CV-13-10331-00CL

**8527504 CANADA INC.**  
Applicant

- and -

**LIQUIBRANDS INC.**  
Respondent

Court File No. CV-14-10543-00CL

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

Proceedings commenced at TORONTO

**SUPPLEMENTARY FACTUM OF**  
**8527504 CANADA INC.**

(re receivership application and  
motions returnable November 28, 2014)

**CHAITONS LLP**

5000 Yonge Street, 10<sup>th</sup> Floor  
Toronto, Ontario M2N 7E9

**Harvey Chaiton** (LSUC #21592F)

Tel: (416) 218-1129

Fax: (416) 218-1849

E-mail: harvey@chaitons.com

**Sam Rappos** (LSUC #51399S)

Tel: (416) 218-1137

Fax: (416) 218-1837

E-mail: samr@chaitons.com

**Lawyers for 8527504 Canada Inc.**



TAB 9





Court File No. CV-13-10331-00CL

**ONTARIO  
SUPERIOR COURT OF JUSTICE  
COMMERCIAL LIST**

BETWEEN:

8527504 CANADA INC.

Applicant

and

SUN PAC FOODS LIMITED

Respondent

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

**AFFIDAVIT OF CSABA REIDER**

I, Csaba Reider, of the Town of Richmond Hill, Region of York, DO MAKE OATH AND

SAY:

1. I am the sole officer, director and shareholder of Liquibrands Inc. ("Liquibrands").
2. In November 2011, I directed Liquibrands in the acquisition of Sun Pac Foods Limited ("Sun Pac").
3. Sun Pac was a 100 year old privately-owned, Canadian manufacturer of private label and branded beverage products, including juices, natural teas, sports drinks, juice concentrates, frozen juices and other beverage products. Sun Pac also manufactured croutons and bread crumbs under

the 'McDowell Ovens' banner and private label brands owned by various large Canadian retailers (the "Breadcrumbs Division").

4. Liquibrands is the sole shareholder of Sun Pac.

5. I was the sole director and officer of Sun Pac. For further information with respect to my background, I attach hereto as **Exhibit A** a copy of my resume.

6. Bridging Capital Inc. ("Bridging") and 8527504 Canada Inc. ("852") were lenders to Sun Pac (collectively the "Lenders").

7. Liquibrands guaranteed \$1,000,000.00 of Sun Pac's debt.

8. Liquibrands financed Sun Pac.

9. Sun Pac owes \$2,540,000.00 to Liquibrands as a secured creditor. Attached hereto as **Exhibit B** is a copy of the Promissory Note from Sun Pac to Liquibrands dated May 1, 2012. Attached hereto as **Exhibit C** is a copy of the General Security Agreement from Sun Pac to Liquibrands dated May 1, 2012.

10. Sun Pac products were distributed throughout North America and the Caribbean from a 355,000 square foot facility at 10 Sun Pac Boulevard, Brampton, Ontario.

11. Sun Pac had approximately 52 employees.

12. In March, 2012, I started negotiations with Loblaws Inc. ("Loblaws") to provide beverage manufacturing services. Loblaws is the largest retail grocer in Canada. Indeed it is bigger than all other grocers combined.

13. To finance Sun Pac pending the completion of negotiations with Loblaws and to continue ongoing operations, Bridging provided credit facilities to Sun Pac secured by a general security agreement.

14. Specifically, on October 1, 2012, Bridging advanced a revolving loan of up to \$5,000,000.00 based on a lending formula under Facility A, \$500,000.00 (before facility fees) on January 18, 2013 under the Facility B term loan on the equipment, and the balance of the Facility B loan, \$1,182,524.00 (before facility fees), was advanced on January 31, 2013. Attached hereto as **Exhibit D** is a copy of the Letter Agreement between Sun Pac and Bridging dated October 1, 2012. Attached hereto as **Exhibit E** is a copy of the Amended and Restated Letter Agreement between Sun Pac and Bridging, dated January 17, 2013. Attached hereto as **Exhibit F** is a copy of the General Security Agreement between Sun Pac and Bridging dated October 1, 2012.

15. By August 13, 2013, Sun Pac had reached an agreement in principle with Loblaws.

16. The Loblaws negotiations continued to September 18, 2013, when a written contract was executed. Attached hereto as **Exhibit G** is a copy of the agreement between Sun Pac and Loblaws dated September 18, 2013.

17. The Loblaws contract provided:

- (a) six years of guaranteed sales comprising \$60,000,000.00 per year in sales with a 12 per cent gross margin;
- (b) guaranteed volumes or price adjustments to compensate for volume short falls and price increases for raw material price increases passed through to Loblaws;

- (c) Loblaws paid for the transportation of the goods from Sun Pac facilities;
- (d) Sun Pac's unit fixed cost increases arising from decreased volumes could be passed through to Loblaws;
- (e) Sun Pac had the exclusive right to produce designated "President's Choice" products including 72 products and flavours; and
- (f) Sun Pac had exclusivity in Ontario to produce "President's Choice" carbonated soft drinks and exclusivity in Canada to produce "President's Choice" carbonated juices and sports drinks.

18. Volumes were expected to increase with the sale of President's Choice products in Shoppers Drug Mart stores acquired by Loblaws.

19. The parties anticipated contract renewals beyond the initial term and I anticipated incremental sales to other retailers to follow.

20. In the first quarter of 2012, I retained Jim Shone ("Shone") at Firepower Capital Corporation ("Firepower") to find and structure third-party equipment financing, from lenders such as Element Finance or GE Capital, together with working capital financing and private equity of \$10,000,000.00.

21. Firepower forecast that, by 2015, assuming a steady annual net income of \$6,000,000.00 to \$10,000,000.00 per year and earnings before interest, taxes, depreciation and amortization ("EBITDA") of \$10,000,000.00 per year, the value of Sun Pac at the end of six years would be a multiple ranging from 6 to 7 times EBITDA; or \$60,000,000.00 to \$70,000,000.00. The value of

the Loblaws contract is set out in a financing presentation, attached hereto as **Exhibit H**, as prepared by Shone and my staff in or about September 2013.

22. On September 5, 2013, 13 days before the Loblaws contract was executed, 852's lawyers delivered a "default notification" to Sun Pac by fax. Although Sun Pac was not in default at that time, the president of Bridging, Natasha Sharpe ("Sharpe"), explained to me that this was required for the structuring of the Forbearance Agreement for facilities C and D. Bridging was the architect of the new agreement to advance further working capital, Sun Pac was not in default and Bridging was not calling our loan. At that time, Sun Pac owed the Lenders \$3,950,039.57. Attached hereto as **Exhibit I** is a copy of a letter dated September 5, 2013, from Philip Taylor ("Taylor") of Chaitons LLP Bridgings' solicitor to Csaba Reider.

23. The parties understood that Sun Pac was on the verge of executing the Loblaws contract.

24. A week before the Loblaws contract was executed, Sun Pac, Liquibrands and 852 entered into the Forbearance and Amending Agreement dated September 11, 2013 (the "Forbearance Agreement"), attached hereto as **Exhibit J**

25. Pursuant to the Forbearance Agreement, the Lenders agreed to provide Sun Pac with additional financing and to forbear from enforcing any security prior to the earlier of December 6, 2013, or default.

26. The credit facilities in the Forbearance Agreement included:

- (a) Facility A: an operating credit line;

- (b) Facility B: a demand, non-revolving loan in the amount of up to the lesser of (i) \$2,250,000 and (ii) 90% of the Equipment Appraisal;
  - (c) Facility C: a demand non-revolving loan of \$500,000.00; and
  - (d) Facility D: a loan in the amount of up to 2 times EBITDA of the Breadcrumbs Division as determined by BDO Canada ("BDO"), less the amount advanced to Sun Pac under the Facility C Loan.
27. Credit facilities were to be repaid on the earlier of the termination or the sale of Sun Pac's Breadcrumbs Division or lawful demand being made by 852.
28. The Lenders advanced the Facility C loan and left the Facility A, Facility B and Facility C loans intact up to the date of the receivership of Sun Pac.
29. Sun Pac provided the Lenders and its appointed collateral examination firm, GDR Advisory Group Inc. ("GDR"), with full access every 2 weeks to the plant, financial records, inventory and management and allowed them to exercise *de facto* control of Sun Pac to protect their security.
30. Sun Pac and Liquibrands agreed to market the sale of the Breadcrumbs Division.
31. The parties defined as a milestone that Sun Pac enter an agreement of purchase and sale of the Breadcrumbs Division by November 6, 2013 with a closing of the sale and repayment of debt by December 6, 2013.

32. Sun Pac entered into negotiations to sell the Breadcrumbs Division and on September 6, 2013, Sun Pac received a signed Letter of Intent from a purchaser at a sale price of \$3,000,000.00, attached hereto as **Exhibit K**.

33. Sun Pac retained BDO to prepare a Quality of Earnings Report for the Breadcrumbs Division. Attached hereto as **Exhibit L** is a copy of the Financial Due Diligence Engagement Letter dated September 5, 2013. Based on the report, the Lenders had an obligation pursuant to the Forbearance Agreement to advance the Facility D loan of \$1,200,000.00 by October 1, 2013. Attached hereto as **Exhibit M** is a copy of the Financial Due Diligence Report dated September 25, 2013.

34. On the morning of October 4, 2013, Len Kofman ("Kofman"), Chief Credit Officer at Bridging, called me to a meeting on short notice that afternoon without stating in advance the agenda or purpose of the meeting. The meeting was to be held at Jenny Coco's ("Coco") offices at Coco Paving Inc., in North York. Coco is a director of Bridging.

35. I attended the meeting with the belief that we would review the terms of the Loblaws contract signed two weeks earlier. Kofman and Coco attended the meeting in person. Sharpe joined the meeting by conference call.

36. To my surprise, Coco declared that the Lenders refused to fund the Facility D loan pursuant to the Forbearance Agreement. Kofman and Coco both stated they were uncomfortable having a conditional letter of intent for the sale of the Breadcrumbs Division as their primary reason not to honour the contractual agreement it had with Sun Pac. Bridging did not advise that it intended to place Sun Pac in default or call the loan. The meeting ended after 25 minutes

37. I called Sharpe after the meeting to remind her of the terms of the Forbearance Agreement, the November 6, 2013 milestone date for a Breadcrumbs Division Agreement of Purchase and Sale, the positive impact of the Loblaws contract, my view of financing negotiations with Firepower and the flow of information I had provided to her.

38. Sharpe stated that she had been “thrown under the bus”. She said that she had recommended payment of the Facility D loan and was overruled, despite Sun Pac obtaining i) a 6-year binding contract with Loblaws, ii) a letter of intent to purchase the Breadcrumbs Division for \$3,000,000.00, iii) the BDO Quality of Earnings Report which verifies the value of the Breadcrumbs Division, and iv) a report from their collateral examination firm, GDR, affirming there were no issues at Sun Pac.

39. It was a final decision.

40. The 25-minute meeting at Coco’s office and her declaration that the Lenders refused to fund the Facility D loan was the end of Sun Pac. The Lenders left Facilities A, B and C intact. The Lenders did not place Sun Pac in default or call the loan.

41. I received a letter from Taylor dated October 10, 2013, attached hereto as **Exhibit N**, purporting to outline the reasons the Facility D loan was not funded. The reasons cited were:

- (a) late reporting;
- (b) draw requests in excess of availability;
- (c) the inclusion of slow moving inventory in the Weekly Borrowing Base Report premised upon inaccurate and changing information;



- (d) failure to meet sales projections;
- (e) concern in respect of a quantity of frozen orange juice concentrate;
- (f) the Lender could no longer rely on information provided by management;
- (g) concerns with respect to working capital and the prospects and sustainability of the business; and
- (h) the Lenders' lack of confidence in management.

42. The statements made by Taylor were not made by Coco or Sharpe or any other Lenders representative before the meeting of October 4.

43. I responded to Taylor by email dated October 15, 2013, with copies to Sun Pac's corporate counsel, Sharpe, Kofman and Shone, a copy of which is attached hereto as **Exhibit O**, and made the following points:

- (a) Taylor's conclusions were inaccurate and based on incomplete, mistaken or out-of-date information;
- (b) Sun Pac's short-term working capital challenges were currently caused by Bridging having "reneged" on the Facility D advances;
- (c) Sun Pac relied on Bridging's financing commitment for the Facility C and D loans, made by Bridging's own initiative, in making critical operating decisions regarding production planning and cash flow management;

- (d) the management of Sun Pac dealt with Bridging in good faith; Bridging's proposal to abandon its contractual obligations lacked good faith;
- (e) at no time during dealings in respect of the Facility C and Facility D loans was there any material concerns that would warrant the failure to advance funds under Facility D nor was there ever any communication of any material concern to me as President, CEO and owner: not one e-mail, phone call or other communication;
- (f) the BDO Quality of Earnings report which fixed the amount to be funded under the Facility D loan was the only precondition to advancing the operating capital under Facility D and the report was prepared and delivered;
- (g) on Friday October 4, 2013, Coco told me that Bridging intended to default primarily because she was "uncomfortable funding" while there was a non-binding letter of intent for the sale of the Breadcrumbs Division;
- (h) Sharpe told me that she recommended approval of funding and was shocked and disappointed with Coco's position;
- (i) Bridging agreed to provide interim financing to Sun Pac in anticipation of Sun Pac signing an agreement with Loblaws;
- (j) Sun Pac signed the contract with Loblaws and was engaged in negotiations to finance that contract;
- (k) the gross value of the Loblaws contract was \$250,000,000.00;

- (l) Sun Pac's management delivered on its good faith representation that it would obtain this contract;
- (m) employees, landlords, suppliers, customers, regulators, alternative financing sources and Canada's largest food retailer had confidence in Sun Pac and its management;
- (n) performance of the Loblaws contract would fail due to Bridging reneging on the Facility D loan, which would cripple Sun Pac and its ability to complete financing for performance of the contract; and
- (o) the business and contractual relationship with Bridging and our good faith performance of our loan obligations did not justify Bridging's default.

44. I addressed specific issues raised by Taylor in his letter as follows:

- (a) weekly reporting had been consistently on time;
- (b) priority payable reporting was discussed with Bridging and was consistently on time since April 2013;
- (c) Financial Statement reporting was discussed at length with Bridging;
- (d) draw requests were explained and discussed with Bridging multiple times;
- (e) Sun Pac had advised Bridging on October 1, 2013 that the flow of funds came in late Mondays as funds came in from customers electronically over the weekend, and it was a timing issue to get the maximum benefit of the draw; and

- (f) the inclusion of slow moving inventory in the weekly borrowing base report was discussed in detail with Sean Rai at GDR and Kofman at Bridging, and the letter was inconsistent with the resolution agreed upon with GDR.

45. Despite the meeting with Bridging on October 4, 2013, and Taylor's letter with all of Bridging's purported concerns, allegations and lack of confidence in management, Bridging was not placing Sun Pac in default or calling the loan, and in fact continued funding Facility A, B and C right up to November 12, 2013, the date Sun Pac was ordered into receivership.

46. Sun Pac was unable to continue with daily manufacturing for more than a month without Facility D or new financing.

47. From October 11, 2013, I sought the assistance of Shone, legal counsel and my staff to find lenders willing to offer take-out financing for Sun Pac in an extremely compressed time frame.

48. Shone had introduced Sun Pac to potential lenders and private equity investors over the previous 12 months in anticipation of financing the Loblaws contract and paying out the Lenders.

49. Potential lenders and investors, including Indus Limited in Toronto and Saybrook Capital LLC in Los Angeles, California, were interested in providing short-term interim financing to help sustain Sun Pac and allow them to participate in permanent financing for Sun Pac's Loblaws contract performance. They were perplexed why the Lenders refused to honour their contractual obligations to advance funding in the face of the Loblaws contract.

50. The Lenders refused to postpone any of their security to new interim financing. The Lenders declared that they would proceed to exercise their rights forthwith by the appointment of a receiver.

51. The declarations in Taylor's letter crippled Sun Pac and the damage was critical when lenders and investors declared they were unable to start and complete due diligence for replacement financing in the time frame imposed by the Lenders for the appointment of a receiver.

52. I aggressively pursued replacement financing on short notice and continued seeking alternatives through to the evening before the receiver's liquidation sale.

53. Sun Pac's management was restrained from entering agreements outside of the ordinary course of business, except with the prior written consent of lenders. It could not market and sell the Breadcrumbs Division or accept any offer to purchase the Breadcrumbs Division; make any capital expenditures; encumber, sell, transfer, convey, lease or otherwise dispose of any assets out of the ordinary course of business or modify any material contract without consent.

54. The Lenders refused to amend the Forbearance Agreement or any of the lending agreements to allow Sun Pac to accept interim financing to repay the Lenders.

55. The entire undertaking of Sun Pac was liquidated by BDO as court appointed receiver.

56. The Lender's failure to fund the Facility D loan cut off Sun Pac's working capital and paralyzed its ability to continue operating.

57. As a result of the Lenders refusal to fund the Facility D loan, Sun Pac was forced to discontinue operations, lay off all of its employees and lost the chance to refinance and perform the Loblaws contract and grow its business with consequential sales to other retailers.

58. As a result of Sun Pac discontinuing operations, Liquibrands is unable to obtain repayment of its loan to Sun Pac.

59. The current receiver, BDO, has declared it does not intend to continue the stayed action by Sun Pac against the Lenders.

60. BDO demanded that Liquibrands honour its guarantee of Sun Pac's debt and the terms of its security agreement and transfer its Sun Pac shares to the receiver.

61. The tax losses associated with the shares of Sun Pac held by Liquibrands have a potential market value to the appropriate purchaser.

62. The current receiver may propose to pay out the proceeds of the liquidation of Sun Pac to the Lenders without trial of the Sun Pac and Liquibrands claims against the Lenders.

63. This affidavit is made in support of a request of the Court for the trial of an issue for a declaration that 852 and Bridging breached the terms of the Forbearance Agreement and for consequential damages.

64. To adjudicate the claims herein referred to, I am advised I must seek an order to lift the stay of proceedings in Court File CV-13-00492612-0000 (the "Action") and for leave for Sun Pac and Liquibrands to continue the Action against 852 and Bridging. A copy of the Statement of Claim is attached hereto as **Exhibit P**.

65. The plaintiffs in the Action assert, among other things:

(a) the Lenders breached the Forbearance Agreement by failing to fund the Facility D loan;

(b) the defendants refused to facilitate the replacement of Sun Pac's financing notwithstanding breach of their obligation to fund the Facility D loan;

- (c) the Lenders security agreements and refusal to fund the Facility D loan eliminated Sun Pac's ability to find alternative financing, close the sale of the Breadcrumbs Division to repay its debt and continue operations in the ordinary course;
- (d) the Lenders' management became *de facto* directors of Sun Pac and directed Sun Pac's operations solely in the defendants' interests in bad faith contrary to the defendants' contractual obligations, the reasonable expectations of the parties and commercially reasonable conduct;
- (e) the defendants' breach of their obligations to fund the Facility D loan caused Sun Pac to default on the Lenders' Facility A, B and C loans and eliminated working capital;
- (f) the Lenders knew Sun Pac would be unable to continue as a going concern;
- (g) the Lenders knew that their financing was intended to bridge the Loblaws contract negotiations and operations to fulfill the contract;
- (h) the Lenders knew the financing provided working capital for Sun Pac pending permanent financing for the execution of the Loblaws' contract;
- (i) based on the defendants' access to Sun Pac's financial information they knew that failure to fund the Facility D loan would cause Sun Pac to cease operations;
- (j) the defendants owed the plaintiffs a duty of honesty and good faith in the performance of the Agreement, in funding the Facility D loan and facilitating the financing necessary to repay the defendants and perform the Loblaws contract;

- (k) the Lenders had an implied obligation to perform the lending agreement reasonably, honestly and in good faith; to not perform their obligations in a fashion that eviscerated the very purpose of the lending agreements and to use confidential business, operations and financial information for the purpose for which it was provided, in particular to monitor the execution of the Loblaws contract, the sale of the Breadcrumbs Division and refinancing Sun Pac with long term financing; and
- (l) the defendants breached their duty of fair dealing and good faith in the performance of the contract.

66. The Action was issued prior to Sun Pac being placed into receivership by court order on November 12, 2013. Justice Mesbur ordered that the receiver was empowered and authorized to continue the prosecution of proceedings pending. The receiver declines to do so, however, the money from the sale of the assets of Sun Pac held by the receiver is to be paid in accordance with the terms of the order of the Court. The Order of Justice Mesbur dated November 12, 2013, is attached hereto as **Exhibit Q**.

67. I also seek an order declaring that Liquibrands is entitled, in the circumstances, to claim under its general security agreement in priority to claims by the Lenders against the realization of the Sun Pac proceeds.

68. As BDO was the company that prepared the Quality of Earnings Report for Sun Pac that was the precondition to the funding amount of the Facility D loan, its representatives will be witnesses should the proceedings be allowed to proceed. BDO as receiver has declared it does not intend to advance the proceedings.




69. Accordingly, I seek to appoint Spergel Inc. on behalf of Liquibrands, a secured creditor as receiver of the assets of Sun Pac for the purposes of advancing the litigation and disposing of the proceeds of realization and litigation if the action is allowed to proceed.

70. I seek the relief set out in the Notice of Motion.

71. I make this affidavit in support of this motion and for no other or improper purpose.

**SWORN BEFORE ME** at the City of Toronto, in the Province of Ontario on the 3<sup>rd</sup> day of April, 2014.

  
\_\_\_\_\_  
Commissioner for Taking Affidavits  
(or as may be)

  
\_\_\_\_\_  
**CSABA REIDER**



**EXHIBIT "A"**



Exhibit A to the Affidavit  
Of Csaba A. Reider  
Sworn on the 3rd day of  
April 2014  
Commissioner for Taking Oaths

**Csaba A. Reider**

---

*Professional Experience*

**SunPac Foods Limited  
President/CEO**

**2011 – 2013**

Sun Pac operates one of the largest independent hot-fill and aseptic beverage facilities in North America, headquartered in a 355,000 square foot facility in the Toronto area. Sun Pac produces a wide range of "better for you" beverages for private label and branded products. The Company's production capabilities include juices, natural teas, sports drinks, juice concentrates, frozen juices and other innovative beverage products. Sun Pac products are distributed throughout North America and the Caribbean.

**Associated Brands  
Board Member/Investor  
Compensation Committee**

**2007 – 2013**

Associated Brands is one of the top tier companies in North America producing dry blended beverage and food items for branded and private label customers.

Associated Brands is held by Torquest Partners, a Canadian Private Equity Group with revenue of \$200m annually.

**Xyience Inc.  
President/CEO**

**2008 -2010**

Xyience is based in Las Vegas and is one of the fastest growing brands in sport supplements and energy drinks in North America.

Reporting to the Board of Directors.

Led the company out of Bankruptcy protection.

Restructured the entire organization from marketing, sales, logistics, manufacturing.

Led the development of new scu's, new formulas, new packaging and Branding.

Grew the business 50% in the U.S. and 400% in Canada, \$40m annually.

