



**The Law Society
of Manitoba**

INCORPORATED 1877 | INCORPORÉ EN 1877

CORPORATE COMMERCIAL

Chapter 3

Financing

April 2025

TABLE OF CONTENTS

TABLE OF CONTENTS	1
A. TYPES AND SOURCES OF FINANCING.....	3
1. Introduction.....	3
2. Equity v. Debt Financing.....	3
3. Sources of Financing	7
B. SECURITY.....	15
1. Introduction.....	15
2. Real Property Security.....	15
3. Personal Property Security	16
4. Security under Section 427 of the Bank Act.....	19
5. Loan Agreement	20
C. DUE DILIGENCE - SEARCHES AND CERTIFICATES	23
1. The Capacity of the Borrower to Borrow Funds/Grant Security/Issue Shares ..	23
2. Searches and Certificates Checklist	25
D. OPINIONS IN COMMERCIAL TRANSACTIONS	33
1. Introduction.....	33
2. When is an Opinion Necessary?	33
3. Professional Approach When Requesting or Giving an Opinion	35
4. Opinion Format.....	36
5. Scope of Investigations	37
6. Facts and Assumptions	38
7. Substantive Part of the Opinion.....	39
8. Qualifications	50
9. Signature	53
E. FORMS, PRECEDENTS AND CHECKLISTS.....	54
1. Debenture	54
2. Pledge of Debenture	73

3. Guarantee.....	75
4. Loan Agreement	79
5. Certificate of Incumbency	93
6. Certificate of Authority	94
7. Certificate of Non-Restriction	96
8. Searches and Certificates Checklist	97
9. Occupancy Certificate Letter	99
10. Verification of Use Letter	100
11. Aeronautics Act Letter	101
12. The Transportation Infrastructure Act.....	102
13. Waterways Letter	103
14. Utilities Letter	104
15. Request for Final Water Account Balance	105
16. Environmental Planning Letter.....	106
17. Department of Labour and Immigration - Inspection and Technical Services Letter.....	107
18. Workplace Health and Safety Letter	108
19. Manitoba Department of Environment and Climate Change - Environmental File Search Request Form	109
20. Section 427 of the Bank Act Letter	112
21. Registrar of Bankruptcy Search.....	113
22. Department of Labour Letter	114
23. The Corporation Capital Tax Act Request and Authorization	115
24. The Health and Post Secondary Education Tax Levy Act Letter	116
25. Canada Revenue Agency District Taxation Office Letter and Authorization ...	117
26. Excise Tax Letter (Goods and Services Tax Search).....	118
27. Business Tax Search	119
28. Workers Compensation Act Compliance Certificate	120
29. Opinion Letter	122
30. SCHEDULE "A".....	127

A. TYPES AND SOURCES OF FINANCING

1. Introduction

Lawyers are not expected to locate funds for their clients, but they should appreciate the different sources and types of financing potentially available, and what a potential investor or lender is likely to look for in a financing package, including security. A borrower may (and often does) combine two or more types of financing. A lender may (and often does) insist that such be the case and that certain ratios between different forms of financing be maintained.

2. Equity v. Debt Financing

a) Equity Financing

Equity financing is ordinarily known to mean financing through the sale to a third party of shares in the corporate borrower. Arguably, it could also be used to describe the investment by a third party in the business carried on by a partnership or other business entity through the investor's purchase of a certain percentage partnership or other interest. For this chapter, however, equity financing will be discussed in the corporate context only.

Equity financing tends to be capital invested for a long term in the hope of deriving long-term profits.

It is the riskiest kind of capital financing from the investor's point of view for the following reasons:

- No return is guaranteed for the use of such capital; no dividends have to be paid on the shares purchased unless the articles of the corporation provide for the particular share class to pay a guaranteed (subject to corporate solvency tests), fixed and, often, cumulative dividend to the shareholder.

Thus, an equity investor will often insist on purchasing what is ordinarily called preferred or preference shares, as opposed to what is ordinarily called common shares, in respect of which dividends are paid at the discretion of the directors of the corporation.

From the corporation's point of view, preferred shares, if used, should be non-voting to maintain control in the hands of the original shareholders who own the common shares in the corporation (or possibly common and preferred shares). See Chapter 2 Corporations for the various rights which can be given to different share classes (e.g., the investor/preferred shareholder's

right to sit on the board of directors of the corporation in the event fixed dividends remain unpaid for a certain length of time) to tailor them for the particular client's financing and other requirements;

- The capital is not assured of being repaid unless the corporation's business is successful, and then only upon the winding up or dissolution of the corporation (distributions to shareholders), unless the articles of the corporation provide for earlier repayment through a redeemability feature attached to the share class;
- Subject to any redeemability feature of the investor's share class, the investor will be repaid the capital upon the winding-up or dissolution of the corporation after all secured and unsecured creditors, including shareholders who have made loans to the corporation (debt financiers), have been paid;
- Equity financing cannot be secured.

Equity financing usually involves a shareholder agreement. Such an agreement is necessary to protect the interests of the investor and the original shareholder(s) and is particularly required to protect the interests of any minority shareholder.

A shareholder agreement may contain provisions dealing with the obligation of each party to contribute monies for further financing to guarantee the corporation's bank loans, if required, and provisions for penalties if any party fails to fulfil their obligations. There might be restrictions prohibiting payments of unusually large salaries or