Xyience became the number 1 Brand in some key markets in Canada such as Ottawa.

**COTT CORPORATION**  
**Vice-President Global Sourcing & Six Sigma**

**1999 – 2007**  
**2005 – April 2007**

Reporting to the President/CEO of Cott Corporation (\$1.8 billion U.S. Beverage Company), responsible for : Global Procurement, Global Continuous Improvement Group, North American Engineering Group, Print Production Group and total capital budget for equipment of \$50 million annually.

- Managed a spend exceeding \$1 billion U.S. with 12 direct reports
- Obtained the respect and trust of all global executives by understanding the business and providing sound advice and service
- Developed procurement focus from 'price' to 'total activity cost' in our procurement decisions
- Led team with Six Sigma/ Lean Initiatives that have driven up manufacturing efficiencies exceeding industry metrics across 18 facilities with 500-700 average sku 's per manufacturing facility.
- Developed supplier relationships into strategic relationships, ie: Ecolab contract saved Cott \$4 million over 5 years that will include capital, engineering, global benchmarks and guaranteed operational savings globally
- Led a team that recommended and closed 4 manufacturing facilities over 2 years as part of asset maximization, with savings to Cott of \$15 million annually.
- Collaborated with largest supplier of bottles to drive \$11 M in savings annually with redesign and series of light weighting programs. (removing resin)

**COTT BEVERAGES CANADA**  
**Vice-President Operations**

**2000 - 2005**

Reported to President/EVP International. Responsible for operations, - manufacturing, supply chain, engineering, capital, quality, freight. Budget of \$75 million with 9 direct reports, 7 manufacturing facilities, with 700 employees. Led teams in 3 acquisitions.

- Led team to purchase then rebuild and expand the Mexico facility.\$10 M project– on time, on budget, on performance targets.
- In Canada – rationalized in/outbound logistics saving \$1 million annually
- Canadian manufacturing plants became top 10 of 28 in highest efficiency and lowest cost per case among all plants in Cott system, due to the following:
  - Negotiated successfully 4 multi-year contracts with bargaining units
  - Identified and installed the strong leadership in key positions in all plants
  - Led cultural change to a highly motivated, empowered, self directed work force
  - 20% headcount reduction of plant staff positions
  - 20% average increase in plant efficiency across Canada
  - 40% reduction in raw material inventory
  - 35% reduction in full goods inventory
  - Eliminated majority of outside warehouses across Canada
  - Tailored and implemented best practices such as 'six sigma'
- Canadian Plant Managers were first to be 'six sigma' black belts globally.
- Designed and implemented an Operations bonus compensation plan to align with corporate strategic goals

- Led training and apprenticeship implementation of maintenance groups
- Inspirational leadership and attention to employee development cut turnover from 15% per year to less than 5%

**COTT BEVERAGES CANADA**  
**Director of Manufacturing**

1999 – 2000

Reporting to Vice-President Operations, responsible for 5 manufacturing facilities across Canada for quality, engineering, process improvement, capital equipment with a \$10 million budget, 8 direct reports.

- Led team to define all manufacturing key performance indicators (KPI's) still used to this day globally.
- Led team with installing Cott "Management Operating System" (PVA at the time) still used to this day globally.
- Canada led in developing 'six sigma' practices across all manufacturing units

**HERITAGE CLUB HOMES**  
**President/CEO & Partner**

1990 – 1998

- Led and directed an executive team and implemented a business plan which identified opportunities, risks and resources required to accelerate business in the residential housing market
- Redefined the business to create competitive differentiation, revenue growth, higher return on investment, business and product, and increased shareholder value with introducing premium upgrades.
- Led projects from assembling land - land development to building lots
- Led re-development in in fill properties, converting existing properties to multiple building lots with new streets.

**Pepsi / 7Up CANADA**  
**Vice-President Foodservice / President Foodcor Division**

1987 - 1989

- Full P&L responsibility and to develop and execute the strategies needed to maximize and enhance the brand positioning in the \$60m Foodservice division
- Fully responsible for the Foodservice program and improving efficiencies in the management and distribution of product and assets

**FOODCOR CORPORATION**  
**President / CEO & Partner**

1983 - 1987

**CSV FOOD SERVICES**  
**Vice-President Sales and Marketing & Partner**

1981 - 1983

**KCR VENDING LTD.**  
**Owner**

1976 - 1981

**Professional Activities**

Board Member, Foodcor Corporation	1984 - 1987
Board Member, Graphstar Communications Ltd.	1989 – 1992
Board Member, Iroquois Water Ltd.	2002 – 2005
Board Member, Northeast Retailer Brands Ltd.	2005 – 2007
Board Member Associated Brands	2007 - 2013

**Education & Professional Development**

Agincourt Collegiate – Graduated	1974
Ryerson University - Marketing Management	1985
Cott Internal Training - 'Six Sigma'/Lean Manufacturing	2000
Harvard University - Competitive Advantage Through Operations	2003

**Interests/Other Activities**

Provincial Level Soccer & Hockey Coach  
National Coaching Certificate, Level 3  
Accomplished numerous Championships including  
Provincial Champions, U.S.A. Cup Finalists



**EXHIBIT "B"**



Exhibit  
 Of Saba Kador to the Affidavit  
 Sworn on the 3<sup>rd</sup> day of  
April, 2014  
 Commissioner for Taking Oaths

### PROMISSORY NOTE

1. **Principal and Interest.** For value received, **SUN PAC FOODS LIMITED** (the "Borrower") promises to pay to **LIQUIBRANDS INC.** (the "Lender") at 10 Sun Pac Blvd., Brampton, Ontario, L6S 4R5, or at such other place as the Lender may direct in writing, the aggregate unpaid principal amount of all borrowings by the Borrower from the Lender as recorded on the grid attached as Schedule "A" hereto, in lawful money of Canada. The principal amount owing under this promissory note (the "Note") shall be non-interest bearing before default. After an Event of Default (as hereinafter defined), the outstanding principal balance owing under this Note shall bear interest at a rate of 10% per annum, accrued daily and calculated and payable monthly in arrears on the last day of each and every month. All principal and interest owing under this Note are collectively referred to as the "Obligations".
2. **Repayment.** The Obligations owing under this Note shall become fully due and payable, and shall be repaid, on demand by the Lender. If an Event of Default occurs and is continuing, the Lender may in its discretion declare all of the Obligations then outstanding to be due and payable and the same shall become immediately due and payable to the Lender.
3. **Prepayment.** The Borrower may, without premium or penalty, at any time and from time to time, prepay all or any portion of the outstanding principal balance due under this Note, provided that each such prepayment is accompanied by accrued interest, if any, on the amount of principal prepaid calculated to the date of such prepayment.
4. **Application of Payments.** Payments received by the Lender pursuant to this Note shall be applied firstly in payment of unpaid accrued interest, if any, and the balance in reduction of principal.
5. **Endorsement on Grid.** All borrowings evidenced by this Note and all payments made on account of the Obligations hereunder shall be endorsed by the Lender on the grid attached hereto and made a part hereof, or on a continuation thereof which shall be attached hereto and made a part hereof, provided however that any failure to endorse such information on such schedule or continuation thereof shall not in any manner affect the obligation of the Borrower to make payments of principal and interest in accordance with the terms of this Note. All notations on such grid as to borrowings and repayments made and initialled by an officer or employee of the Lender shall constitute conclusive evidence of such borrowings or repayments.
6. **Event of Default.** Each of the following events shall constitute an "Event of Default" hereunder:
  - (a) default in the payment of any of the Obligations as and when the same shall become due and payable in accordance with the terms of this Note;
  - (b) failure on the part of the Borrower to duly observe or perform any of the other covenants or agreements on its part contained in this Note for a period of 30 days after the earlier of the date (i) on which written notice of such failure, requiring the Borrower to remedy the same, shall have been given by the Lender, and (ii) the Borrower becomes aware of such default;
  - (c) if any material representation or warranty made by the Borrower herein is found to be false or incorrect when made or when deemed to have been made;
  - (d) default by the Borrower in the payment of principal or interest on any material indebtedness for borrowed money in the aggregate or in the performance of any other

- 2 -

covenant contained in any agreement or instrument evidencing or under which such indebtedness is outstanding, and the declaration by the holders thereof, or a trustee, if any, for such holders, declaring the same to be due and payable prior to the stated maturity, if any, thereof; but if such default is cured by the Borrower within five (5) Business Days or waived in writing by the Holder, then the event of default hereunder shall be deemed to be cured or waived without further action on the part of the Holder;

- (e) the institution of bankruptcy or insolvency proceedings against the Borrower, or the institution of proceedings seeking reorganization or winding-up of the Borrower under the *Companies' Creditors Arrangement Act* (Canada), the *Bankruptcy and Insolvency Act* (Canada) or the *Winding-Up Act* (Canada) or any other bankruptcy, insolvency or analogous laws, or the issuing of sequestration or process of execution against the Borrower, or any substantial part of its property, or the appointment of a receiver of the Borrower, or of any substantial part of its property, and, in each case, the continuance of any such proceedings unstayed, undischarged and in effect for a period of 30 days from the date thereof;
- (f) the institution by the Borrower of proceedings to be adjudicated bankrupt or insolvent, or the consent by it to the institution of bankruptcy or insolvency proceedings against it, or the filing by it, or the passing of a resolution authorizing the filing by it, of a petition or answer or consent seeking reorganization or relief under the *Companies' Creditors Arrangement Act* (Canada), the *Bankruptcy and Insolvency Act* (Canada) or the *Winding-Up Act* (Canada) or any other bankruptcy, insolvency or analogous laws, or the consent by it to the filing of any such petition or to the appointment of a receiver of the Borrower, or of any substantial part of its property, or the making by it of a general assignment for the benefit of creditors, or the Borrower admitting in writing its inability to pay its debts generally as they become due or taking corporate action in furtherance of any of the aforesaid purposes;
- (g) a notice is sent to or received by the Borrower from any creditor with respect to the intention of such creditor to enforce any lien on any of the property of the Borrower, unless such notice is being contested in good faith by appropriate legal proceedings and such notice has not resulted in, or does not involve, any immediate prospect of the sale or forfeiture or loss of any of the property of the Borrower that is subject to such notice; or
- (h) if the Borrower fails within twenty (20) days of the commencement of same to contest actively and diligently in good faith by appropriate and timely proceedings any action, suit, litigation or other proceeding commenced against it.

7. **Security.** The obligations of the Borrower under this Note shall be secured by a first charge and security interest in all present and after acquired assets and property of the Borrower pursuant to a general security agreement to be entered into between the Borrower and the Lender (the "Security Agreement").

8. **Further Security.** The Borrower covenants and agrees that it shall not, without the prior written consent of the Lender, create, permit, assume, have outstanding or suffer to exist, any assignment, mortgage, lien, charge, security interest or other encumbrance over its assets and property, or any part thereof, ranking or purporting to rank prior to or *pari passu* with the charge and security interest to be created by the Security Agreement except for any purchase money security arising by law during the ordinary course of business which security shall be discharged by payment in accordance with the standard practices of the Borrower.

- 3 -

9. **Further Documentation.** The Borrower will from time to time, at its own expense, promptly and duly authorize, execute and deliver such further instruments and documents, and take such further action, as the Lender may request for the purpose of obtaining or preserving the full benefits of, and the rights and powers granted by, this Note.

10. **Conflict.** In the event of any conflict between this Note and any other document or instrument, the terms of this Note will prevail to the extent of such conflict.

11. **Waiver of Notice.** The Borrower waives presentment, protest, notice of dishonour, days of grace and the right of set-off.

12. **Successors and Assigns.** This Note shall enure to the benefit of the Lender and its successors and assigns, and shall be binding upon the Borrower and its successors and permitted assigns.

13. **Governing Law and Attornment.** This Note shall be governed by and interpreted in accordance with the laws of the Province of Ontario and the federal laws of Canada applicable therein. Without prejudice to the ability of the Lender to enforce this Note in any other proper jurisdiction, the Borrower hereby irrevocably submits and attorns to the non-exclusive jurisdiction of the courts of the Province of Ontario in connection with this Note.

**THIS NOTE** has been executed, sealed and delivered by the Borrower as of the 1<sup>st</sup> day of May, 2012.

**SUN PAC FOODS LIMITED**

By: 

\_\_\_\_\_  
Csaba Reider, President



**EXHIBIT "C"**





**GENERAL SECURITY AGREEMENT**

This General Security Agreement is made as of May 1, 2012.

**TO:** LIQUIBRANDS INC. (the "Creditor")

**RECITALS:**

A. Sun Pac Foods Limited (the "**Debtor**") has borrowed or may from time to time borrow certain amounts from the Creditor as evidenced by a grid promissory note of the Debtor dated as of May 1, 2012 issued in favour of the Creditor (the "**Note**").

B. To secure the payment and performance of the Obligations (as hereinafter defined), the Debtor has agreed to grant to the Creditor the Security Interests in respect of the Collateral in accordance with the terms of this Agreement.

For good and valuable consideration, the receipt and adequacy of which are acknowledged by the Debtor, the Debtor agrees with and in favour of the Creditor as follows:

1. **Definitions.** In this Agreement capitalized terms used but not otherwise defined in this Agreement shall have the meanings given to them in the Note (as defined below), and the following terms have the following meanings:

**"Accessions"**, **"Account"**, **"Certificated Security"**, **"Chattel Paper"**, **"Consumer Goods"**, **"Document of Title"**, **"Equipment"**, **"Goods"**, **"Instrument"**, **"Intangible"**, **"Inventory"**, **"Investment Property"**, **"Money"**, **"Proceeds"**, **"Securities Account"**, **"Securities Intermediary"**, **"Security"**, **"Security Certificate"**, **"Security Entitlement"**, and **"Uncertificated Security"** have the meanings given to them in the PPSA.

**"Agreement"** means this agreement, including the schedules and recitals to this agreement, as it or they may be amended, supplemented, restated or replaced from time to time, and the expressions "hereof", "herein", "hereto", "hereunder", "hereby" and similar expressions refer to this Agreement and not to any particular section or other portion of this Agreement.

**"Books and Records"** means all books, records, files, papers, disks, documents and other repositories of data recording in any form or medium, evidencing or relating to the Personal Property of the Debtor which are at any time owned by the Debtor or to which the Debtor (or any Person on the Debtor's behalf) has access.

**"Business Day"** means any day other than a Saturday, Sunday or statutory holiday in the Province referred to in the "Governing Law" section of this Agreement.

**"Collateral"** means all of the present and future:

- (a) undertaking;
- (b) Personal Property (including any Personal Property that may be described in any schedule to this Agreement or any schedules, documents or listings that the Debtor may from time to time provide to the Creditor in connection with this Agreement); and

- (c) real property (including any real property that may be described in any schedule to this Agreement or any schedules, documents or listings that the Debtor may from time to time provide to the Creditor in connection with this Agreement and including all fixtures, improvements, buildings and other structures placed, installed or erected from time to time on any such real property),

of the Debtor (including Books and Records, Contracts, Intellectual Property Rights and Permits), including all such property in which the Debtor now or in the future have any right, title or interest whatsoever, whether owned, leased, licensed, possessed or otherwise held by the Debtor, and all Proceeds thereof, wherever located.

**“Contracts”** means all contracts and agreements to which the Debtor is at any time a party or pursuant to which the Debtor has at any time acquired rights, and includes (i) all rights of the Debtor to receive money due and to become due to it in connection with a contract or agreement, (ii) all rights of the Debtor to damages arising out of, or for breach or default in respect of, a contract or agreement, and (iii) all rights of the Debtor to perform and exercise all remedies in connection with a contract or agreement.

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

**“Creditor”** has the meaning set out in the recitals hereto.

**“Debtor”** has the meaning set out in the recitals hereto.

**“Event of Default”** means any “Event of Default” as defined in the Note.

**“GAAP”** means generally accepted accounting principles in Canada as in effect from time to time.

**“Governmental Authority”** means the government of Canada, any other nation or any political subdivision thereof, whether provincial, state, territorial or local, and any agency, authority, instrumentality, regulatory body, court, central bank, fiscal or monetary authority or other authority regulating financial institutions, and any other entity exercising executive, legislative, judicial, taxing, regulatory or administrative powers or functions of or pertaining to government.

**“Note”** has the meaning set out in the recitals hereto.

**“Obligations”** means all present and future indebtedness, liabilities and obligations of any and every kind, nature and description (whether direct or indirect, joint or several, absolute or contingent, matured or unmatured) of the Debtor to the Creditor under the Note and any unpaid balance thereof.

**“Intellectual Property Rights”** means all industrial and intellectual property rights of the Debtor or in which the Debtor has any right, title or interest, including copyrights, patents, inventions (whether or not patented), trade-marks, get-up and trade dress, industrial designs, integrated circuit topographies, plant breeders' rights, know how and trade secrets, registrations and applications for registration for any such industrial and intellectual property rights, and all Contracts related to any such industrial and intellectual property rights.

**“Issuer”** has the meaning given to that term in the STA.

**“Laws”** means all federal, provincial, municipal, foreign and international statutes, acts, codes, ordinances, decrees, treaties, rules, regulations, municipal by-laws, judicial or arbitral or administrative or ministerial or departmental or regulatory judgments, orders, decisions, rulings or awards or any provisions of the foregoing, including general principles of common and civil law and equity, and all policies, practices and guidelines of any Governmental Authority binding on or affecting the Person referred to in the context in which such word is used (including, in the case of tax matters, any accepted practice or application or official interpretation of any relevant taxation authority); and **“Law”** means any one or more of the foregoing.

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

**“Organizational Documents”** means, with respect to any Person, such Person’s articles or other charter documents, by-laws, unanimous shareholder agreement, partnership agreement or trust agreement, as applicable, and any and all other similar agreements, documents and instruments relative to such Person.

**“Permits”** means all permits, licences, waivers, exemptions, consents, certificates, authorizations, approvals, franchises, rights-of-way, easements and entitlements that the Debtor has, requires or is required to have, to own, possess or operate any of its property or to operate and carry on any part of its business.

**“Permitted Liens”** means:

- (a) Liens in favour of the Creditor for the obligations of the Debtor under or pursuant to the Note or this Agreement;
- (b) any Liens existing on the property or assets of the Creditor prior to the date hereof;
- (c) Liens imposed by any Governmental Authority for Taxes not yet due and delinquent or which are being contested in good faith and by appropriate proceedings, and, during such period during which such Liens are being so contested, such Liens shall not be executed on or enforced against any of the assets of the Debtor;
- (d) Liens of or resulting from any judgement or award, the time for the appeal or petition for rehearing of which shall not have expired, or in respect of which the Debtor shall at any time in good faith be prosecuting an appeal or proceeding for review and in respect of which a stay of execution pending such appeal or proceeding for review shall have been secured;
- (e) undetermined or inchoate Liens and charges arising or potentially arising under statutory provisions which have not at the time been filed or registered in accordance with applicable Laws or of which written notice has not been duly given in accordance with applicable Laws or which although filed or registered, relate to obligations not due or delinquent;

- (f) Purchase Money Liens;
- (g) any Lien existing on any property or asset prior to the acquisition thereof by the Debtor; provided that (i) such Lien is not created in contemplation of or in connection with such acquisition, (ii) such Lien shall not apply to any other property or assets of the Debtor, and (iii) such Lien shall secure only those obligations which it secures on the date of such acquisition; and
- (h) any extension, renewal or replacement of any of the foregoing; provided, however, that the Liens permitted hereunder shall not be extended to cover any additional indebtedness of the Debtor or its property (other than a substitution of like property), except Liens in respect of Purchase Money Liens.

**“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.

**“Personal Property”** means personal property and includes Accounts, Chattel Paper, Documents of Title, Equipment, Goods, Instruments, Intangibles, Inventory, Investment Property and Money.

**“Pledged Certificated Securities”** means any and all Collateral that is a Certificated Security.

**“Pledged Issuer”** means, at any time, any Person which is at such time an Issuer with respect to any Pledged Securities or Pledged Security Entitlements.

**“Pledged Issuer’s Jurisdiction”** means, with respect to any Pledged Issuer, its jurisdiction as determined under section 44 of the STA.

**“Pledged Security Certificates”** means any and all Security Certificates representing the Pledged Certificated Securities.

**“Pledged Securities”** means any and all Collateral that is a Security.

**“Pledged Securities Accounts”** means any and all Collateral that is a Securities Account.

**“Pledged Securities Intermediary”** means, at any time, any Person which is at such time is a Securities Intermediary at which a Pledged Securities Account is maintained.

**“Pledged Securities Intermediary’s Jurisdiction”** means, with respect to any Securities Intermediary, its jurisdiction as determined under section 45(2) of the STA.

**“Pledged Security Entitlements”** means any and all Collateral that is a Security Entitlement.

**“Pledged Uncertificated Securities”** means any and all Collateral that is an Uncertificated Security.

**“PPSA”** means the *Personal Property Security Act* of the Province referred to in the “Governing Law” section of this Agreement, as such legislation may be amended, renamed or replaced from time to time, and includes all regulations from time to time made under such legislation.

**“Purchase Money Lien”** means a Lien taken or reserved in personal property to secure payment of all or part of its purchase price, provided that such Lien (i) secures an amount not exceeding the lesser of the

purchase price of such personal property and the fair market value of such personal property at the time such Lien is taken or reserved, (ii) extends only to such personal property and its proceeds, and (iii) is granted prior to or within 30 days after the purchase of such personal property.

**“Receiver”** means a receiver, a manager or a receiver and manager.

**“Release Date”** means the date on which all the Obligations have been indefeasibly paid and discharged in full and the Creditor has no further obligations to the Debtor under the Note pursuant to which further Obligations might arise.

**“Security Interests”** means the Liens created by the Debtor in favour of the Creditor under this Agreement.

**“STA”** means the *Securities Transfer Act* of the Province referred to in the “Governing Law” section of this Agreement, as such legislation may be amended, renamed or replaced from time to time, and includes all regulations from time to time made under such legislation.

**“Subsidiary”** means, with respect to any Person (the “parent”) at any date, any other Person (a) of which securities or other ownership interests representing more than 50% of the equity or more than 50% of the ordinary voting power or, in the case of a partnership, more than 50% of the general partnership interests are, as of such date, owned, controlled or held, or (b) that is, as of such date, otherwise Controlled, by the parent or one or more Subsidiaries of the parent or by the parent and one or more Subsidiaries of the parent.

**“Taxes”** means all taxes, charges, fees, levies, imposts and other assessments, including all income, sales, use, goods and services, value added, capital, capital gains, alternative, net worth, transfer, profits, withholding, payroll, employer health, excise, real property and personal property taxes, and any other taxes, customs duties, fees, assessments, or similar charges in the nature of a tax, including Canada Pension Plan and provincial pension plan contributions, unemployment insurance payments and workers’ compensation premiums, together with any instalments with respect thereto, and any interest, fines and penalties with respect thereto, imposed by any Governmental Authority (including federal, state, provincial, municipal and foreign Governmental Authorities), and whether disputed or not.

**“ULC”** means an Issuer that is an unlimited company or unlimited liability company.

**“ULC Laws”** means the *Companies Act* (Nova Scotia), the *Business Corporations Act* (Alberta), the *Business Corporations Act* (British Columbia), and any other present or future Laws governing ULCs.

**“ULC Shares”** means shares or other equity interests in the capital stock of a ULC.

2. **Grant of Security Interests.** As general and continuing collateral security for the due payment and performance of the Obligations, the Debtor pledges, mortgages, charges and assigns (by way of security) to the Creditor, and grants to the Creditor a security interest in, the Collateral.

3. **Limitations on Grant of Security Interests.** If the grant of the Security Interests in respect of any Contract, Intellectual Property Right or Permit under Section 2 would result in the termination or breach of such Contract, Intellectual Property Right or Permit or is otherwise prohibited or ineffective (whether by the terms thereof or under applicable Law), then such Contract, Intellectual Property Right or Permit will not be subject to the Security Interests but will be held in trust by the Debtor for the benefit of the Creditor and, on the exercise by the Creditor of any of its rights or remedies under this Agreement following an Event of Default that is continuing will be assigned by the Debtor as directed by the

Creditor; provided that: (a) the Security Interests shall attach to such Contract, Intellectual Property Right or Permit, or applicable portion thereof, immediately at such time as the condition causing such termination or breach is remedied, and (b) if a term in a Contract that prohibits or restricts the grant of the Security Interests in the whole of an Account or Chattel Paper forming part of the Collateral is unenforceable against the Creditor under applicable Law, then the exclusion from the Security Interests set out above shall not apply to such Account or Chattel Paper. In addition, the Security Interests do not attach to Consumer Goods or extend to the last day of the term of any lease or agreement for lease of real property. Such last day will be held by the Debtor in trust for the Creditor and, on the exercise by the Creditor of any of its rights or remedies under this Agreement following an Event of Default that is continuing, will be assigned by the Debtor as directed by the Creditor.

4. **Attachment: No Obligation to Advance.** The Debtor confirms that value has been given by the Creditor to the Debtor, that the Debtor has rights in the Collateral existing at the date of this Agreement and that the Debtor and the Creditor has not agreed to postpone the time for attachment of the Security Interests to any of the Collateral. The Security Interests will have effect and be deemed to be effective whether or not the Obligations or any part thereof are owing or in existence before or after or upon the date of this Agreement. Neither the execution and delivery of this Agreement nor the provision of any financial accommodation by the Creditor shall oblige the Creditor to make any financial accommodation or further financial accommodation available to the Debtor or any other Person.

5. **Representations and Warranties.** The Debtor represents and warrants to the Creditor that, as of the date of this Agreement:

- (a) **Debtor Information.** All of the information set out in Schedule "A" with respect to the Debtor is accurate and complete.
- (b) **Title: No Other Security Interests.** Except for Permitted Liens, the Debtor owns (or, with respect to any leased or licensed property forming part of the Collateral, holds a valid leasehold or licensed interest in) its Collateral free and clear of any Liens. The Debtor is the record and beneficial owner of all of its Collateral that is Investment Property. No security agreement, financing statement or other notice with respect to any or all of the Collateral is on file or on record in any public office, except for filings with respect to Permitted Liens.
- (c) **Authority.** The Debtor has full power and authority to grant to the Creditor its Security Interests and to execute, deliver and perform its obligations under this Agreement, and such execution, delivery and performance does not contravene any of the Debtor's Organizational Documents or any agreement, instrument or restriction to which the Debtor is a party or by which the Debtor or any of its Collateral is bound.
- (d) **Consents.** No consent of any Person (including any counterparty in respect of any Contract, any account debtor in respect of any Account, or any Governmental Authority in respect of any Permit) is required, or is purported to be required, for the execution, delivery, performance and enforcement of this Agreement (this representation being given without reference to the exclusions contained in Section 3). For the purposes of complying with any transfer restrictions contained in the Organizational Documents of any Pledged Issuer, the Debtor hereby irrevocably consents to any transfer of the Pledged Securities of such Pledged Issuer.
- (e) **Execution and Delivery.** This Agreement has been duly authorized, executed and delivered by the Debtor and is a valid and binding obligation of the Debtor enforceable

against the Debtor in accordance with its terms, subject only to bankruptcy, insolvency, liquidation, reorganization, moratorium and other similar Laws generally affecting the enforcement of creditors' rights, and to the fact that equitable remedies (such as specific performance and injunction) are discretionary remedies.

- (f) No Consumer Goods. The Debtor does not own any Consumer Goods which are material in value or which are material to the business, operations, property, condition or prospects (financial or otherwise) of the Debtor.
- (g) Partnerships, Limited Liability Companies. The terms of any interest in a partnership or limited liability company that is Collateral expressly provide that such interest is a "security" for the purposes of the STA.
- (h) Due Authorization. The Pledged Securities have been duly authorized and validly issued and are fully paid and non-assessable.
- (i) Warrants, Options, etc. There are no outstanding warrants, options or other rights to purchase, or other agreements outstanding with respect to, or property that is now or hereafter convertible into, or that requires the issuance or sale of, any Pledged Securities.
- (j) No Required Disposition. There is no existing agreement, option, right or privilege capable of becoming an agreement or option pursuant to which the Debtor would be required to sell or otherwise dispose of any Pledged Securities or under which any Pledged Issuer thereof has any obligation to issue any Securities of such Pledged Issuer to any Person.

6. Survival of Representations and Warranties. All representations and warranties made by the Debtor in this Agreement (a) are material, (b) will be considered to have been relied on by the Creditor, and (c) will survive the execution and delivery of this Agreement or any investigation made at any time by or on behalf of the Creditor and any disposition or payment of the Obligations until the Release Date.

7. Covenants. The Debtor covenants and agrees with the Creditor that:

- (a) Further Documentation. The Debtor will from time to time, at the expense of the Debtor, promptly and duly authorize, execute and deliver such further instruments and documents, and take such further action, as the Creditor may reasonably request for the purpose of obtaining or preserving the full benefits of, and the rights and powers granted by, this Agreement (including the filing of any financing statements or financing change statements under any applicable legislation with respect to the Security Interests). The Debtor acknowledges that this Agreement has been prepared based on the existing Laws in the Province referred to in the "Governing Law" section of this Agreement and that a change in such Laws, or the Laws of other jurisdictions, may require the execution and delivery of different forms of security documentation. Accordingly, the Debtor agrees that the Creditor will have the right to require that this Agreement be amended, supplemented, restated or replaced, and that the Debtor will immediately on request by the Creditor authorize, execute and deliver any such amendment, supplement, restatement or replacement (i) to reflect any changes in such Laws, whether arising as a result of statutory amendments, court decisions or otherwise, (ii) to facilitate the creation and registration of appropriate security in all appropriate jurisdictions, or (iii) if the Debtor merges or amalgamates with any other Person or enters into any corporate reorganization,

in each case in order to confer on the Creditor Liens similar to, and having the same effect as, the Security Interests.

- (b) Maintenance of Records. The Debtor will keep and maintain accurate and complete records of the Collateral, including a record of all payments received and all credits granted with respect to the Accounts and Contracts. At the written request of the Creditor, the Debtor will mark any Collateral specified by the Creditor to evidence the existence of the Security Interests.
- (c) Right of Inspection. The Creditor may, at all times during normal business hours, without charge, examine and make copies of all Books and Records, and may discuss the affairs, finances and accounts of the Debtor with its officers and accountants. The Creditor may also, upon reasonable prior notice and without charge, enter the premises of the Debtor where any of the Collateral is located for the purpose of inspecting the Collateral, observing its use or otherwise protecting its interests in the Collateral. The Debtor, at its expense, will provide the Creditor with such clerical and other assistance as may be reasonably requested by the Creditor to exercise any of its rights under this paragraph.
- (d) Limitations on Other Liens. The Debtor will not create, incur or permit to exist, and will defend the Collateral against, and will take such other action as is necessary to remove, any and all Liens in and other claims affecting the Collateral, other than the Permitted Liens, and the Debtor will defend the right, title and interest of the Creditor in and to the Collateral against the claims and demands of all Persons.
- (e) Limitations on Dispositions of Collateral. The Debtor will not, without the Creditor's prior written consent, sell, lease or otherwise dispose of any of the Collateral, except that Accounts may be collected in the ordinary course of the Debtor's business. Following an Event of Default that is continuing, all Proceeds of the Collateral (including all amounts received in respect of Accounts) received by or on behalf of the Debtor, whether or not arising in the ordinary course of the Debtor's business, will be received by the Debtor as trustee for the Creditor and, upon request by the Creditor, will be immediately paid to the Creditor.
- (f) Limitations on Modifications, Waivers, Extensions. Other than as not prohibited by paragraph (g) below, the Debtor will not (i) amend, modify, terminate, permit to expire or waive any provision of any Permit, Contract or any document giving rise to an Account in any manner which is or could reasonably be expected to be materially adverse to the Debtor or the Creditor, or (ii) fail to exercise promptly and diligently its rights under each Contract and each document giving rise to an Account if such failure is or could reasonably be expected to be materially adverse to the Debtor or the Creditor.
- (g) Limitations on Discounts, Compromises, Extensions of Accounts. Other than in the ordinary course of business of the Debtor consistent with previous practices, the Debtor will not (i) grant any extension of the time for payment of any Account, (ii) compromise, compound or settle any Account for less than its full amount, (iii) release, wholly or partially, any Person liable for the payment of any Account, or (iv) allow any credit or discount of any Account.
- (h) Maintenance of Security. The Debtor shall cause the Security Interest in respect of its Collateral to be maintained in full force and effect and shall not take any action which



would prejudice the rights of the Creditor against the Collateral as provided in this Agreement or render the Security Interest invalid or ineffective.

- (i) Further Identification of Collateral. The Debtor will promptly furnish to the Creditor such statements and schedules further identifying and describing the Collateral, and such other reports in connection with the Collateral, as the Creditor may from time to time reasonably request.
- (j) Amalgamation, Merger or Consolidation. The Debtor will not permit any Pledged Issuer to amalgamate, merge or consolidate unless all of the outstanding capital stock of the surviving or resulting corporation is, upon such amalgamation, merger or consolidation, pledged hereunder and no cash, securities or other property is distributed in respect of the outstanding shares of any other constituent corporation.
- (k) Pledged Certificated Securities. Promptly upon request from time to time by the Creditor, the Debtor will deliver to the Creditor any and all Pledged Security Certificates and other materials as may be required from time to time to provide the Creditor with control over all Pledged Certificated Securities in the manner provided under section 23 of the STA. At the request of the Creditor, the Debtor will cause all Pledged Security Certificates to be registered in the name of the Creditor or its nominee.
- (l) Pledged Uncertificated Securities. Promptly upon request from time to time by the Creditor, the Debtor will deliver to the Creditor any and all such documents, agreements and other materials as may be required from time to time to provide the Creditor with control over all Pledged Uncertificated Securities in the manner provided under section 24 of the STA.
- (m) Pledged Security Entitlements. The Debtor will deliver to the Creditor any and all such documents, agreements and other materials as may be required from time to time to provide the Creditor with control over all Pledged Security Entitlements in the manner provided under section 25 or 26 of the STA.
- (n) Partnerships, Limited Liability Companies. The Debtor will ensure that the terms of any interest in a partnership or limited liability company that is Collateral will expressly provide that such interest is a "security" for the purposes of the STA.
- (o) Transfer Restrictions. If the constating documents of any Pledged Issuer (other than a ULC) restrict the transfer of the Securities of such Pledged Issuer, then the Debtor will deliver to the Creditor a certified copy of a resolution of the directors, shareholders, unitholders or partners of such Pledged Issuer, as applicable, consenting to the transfer(s) contemplated by this Agreement, including any prospective transfer of the Collateral by the Creditor upon a realization on the Security Interests.
- (p) Notices. The Debtor will advise the Creditor promptly, in reasonable detail, of any:
  - (i) change to a Pledged Securities Intermediary's Jurisdiction or Pledged Issuer's Jurisdiction;
  - (ii) change in the location of the jurisdiction of incorporation or amalgamation, chief executive office or domicile of the Debtor;

- (iii) change in the name of the Debtor;
- (iv) merger, consolidation or amalgamation of the Debtor with any other Person;
- (v) additional jurisdiction in which the Debtor carries on business or has tangible Personal Property;
- (vi) additional jurisdiction in which material account debtors of the Debtor are located;
- (vii) acquisition of any right, title or interest in real property by the Debtor;
- (viii) acquisition of any Intellectual Property Rights which are the subject of a registration or application with any governmental intellectual property or other governing body or registry, or which are material to the Debtor's business;
- (ix) acquisition of any Instrument, Document of Title or Chattel Paper;
- (x) creation or acquisition of any Subsidiary of the Debtor;
- (xi) Lien (other than Permitted Liens) on, or claim asserted against, any of the Collateral; or
- (xii) occurrence of any event, claim or occurrence that could reasonably be expected to have a material adverse effect on the value of the Collateral or on the Security Interests.

The Debtor will not effect or permit any of the changes referred to in clauses (ii) through (viii) above unless all filings have been made and all other actions taken that are required in order for the Creditor to continue at all times following such change to have a valid and perfected first priority Security Interest in respect of all of the Collateral.

8. **Voting Rights.** Unless an Event of Default has occurred and is continuing, the Debtor will be entitled to exercise all voting power from time to time exercisable in respect of the Pledged Securities and Pledged Security Entitlements and give consents, waivers and ratifications in respect thereof; provided, however, that no vote will be cast or consent, waiver or ratification given or action taken which would be, or would have a reasonable likelihood of being, prejudicial to the interests of the Creditor or which would have the effect of reducing the value of the Collateral as security for the Obligations or imposing any restriction on the transferability of any of the Collateral. Unless an Event of Default has occurred and is continuing the Creditor shall, from time to time at the request and expense of any of the Debtor, execute or cause to be executed, in respect of all Pledged Securities that are registered in the name of the Creditor or its nominee, valid proxies appointing the Debtor as its (or its nominee's) proxy to attend, vote and act for and on behalf of the Creditor or such nominee, as the case may be, at any and all meetings of the applicable Pledged Issuer's shareholders or debt holders, all Pledged Securities that are registered in the name of the Creditor or such nominee, as the case may be, and to execute and deliver, consent to or approve or disapprove of or withhold consent to any resolutions in writing of shareholders or debt holders of the applicable Pledged Issuer for and on behalf of the Creditor or such nominee, as the case may be. Immediately upon the occurrence and during the continuance of any Event of Default, all such rights of the Debtor to vote and give consents, waivers and ratifications will cease and the Creditor or its nominee will be entitled to exercise all such voting rights and to give all such consents, waivers and ratifications.

9. **Dividends; Interest.** Unless an Event of Default has occurred and is continuing, the Debtor will be entitled to receive any and all cash dividends, interest, principal payments and other forms of cash distribution on the Pledged Securities or Pledged Security Entitlements which it is otherwise entitled to receive, but any and all stock and/or liquidating dividends, distributions of property, returns of capital or other distributions made on or in respect of the Pledged Securities or Pledged Security Entitlements, whether resulting from a subdivision, combination or reclassification of the outstanding capital stock of any Pledged Issuer or received in exchange for the Pledged Securities, Pledged Security Entitlements or any part thereof or as a result of any amalgamation, merger, consolidation, acquisition or other exchange of property to which any Pledged Issuer may be a party or otherwise, and any and all cash and other property received in exchange for any Pledged Securities or Pledged Security Entitlements will be and become part of the Collateral subject to the Security Interests and, if received by the Debtor, will forthwith be delivered to the Creditor or its nominee (accompanied, if appropriate, by proper instruments of assignment and/or stock powers of attorney executed by the Debtor in accordance with the Creditor's instructions) to be held subject to the terms of this Agreement; and if any of the Pledged Security Certificates have been registered in the name of the Creditor or its nominee, the Creditor will execute and deliver (or cause to be executed and delivered) to the Debtor all such dividend orders and other instruments as the Debtor may request for the purpose of enabling the Debtor to receive the dividends, distributions or other payments which the Debtor is authorized to receive and retain pursuant to this Section. If an Event of Default has occurred and is continuing, all rights of the Debtor pursuant to this Section will cease and the Creditor will have the sole and exclusive right and authority to receive and retain the cash dividends, interest, principal payments and other forms of cash distribution which the Debtor would otherwise be authorized to retain pursuant to this Section. Any money and other property paid over to or received by the Creditor pursuant to the provisions of this Section will be retained by the Creditor as additional Collateral hereunder and be applied in accordance with the provisions of this Agreement.

10. **Rights on Event of Default.** If an Event of Default has occurred and is continuing, then and in every such case the Security Interests shall become enforceable and the Creditor, in addition to any rights now or hereafter existing under applicable Law may, personally or by agent, at such time or times as the Creditor in its discretion may determine, subject to the provisions of the Note, do any one or more of the following:

- (a) **Rights under PPSA, etc.** Exercise all of the rights and remedies granted to secured parties under the PPSA and any other applicable statute, or otherwise available to the Creditor by contract, at law or in equity.
- (b) **Demand Possession.** Demand possession of any or all of the Collateral, in which event the Debtor will, at the expense of the Debtor, immediately cause the Collateral designated by the Creditor to be assembled and made available and/or delivered to the Creditor at any place designated by the Creditor.
- (c) **Take Possession.** Enter on any premises where any Collateral is located and take possession of or remove such Collateral.
- (d) **Deal with Collateral.** Hold, store and operate or otherwise use or permit the use of, any or all of the Collateral for such time and on such terms as the Creditor may determine, and demand, collect and retain all earnings and other sums due or to become due from any Person in respect of any of the Collateral.

- 12 -

- (e) Carry on Business. Carry on, or concur in the carrying on of, any or all of the business or undertaking of the Debtor and enter on, occupy and use (without charge by the Debtor) any of the premises and undertaking of, or occupied or used by, the Debtor.
- (f) Enforce Collateral. Seize, collect, receive, enforce or otherwise deal with any Collateral in such manner, on such terms and conditions and at such times as the Creditor deems advisable.
- (g) Dispose of Collateral. Realize on any or all of the Collateral and sell, lease, assign, give options to purchase, or otherwise dispose of and deliver any or all of the Collateral (or contract to do any of the above), in one or more parcels at any public or private sale, at any exchange, broker's board or office of the Creditor or elsewhere, with or without advertising or other formality, except as required by applicable Law, on such terms and conditions as the Creditor may deem advisable and at such prices as it may deem best, for cash or on credit or for future delivery.
- (h) Court-Approved Disposition of Collateral. Obtain from any court of competent jurisdiction an order for the sale or foreclosure of any or all of the Collateral.
- (i) Purchase by Creditor. At any public sale, and to the extent permitted by Law on any private sale, bid for and purchase any or all of the Collateral offered for sale and, upon compliance with the terms of such sale, hold, retain, sell or otherwise dispose of such Collateral without any further accountability to the Debtor or any other Person with respect to such holding, retention, sale or other disposition, except as required by Law. In any such sale to the Creditor, the Creditor may, for the purpose of making payment for all or any part of the Collateral so purchased, use any claim for any or all of the Obligations then due and payable to it as a credit against the purchase price.
- (j) Collect Accounts. Notify (whether in its own name or in the name of the Debtor) the account debtors under any Accounts of the Debtor of the assignment of such Accounts to the Creditor and direct such account debtors to make payment of all amounts due or to become due to the Debtor in respect of such Accounts directly to the Creditor and, upon such notification and at the expense of the Debtor, enforce collection of any such Accounts, and adjust, settle or compromise the amount or payment of such Accounts, in such manner and to such extent as the Creditor deems appropriate in the circumstances.
- (k) Transfer of Collateral. Transfer any Collateral that is Investment Property into the name of the Creditor or its nominee.
- (l) Voting. Vote any or all of the Pledged Securities (whether or not transferred to the Creditor or its nominee) and Pledged Security Entitlements and give or withhold all consents, waivers and ratifications in respect thereof and otherwise act with respect thereto as though it were the outright owner thereof.
- (m) Exercise Other Rights. Exercise any and all rights, privileges, entitlements and options pertaining to any Collateral that is Investment Property as if the Creditor were the absolute owner of such Investment Property.
- (n) Dealing with Contracts and Permits. Deal with any and all Contracts and Permits to the same extent as the Debtor might (including the enforcement, realization, sale,

assignment, transfer and requirement for continued performance), all on such terms and conditions and at such time or times as may seem advisable to the Creditor.

- (o) Payment of Liabilities. Pay any liability secured by any Lien against any Collateral. The Debtor will immediately on demand reimburse the Creditor for all such payments and, until paid, any such reimbursement obligation shall form part of the Obligations and shall be secured by the Security Interests.
- (p) Borrow and Grant Liens. Borrow money for the maintenance, preservation or protection of any Collateral or for carrying on any of the business or undertaking of the Debtor and grant Liens on any Collateral (in priority to the Security Interests or otherwise) as security for the money so borrowed. The Debtor will immediately on demand reimburse the Creditor for all such borrowings and, until paid, any such reimbursement obligations shall form part of the Obligations and shall be secured by the Security Interests.
- (q) Appoint Receiver. Appoint by instrument in writing one or more Receivers of the Debtor or any or all of the Collateral with such rights, powers and authority (including any or all of the rights, powers and authority of the Creditor under this Agreement) as may be provided for in the instrument of appointment or any supplemental instrument, and remove and replace any such Receiver from time to time. To the extent permitted by applicable Law, any Receiver appointed by the Creditor will (for purposes relating to responsibility for the Receiver's acts or omissions) be considered to be the agent of the Debtor and not of the Creditor.
- (r) Court-Appointed Receiver. Obtain from any court of competent jurisdiction an order for the appointment of a Receiver of the Debtor or of any or all of the Collateral.
- (s) Consultants. Require the Debtor to engage a consultant of the Creditor's choice, or engage a consultant on its own behalf, such consultant to receive the full cooperation and support of the Debtor and its agents and employees, including unrestricted access to the premises of the Debtor and the Books and Records; all reasonable fees and expenses of such consultant shall be for the account of the Debtor and the Debtor hereby authorize any such consultant to report directly to the Creditor and to disclose to the Creditor any and all information obtained in the course of such consultant's employment.

The Creditor may exercise any or all of the foregoing rights and remedies without demand of performance or other demand, presentment, protest, advertisement or notice of any kind (except as required by applicable Law) to or on the Debtor or any other Person, and the Debtor hereby waives each such demand, presentment, protest, advertisement and notice to the extent permitted by applicable Law. None of the above rights or remedies will be exclusive of or dependent on or merge in any other right or remedy, and one or more of such rights and remedies may be exercised independently or in combination from time to time. The Debtor acknowledges and agrees that any action taken by the Creditor hereunder following the occurrence and during the continuance of an Event of Default shall not be rendered invalid or ineffective as a result of the curing of the Event of Default on which such action was based.

11. Realization Standards. To the extent that applicable Law imposes duties on the Creditor to exercise remedies in a commercially reasonable manner and without prejudice to the ability of the Creditor to dispose of the Collateral in any such manner, the Debtor acknowledges and agrees that it is not commercially unreasonable for the Creditor to (or not to) (a) incur expenses reasonably deemed significant by the Creditor to prepare the Collateral for disposition, (b) fail to obtain third party consents for access to the Collateral to be disposed of, (c) fail to exercise collection remedies against account

debtors or other Persons obligated on the Collateral or to remove Liens against the Collateral, (d) exercise collection remedies against account debtors and other Persons obligated on the Collateral directly or through the use of collection agencies and other collection specialists, (e) dispose of Collateral by way of public auction, public tender or private contract, with or without advertising and without any other formality, (f) contact other Persons, whether or not in the same business of the Debtor, for expressions of interest in acquiring all or any portion of the Collateral, (g) disclaim disposition warranties, such as title, (h) purchase insurance or credit enhancements to insure the Creditor against risks of loss, collection or disposition of the Collateral or to provide to the Creditor a guaranteed return from the collection or disposition of the Collateral, (i) the extent deemed appropriate by the Creditor, to obtain the services of other brokers, investment bankers, consultants and other professionals to assist the Creditor in the collection or disposition of any of the Collateral, (j) dispose of Collateral in whole or in part, and (k) to dispose of Collateral to a customer of the Creditor.

12. **Grant of Licence.** For the purpose of enabling the Creditor to exercise its rights and remedies under this Agreement when the Creditor are entitled to exercise such rights and remedies, and for no other purpose, the Debtor grants to the Creditor an irrevocable, non-exclusive licence (exercisable without payment of royalty or other compensation to the Debtor) to use, assign or sublicense any or all Intellectual Property Rights, including in such licence reasonable access to all media in which any of the licensed items may be recorded or stored and to all computer programs used for the compilation or printout of the same.

13. **Securities Laws.** The Creditor is authorized, in connection with any offer or sale of any Pledged Securities or Pledged Security Entitlements, to comply with any limitation or restriction as they may be advised by counsel is necessary to comply with applicable Law, including compliance with procedures that may restrict the number of prospective bidders and purchasers, requiring that prospective bidders and purchasers have certain qualifications, and restricting prospective bidders and purchasers to Persons who will represent and agrees that they are purchasing for its own account or investment and not with a view to the distribution or resale of such Securities. In addition to and without limiting Section 11, the Debtor further agree that compliance with any such limitation or restriction will not result in a sale being considered or deemed not to have been made in a commercially reasonable manner, and the Creditor will not be liable or accountable to the Debtor for any discount allowed by reason of the fact that such Pledged Securities or Pledged Security Entitlements are sold in compliance with any such limitation or restriction. If the Creditor chooses to exercise its right to sell any or all Pledged Securities or Pledged Security Entitlements, upon written request, the Debtor will cause each applicable Pledged Issuer to furnish to the Creditor all such information as the Creditor may request in order to determine the number of shares and other instruments included in the Collateral which may be sold by the Creditor in exempt transactions under any Laws governing securities, and the rules and regulations of any applicable securities regulatory body thereunder, as the same are from time to time in effect.

14. **ULC Shares.** The Debtor acknowledges that certain of the Collateral may now or in the future consist of ULC Shares, and that it is the intention of Creditor and the Debtor that the Creditor should not under any circumstances prior to realization thereon be held to be a "member" or a "shareholder", as applicable, of a ULC for the purposes of any ULC Laws. Therefore, notwithstanding any provisions to the contrary contained in this Agreement or the Note, where the Debtor is the registered owner of ULC Shares which are Collateral, the Debtor will remain the sole registered owner of such ULC Shares until such time as such ULC Shares are effectively transferred into the name of the Creditor or any other Person on the books and records of the applicable ULC. Accordingly, such Debtor shall be entitled to receive and retain for its own account any dividend on or other distribution, if any, in respect of such ULC Shares (except for any dividend or distribution comprised of Pledged Security Certificates, which shall be delivered to the Creditor to hold hereunder) and shall have the right to vote such ULC Shares and to control the direction, management and policies of the applicable ULC to the same extent as the Debtor

would if such ULC Shares were not pledged to the Creditor pursuant hereto. Nothing in this Agreement or the Note is intended to, and nothing in this Agreement or the Note shall, constitute the Creditor or any Person other than the Debtor, a member or shareholder of a ULC for the purposes of any ULC Laws (whether listed or unlisted, registered or beneficial), until such time as notice is given to the Debtor and further steps are taken pursuant hereto or thereto so as to register the Creditor or such other Person, as specified in such notice, as the holder of the ULC Shares. To the extent any provision hereof would have the effect of constituting the Creditor as a member or a shareholder, as applicable, of any ULC prior to such time, such provision shall be severed herefrom and shall be ineffective with respect to ULC Shares which are Collateral without otherwise invalidating or rendering unenforceable this Agreement or invalidating or rendering unenforceable such provision insofar as it relates to Collateral which is not ULC Shares. Except upon the exercise of rights of the Creditor to sell, transfer or otherwise dispose of ULC Shares in accordance with this Agreement, the Debtor shall not cause or permit, or enable a Pledged Issuer that is a ULC to cause or permit, the Creditor to: (a) be registered as a shareholder or member of such Pledged Issuer; (b) have any notation entered in its favour in the share register of such Pledged Issuer; (c) be held out as shareholders or members of such Pledged Issuer; (d) receive, directly or indirectly, any dividends, property or other distributions from such Pledged Issuer by reason of the Creditor holding the Security Interests over the ULC Shares; or (e) act as a shareholder of such Pledged Issuer, or exercise any rights of a shareholder including the right to attend a meeting of shareholders of such Pledged Issuer or to vote its ULC Shares.

15. **Application of Proceeds.** Subject to the provisions of the Note, all Proceeds of Collateral received by the Creditor or a Receiver may be applied to discharge or satisfy any expenses (including the Receiver's remuneration and other expenses of enforcing the Creditor's rights under this Agreement), Liens on the Collateral in favour of Persons other than the Creditor, borrowings, taxes and other outgoings affecting the Collateral or which are considered advisable by the Creditor or the Receiver to protect, preserve, repair, process, maintain or enhance the Collateral or prepare it for sale, lease or other disposition, or to keep in good standing any Liens on the Collateral ranking in priority to any of the Security Interests, or to sell, lease or otherwise dispose of the Collateral. The balance of such Proceeds may, at the sole discretion of the Creditor and subject to the provisions of the Note, be held as collateral security for the Obligations or be applied to such of the Obligations (whether or not the same are due and payable) in such manner and at such times as the Creditor considers appropriate and thereafter will be accounted for as required by Law.

16. **Continuing Liability of Debtor.** The Debtor will remain liable for any Obligations that are outstanding following realization of all or any part of the Collateral and the application of the Proceeds thereof.

17. **Creditor's Appointment as Attorneys-in-Fact.** Effective upon the occurrence and during the continuance of an Event of Default, the Debtor constitutes and appoints the Creditor and any officer or agent of the Creditor, with full power of substitution, as the Debtor's true and lawful attorneys-in-fact with full power and authority in the place of the Debtor and in the name of the Debtor or in its own name, from time to time in the Creditor's discretion, to take any and all appropriate action and to execute any and all documents and instruments as, in the opinion of such attorney, may be necessary or desirable to accomplish the purposes of this Agreement. Without limiting the effect of this Section, the Debtor grants the Creditor an irrevocable proxy to vote the Pledged Securities and Pledged Security Entitlements and to exercise all other rights, powers, privileges and remedies to which a holder thereof would be entitled (including giving or withholding written consents of shareholders, calling special meetings of shareholders and voting at such meetings), which proxy shall be effective, automatically and without the necessity of any action (including any transfer of any Pledged Securities or Pledged Security Entitlements on the books and records of a Pledged Issuer or Pledged Securities Intermediary, as applicable), upon the occurrence and continuance of an Event of Default. These powers are coupled with an interest and are

irrevocable until the Release Date. Nothing in this Section affects the right of the Creditor as secured party or any other Person on the Creditor's behalf, to sign and file or deliver (as applicable) all such financing statements, financing change statements, notices, verification statements and other documents relating to the Collateral and this Agreement as the Creditor or such other Person considers appropriate. The Debtor hereby ratifies and confirms, and agrees to ratify and confirm, whatever lawful acts the Creditor or any of the Creditor's sub-agents, nominees or attorneys do or purport to do in exercise of the power of attorney granted to the Creditor pursuant to this Section.

18. **Performance by Creditor of Debtor's Obligations.** If the Debtor fails to perform or comply with any of the obligations of the Debtor under this Agreement, the Creditor may, but need not, perform or otherwise cause the performance or compliance of such obligation, provided that such performance or compliance will not constitute a waiver, remedy or satisfaction of such failure. The expenses of the Creditor incurred in connection with any such performance or compliance will be payable by the Debtor to the Creditor immediately on demand, and until paid, any such expenses will form part of the Obligations and will be secured by the Security Interests.

19. **Interest.** If any amount payable by the Debtor to the Creditor under this Agreement is not paid when due, the Debtor will pay to the Creditor, immediately on demand, interest on such amount from the date due until paid, at a nominal annual rate equal to 10%. All amounts payable by the Debtor to the Creditor under this Agreement, and all interest on all such amounts, compounded semi-annually, will form part of the Obligations and will be secured by the Security Interests.

20. **Severability.** Any provision of this Agreement that is prohibited or unenforceable in any jurisdiction will, as to that jurisdiction, be ineffective to the extent of such prohibition or unenforceability and will be severed from the balance of this Agreement, all without affecting the remaining provisions of this Agreement or affecting the validity or enforceability of such provision in any other jurisdiction.

21. **Rights of Creditor; Limitations on Creditor's Obligations.**

- (a) **Limitations on Creditor's Liability.** The Creditor will not be liable to the Debtor or any other Person for any failure or delay in exercising any of the rights of the Debtor under this Agreement (including any failure to take possession of, collect, sell, lease or otherwise dispose of any Collateral, or to preserve rights against prior parties). None of the Creditor, a Receiver nor any agent of the Creditor is required to take, or will have any liability for any failure to take or delay in taking, any steps necessary or advisable to preserve rights against other Persons under any Collateral in its possession. None of the Creditor, any Receiver nor any agent of the Creditor will be liable for any, and the Debtor will bear the full risk of all, loss or damage to any and all of the Collateral (including any Collateral in the possession of the Creditor, any Receiver or any agent of the Creditor) caused for any reason other than the gross negligence or wilful misconduct of the Creditor, such Receiver or such agent of the Creditor.
- (b) **Debtor Remains Liable under Accounts and Contracts.** Notwithstanding any provision of this Agreement, the Debtor will remain liable under each of the documents giving rise to the Accounts of the Debtor and under each of the Contracts to observe and perform all the conditions and obligations to be observed and performed by the Debtor thereunder, all in accordance with the terms of each such document and Contract. The Creditor will have no obligation or liability under any Account of the Debtor (or any document giving rise thereto) or Contract by reason of or arising out of this Agreement or the receipt by the Creditor of any payment relating to such Account or Contract pursuant hereto, and in particular (but without limitation), the Creditor will not be obligated in any manner to



perform any of the obligations of the Debtor under or pursuant to any Account (or any document giving rise thereto) or under or pursuant to any Contract to make any payment, to make any inquiry as to the nature or the sufficiency of any payment received by it or as to the sufficiency of any performance by any party under any Account (or any document giving rise thereto) or under any Contract, to present or file any claim, to take any action to enforce any performance or to collect the payment of any amounts which may have been assigned to it or to which it may be entitled at any time.

- (c) Collections on Accounts and Contracts. The Debtor shall be authorized to, at any time that an Event of Default is not continuing, collect its Accounts and payments under the Contracts in the normal course of the business of the Debtor and for the purpose of carrying on the same. If an Event of Default has occurred and is continuing, any payments of Accounts or under Contracts, when collected by the Debtor, will be forthwith (and, in any event, within two Business Days) deposited by the Debtor in the exact form received, duly endorsed by the Debtor to the Creditor if required, in a special collateral account maintained by the Creditor, and until so deposited, will be held by the Debtor in trust for the Creditor, segregated from the other funds of the Debtor. All such amounts while held by the Creditor (or by the Debtor in trust for the Creditor) and all income in respect thereof will continue to be collateral security for the Obligations and will not constitute payment thereof until applied as hereinafter provided. If an Event of Default has occurred and is continuing, the Creditor may apply all or any part of the amounts on deposit in such special collateral account on account of the Obligations in such order as the Creditor may elect. At the Creditor's request, the Debtor will deliver to the Creditor any documents evidencing and relating to the agreements and transactions which gave rise to its Accounts and the Contracts, including all original orders, invoices and shipping receipts.
- (d) Analysis of Accounts. If an Event of Default has occurred and is continuing, the Creditor will have the right to analyze and verify the Accounts of the Debtor in any manner and through any medium that they reasonably consider advisable, and the Debtor will furnish all such assistance and information as the Creditor may require in connection therewith. If an Event of Default has occurred and is continuing, the Creditor may in its own name or in the name of others (including the Debtor) communicate with account debtors on the Accounts of the Debtor and parties to the Contracts to verify with them to its satisfaction the existence, status, amount and terms of any Account or any Contract. If an Event of Default has occurred and is continuing, upon the Creditor's reasonable request and at the expense of the Debtor, the Debtor will furnish to the Creditor reports showing reconciliations, aging and test verifications of, and trial balances for, its Accounts.
- (e) Use of Agents. The Creditor may perform any of its rights or duties under this Agreement by or through agents and are entitled to retain counsel and to act in reliance on the advice of such counsel concerning all matters pertaining to its rights and duties under this Agreement.

22. Dealings by Creditor. The Creditor will not be obliged to exhaust its recourse against any of the Debtor or any other Person or against any other security it may hold in respect of the Obligations or any part thereof before realizing upon or otherwise dealing with the Collateral in such manner as the Creditor may consider desirable. The Creditor may grant extensions of time and other indulgences, take and give up security, accept compositions, grant releases and discharges and otherwise deal with any of the Debtor and any other Person, and with any or all of the Collateral, and with other security and sureties, as the Creditor may see fit, all without prejudice to the Obligations or to the rights and remedies of the Creditor

under this Agreement. The powers conferred on the Creditor under this Agreement are solely to protect the interests of the Creditor in the Collateral and will not impose any duty upon the Creditor to exercise any such powers.

23. **Communication.** Any notice or other communication required or permitted to be given under this Agreement will be in writing and will be effectively given if (i) delivered personally, (ii) sent by prepaid courier service or mail, or (iii) sent by facsimile transmission or other similar means of electronic communication including e-mail, in each case to the following addresses, facsimile numbers or email addresses of the Debtor and Creditor:

To the Creditor:

LiquiBrands Inc.  
10 Sun Pac Blvd.  
Brampton, Ontario L6S 4R5  
Attention: Csaba Reider

Fax: (902) 792-8490  
E-mail: creider@sunpac.com

To the Corporation:

LiquiBrands Inc.  
10 Sun Pac Blvd.  
Brampton, Ontario L6S 4R5  
Attention: Csaba Reider

Fax: (902) 792-8490  
E-mail: creider@sunpac.com

Any communication so given will be deemed to have been given and to have been received on the day of delivery if so delivered, or on the day of facsimile transmission or sending by other means of recorded electronic communication provided that such day is a Business Day and the communication is so delivered or sent prior to 4:30 p.m. (local time at the place of receipt). Otherwise, such communication will be deemed to have been given and to have been received on the following Business Day. Any communication sent by mail will be deemed to have been given and to have been received on the fifth Business Day following mailing, provided that no disruption of postal service is in effect. The Debtor and the Creditor may from time to time change their respective addresses or facsimile numbers for notice by giving notice to the other in accordance with the provisions of this Section.

24. **Release of Information.** The Debtor authorizes the Creditor to provide a copy of this Agreement and such other information as may be requested of the Creditor (i) to the extent necessary to enforce the Creditor's rights, remedies and entitlements under this Agreement, (ii) to any assignee or prospective assignee of all or any part of the Obligations, in accordance with the provisions of the Note, and (iii) as required by applicable Law.

25. **Expenses; Indemnity; Waiver.**

- (a) The Debtor shall pay (i) all reasonable out-of-pocket expenses incurred by the Creditor, including the reasonable fees, charges and disbursements of counsel for the Creditor and applicable taxes, in connection with any amendments, modifications or waivers of the

provisions hereof, and (ii) all out-of-pocket expenses incurred by the Creditor, including the fees, charges and disbursements of any counsel for the Creditor and all applicable taxes, in connection with the assessment, enforcement or protection of its rights in connection with this Agreement, including its rights under this Section, including all such out-of-pocket expenses incurred during any workout, restructuring or negotiations in respect of the Obligations.

- (b) The Debtor shall indemnify the Creditor against, and hold the Creditor harmless from, any and all losses, claims, cost recovery actions, damages, expenses and liabilities of whatsoever nature or kind and all reasonable out-of-pocket expenses and all applicable taxes to which the Creditor may become subject arising out of or in connection with (i) the execution or delivery of this Agreement and the performance by the Debtor of its obligations hereunder, (ii) any actual claim, litigation, investigation or proceeding relating to this Agreement or the Obligations, whether based on contract, tort or any other theory and regardless of whether the Creditor is a party thereto, (iii) any other aspect of this Agreement, or (iv) the enforcement of the Creditor's rights hereunder and any related investigation, defence, preparation of defence, litigation and enquiries; provided that such indemnity shall not, as to the Creditor, be available to the extent that such losses, claims, damages, liabilities or related expenses are determined by a court of competent jurisdiction by final and nonappealable judgment to have resulted from the gross negligence (it being acknowledged that ordinary negligence does not necessarily constitute gross negligence) or wilful misconduct of or material breach of this Agreement by the Creditor.
- (c) The Debtor shall not assert, and hereby waives (to the fullest extent permitted by applicable Law), (i) any claim against the Creditor (or any director, officer or employee thereof), on any theory of liability, for special, indirect, consequential or punitive damages (as opposed to direct or actual damages) arising out of, in connection with, or as a result of, this Agreement, and (ii) all of the rights, benefits and protections given by any present or future statute that imposes limitations on the rights, powers or remedies of a secured party or on the methods of, or procedures for, realization of security, including any "seize or sue" or "anti-deficiency" statute or any similar provision of any other statute.
- (d) All amounts due under this Section shall be payable not later than three Business Days after written demand therefor.
- (e) The indemnifications set out in this Section will survive the Release Date and the release or extinguishment of the Security Interests for a period of 3 years.

26. **Release of Debtor.** Upon the written request of the Debtor given at any time on or after the Release Date, the Creditor shall, at the expense of the Debtor, release the Debtor and the Collateral from the Security Interests and such release shall serve to terminate any licence granted in this Agreement. Upon such release, and at the request and expense of the Debtor, the Creditor shall execute and deliver to the Debtor such releases and discharges as the Debtor may reasonably request.

27. **Additional Security.** This Agreement is in addition to, and not in substitution of, any and all other security previously or concurrently delivered by the Debtor or any other Person to the Creditor, all of which other security shall remain in full force and effect.

28. **Alteration or Waiver.** None of the terms or provisions of this Agreement may be waived, amended, supplemented or otherwise modified except by a written instrument executed by the Creditor. The Creditor will not, by any act or delay, be deemed to have waived any right or remedy hereunder or to have acquiesced in any Event of Default or in any breach of any of the terms and conditions hereof. No failure to exercise, nor any delay in exercising, on the part of the Creditor, any right, power or privilege hereunder shall operate as a waiver thereof. No single or partial exercise of any right, power or privilege hereunder will preclude any other or further exercise thereof or the exercise of any other right, power or privilege. A waiver by the Creditor of any right or remedy hereunder on any one occasion will not be construed as a bar to any right or remedy which the Creditor would otherwise have on any future occasion. Neither the taking of any judgment nor the exercise of any power of seizure or sale will extinguish the liability of the Debtor to pay the Obligations, nor will the same operate as a merger of any covenant contained in this Agreement or of any other liability, nor will the acceptance of any payment or other security constitute or create any novation.

29. **Amalgamation.** If the Debtor is a corporation, the Debtor acknowledges that if it amalgamates or merges with any other corporation or corporations, then (i) the Collateral and the Security Interests will extend to and include all the property and assets of the amalgamated corporation and to any property or assets of the amalgamated corporation thereafter owned or acquired, (ii) the term "Debtor", where used in this Agreement, will extend to and include the amalgamated corporation, and (iii) the term "Obligations", where used in this Agreement, will extend to and include the Obligations of the amalgamated corporation.

30. **Governing Law; Attornment.** This Agreement will be governed by and construed in accordance with the Laws of the Province of Ontario. Without prejudice to the ability of the Creditor to enforce this Agreement in any other proper jurisdiction, the Debtor irrevocably submit and attorn to the non-exclusive jurisdiction of the courts of such province. To the extent permitted by applicable Law, the Debtor irrevocably waive any objection (including any claim of inconvenient forum) that they may now or hereafter have to the venue of any legal proceeding arising out of or relating to this Agreement in the courts of such Province.

31. **Interpretation.** The definitions of terms herein shall apply equally to the singular and plural forms of the terms defined. Whenever the context may require, any pronoun shall include the corresponding masculine, feminine and neuter forms. The words "include", "includes" and "including" shall be deemed to be followed by the phrase "without limitation". The word "will" shall be construed to have the same meaning and effect as the word "shall". The word "or" is disjunctive; the word "and" is conjunctive. The word "shall" is mandatory; the word "may" is permissive. Unless the context requires otherwise (a) any definition of or reference to any agreement, instrument or other document herein shall be construed as referring to such agreement, instrument or other document as from time to time amended, supplemented or otherwise modified (subject to any restrictions on such amendments, supplements or modifications set out herein), (b) any reference herein to any statute or any section thereof shall, unless otherwise expressly stated, be deemed to be a reference to such statute or section as amended, restated or re-enacted from time to time, (c) any reference herein to any Person shall be construed to include such Person's successors and permitted assigns, (d) the words "herein", "hereof" and "hereunder", and words of similar import, shall be construed to refer to this Agreement in its entirety and not to any particular provision hereof, and (e) all references herein to Sections and Schedules shall be construed to refer to Sections and Schedules to, this Agreement, Section headings are for convenience of reference only, are not part of this Agreement and shall not affect the construction of, or be taken into consideration in interpreting, this Agreement. Any reference in this Agreement to a Permitted Lien is not intended to subordinate or postpone, and shall not be interpreted as subordinating or postponing, or as any agreement to subordinate or postpone, any Security Interest to any Permitted Lien. In accordance with the *Property Law Act* (Ontario), the doctrine of consolidation applies to this Agreement.

32. **Successors and Assigns.** This Agreement will enure to the benefit of, and be binding on, the Debtor and its successors and permitted assigns, and will enure to the benefit of, and be binding on, the Creditor and its successors and assigns. The Debtor may not assign this Agreement, or any of its rights or obligations under this Agreement. The Creditor may assign all or any part of its rights and obligations hereunder to an affiliate upon giving written notice to the Debtor. If the Debtor or a Creditor is an individual, then the term "Debtor" or "Creditor", as applicable, will also include his or her heirs, administrators and executors.

33. **Acknowledgment of Receipt/Waiver.** The Debtor acknowledge receipt of an executed copy of this Agreement and, to the extent permitted by applicable Law, waive the right to receive a copy of any financing statement or financing change statement registered in connection with this Agreement or any verification statement issued in respect of any such financing statement or financing change statement.

34. **Electronic Signature and Counterparts.** Delivery of an executed signature page to this Agreement by the Debtor by facsimile or other electronic form of transmission shall be as effective as delivery by the Debtor of a manually executed copy of this Agreement by the Debtor. This Agreement may be executed by any one or more of the parties to this Agreement in any number of 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.

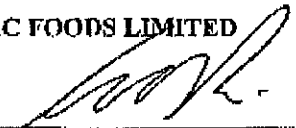
35. **Paramountcy.** If any of the provisions of this Agreement are inconsistent with the provisions of the Note, the provisions of the Note shall take precedence and shall govern.

[REMAINDER OF PAGE INTENTIONALLY LEFT BLANK]

IN WITNESS WHEREOF the undersigned have caused this Agreement to be duly executed as of the date first written above.

**SUN PAC FOODS LIMITED**

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

  
Authorized Signing Officer

**SCHEDULE "A"**

**DEBTOR'S INFORMATION**

**Full legal name:** Sun Pac Foods Limited

**Jurisdiction of incorporation or organization:** Ontario.

**Addresses of chief executive office and all places where business is carried on or tangible Personal Property is kept:** 10 Sun Pac Blvd., Brampton, Ontario, L6S 4R5.

**Jurisdictions in which all material account debtors are located:** Ontario.

**Addresses of all owned and leased real property:** 10 Sun Pac Blvd., Brampton, Ontario, L6S 4R5.

**Description of all "serial number" goods (i.e. motor vehicles, trailers, aircraft, boats and outboard motors for boats):** None.

**Description of all material Permits:** None.

**Subsidiaries of the Debtor:** CDX Transport & Leasing Inc.

**Instruments, Documents of Title and Chattel Paper of the Debtor:** None.

**Pledged Certificated Securities:** None.

**Pledged Securities Accounts:** None.

**Pledged Uncertificated Securities:** None.

**Registered trade-marks and applications for trademark registrations:** See attached schedule.

**Patents and patent applications:** None.

**Copyright registrations and applications for copyright registrations:** None.

**Industrial designs/registered designs and applications for registered designs:** None.





**EXHIBIT "D"**



Exhibit D to the Affidavit  
Of Csaba Reider  
Sworn on the 3rd day of  
April, 2014  
Commissioner for Taking Oaths

October 1, 2012

Sun Pac Foods Limited  
10 Sun Pac Blvd.  
Brampton, Ontario L6S 4R5

Attention: Csaba Reider, President

Dear Mr. Reider:

Re: Bridging Capital Inc. (the "Lender") credit facility in favour of Sun Pac Foods Limited (the "Borrower")

The Lender is pleased to offer the credit facility (the "Facility") described in this letter agreement (the "Agreement") subject to the terms and conditions set forth herein including, without limitation, the satisfactory completion of due diligence. Unless otherwise indicated, all amounts are expressed in Canadian currency. All capitalized terms not otherwise defined in the body of this Agreement shall have the meanings ascribed thereto in Schedule "A".

**Borrower:** Sun Pac Foods Limited

**Guarantor:** Liquibrands Inc. (the "Guarantor")

**Lender:** Bridging Capital Inc.

**Facility:** Demand revolving loan of up to \$5,000,000, based on the lending formula described herein (the "Facility"). The Facility may be increased to up to \$7,000,000 in increments of \$1,000,000, provided the following conditions are met: (a) the lending formula supports the increased amount, (b) a 1% commitment fee on the incremental amount is paid prior to funding, (c) two weeks' prior written notice is provided to the Lender together with payment of the commitment fee on the incremental amount, and (d) the Facility is not in default. For greater certainty, the maximum amount of the Facility at any time shall not exceed \$7,000,000.

**Purpose:** To support the working capital needs of the Borrower.

**Term:** The earlier of demand and twelve (12) months from the date of the initial advance of the Facility (the "Term"). In the event of demand for repayment prior to the end of the Term in circumstances where an Event of Default has not occurred, the Lender shall provide the Borrower with thirty (30) days' prior written notice of the required repayment date.

**Facility Availability:** The maximum amount that shall be available under the Facility at any time and from time to time will, subject to the maximum amount of \$7,000,000, be determined by the Lender once each week (or more frequently as determined by the Lender) and will be limited during such week (or other period as aforesaid) in accordance with the following formula (the "Facility Availability"):

the aggregate of:

- (i) Accounts Receivable: Up to 90% of the net insured (satisfactory to the Lender) eligible accounts receivable and up to 90% of the net domestic uninsured eligible accounts receivable. The Lender will determine eligibility in its reasonable credit discretion. General eligibility criteria will include the requirement that eligible accounts receivable be less than 90 days past invoice date but no more than 60 days past due date unless such accounts receivable are insured and in compliance with the insurance policy terms (maximum 90 days past invoice date) or are

- 2 -

backed by an irrevocable letter of credit drawn on a bank acceptable to the Lender. In addition, eligible accounts will exclude (among other things as determined by the Lender in its reasonable credit discretion) accounts of an account debtor if 50% or more of the accounts owing from such account debtor are past due, any account that is an obligation for which the total unpaid accounts of the specific account debtor exceed 20% of the aggregate of all gross accounts as related to eligible accounts receivable, to the extent of such excess, foreign accounts not backed by letters of credit or acceptable credit insurance, bill and hold, contras, credits in prior, inter-company receivables and amounts due from affiliated or associated companies, governments, disputed and doubtful accounts, progress billings (except where the receivables are insured satisfactory to the Lender), pre-billed accounts and other accounts at the Lender's discretion. Any exceptions to the foregoing will be considered by the Lender in its sole discretion as and when required. The advance rates are subject to a dilution test as determined by the Lender; PLUS

- (ii) Inventory: An amount of up to 75% of: (i) 50% of the cost (being the aggregate of the supplier's invoice cost of the inventory in question (net of all discounts, rebates and allowances and excluding all applicable taxes) plus inbound freight charges, clearing charges and customs duties) of eligible raw materials; and (ii) up to 91.02% of the cost (being the Borrower's standard manufacturing costs for each product as approved by the Lender in its sole discretion for margining purposes from time to time. Notwithstanding the foregoing, for the purposes of this section, such cost shall not exceed the agreed upon invoice price (plus buyer approved changes) for the product in question) of finished goods inventory based on an independent appraisal by an appraiser acceptable to the Lender over which the Lender has a valid charge together with appropriate landlord waivers (at the discretion of the Lender) rounded to the nearest percentage. The Lender will determine eligibility in its reasonable credit discretion. Eligible inventory criteria shall not include inventory that is unsaleable, slow moving, damaged or obsolete, work-in-process, packaging, inventory to be shipped to foreign subsidiaries, consigned, rental in nature, used, or held offsite (except in a situation where satisfactory landlord waiver/bailee letter is received that includes confirmation of no-offset of payables due the vendor) or outside Canada all as determined by the Lender in its discretion. Final inventory advance rates, eligibility and reserves will be determined by the Lender in its discretion based in part on the independent appraisal report findings together with the pre-closing field examination and may be changed from time to time by the Lender in its discretion based in part on any updated independent appraisals; LESS
- (iii) the amount of the Facility (including principal, interest and costs) then outstanding, together with all amounts owing by the Borrower to the Lender under this Agreement or under any other agreement or instrument; LESS
- (iv) reserves, determined by the Lender in its sole discretion, in respect of actual and/or potential Priority Claims and/or Statutory Encumbrances liquidation expenses and any other reserves, determined from time to time by the Lender in its sole discretion.

On a Business Day in each week as determined by the Lender (the "Report Day"), prior to 1:00 p.m. ET, the Borrower will provide a report (a "Weekly Borrowing Base Report") to the Lender (in such form as the Lender shall reasonably require) providing, as at the end of the preceding week, a listing of all of the Borrower's accounts receivable, accounts payable, finished goods inventory, raw material inventory, work in progress, inventory in transit, details of any then existing or potential Priority Claims, the amount of the requested Facility advance to be made hereunder for the week, and

any other information that may be reasonably required by the Lender. The Lender shall, upon receipt of such report, calculate the then existing Facility Availability and advise the Borrower accordingly.

**Facility  
Advances:**

Facility advances to be made hereunder shall be the lesser of the Borrower's requested advance in its Weekly Borrowing Base Report and the then Facility Availability and will, less any amounts to be deducted therefrom as provided for hereunder, be deposited into the Borrower's Disbursement Accounts.

Provided that no Event of Default has occurred and is continuing, and that at the time the advance is to be made the conditions contained in this Agreement have been satisfied, Facility advances to be made hereunder shall, provided that the request is contained in a Weekly Borrowing Base Report and that such Weekly Borrowing Base Report is received by the Lender prior to 1:00 p.m. on the Report Day, be made no later than the close of business on the next Business Day and for advance requests over \$200,000 the second Business Day.

**Interest Rate  
and Fees:**

Interest: Annual rate of 18% calculated on the daily outstanding balance of the Facility and compounded monthly, not in advance and with no deemed reinvestment of monthly payments. On the occurrence of an Event of Default, interest shall be calculated at an annual rate of 21% per annum calculated and compounded as aforesaid.

Facility Fee: A facility fee of \$100,000 will be due and payable to the Lender at the time of the first advance of the Facility and shall be deducted from the advance of the Facility.

Maintenance and Monitoring Fee: The Borrower shall pay a maintenance and monitoring fee in the amount of \$2,000 for each month, or pro-rated for any partial month, until the Facility is repaid in full and any obligation of the Lender to make advances hereunder is permanently cancelled. The aforesaid fee shall be paid monthly on the last Business Day of each month during which such fee is payable, as provided for herein, and upon repayment of the Facility and permanent cancellation of any obligation of the Lender to make advances hereunder in respect of the final month in question.

Administration Fee: If the Borrower fails to pay any amounts on the day such amounts are due or if the Borrower fails to deliver the required reports set out herein, the Borrower shall pay to the Lender a late administration fee of \$100 per day until such date that such payment has been made or the Borrower has delivered such report, as the case may be.

Expenses: The Borrower shall pay all fees and expenses (including, but not limited to, all due diligence, consultant, field examination and appraisal costs, all fees and expenses for outside legal counsel and other outside professional advisors and, after an Event of Default and upon enforcement under any Security provided hereunder, the time spent by the Lender and its representatives in retaking, holding, repairing, processing and preparing for disposition and disposing of the Security calculated at the Lender's standard per diem rate in effect at such applicable time and established by the Lender in its sole discretion for internal personnel of the Lender) incurred by the Lender in connection with the preparation, registration and ongoing administration of this Agreement and the Security and with the enforcement of the Lender's rights and remedies under this Agreement or the Security, whether or not any amounts are advanced under this Agreement. If the Lender has paid any expense for which the Lender is entitled to reimbursement from the Borrower and such expense has not been deducted from the advance of the Facility, such expense shall be payable by the Borrower within fifteen (15) days following demand for payment and in the event that the Borrower does not pay such amount to the Lender within the fifteen (15) day period, interest shall accrue on such

- 4 -

expense at the highest rate payable by the Borrower under this Agreement. All such fees and expenses and interest thereon shall be secured by the Security whether or not any funds under the Facilities are advanced.

**Payments:** Without limiting the right of the Lender to at any time demand repayment and subject to and in addition to the requirement for repayment in full pursuant to this Agreement, interest only at the aforesaid rate, calculated daily and compounded and payable monthly, not in advance, shall be due and payable on the last Business Day of each and every month during the Term.

**Prepayment:** The Facility can be repaid in full at any time without any fee or penalty upon sixty (60) days written notice to the Lender, provided that if the Lender takes any action in the exercise of its discretion under this Agreement which is an arbitrary change in the manner which it exercises that discretion (such as arbitrarily determining previously eligible accounts to be ineligible) that results in the amount actually available to the Borrower under the Facility being reduced by an amount greater than \$300,000 and the Lender has not provided the Borrower at least thirty (30) business days written notice of such action to the Borrower, the Borrower shall be permitted to repay the Facility in full without any fee or penalty on five (5) days written notice. In addition, if the Lender refuses to fund any subsequent advance, or indicates its intention to refuse to fund any subsequent advance, the Borrower shall be permitted to repay the Facility in full without any fee or penalty on five (5) days written notice.

**Deposit:** The Lender acknowledges that it has been paid a deposit of \$25,000 by the Borrower (the "Deposit") will be dealt with as follows:

- (i) If the Facility closes, the full amount of the Deposit will be credited against the Facility; and
- (ii) If the Borrower chooses not to proceed with the Facility for any reason, the full amount of the Deposit will be deemed a fully earned work fee by the Lender and non-refundable. The Borrower will also be responsible for any and all expenses including legal fees incurred by the Lender.

**Renewal:** Subject to demand by the Lender or an Event of Default, the Borrower acknowledges that the principal amount of the Facility is payable upon maturity and that the Lender is not obligated to grant any renewal or extension of the Term. However, should the Borrower wish to renew or extend the Term for a further six (6) month period, such renewal shall also be conditional upon: (a) the Facility having been in good standing at all times; (b) the Borrower providing sixty (60) days' prior written notice to the Lender of its desire to renew or extend the Term; and (c) the Lender receiving an extension fee in the amount of \$20,000.

**Cash Management Systems:**

- (i) The Borrower shall establish and shall continue to maintain, at its expense, a blocked deposit account (the "Blocked Account") at BMO into which the Borrower shall promptly deposit all funds received from all sources including, without limitation, all account receivable payments, cash sales receipts, credit card payments, any and all refunds received from any source whatsoever and any proceeds of any advances or other loans made to it and shall direct its account debtors that remit payments by electronic funds transfers to directly remit all payments into the Blocked Account.
- (ii) BMO, the Lender and the Borrower shall enter into an agreement (the "Blocked Account Agreement"), in form and substance satisfactory to the Lender, acting

- 5 -

reasonably, providing that all funds received or deposited in the Blocked Account are the property of the Lender, that BMO has no Lien upon, or right to set off against, the Blocked Account, the items received for deposit therein, or the funds from time to time on deposit therein and that BMO will wire, or otherwise transfer, in immediately available funds, on a daily basis, all funds received or deposited into the Blocked Account to the Lender's account, as the Lender may from time to time designate for such purpose. The Borrower agrees that all payments made to the Blocked Account or other funds received and collected by the Lender, shall be property of the Lender.

- (iii) The Borrower and all of its affiliates, subsidiaries, officers, employees, agents, directors or other persons (a "related person") shall, acting as trustee for the Lender, receive, as the property of the Lender, any monies, cheques, notes, drafts or any other payment which comes into the possession or under the control of the Borrower or, in the case of any related person, comes into its possession or under its control and is rightfully that of the Borrower, and immediately upon receipt thereof where received by the Borrower or upon becoming aware of the receipt thereof where received by a related person, the Borrower shall deposit or shall cause the same to be deposited in the Blocked Account, or remit the same or cause the same to be remitted, in kind, to the Lender. In no event shall the same be commingled with any of the Borrower's own funds. The Borrower agrees to reimburse the Lender on demand for any amounts owed or paid to BMO regarding the Blocked Account or any other bank or person involved in the transfer of funds to or from such Blocked Account arising out of the Lender's payments to or indemnification of such bank or person.
- (iv) The Lender shall apply amounts received from the Blocked Account to the Facility as applicable.
- (v) The Borrower shall make all of its payments and disbursements only from its Disbursement Accounts.
- (vi) The Borrower and BMO shall make the necessary arrangements to provide view only electronic access to the Disbursement Accounts to the Lender.

**Conditions  
Precedent:**

The availability of the Facility is subject to and conditional upon the following conditions:

- (i) satisfactory completion of due diligence and continual due diligence, including the Lender's review of the operations of the Borrower and its business and financial plans;
- (ii) satisfactory completion of the Lender's legal due diligence;
- (iii) receipt of a duly executed copy of this Agreement and the Security, in form and substance satisfactory to the Lender and its legal counsel, registered as required to perfect and maintain the security created thereby and such certificates, authorizations, resolutions and legal opinions as the Lender may reasonably require including an opinion from the Borrower's counsel with respect status and the due authorization, execution, delivery, validity and enforceability of this Agreement and the Security;
- (iv) the discharge or subordination of any and all existing security against the Borrower or the Guarantor as may be required by the Lender;

- 6 -

- (v) payment of all fees owing to the Lender hereunder;
- (vi) the Borrower shall have opened the Blocked Account at BMO and shall have entered into the Blocked Account Agreement;
- (vii) delivery of such financial and other information or documents relating to the Borrower or the Guarantor as the Lender may require;
- (viii) the Lender being satisfied that there has been no material deterioration in the financial condition of the Borrower or the Guarantor;
- (ix) no event shall have occurred and be continuing and no circumstance shall exist which has not been waived, which constitutes an Event of Default in respect of any material commitment, agreement or any other instrument to which the Borrower is a party or is otherwise bound, entitling any other party thereto to accelerate the maturity of amounts of principal owing thereunder or terminate any such material commitment, agreement or instrument which would have a material adverse effect upon the financial condition, property, assets, operation or business of the Borrower; and
- (x) no event that constitutes, or with notice or loss of time or both, would constitute an Event of Default shall have occurred.

Each of the following is a condition precedent to any subsequent advance to be made hereunder:

- (i) all of the conditions contained in this Agreement shall have been satisfied and shall as at the time of the making of the subsequent advance in question continue to be satisfied;
- (ii) all of the representations and warranties of the Borrower herein are true and correct on and as of such date as though made on and as of such date other than those representations and warranties which relate to a specific date which shall continue to be true as of such date;
- (iii) no event or condition has occurred and is continuing, or would result from such advance, which constitutes or which, with notice, lapse of time, or both, would constitute, a breach of any covenant or other term or condition of this Agreement or of the Security;
- (iv) such Borrowing will not violate any Applicable Law (which for the purposes of this Agreement means, with respect to any person, property, transaction or event, all present or future statutes, regulations, rules, orders, codes, treaties, conventions, judgments, awards, determinations and decrees of any governmental, regulatory, fiscal or monetary body or court of competent jurisdiction, in each case, having the force of law in any applicable jurisdiction then in effect);
- (v) no Event of Default shall have occurred; and
- (vi) no other event shall have occurred that, in the Lender's sole discretion, acting reasonably, materially adversely affects or could materially adversely affect either: (i) the business, assets, liabilities, prospects, financial condition or operations of the Borrower, or (ii) the value of the Collateral.



- 7 -

The making of an advance hereunder without the fulfillment of one or more conditions set forth in this Agreement shall not constitute a waiver of any such condition, and the Lender reserves the right to require fulfillment of such condition in connection with any subsequent advance.

Nothing in this Agreement creates a legally binding obligation on the Lender to advance any amount under the Facility at any time unless the Lender is completely satisfied in its sole discretion that the Borrower is in compliance with every provision of this Agreement and that no fact exists or event has occurred which changes the manner in which the Lender previously evaluated the risks inherent in advancing amounts to the Borrower under the Facility, whether or not the Lender was or should have been aware of such facts or events differently at any time.

**Covenants:**

Each of the Borrower and the Guarantor covenant and agree with the Lender, while this Agreement is in effect to:

- (i) pay all sums of money when due hereunder or arising therefrom;
- (ii) provide the Lender with prompt written notice of any event which constitutes, or which, with notice, lapse of time, or both, would constitute an Event of Default, a breach of any covenant or other term or condition of this Agreement or of any of the Security given in connection therewith;
- (iii) use the proceeds of the Facility for the purposes provided for herein;
- (iv) continue to carry on business in the nature of or related to the business transacted by the Borrower prior to the date hereof in the name and for the account of the Borrower;
- (v) keep and maintain books of account and other accounting records in accordance with generally accepted accounting principles;
- (vi) subject to (vii), ensure all assets secured by the Security are in existence and in the possession and control of the Borrower;
- (vii) not sell, transfer, convey, lease or otherwise dispose of any of its properties or assets or permit any reorganization or change of control of the Borrower, other than inventory in the ordinary course of business and on commercially reasonable terms or as otherwise permitted herein;
- (viii) not sell, transfer, convey, encumber or otherwise dispose of any of its capital stock or permit any reorganization or change of control of the Borrower;
- (ix) not purchase or redeem its shares or otherwise reduce its capital;
- (x) not declare or pay any dividends or repay any shareholders' loans, interest thereon or share capital;
- (xi) not make loans or advances (excluding for greater certainty, salaries and bonuses (which shall not be funded from the sale of assets) payable in the ordinary course of business and in accordance with past practice) to shareholders, directors, officers or any other related or associated party;
- (xii) permit the Lender or its representatives, at any time and from time to time with such frequency as the Lender, in its sole discretion, may require, during business hours, to visit and inspect the Borrower's premises, properties and assets

- 8 -

(including, without limitation, weekly inventory testing) and to examine and obtain copies of the Borrower's records or other information and discuss the Borrower's affairs with the auditors, counsel and other professional advisors of the Borrower all at the reasonable expense of the Borrower;

- (xiii) forthwith notify the Lender of the particulars of any occurrence which constitutes an Event of Default hereunder or of any action, suit or proceeding, pending or to the Borrower's knowledge threatened against the Borrower (the Lender acknowledging that it has been previously advised by the Borrower of certain ongoing litigation involving John Riddell in Ontario Superior Court of Justice Court File No. CV-12-445723 (the "Riddell Litigation"), in respect of which the Borrower shall provide monthly updates with the monthly compliance certificate noted in (xiv)(d) below);
- (xiv) in a form and manner prescribed by the Lender (which may include by fax and/or e-mail), deliver to the Lender the following, signed by a senior officer of the Borrower:
  - (a) weekly by Friday of each week, a list of total invoiced sales completed during the preceding week and a list of credit notes and cash receipts received by the Borrower from its customers during the preceding week (Friday to Thursday inclusive);
  - (b) weekly by Friday of each week, the daily invoice register, credit note register and cash receipts register in respect of the preceding week (Friday to Thursday inclusive);
  - (c) weekly, by Friday of each week in respect of the preceding week (Friday to Thursday inclusive), an aged accounts receivable schedule, aged accounts payable schedule, detailed inventory schedule (including, work in progress, finished goods and raw materials) and summary trial balance;
  - (d) monthly, by the 25<sup>th</sup> of each calendar month, a compliance certificate in form satisfactory to the Lender;
  - (e) monthly, by the 25<sup>th</sup> of each calendar month in respect of the preceding month, internally prepared financial statements for the preceding month and internally prepared financial statements for the year to date;
  - (f) monthly bank statements for all bank accounts of the Borrower within 15 days of its month-end;
  - (g) monthly, by the 10<sup>th</sup> of each calendar month in respect of the preceding month proof of payments, in a form satisfactory to the Lender, of Priority Claims;
  - (h) annually, no later than 30 days prior to the end of the Borrower's financial year, financial and business projections for the following financial year;
  - (i) annually, within 90 days of the Borrower's and the Guarantor's financial year end in respect of the preceding financial year, review engagement financial statements for the Borrower and the Guarantor that were prepared by external auditors; and

- 9 -

- (j) such additional financial information with respect to Borrower and the Guarantor as and when requested by the Lender;

provided that in the event that the foregoing reporting does not meet the requirements of the Lender in its discretion, the Lender shall have the right to appoint a consultant of its choosing at the expense of the Borrower to assist with the reporting;

- (xv) file all tax returns which the Borrower must file from time to time, to pay or make provision for payment of all taxes (including interest and penalties) and other potential preferred claims which are or will become due and payable and to provide adequate reserves for the payment of any tax, the payment of which is being contested;
- (xvi) not make capital expenditures in any financial year of the Borrower in excess of \$500,000 without the written consent of the Lender, which shall not be unreasonably withheld, with any capital expenditures to be reported monthly (and, for greater certainty, none of the proceeds from the Facility shall be used to finance capital expenditures);
- (xvii) not grant, create, assume or suffer to exist any mortgage, charge, Lien, pledge, security interest, including a purchase money security interest, or other encumbrance affecting any of the Borrower's properties, assets or other rights except for Encumbrances in existence, known to and approved by the Lender as the date hereof or from time to time;
- (xviii) 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;
- (xix) not change its name, merge, amalgamate or otherwise enter into any other form of business combination with any other entity without the prior written consent of the Lender not to be used unreasonably withheld;
- (xx) keep the Borrower's assets fully insured against such perils and in such manner as would be customarily insured by companies carrying on a similar business or owning similar assets naming the Lender as first loss payee and to ensure all assets secured by the Security are in existence and in the possession and control of the Borrower;
- (xxi) forthwith resolve existing accounting issues with aging accounts receivable balances resulting from "short-pays" that continue to age out; and
- (xxii) comply with all the applicable health, construction, environmental and other laws and regulations; to advise the Lender promptly of any action, requests or violation notices received from any government or regulatory authority concerning the Borrower's operations; and to indemnify and hold the Lender harmless from all liability of loss as a result of any non-compliance with such laws and regulations.

**Security and other Requirements:**

As general and continuing security for the performance by the Borrower of all of its obligations, present and future, to the Lender, including, without limitation, the repayment of advances granted hereunder and the payment of interest, fees and any other amounts provided for hereunder and under the security documents, the Borrower undertakes to grant to the Lender and to maintain at all times the following security in

- 10 -

form satisfactory to the Lender (the "Security"), in accordance with the forms in use by the Lender or as prepared by its solicitors:

- (i) a Demand Promissory Note evidencing the Facility;
- (ii) a General Security Agreement, on the Lender's form signed by the Borrower constituting a first ranking security interest in all personal property of the Borrower;
- (iii) an assignment of adequate all risk, business interruption, commercial general liability and property insurance (including the equipment of the Borrower in an amount not less than its appraised value) naming the Lender as first loss payee;
- (iv) a postponement and subordination of all directors, officers, shareholders, non-arm's length creditors and related party loans, to include a postponement of the right to receive any payments of both principal and interest under such loans;
- (v) a landlord waiver and consent in a form satisfactory to the Lender;
- (vi) a guarantee by the Guarantor in the limited amount of \$1,000,000 supported by a General Security Agreement, on the Lender's form constituting a first ranking security interest in all personal property of the Guarantor (registered in all applicable jurisdictions);
- (vii) an assignment of \$1,500,000 of key man life insurance over the life of Csaba Reider or undertaking to obtain the same satisfactory to the Lender within 30 days from the date of this Agreement; and
- (viii) such other security as may be required by the Lender.

**Events  
of Default:**

Without limiting any other rights of the Lender under this Agreement, if any one or more of the following events (an "Event of Default") has occurred and is continuing:

- (i) the Borrower fails to pay when due any principal, interest, fees or other amounts due under this Agreement or under any of the Security;
- (ii) the Borrower breaches any provision of this Agreement or any of the Security or other agreement with the Lender;
- (iii) the Borrower is in material default under the terms of any other contracts, agreements or otherwise with any other creditor ("material" for this purpose meaning a default that would reasonably be expected to give rise to a liability of the Borrower in excess of \$50,000 or cause a Material Adverse Effect and, for greater certainty, excluding the disputed consulting agreement between the Borrower and John Riddell which is the subject of the Riddell Litigation);
- (iv) the Lender receives from any present or future guarantor a notice proposing to terminate, limit or otherwise modify such guarantor's liability under its guarantee of the Borrower's indebtedness to the Lender under the Facility or under a security document or under any other document in favour of the Lender;
- (v) the Borrower ceases or threatens to cease to carry on business in the ordinary course;

- 11 -

- (vi) any default or failure by the Borrower to make any payment of, wages or other monetary remuneration payable by the Borrower to its employees under the terms of any contract of employment, oral or written, express or implied;
- (vii) any default or failure by the Borrower to keep current all amounts owing to parties other than the Lender who, in the Lender's sole opinion, have or could have a security interest, trust or deemed trust in the property, assets or undertaking of the Borrower which, in the Lender's sole opinion could rank in priority to the security held by the Lender upon the property, assets and undertaking of the Borrower;
- (viii) any breach by a guarantor of the provisions of any guarantee or other security, undertaking or covenant given to the Lender to secure any guarantee;
- (ix) if any representation or warranty made or deemed to have been made herein or in any certificate or the Security provided for herein shall be false or inaccurate;
- (x) if, in the reasonable opinion of the Lender, there is a Material Adverse Change in the financial condition, ownership or operation of any of the Borrower;
- (xi) the Borrower is unable to pay its debts as such debts become due, or is adjudged or declared to be or admit to being bankrupt or insolvent;
- (xii) any judgment or award is made against the Borrower or the Guarantor in excess of \$25,000 in respect of which there is not an appeal or proceeding for review being diligently pursued in good faith and in respect of which adequate provision has been made on the books of the Borrower or the Guarantor, as applicable; or
- (xiii) any notice of intention is filed or any voluntary or involuntary case or proceeding filed or commenced for:
  - (a) the bankruptcy, liquidation, winding-up, dissolution or suspension of general operations of the Borrower;
  - (b) the composition, rescheduling, reorganization, arrangement or readjustment of, or other relief from, or stay of proceedings to enforce, some or all of the debts of the Borrower;
  - (c) the appointment of a trustee, receiver, receiver and manager, liquidator, administrator, custodian or other official for, all or any significant part of the assets of the Borrower;
  - (d) the possession, foreclosure, retention, sale or other disposition of, or other proceedings to enforce security over, all or any significant part of the assets of the Borrower; or
  - (e) any secured creditor, encumbrancer or lienor, or any trustee, receiver, receiver and manager, agent, bailiff or other similar official appointed by or acting for any secured creditor, encumbrancer or lienor, takes possession of or forecloses or retains, or sells or otherwise disposes of, or otherwise proceeds to enforce security over all or any significant part of the assets of the Borrower or gives notice of its intention to do any of the foregoing;

then, in such event, the Lender may, by written notice to the Borrower declare all monies outstanding under the Facility to be immediately due and payable. Upon receipt of such written notice, the Borrower shall immediately pay to the Lender all monies outstanding under the Facility and all other obligations of the Borrower to the Lender in connection with the Facility under this Agreement. The Lender may enforce its rights to realize upon its security and retain an amount sufficient to secure the Lender for the Borrower's obligations to the Lender.

Nothing contained in this section shall limit any right of the Lender under this Agreement to demand payment of the Facility at any time.

**Evidence of  
Indebtedness:**

The Lender shall maintain records evidencing the Facility. The Lender shall record the principal amount of the Facility, the payment of principal and interest on account of the Facility, and all other amounts becoming due to the Lender under this Agreement.

The Lender's accounts and records constitute, in the absence of manifest error, conclusive evidence of the indebtedness of the Borrower to the Lender pursuant to this Agreement.

**Representations  
and Warranties:**

The Borrower represents and warrants to the Lender that:

- (i) each of the Borrower and the Guarantor is a corporation duly incorporated, validly existing and duly registered or qualified to carry on business in the Province of Ontario or any other jurisdiction where they may carry on business;
- (ii) the execution, delivery and performance by the Borrower and the Guarantor of this Agreement has been duly authorized by all necessary actions and do not violate the constating documents or any Applicable Laws or agreements to which the Borrower and the Guarantor is subject or by which they are bound;
- (iii) the Borrower's and the Guarantor's financial statements most recently provided to the Lender fairly present their financial positions as of the date thereof and its results of operations and cash flows for the fiscal period covered thereby, and since the date of such financial statements, there has occurred no Material Adverse Change in the Borrower's and the Guarantor's business or financial condition;
- (iv) there is no claim, action, prosecution or other proceeding of any kind pending or threatened against the Borrower or the Guarantor or any of their respective assets or properties before any court or administrative agency which relates to any non-compliance with any environmental law which, if adversely determined, might have a material adverse effect upon its financial condition or operations or its ability to perform its obligations under this Agreement or any of the Security, and there are no circumstances of which the Borrower or the Guarantor is aware which might give rise to any such proceeding which has not been fully disclosed to the Lender;
- (v) the Borrower and the Guarantor have good and marketable title to all of their properties and assets, free and clear of any Encumbrances, other than as may be provided for herein;
- (vi) no event has occurred which constitutes, or which, with notice, lapse of time, or both, would constitute, an Event of Default, a breach of any covenant or other term or condition of this Agreement or any of the Security given in connection therewith;

- (vii) the Borrower and the Guarantor have filed all tax returns which were required to be filed by them, if any, paid or made provision for payment of all taxes and potential prior ranking claims (including interest and penalties) which are due and payable, if any and provided adequate reserves for payment of any tax, the payment of which is being contested, if any; and
- (viii) the Borrower's obligation to complete this transaction is not dependent upon any condition whatsoever, and that the Lender assumes no obligation to assist the Borrower to complete the transaction in any way, except to make available the Facility as contemplated herein.

**Field Examinations /  
Appraisals:**

- (i) In addition to weekly inventory testing / audits at the discretion of the Lender, the Borrower acknowledges that the Lender and its examiners shall be permitted to conduct periodic field examinations of the Collateral and operations of the Borrower, such examinations not to exceed four (4) in any calendar year prior to an Event of Default and more frequently as the Lender may determine in its sole discretion thereafter.
- (ii) The Borrower further acknowledges that the Lender shall be permitted to obtain inventory valuations (not to exceed two (2)) in any calendar year prior to an Event of Default which is continuing and more frequently as the Lender may determine in its sole discretion thereafter).

**Environmental:**

In relation to the Borrower's business, assets and projects: the Borrower is operating and will continue to operate in conformity with all environmental laws; there are no contaminants, pollutants or other hazardous substances (including, without limitation, asbestos, products containing urea formaldehyde or polychlorinated biphenyl or any radioactive substances) have been or are now stored or located at any property from which the Borrower operates its business (collectively, the "Properties") and no order, approval, direction or other governmental or regulatory notice relating to the environment has been threatened against, is pending or has been issued with respect to the Properties or the operations of the business being conducted at the Properties; the Borrower is not aware of any pending or threatened action, suit or proceedings relating to any actual or alleged environmental violation from or at the Properties, nor have any proceedings been or are being instituted to make the Borrower or any other owner of the subject property comply with environmental laws and regulations; the Borrower will ensure that all of its property and assets comply with existing legislation and will remain free of any environmental problem; the Borrower will inform the Lender immediately upon becoming aware of any environmental problem or issue and will provide the Lender with copies of all communications with environmental authorities and all studies or assessments prepared on the Borrower's behalf, all as soon as received by the Borrower; the Borrower also agrees to pay the cost of any external environmental consultant engaged by the Lender to effect an environmental audit and the cost of any environmental rehabilitation, removal or repair necessary to protect, preserve or remediate the assets, including any fine or penalty the Lender is obligated to incur by reason of any statute, order or directive by a competent authority. The Borrower agrees to indemnify the Lender for any liability arising from an environmental problem including, without limitation, for all decontamination and decommissioning costs or for damages incurred by the Lender or its agents as a result of such contamination. For the purposes of this Agreement, an "environmental problem" means an act of non-compliance to a law, regulation, etc. or soil and/or underground water that contains one or many pollutants (contaminants) in levels of concentration that exceed parameters or norms applicable for the present use and intended use of any of the Borrower's personal or real property including leased property.

In the event any environmental report shows that decontamination is required the Borrower undertakes to forthwith carry out decontamination at its own expense should this be required or requested.

**Confidentiality:**

The Borrower and the Guarantor agree to keep all of the information and terms related to this Agreement confidential. In particular, the existence of this Agreement or the discussions surrounding this Agreement cannot be disclosed to any party, including other creditors, without the Lender's prior written consent. The parties acknowledge and agree that information and terms related to this Agreement have been disclosed to Danbury Financial Services in connection with the Borrower's ongoing discussions with Danbury Financial Services and have been or may be disclosed to BMO and shall not be considered breaches of the foregoing confidentiality provisions.

**General:**

Credit: The Borrower and the Guarantor authorize the Lender, hereinafter, to obtain such factual and investigative information regarding the Borrower or the Guarantor from others as permitted by law, to furnish other consumer credit grantors and credit bureaus such information. The Lender, after completing credit investigations, which it will make from time to time concerning the Borrower and the Guarantor, must in its absolute discretion be satisfied with all information obtained, prior to any advance being made under the Facility.

The Borrower and the Guarantor further authorize any financial institution, creditor, tax authority, employer or any other person, including any public entity, holding information concerning the Borrower or the Guarantor or their assets, including any financial information or information with respect to any undertaking or suretyship given by the Borrower or the Guarantor, to supply such information to the Lender in order to verify the accuracy of all information furnished or to be furnished from time to time to the Lender and to ensure the solvency of the Borrower and the Guarantor at all times.

Non-Merger: The provisions of this Agreement shall not merge with any of the Security, but shall continue in full force and effect for the benefit of the parties hereto. In the event of an inconsistency between this Agreement and any of the Facility and security documentation, including the Security, the provisions of this Agreement shall prevail.

Further Assurances and Documentation: The Borrower and the Guarantor shall do all things and execute all documents deemed necessary or appropriate by the Lender for the purposes of giving full force and effect to the terms, conditions, undertakings hereof and the Security granted or to be granted hereunder.

Severability: If any provisions of this Agreement is or becomes prohibited or unenforceable in any jurisdiction, such prohibition or unenforceability shall not invalidate or render unenforceable the provision concerned in any other jurisdiction nor shall it invalidate, affect or impair any of the remaining provisions of this Agreement.

Marketing: The Lender shall be permitted to use the name of the Borrower and the amount of the Facility for advertising purposes.

Governing Law: This Agreement and all agreements arising hereinafter shall be deemed to have been made and accepted in the City of Toronto, Ontario and construed in accordance with and be governed by the laws of the Province of Ontario and of Canada applicable therein.

Counterparts: This Agreement, the Security and all agreements arising hereinafter may be executed in any number of separate counterparts by any one or more of the parties thereto, and all of said counterparts taken together shall constitute one and the same



- 15 -

instrument. Delivery of an executed counterpart of this Agreement by telecopier, PDF or by other electronic means shall be as effective as delivery of a manually executed counterpart.

Assignment and Syndication: This Agreement when accepted and any commitment to advance, if issued, and the Security in furtherance thereof or any warrant or right may be assigned by the Lender, or monies required to be advanced may be syndicated by the Lender from time to time. For greater certainty, the Lender may assign or grant participation in all or part of this Agreement or in the Facility made hereunder without notice to and without the Borrower's consent. The Borrower may not assign or transfer all or any part of its rights or obligations under this Agreement, any such transfer or assignment being null and void insofar as the Lender is concerned and rendering any balance then outstanding under the Facility immediately due and payable at the option of the Lender. Any information provided to any syndicate members shall be communicated to the members on a confidential basis and shall be maintained by the syndicate members on a confidential basis and used by them solely in connection with the Facility.

Joint and Several: Where more than one person is liable as the Borrower or Guarantor for any obligation under this Agreement, then the liability of each such person for such obligation is joint and several with each other such person.

Time: Time shall be of the essence in all provisions of this Agreement.

Whole Agreement, Amendments and Waiver: This Agreement, the Security and any other written agreement delivered pursuant to or referred to in this Agreement constitute the whole and entire agreement between the parties in respect of the Facility. There are no verbal agreements, undertakings or representations in connection with the Facility. No amendment or waiver of any provision of this Agreement will be effective unless it is in writing signed by the Borrower, the Guarantor and the Lender. No failure or delay on the part of the Lender in exercising any right or power hereunder or under any of the Security shall operate as a waiver thereon. No course of conduct by the Lender will give rise to any reasonable expectation which is in any way inconsistent with the terms and conditions of this Agreement and the Security or the Lender's rights thereunder.

**Expiration:** This Agreement must be accepted by the Borrower and the Guarantor by no later than 5:00 pm on October 1, 2012, after which this Agreement will expire.

[THIS REST OF THIS PAGE IS INTENTIONALLY BLANK. SIGNATURE PAGE FOLLOWS]

- 16 -

If the terms and conditions of this Agreement are acceptable to you, please sign in the space indicated below and return the signed copy of this Agreement to us. Acceptance may also be effected by facsimile or scanned transmission and in counterpart.

We thank you for allowing us the opportunity to provide you with this Agreement.

Yours truly,

**BRIDGING CAPITAL INC.**

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

Name:

Title:

I have authority to bind the Corporation.

**ACCEPTANCE**

The undersigned hereby accepts this Agreement this 1<sup>st</sup> day of October, 2012.

**SUN PAC FOODS LIMITED**

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

Name: Csaba Reider

Title: President

I have authority to bind the Corporation.

**LIQUIBRANDS INC.**

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

Name: Csaba Reider

Title: President

I have authority to bind the Corporation.

- 16 -

If the terms and conditions of this Agreement are acceptable to you, please sign in the space indicated below and return the signed copy of this Agreement to us. Acceptance may also be effected by facsimile or scanned transmission and in counterpart.

We thank you for allowing us the opportunity to provide you with this Agreement.

Yours truly,

**BRIDGING CAPITAL INC.**

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

Name: *Natasha Sharpe*  
Title: *President*

I have authority to bind the Corporation.

**ACCEPTANCE**

The undersigned hereby accepts this Agreement this 1<sup>st</sup> day of October, 2012.

**SUN PAC FOODS LIMITED**

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

Name: Csaba Reider  
Title: President

I have authority to bind the Corporation.

**LIQUIBRANDS INC.**

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

Name: Csaba Reider  
Title: President

I have authority to bind the Corporation.

- 16 -

If the terms and conditions of this Agreement are acceptable to you, please sign in the space indicated below and return the signed copy of this Agreement to us. Acceptance may also be effected by facsimile or scanned transmission and in counterpart.

We thank you for allowing us the opportunity to provide you with this Agreement.

Yours truly,

**BRIDGING CAPITAL INC.**

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

I have authority to bind the Corporation.

**ACCEPTANCE**

The undersigned hereby accepts this Agreement this 1<sup>st</sup> day of October, 2012.

**SUN PAC FOODS LIMITED**

Per: \_\_\_\_\_  
Name: Csaba Reider  
Title: President

I have authority to bind the Corporation.

**LIQUIBRANDS INC.**

Per: \_\_\_\_\_  
Name: Csaba Reider  
Title: President

I have authority to bind the Corporation.

- 17 -

Schedule A  
Definitions

In addition to terms defined elsewhere in this Agreement, the following terms shall have the following meanings:

- (a) "Applicable Laws" means, with respect to any person, property, transaction or event, all present or future statutes, regulations, rules, orders, codes, treaties, conventions, judgments, awards, determinations and decrees of any governmental, regulatory, fiscal or monetary body or court of competent jurisdiction, in each case, having the force of law in any applicable jurisdiction.
- (b) "BMO" means Bank of Montreal including Harris Bank.
- (c) "Business Day" means any day other than a Saturday or a Sunday or any other day on which banks are closed for business in Toronto.
- (d) "Collateral" means all of the Borrower's and the Guarantor's personal property.
- (e) "Disbursement Accounts" means specifically account / transit numbers 1053912/0470 (CAD\$) and 4612684/0002 (US\$) at BMO from which the Borrower shall make all of its payments and disbursements.
- (f) "Encumbrances" means any mortgage, Lien, pledge, assignment, charge, security interest, title retention agreement, hypothec, levy, execution, seizure, attachment, garnishment, right of distress or other claim in respect of property of any nature or kind whatsoever howsoever arising (whether consensual, statutory or arising by operation of law or otherwise) and includes arrangements known as sale and lease-back, sale and buy-back and sale with option to buy-back or other agreement to sell or give a security interest in and any filing of or agreement to give any financing statement under the PPSA or Uniform Commercial Code (or equivalent statutes) of any jurisdiction.
- (g) "Lien" means any mortgage, charge, pledge, hypothecation, security interest, assignment, encumbrance, lien (statutory or otherwise), charge, title retention agreement or arrangement, restrictive covenant or other encumbrance of any nature or any other arrangement or condition that in substance secures payment or performance of an obligation.
- (h) "Material Adverse Change" means any change, condition or event which, when considered individually or together with other changes, conditions, events or occurrences could reasonably be expected to have a Material Adverse Effect.
- (i) "Material Adverse Effect" means a material adverse effect on (i) the business, revenues, operations, assets, liabilities (contingent or otherwise), financial condition or prospects of the Borrower; (ii) on the rights and remedies of the Lender under this Agreement and the Security; (iii) on the ability of the Borrower to perform its obligations under the Credit Documents; or (iv) on the Liens created by the Security Agreements.
- (j) "person" includes a natural person, a partnership, a joint venture, a trust, a fund, an unincorporated organization, a company, a corporation, an association, a government or any department or agency thereof, and any other incorporated or unincorporated entity.
- (k) "PPSA" means the *Personal Property Security Act* (Ontario) as the same may be amended from time to time.
- (l) "Priority Claims" means the aggregate of any amounts accrued or payable by the Borrower which under any law may rank prior to or *pari passu* with any of the Security Agreements or otherwise in priority to any claim by the Lender for payment or repayment of any amounts owing

- 18 -

under this Agreement, including: (i) wages, salaries, commissions or other remuneration; (ii) vacation pay; (iii) pension plan contributions; (iv) amounts required to be withheld from payments to employees or other persons for federal and provincial income taxes, employee Canadian Pension Plan contributions and employee Employment Insurance premiums, additional amounts payable on account of employer Canada Pension Plan contributions and employer Employment Insurance premiums; (v) harmonized sales tax; (vi) provincial sales or other consumption taxes; (vii) Workers' Compensation Board and Workplace Safety and Insurance Board premiums or similar premiums; (viii) real property taxes; (ix) rent and other amounts payable in respect of the use of real property; (x) amounts payable for repair, storage, transportation or construction or other services which may give rise to a possessory or registerable lien; (xi) claims which suppliers could assert pursuant to Section 81.1 or Section 81.2 of the *Bankruptcy and Insolvency Act* (Canada); and (xii) WEPPA Claims.

- (m) "Statutory Encumbrances" means any Encumbrances arising by operation of Applicable Laws, including, without limitation, for carriers, warehousemen, repairers', taxes, assessments, statutory obligations and government charges and levies for amounts not yet due and payable or which may be past due but which are being contested in good faith by appropriate proceedings (and as to which there are no other enforcement proceedings or they shall have been effectively stayed).
- (n) "WEPPA Claims" means any claims made against the Borrower pursuant to the *Wage Earner Protection Program Act*, S.C. 2005, c. 47, s.1, as the same may be amended, restated or replaced from time to time.

Words importing the singular include the plural thereof and vice versa and words importing gender include the masculine, feminine and neuter genders.

**EXHIBIT "E"**





Exhibit E to the Affidavit  
Of Csaba Reider  
Sworn on the 3rd day of  
April 2014  
Commissioner for Taking Oaths

**AMENDED AND RESTATED LETTER AGREEMENT**

January 17, 2013

Sun Pac Foods Limited  
10 Sun Pac Blvd.  
Brampton, Ontario L6S 4R5

Attention: Csaba Reider, President

Dear Mr. Reider:

Re: Bridging Capital Inc. (the "Lender") credit facility in favour of Sun Pac Foods Limited (the "Borrower")

The Lender is pleased to offer the credit facilities (collectively, the "Facility") described in this amended and restated letter agreement (which, for greater certainty, amends and restates the letter agreement dated October 1, 2012, among the Lender, the Borrower and the Guarantor) (the "Agreement") subject to the terms and conditions set forth herein including, without limitation, the satisfactory completion of due diligence. Unless otherwise indicated, all amounts are expressed in Canadian currency. All capitalized terms not otherwise defined in the body of this Agreement shall have the meanings ascribed thereto in Schedule "A".

- Borrower:** Sun Pac Foods Limited
- Guarantor:** Liquibrands Inc. (the "Guarantor")
- Lender:** Bridging Capital Inc.
- Facility:**
  - (i) Demand revolving loan of up to \$5,000,000, based on the lending formula described herein (the "Facility A Loan"). The Facility A Loan may be increased to up to \$7,000,000 in increments of \$1,000,000, provided the following conditions are met: (a) the lending formula supports the increased amount, (b) a 1% commitment fee on the incremental amount is paid prior to funding, (c) two weeks' prior written notice is provided to the Lender together with payment of the commitment fee on the incremental amount, and (d) the Facility is not in default. For greater certainty, the maximum amount of the Facility A Loan at any time shall not exceed \$7,000,000.
  - (ii) Demand non-revolving loan in the amount of the lesser of (i) \$2,250,000 and (ii) 90% of the Equipment Appraisal (the "Facility B Loan").
- Purpose:** To support the working capital needs of the Borrower.
- Term:** The earlier of demand and January 14, 2014 (the "Term"). In the event of demand for repayment prior to the end of the Term in circumstances where an Event of Default has not occurred, the Lender shall provide the Borrower with thirty (30) days' prior written notice of the required repayment date.
- Facility A Loan Availability:** The maximum amount that shall be available under the Facility A Loan at any time and from time to time will, subject to the maximum amount of \$7,000,000, be determined by the Lender once each week (or more frequently as determined by the Lender) and will be limited during such week (or other period as aforesaid) in accordance with the following formula (the "Facility A Loan Availability"):
  - the aggregate of:

- (i) **Accounts Receivable:** Up to 90% of the net insured (satisfactory to the Lender) eligible accounts receivable and up to 90% of the net domestic uninsured eligible accounts receivable. The Lender will determine eligibility in its reasonable credit discretion. General eligibility criteria will include the requirement that eligible accounts receivable be less than 90 days past invoice date but no more than 60 days past due date unless such accounts receivable are insured and in compliance with the insurance policy terms (maximum 90 days past invoice date) or are backed by an irrevocable letter of credit drawn on a bank acceptable to the Lender. In addition, eligible accounts will exclude (among other things as determined by the Lender in its reasonable credit discretion) accounts of an account debtor if 50% or more of the accounts owing from such account debtor are past due, any account that is an obligation for which the total unpaid accounts of the specific account debtor exceed 20% of the aggregate of all gross accounts as related to eligible accounts receivable, to the extent of such excess, foreign accounts not backed by letters of credit or acceptable credit insurance, bill and hold, contras, credits in prior, inter-company receivables and amounts due from affiliated or associated companies, governments, disputed and doubtful accounts, progress billings (except where the receivables are insured satisfactory to the Lender), pre-billed accounts and other accounts at the Lender's discretion. Any exceptions to the foregoing will be considered by the Lender in its sole discretion as and when required. The advance rates are subject to a dilution test as determined by the Lender; PLUS
- (ii) **Inventory:** An amount of up to 75% of: (i) 50% of the cost (being the aggregate of the supplier's invoice cost of the inventory in question (net of all discounts, rebates and allowances and excluding all applicable taxes) plus inbound freight charges; clearing charges and customs duties) of eligible raw materials; and (ii) up to 91.02% of the cost (being the Borrower's standard manufacturing costs for each product as approved by the Lender in its sole discretion for margining purposes from time to time. Notwithstanding the foregoing, for the purposes of this section, such cost shall not exceed the agreed upon invoice price (plus buyer approved changes) for the product in question) of finished goods inventory based on an independent appraisal by an appraiser acceptable to the Lender over which the Lender has a valid charge together with appropriate landlord waivers (at the discretion of the Lender) rounded to the nearest percentage. The Lender will determine eligibility in its reasonable credit discretion. Eligible inventory criteria shall not include inventory that is unsaleable, slow moving, damaged or obsolete, work-in-process, packaging, inventory to be shipped to foreign subsidiaries, consigned, rental in nature, used, or held offsite (except in a situation where satisfactory landlord waiver/bailee letter is received that includes confirmation of no-offset of payables due the vendor) or outside Canada all as determined by the Lender in its discretion. Final inventory advance rates, eligibility and reserves will be determined by the Lender in its discretion based in part on the independent appraisal report findings together with the pre-closing field examination and may be changed from time to time by the Lender in its discretion based in part on any updated independent appraisals; LESS
- (iii) the amount of the Facility A Loan (including principal, interest and costs) then outstanding, together with all amounts owing by the Borrower to the Lender under this Agreement or under any other agreement or instrument; LESS
- (iv) reserves, determined by the Lender in its sole discretion, in respect of actual and/or potential Priority Claims and/or Statutory Encumbrances liquidation expenses and any other reserves, determined from time to time by the Lender in its sole discretion.

On a Business Day in each week as determined by the Lender (the "Report Day"), prior to 1:00 p.m. ET, the Borrower will provide a report (a "Weekly Borrowing Base Report") to the Lender (in such form as the Lender shall reasonably require) providing, as at the end of the preceding week, a listing of all of the Borrower's accounts receivable, accounts payable, finished goods inventory, raw material inventory, work in progress, inventory in transit, details of any then existing or potential Priority Claims, the amount of the requested Facility advance to be made hereunder for the week, and any other information that may be reasonably required by the Lender. The Lender shall, upon receipt of such report, calculate the then existing Facility A Loan Availability and advise the Borrower accordingly.

**Facility A Loan Advances:**

Facility A Loan advances to be made hereunder shall be the lesser of the Borrower's requested advance in its Weekly Borrowing Base Report and the then Facility A Loan Availability and will, less any amounts to be deducted therefrom as provided for hereunder, be deposited into the Borrower's Disbursement Accounts.

Provided that no Event of Default has occurred and is continuing, and that at the time the advance is to be made the conditions contained in this Agreement have been satisfied, Facility A Loan advances to be made hereunder shall, provided that the request is contained in a Weekly Borrowing Base Report and that such Weekly Borrowing Base Report is received by the Lender prior to 1:00 p.m. on the Report Day, be made no later than the close of business on the next Business Day and for advance requests over \$200,000 the second Business Day.

**Facility B Loan Advances:**

Provided that no Event of Default has occurred, and that at the time the advance is to be made the conditions contained in this Agreement have been satisfied, the Lender shall advance to the Borrower as a Facility B Loan advance by way of two advances, the lesser of \$2,250,000 and 90% of the Equipment Appraisal, less, without duplication in respect of the Facility A Loan, reserves as determined by the Lender in its sole discretion, in respect of actual and/or potential Priority Claims and/or Statutory Encumbrances liquidation expenses. The first advance shall be in the amount of \$500,000. Thereafter, provided that no Event of Default has occurred, that at the time the advance is to be made the conditions contained in this Agreement have been satisfied, that the Lender has received and is satisfied with an Equipment Appraisal, and that the 90% of the Equipment Appraisal less reserves is greater than the Facility B Loan advance outstanding, the Lender shall advance by way of a second advance to the Borrower an amount equal to such difference as an additional Facility B Loan advance. Facility B Loan advances shall be deposited into the Borrower's Disbursement Account. To the extent the Facility B Loan advances at any time exceed the lesser of \$2,250,000 and 90% of the Equipment Appraisal less reserves, the Borrower shall forthwith pay to the Lender an amount equal to such excess.

**Interest Rate and Fees:**

**Interest:** Annual rate of 18% calculated on the daily outstanding balance of the Facility and compounded monthly, not in advance and with no deemed reinvestment of monthly payments. On the occurrence of an Event of Default, interest shall be calculated at an annual rate of 21% per annum calculated and compounded as aforesaid.

**Facility Fee:** A renewal and facility fee of 8% of the lesser of \$2,250,000 and 90% of the Equipment Appraisal less reserves shall be earned by the Lender at the time of acceptance of this Agreement, shall be secured by the Security and be payable to the Lender on the earlier of: (i) the second advance of the Facility B Loan (in which case, such fee shall be deducted from such advance); and (ii) February 15, 2013 (in which case, such fee shall be treated as an advance of the Facility A Loan).

**Maintenance and Monitoring Fee:** The Borrower shall pay a maintenance and monitoring fee in the amount of \$2,000 for each month, or pro-rated for any partial month, until the Facility is repaid in full and any obligation of the Lender to make advances hereunder is permanently cancelled. The aforesaid fee shall be paid monthly on the last Business Day of each month during which such fee is payable, as provided for herein, and upon repayment of the Facility and permanent cancellation of any obligation of the Lender to make advances hereunder in respect of the final month in question.

**Administration Fee:** If the Borrower fails to pay any amounts on the day such amounts are due or if the Borrower fails to deliver the required reports set out herein, the Borrower shall pay to the Lender a late administration fee of \$100 per day until such date that such payment has been made or the Borrower has delivered such report, as the case may be.

**Expenses:** The Borrower shall pay all fees and expenses (including, but not limited to, all due diligence, consultant, field examination and appraisal costs, all fees and expenses for outside legal counsel and other outside professional advisors and, after an Event of Default and upon enforcement under any Security provided hereunder, the time spent by the Lender and its representatives in retaking, holding, repairing, processing and preparing for disposition and disposing of the Security calculated at the Lender's standard per diem rate in effect at such applicable time and established by the Lender in its sole discretion for internal personnel of the Lender) incurred by the Lender in connection with the preparation, registration and ongoing administration of this Agreement and the Security and with the enforcement of the Lender's rights and remedies under this Agreement or the Security, whether or not any amounts are advanced under this Agreement. If the Lender has paid any expense for which the Lender is entitled to reimbursement from the Borrower and such expense has not been deducted from the advance of the Facility, such expense shall be payable by the Borrower within fifteen (15) days following demand for payment and in the event that the Borrower does not pay such amount to the Lender within the fifteen (15) day period, interest shall accrue on such expense at the highest rate payable by the Borrower under this Agreement. All such fees and expenses and interest thereon shall be secured by the Security whether or not any funds under the Facilities are advanced.

**Payments:** Without limiting the right of the Lender to at any time demand repayment and subject to and in addition to the requirement for repayment in full pursuant to this Agreement, interest only at the aforesaid rate, calculated daily and compounded and payable monthly, not in advance, shall be due and payable on the last Business Day of each and every month during the Term.

**Prepayment:** The Facility B Loan can be repaid in full at any time without any fee or penalty upon sixty (60) days written notice to the Lender, provided that if at any time following the determination of the amount of the second advance under the Facility B Loan, the amount available to the Borrower under the Facility B Loan is less than \$1,200,000, the Borrower shall be permitted to repay the Facility B Loan in full without any fee or penalty on five (5) days written notice. For greater certainty, there shall be no repayment of the Facility A Loan until the Facility B Loan has been indefeasibly repaid in full.

The Facility can be repaid in full at any time without any fee or penalty upon sixty (60) days written notice to the Lender, provided that if the Lender takes any action in the exercise of its discretion under this Agreement which is an arbitrary change in the manner which it exercises that discretion (such as arbitrarily determining previously eligible accounts to be ineligible) that results in the amount actually available to the Borrower under the Facility A Loan being reduced by an amount greater than \$300,000 and the Lender has not provided the Borrower at least thirty (30) business days written notice of such action to the Borrower, the Borrower shall be permitted to repay the Facility in full

- 5 -

without any fee or penalty on five (5) days written notice. In addition, if the Lender refuses to fund any subsequent advance, or indicates its intention to refuse to fund any subsequent advance, the Borrower shall be permitted to repay the Facility in full without any fee or penalty on five (5) days written notice.

**Renewal:**

Subject to demand by the Lender or an Event of Default, the Borrower acknowledges that the principal amount of the Facility is payable upon maturity and that the Lender is not obligated to grant any renewal or extension of the Term. However, should the Borrower wish to renew or extend the Term for a further six (6) month period, such renewal shall also be conditional upon: (a) the Facility having been in good standing at all times; (b) the Borrower providing sixty (60) days' prior written notice to the Lender of its desire to renew or extend the Term; and (c) the Lender receiving an extension fee in the amount of \$20,000.

**Cash Management Systems:**

- (i) The Borrower shall establish and shall continue to maintain, at its expense, a blocked deposit account (the "Blocked Account") at BMO into which the Borrower shall promptly deposit all funds received from all sources including, without limitation, all account receivable payments, cash sales receipts, credit card payments, any and all refunds received from any source whatsoever and any proceeds of any advances or other loans made to it and shall direct its account debtors that remit payments by electronic funds transfers to directly remit all payments into the Blocked Account.
- (ii) BMO, the Lender and the Borrower shall enter into an agreement (the "Blocked Account Agreement"), in form and substance satisfactory to the Lender, acting reasonably, providing that all funds received or deposited in the Blocked Account are the property of the Lender, that BMO has no Lien upon, or right to set off against, the Blocked Account, the items received for deposit therein, or the funds from time to time on deposit therein and that BMO will wire, or otherwise transfer, in immediately available funds, on a daily basis, all funds received or deposited into the Blocked Account to the Lender's account, as the Lender may from time to time designate for such purpose. The Borrower agrees that all payments made to the Blocked Account or other funds received and collected by the Lender, shall be property of the Lender.
- (iii) The Borrower and all of its affiliates, subsidiaries, officers, employees, agents, directors or other persons (a "related person") shall, acting as trustee for the Lender, receive, as the property of the Lender, any monies, cheques, notes, drafts or any other payment which comes into the possession or under the control of the Borrower or, in the case of any related person, comes into its possession or under its control and is rightfully that of the Borrower, and immediately upon receipt thereof where received by the Borrower or upon becoming aware of the receipt thereof where received by a related person, the Borrower shall deposit or shall cause the same to be deposited in the Blocked Account, or remit the same or cause the same to be remitted, in kind, to the Lender. In no event shall the same be commingled with any of the Borrower's own funds. The Borrower agrees to reimburse the Lender on demand for any amounts owed or paid to BMO regarding the Blocked Account or any other bank or person involved in the transfer of funds to or from such Blocked Account arising out of the Lender's payments to or indemnification of such bank or person.
- (iv) The Lender shall apply amounts received from the Blocked Account to the Facility as applicable.

- 6 -

- (v) The Borrower shall make all of its payments and disbursements only from its Disbursement Accounts.
- (vi) The Borrower and BMO shall make the necessary arrangements to provide view only electronic access to the Disbursement Accounts to the Lender.

**Conditions  
Precedent:**

The availability of the Facility is subject to and conditional upon the following conditions:

- (i) satisfactory completion of due diligence and continual due diligence, including the Lender's review of the operations of the Borrower and its business and financial plans;
- (ii) satisfactory completion of the Lender's legal due diligence;
- (iii) receipt of a duly executed copy of this Agreement and the Security, in form and substance satisfactory to the Lender and its legal counsel, registered as required to perfect and maintain the security created thereby and such certificates, authorizations, resolutions and legal opinions as the Lender may reasonably require including an opinion from the Borrower's counsel with respect status and the due authorization, execution, delivery, validity and enforceability of this Agreement and the Security;
- (iv) the discharge or subordination of any and all existing security against the Borrower or the Guarantor as may be required by the Lender;
- (v) payment of all fees owing to the Lender hereunder;
- (vi) the Borrower shall have opened the Blocked Account at BMO and shall have entered into the Blocked Account Agreement;
- (vii) delivery of such financial and other information or documents relating to the Borrower or the Guarantor as the Lender may require;
- (viii) the Lender being satisfied that there has been no material deterioration in the financial condition of the Borrower or the Guarantor;
- (ix) no event shall have occurred and be continuing and no circumstance shall exist which has not been waived, which constitutes an Event of Default in respect of any material commitment, agreement or any other instrument to which the Borrower is a party or is otherwise bound, entitling any other party thereto to accelerate the maturity of amounts of principal owing thereunder or terminate any such material commitment, agreement or instrument which would have a material adverse effect upon the financial condition, property, assets, operation or business of the Borrower; and
- (x) no event that constitutes, or with notice or loss of time or both, would constitute an Event of Default shall have occurred.

Each of the following is a condition precedent to any subsequent advance to be made hereunder:

- (i) all of the conditions contained in this Agreement shall have been satisfied and shall as at the time of the making of the subsequent advance in question continue

- 7 -

to be satisfied;

- (ii) all of the representations and warranties of the Borrower herein are true and correct on and as of such date as though made on and as of such date other than those representations and warranties which relate to a specific date which shall continue to be true as of such date;
- (iii) no event or condition has occurred and is continuing, or would result from such advance, which constitutes or which, with notice, lapse of time, or both, would constitute, a breach of any covenant or other term or condition of this Agreement or of the Security;
- (iv) such Borrowing will not violate any Applicable Law (which for the purposes of this Agreement means, with respect to any person, property, transaction or event, all present or future statutes, regulations, rules, orders, codes, treaties, conventions, judgments, awards, determinations and decrees of any governmental, regulatory, fiscal or monetary body or court of competent jurisdiction, in each case, having the force of law in any applicable jurisdiction then in effect);
- (v) no Event of Default shall have occurred; and
- (vi) no other event shall have occurred that, in the Lender's sole discretion, acting reasonably, materially adversely affects or could materially adversely affect either: (i) the business, assets, liabilities, prospects, financial condition or operations of the Borrower, or (ii) the value of the Collateral.

The making of an advance hereunder without the fulfillment of one or more conditions set forth in this Agreement shall not constitute a waiver of any such condition, and the Lender reserves the right to require fulfillment of such condition in connection with any subsequent advance.

Nothing in this Agreement creates a legally binding obligation on the Lender to advance any amount under the Facility at any time unless the Lender is completely satisfied in its sole discretion that the Borrower is in compliance with every provision of this Agreement and that no fact exists or event has occurred which changes the manner in which the Lender previously evaluated the risks inherent in advancing amounts to the Borrower under the Facility, whether or not the Lender was or should have been aware of such facts or events differently at any time.

**Covenants:**

Each of the Borrower and the Guarantor covenant and agree with the Lender, while this Agreement is in effect to:

- (i) pay all sums of money when due hereunder or arising therefrom;
- (ii) provide the Lender with prompt written notice of any event which constitutes, or which, with notice, lapse of time, or both, would constitute an Event of Default, a breach of any covenant or other term or condition of this Agreement or of any of the Security given in connection therewith;
- (iii) use the proceeds of the Facility for the purposes provided for herein;
- (iv) continue to carry on business in the nature of or related to the business transacted by the Borrower prior to the date hereof in the name and for the account of the Borrower;

- 8 -

- (v) keep and maintain books of account and other accounting records in accordance with generally accepted accounting principles;
- (vi) subject to (vii), ensure all assets secured by the Security are in existence and in the possession and control of the Borrower;
- (vii) not sell, transfer, convey, lease or otherwise dispose of any of its properties or assets or permit any reorganization or change of control of the Borrower, other than inventory in the ordinary course of business and on commercially reasonable terms or as otherwise permitted herein;
- (viii) not sell, transfer, convey, encumber or otherwise dispose of any of its capital stock or permit any reorganization or change of control of the Borrower;
- (ix) not purchase or redeem its shares or otherwise reduce its capital;
- (x) not declare or pay any dividends or repay any shareholders' loans, interest thereon or share capital;
- (xi) not make loans or advances (excluding for greater certainty, salaries and bonuses (which shall not be funded from the sale of assets) payable in the ordinary course of business and in accordance with past practice) to shareholders, directors, officers or any other related or associated party;
- (xii) permit the Lender or its representatives, at any time and from time to time with such frequency as the Lender, in its sole discretion, may require, during business hours, to visit and inspect the Borrower's premises, properties and assets (including, without limitation, weekly inventory testing) and to examine and obtain copies of the Borrower's records or other information and discuss the Borrower's affairs with the auditors, counsel and other professional advisors of the Borrower all at the reasonable expense of the Borrower;
- (xiii) forthwith notify the Lender of the particulars of any occurrence which constitutes an Event of Default hereunder or of any action, suit or proceeding, pending or to the Borrower's knowledge threatened against the Borrower (the Lender acknowledging that it has been previously advised by the Borrower of certain ongoing litigation involving John Riddell in Ontario Superior Court of Justice Court File No. CV-12-445723 (the "Riddell Litigation"), in respect of which the Borrower shall provide monthly updates with the monthly compliance certificate noted in (xiv)(d) below);
- (xiv) in a form and manner prescribed by the Lender (which may include by fax and/or e-mail), deliver to the Lender the following, signed by a senior officer of the Borrower:
  - (a) weekly by Friday of each week, a list of total invoiced sales completed during the preceding week and a list of credit notes and cash receipts received by the Borrower from its customers during the preceding week (Friday to Thursday inclusive);
  - (b) weekly by Friday of each week, the daily invoice register, credit note register and cash receipts register in respect of the preceding week (Friday to Thursday inclusive);
  - (c) weekly, by Friday of each week in respect of the preceding week (Friday to Thursday inclusive), an aged accounts receivable schedule, aged accounts



- 9 -

payable schedule, detailed inventory schedule (including, work in progress, finished goods and raw materials) and summary trial balance;

- (d) monthly, by the 25<sup>th</sup> of each calendar month, a compliance certificate in form satisfactory to the Lender;
- (e) monthly, by the 25<sup>th</sup> of each calendar month in respect of the preceding month, internally prepared financial statements for the preceding month and internally prepared financial statements for the year to date;
- (f) monthly bank statements for all bank accounts of the Borrower within 15 days of its month-end;
- (g) monthly, by the 10<sup>th</sup> of each calendar month in respect of the preceding month proof of payments, in a form satisfactory to the Lender, of Priority Claims;
- (h) annually, no later than 30 days prior to the end of the Borrower's financial year, financial and business projections for the following financial year;
- (i) annually, within 90 days of the Borrower's and the Guarantor's financial year end in respect of the preceding financial year, review engagement financial statements for the Borrower and the Guarantor that were prepared by external auditors; and
- (j) such additional financial information with respect to Borrower and the Guarantor as and when requested by the Lender;

provided that in the event that the foregoing reporting does not meet the requirements of the Lender in its discretion, the Lender shall have the right to appoint a consultant of its choosing at the expense of the Borrower to assist with the reporting;

- (xv) file all tax returns which the Borrower must file from time to time, to pay or make provision for payment of all taxes (including interest and penalties) and other potential preferred claims which are or will become due and payable and to provide adequate reserves for the payment of any tax, the payment of which is being contested;
- (xvi) not make capital expenditures in any financial year of the Borrower in excess of \$500,000 without the written consent of the Lender, which shall not be unreasonably withheld, with any capital expenditures to be reported monthly (and, for greater certainty, none of the proceeds from the Facility shall be used to finance capital expenditures);
- (xvii) not grant, create, assume or suffer to exist any mortgage, charge, Lien, pledge, security interest, including a purchase money security interest, or other encumbrance affecting any of the Borrower's properties, assets or other rights except for Encumbrances in existence, known to and approved by the Lender as the date hereof or from time to time;
- (xviii) 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;
- (xix) not change its name, merge, amalgamate or otherwise enter into any other form

of business combination with any other entity without the prior written consent of the Lender not to be used unreasonably withheld;

- (xx) keep the Borrower's assets fully insured against such perils and in such manner as would be customarily insured by companies carrying on a similar business or owning similar assets naming the Lender as first loss payee and to ensure all assets secured by the Security are in existence and in the possession and control of the Borrower; and
- (xxi) comply with all the applicable health, construction, environmental and other laws and regulations; to advise the Lender promptly of any action, requests or violation notices received from any government or regulatory authority concerning the Borrower's operations; and to indemnify and hold the Lender harmless from all liability of loss as a result of any non-compliance with such laws and regulations.

**Security and other Requirements:**

As general and continuing security for the performance by the Borrower of all of its obligations, present and future, to the Lender, including, without limitation, the repayment of advances granted hereunder and the payment of interest, fees and any other amounts provided for hereunder and under the security documents, the Borrower undertakes to grant to the Lender and to maintain at all times the following security in form satisfactory to the Lender (the "Security"), in accordance with the forms in use by the Lender or as prepared by its solicitors:

- (i) a Demand Promissory Notes evidencing the Facility;
- (ii) a General Security Agreement, on the Lender's form signed by the Borrower constituting a first ranking security interest in all personal property of the Borrower;
- (iii) an assignment of adequate all risk, business interruption, commercial general liability and property insurance (including the equipment of the Borrower in an amount not less than its appraised value) naming the Lender as first loss payee;
- (iv) a postponement and subordination of all directors, officers, shareholders, non-arm's length creditors and related party loans, to include a postponement of the right to receive any payments of both principal and interest under such loans;
- (v) a landlord waiver and consent in a form satisfactory to the Lender;
- (vi) a guarantee by the Guarantor in the limited amount of \$1,000,000 supported by a General Security Agreement, on the Lender's form constituting a first ranking security interest in all personal property of the Guarantor (registered in all applicable jurisdictions);
- (vii) an assignment of \$1,500,000 of key man life insurance over the life of Csaba Reider or undertaking to obtain the same satisfactory to the Lender within 30 days from the date of this Agreement; and
- (viii) such other security as may be required by the Lender.

**Events of Default:**

Without limiting any other rights of the Lender under this Agreement, if any one or more of the following events (an "Event of Default") has occurred and is continuing:

- 11 -

- (i) the Borrower fails to pay when due any principal, interest, fees or other amounts due under this Agreement or under any of the Security;
- (ii) the Borrower breaches any provision of this Agreement or any of the Security or other agreement with the Lender;
- (iii) the Borrower is in material default under the terms of any other contracts, agreements or otherwise with any other creditor ("material" for this purpose meaning a default that would reasonably be expected to give rise to a liability of the Borrower in excess of \$50,000 or cause a Material Adverse Effect and, for greater certainty, excluding the disputed consulting agreement between the Borrower and John Riddell which is the subject of the Riddell Litigation);
- (iv) the Lender receives from any present or future guarantor a notice proposing to terminate, limit or otherwise modify such guarantor's liability under its guarantee of the Borrower's indebtedness to the Lender under the Facility or under a security document or under any other document in favour of the Lender;
- (v) the Borrower ceases or threatens to cease to carry on business in the ordinary course;
- (vi) any default or failure by the Borrower to make any payment of, wages or other monetary remuneration payable by the Borrower to its employees under the terms of any contract of employment, oral or written, express or implied;
- (vii) any default or failure by the Borrower to keep current all amounts owing to parties other than the Lender who, in the Lender's sole opinion, have or could have a security interest, trust or deemed trust in the property, assets or undertaking of the Borrower which, in the Lender's sole opinion could rank in priority to the security held by the Lender upon the property, assets and undertaking of the Borrower;
- (viii) any breach by a guarantor of the provisions of any guarantee or other security, undertaking or covenant given to the Lender to secure any guarantee;
- (ix) if any representation or warranty made or deemed to have been made herein or in any certificate or the Security provided for herein shall be false or inaccurate;
- (x) if, in the reasonable opinion of the Lender, there is a Material Adverse Change in the financial condition, ownership or operation of any of the Borrower;
- (xi) the Borrower is unable to pay its debts as such debts become due, or is adjudged or declared to be or admit to being bankrupt or insolvent;
- (xii) any judgment or award is made against the Borrower or the Guarantor in excess of \$25,000 in respect of which there is not an appeal or proceeding for review being diligently pursued in good faith and in respect of which adequate provision has been made on the books of the Borrower or the Guarantor, as applicable; or
- (xiii) any notice of intention is filed or any voluntary or involuntary case or proceeding filed or commenced for:
  - (a) the bankruptcy, liquidation, winding-up, dissolution or suspension of general operations of the Borrower;

- 12 -

- (b) the composition, rescheduling, reorganization, arrangement or readjustment of, or other relief from, or stay of proceedings to enforce, some or all of the debts of the Borrower;
- (c) the appointment of a trustee, receiver, receiver and manager, liquidator, administrator, custodian or other official for, all or any significant part of the assets of the Borrower;
- (d) the possession, foreclosure, retention, sale or other disposition of, or other proceedings to enforce security over, all or any significant part of the assets of the Borrower; or
- (e) any secured creditor, encumbrancer or lienor, or any trustee, receiver, receiver and manager, agent, bailiff or other similar official appointed by or acting for any secured creditor, encumbrancer or lienor, takes possession of or forecloses or retains, or sells or otherwise disposes of, or otherwise proceeds to enforce security over all or any significant part of the assets of the Borrower or gives notice of its intention to do any of the foregoing;

then, in such event, the Lender may, by written notice to the Borrower declare all monies outstanding under the Facility to be immediately due and payable. Upon receipt of such written notice, the Borrower shall immediately pay to the Lender all monies outstanding under the Facility and all other obligations of the Borrower to the Lender in connection with the Facility under this Agreement. The Lender may enforce its rights to realize upon its security and retain an amount sufficient to secure the Lender for the Borrower's obligations to the Lender.

Nothing contained in this section shall limit any right of the Lender under this Agreement to demand payment of the Facility at any time.

**Evidence of  
Indebtedness:**

The Lender shall maintain records evidencing the Facility. The Lender shall record the principal amount of the Facility, the payment of principal and interest on account of the Facility, and all other amounts becoming due to the Lender under this Agreement.

The Lender's accounts and records constitute, in the absence of manifest error, conclusive evidence of the indebtedness of the Borrower to the Lender pursuant to this Agreement.

**Representations  
and Warranties:**

The Borrower represents and warrants to the Lender that:

- (i) each of the Borrower and the Guarantor is a corporation duly incorporated, validly existing and duly registered or qualified to carry on business in the Province of Ontario or any other jurisdiction where they may carry on business;
- (ii) the execution, delivery and performance by the Borrower and the Guarantor of this Agreement has been duly authorized by all necessary actions and do not violate the constating documents or any Applicable Laws or agreements to which the Borrower and the Guarantor is subject or by which they are bound;
- (iii) the Borrower's and the Guarantor's financial statements most recently provided to the Lender fairly present their financial positions as of the date thereof and its results of operations and cash flows for the fiscal period covered thereby, and since the date of such financial statements, there has occurred no Material Adverse Change in the Borrower's and the Guarantor's business or financial

- 13 -

condition;

- (iv) there is no claim, action, prosecution or other proceeding of any kind pending or threatened against the Borrower or the Guarantor or any of their respective assets or properties before any court or administrative agency which relates to any non-compliance with any environmental law which, if adversely determined, might have a material adverse effect upon its financial condition or operations or its ability to perform its obligations under this Agreement or any of the Security, and there are no circumstances of which the Borrower or the Guarantor is aware which might give rise to any such proceeding which has not been fully disclosed to the Lender;
- (v) the Borrower and the Guarantor have good and marketable title to all of their properties and assets, free and clear of any Encumbrances, other than as may be provided for herein;
- (vi) no event has occurred which constitutes, or which, with notice, lapse of time, or both, would constitute, an Event of Default, a breach of any covenant or other term or condition of this Agreement or any of the Security given in connection therewith;
- (vii) the Borrower and the Guarantor have filed all tax returns which were required to be filed by them, if any, paid or made provision for payment of all taxes and potential prior ranking claims (including interest and penalties) which are due and payable, if any and provided adequate reserves for payment of any tax, the payment of which is being contested, if any; and
- (viii) the Borrower's obligation to complete this transaction is not dependent upon any condition whatsoever, and that the Lender assumes no obligation to assist the Borrower to complete the transaction in any way, except to make available the Facility as contemplated herein.

**Field Examinations /  
Appraisals:**

- (i) In addition to weekly inventory testing / audits at the discretion of the Lender, the Borrower acknowledges that the Lender and its examiners shall be permitted to conduct periodic field examinations of the Collateral and operations of the Borrower, such examinations not to exceed four (4) in any calendar year prior to an Event of Default and more frequently as the Lender may determine in its sole discretion thereafter.
- (ii) The Borrower further acknowledges that the Lender shall be permitted to obtain two (2) inventory valuations and one (1) equipment valuation in any calendar year prior to an Event of Default which is continuing and more frequently as the Lender may determine in its sole discretion thereafter.

**Environmental:**

In relation to the Borrower's business, assets and projects: the Borrower is operating and will continue to operate in conformity with all environmental laws; there are no contaminants, pollutants or other hazardous substances (including, without limitation, asbestos, products containing urea formaldehyde or polychlorinated biphenyl or any radioactive substances) have been or are now stored or located at any property from which the Borrower operates its business (collectively, the "Properties") and no order, approval, direction or other governmental or regulatory notice relating to the environment has been threatened against, is pending or has been issued with respect to the Properties or the operations of the business being conducted at the Properties; the Borrower is not aware of any pending or threatened action, suit or proceedings relating to any actual or alleged environmental violation from or at the Properties, nor have any proceedings been

or are being instituted to make the Borrower or any other owner of the subject property comply with environmental laws and regulations; the Borrower will ensure that all of its property and assets comply with existing legislation and will remain free of any environmental problem; the Borrower will inform the Lender immediately upon becoming aware of any environmental problem or issue and will provide the Lender with copies of all communications with environmental authorities and all studies or assessments prepared on the Borrower's behalf, all as soon as received by the Borrower; the Borrower also agrees to pay the cost of any external environmental consultant engaged by the Lender to effect an environmental audit and the cost of any environmental rehabilitation, removal or repair necessary to protect, preserve or remediate the assets, including any fine or penalty the Lender is obligated to incur by reason of any statute, order or directive by a competent authority. The Borrower agrees to indemnify the Lender for any liability arising from an environmental problem including, without limitation, for all decontamination and decommissioning costs or for damages incurred by the Lender or its agents as a result of such contamination. For the purposes of this Agreement, an "environmental problem" means an act of non-compliance to a law, regulation, etc. or soil and/or underground water that contains one or many pollutants (contaminants) in levels of concentration that exceed parameters or norms applicable for the present use and intended use of any of the Borrower's personal or real property including leased property.

In the event any environmental report shows that decontamination is required the Borrower undertakes to forthwith carry out decontamination at its own expense should this be required or requested.

**Confidentiality:**

The Borrower and the Guarantor agree to keep all of the information and terms related to this Agreement confidential. In particular, the existence of this Agreement or the discussions surrounding this Agreement cannot be disclosed to any party, including other creditors, without the Lender's prior written consent. The parties acknowledge and agree that information and terms related to this Agreement have been disclosed to Danbury Financial Services in connection with the Borrower's ongoing discussions with Danbury Financial Services and have been or may be disclosed to BMO and shall not be considered breaches of the foregoing confidentiality provisions.

**General:**

Credit: The Borrower and the Guarantor authorize the Lender, hereinafter, to obtain such factual and investigative information regarding the Borrower or the Guarantor from others as permitted by law, to furnish other consumer credit grantors and credit bureaus such information. The Lender, after completing credit investigations, which it will make from time to time concerning the Borrower and the Guarantor, must in its absolute discretion be satisfied with all information obtained, prior to any advance being made under the Facility.

The Borrower and the Guarantor further authorize any financial institution, creditor, tax authority, employer or any other person, including any public entity, holding information concerning the Borrower or the Guarantor or their assets, including any financial information or information with respect to any undertaking or suretyship given by the Borrower or the Guarantor, to supply such information to the Lender in order to verify the accuracy of all information furnished or to be furnished from time to time to the Lender and to ensure the solvency of the Borrower and the Guarantor at all times.

Non-Merger: The provisions of this Agreement shall not merge with any of the Security, but shall continue in full force and effect for the benefit of the parties hereto. In the event of an inconsistency between this Agreement and any of the Facility and security documentation, including the Security, the provisions of this Agreement shall prevail.

Further Assurances and Documentation: The Borrower and the Guarantor shall do all

- 15 -

things and execute all documents deemed necessary or appropriate by the Lender for the purposes of giving full force and effect to the terms, conditions, undertakings hereof and the Security granted or to be granted hereunder.

**Severability:** If any provisions of this Agreement is or becomes prohibited or unenforceable in any jurisdiction, such prohibition or unenforceability shall not invalidate or render unenforceable the provision concerned in any other jurisdiction nor shall it invalidate, affect or impair any of the remaining provisions of this Agreement.

**Marketing:** The Lender shall be permitted to use the name of the Borrower and the amount of the Facility for advertising purposes.

**Governing Law:** This Agreement and all agreements arising hereinafter shall be deemed to have been made and accepted in the City of Toronto, Ontario and construed in accordance with and be governed by the laws of the Province of Ontario and of Canada applicable therein.

**Counterparts:** This Agreement, the Security and all agreements arising hereinafter may be executed in any number of separate counterparts by any one or more of the parties thereto, and all of said counterparts taken together shall constitute one and the same instrument. Delivery of an executed counterpart of this Agreement by telecopier, PDF or by other electronic means shall be as effective as delivery of a manually executed counterpart.

**Assignment and Syndication:** This Agreement when accepted and any commitment to advance, if issued, and the Security in furtherance thereof or any warrant or right may be assigned by the Lender, or monies required to be advanced may be syndicated by the Lender from time to time. For greater certainty, the Lender may assign or grant participation in all or part of this Agreement or in the Facility made hereunder without notice to and without the Borrower's consent. The Borrower may not assign or transfer all or any part of its rights or obligations under this Agreement, any such transfer or assignment being null and void insofar as the Lender is concerned and rendering any balance then outstanding under the Facility immediately due and payable at the option of the Lender. Any information provided to any syndicate members shall be communicated to the members on a confidential basis and shall be maintained by the syndicate members on a confidential basis and used by them solely in connection with the Facility.

**Joint and Several:** Where more than one person is liable as the Borrower or Guarantor for any obligation under this Agreement, then the liability of each such person for such obligation is joint and several with each other such person.

**Time:** Time shall be of the essence in all provisions of this Agreement.

**Whole Agreement, Amendments and Waiver:** This Agreement, the Security and any other written agreement delivered pursuant to or referred to in this Agreement constitute the whole and entire agreement between the parties in respect of the Facility. There are no verbal agreements, undertakings or representations in connection with the Facility. No amendment or waiver of any provision of this Agreement will be effective unless it is in writing signed by the Borrower, the Guarantor and the Lender. No failure or delay on the part of the Lender in exercising any right or power hereunder or under any of the Security shall operate as a waiver thereon. No course of conduct by the Lender will give rise to any reasonable expectation which is in any way inconsistent with the terms and conditions of this Agreement and the Security or the Lender's rights thereunder.

**Expiration:** This Agreement must be accepted by the Borrower and the Guarantor by no later than 5:00 pm on January 18, 2013, after which this Agreement will expire.

Doc#2030887v1

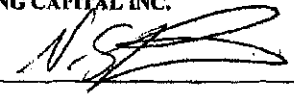
- 16 -

If the terms and conditions of this Agreement are acceptable to you, please sign in the space indicated below and return the signed copy of this Agreement to us. Acceptance may also be effected by facsimile or scanned transmission and in counterpart.

We thank you for allowing us the opportunity to provide you with this Agreement.

Yours truly,

**BRIDGING CAPITAL INC.**

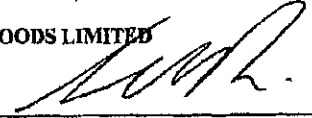
Per:   
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

I have authority to bind the Corporation.

**ACCEPTANCE**


The undersigned hereby accepts this Agreement as of this 18<sup>th</sup> day of January, 2013.

**SUN PAC FOODS LIMITED**

Per:   
Name: Csaba Reider  
Title: President

I have authority to bind the Corporation.

**LIQUIBRANDS INC.**

Per:   
Name: Csaba Reider  
Title: President

I have authority to bind the Corporation.



- 17 -

Schedule A  
Definitions

In addition to terms defined elsewhere in this Agreement, the following terms shall have the following meanings:

- (a) "Applicable Laws" means, with respect to any person, property, transaction or event, all present or future statutes, regulations, rules, orders, codes, treaties, conventions, judgments, awards, determinations and decrees of any governmental, regulatory, fiscal or monetary body or court of competent jurisdiction, in each case, having the force of law in any applicable jurisdiction.
- (b) "BMO" means Bank of Montreal including Harris Bank.
- (c) "Business Day" means any day other than a Saturday or a Sunday or any other day on which banks are closed for business in Toronto.
- (d) "Collateral" means all of the Borrower's and the Guarantor's personal property.
- (e) "Disbursement Accounts" means specifically account / transit numbers 1053912/0470 (CAD\$) and 4612684/0002 (US\$) at BMO from which the Borrower shall make all of its payments and disbursements.
- (f) "Encumbrances" means any mortgage, Lien, pledge, assignment, charge, security interest, title retention agreement, hypothec, levy, execution, seizure, attachment, garnishment, right of distress or other claim in respect of property of any nature or kind whatsoever howsoever arising (whether consensual, statutory or arising by operation of law or otherwise) and includes arrangements known as sale and lease-back, sale and buy-back and sale with option to buy-back or other agreement to sell or give a security interest in and any filing of or agreement to give any financing statement under the PPSA or Uniform Commercial Code (or equivalent statutes) of any jurisdiction.
- (g) "Equipment Appraisal" means the appraised forced sale value of the Borrower's machinery and equipment as determined by a current appraisal of same conducted at the Borrower's expense by Hilco and addressed to and delivered to the Lender and in a form and with content satisfactory to the Lender in its discretion.
- (h) "Lien" means any mortgage, charge, pledge, hypothecation, security interest, assignment, encumbrance, lien (statutory or otherwise), charge, title retention agreement or arrangement, restrictive covenant or other encumbrance of any nature or any other arrangement or condition that in substance secures payment or performance of an obligation.
- (i) "Material Adverse Change" means any change, condition or event which, when considered individually or together with other changes, conditions, events or occurrences could reasonably be expected to have a Material Adverse Effect.
- (j) "Material Adverse Effect" means a material adverse effect on (i) the business, revenues, operations, assets, liabilities (contingent or otherwise), financial condition or prospects of the Borrower; (ii) on the rights and remedies of the Lender under this Agreement and the Security; (iii) on the ability of the Borrower to perform its obligations under the Credit Documents; or (iv) on the Liens created by the Security Agreements.
- (k) "person" includes a natural person, a partnership, a joint venture, a trust, a fund, an unincorporated organization, a company, a corporation, an association, a government or any department or agency thereof, and any other incorporated or unincorporated entity.

- 18 -

- (l) **"PPSA"** means the *Personal Property Security Act* (Ontario) as the same may be amended from time to time.
- (m) **"Priority Claims"** means the aggregate of any amounts accrued or payable by the Borrower which under any law may rank prior to or *pari passu* with any of the Security Agreements or otherwise in priority to any claim by the Lender for payment or repayment of any amounts owing under this Agreement, including: (i) wages, salaries, commissions or other remuneration; (ii) vacation pay; (iii) pension plan contributions; (iv) amounts required to be withheld from payments to employees or other persons for federal and provincial income taxes, employee Canadian Pension Plan contributions and employee Employment Insurance premiums, additional amounts payable on account of employer Canada Pension Plan contributions and employer Employment Insurance premiums; (v) harmonized sales tax; (vi) provincial sales or other consumption taxes; (vii) Workers' Compensation Board and Workplace Safety and Insurance Board premiums or similar premiums; (viii) real property taxes; (ix) rent and other amounts payable in respect of the use of real property; (x) amounts payable for repair, storage, transportation or construction or other services which may give rise to a possessory or registerable lien; (xi) claims which suppliers could assert pursuant to Section 81.1 or Section 81.2 of the *Bankruptcy and Insolvency Act* (Canada); and (xii) WEPPA Claims.
- (n) **"Statutory Encumbrances"** means any Encumbrances arising by operation of Applicable Laws, including, without limitation, for carriers, warehousemen, repairers', taxes, assessments, statutory obligations and government charges and levies for amounts not yet due and payable or which may be past due but which are being contested in good faith by appropriate proceedings (and as to which there are no other enforcement proceedings or they shall have been effectively stayed).
- (o) **"WEPPA Claims"** means any claims made against the Borrower pursuant to the *Wage Earner Protection Program Act*, S.C. 2005, c. 47, s.1, as the same may be amended, restated or replaced from time to time.

Words importing the singular include the plural thereof and vice versa and words importing gender include the masculine, feminine and neuter genders.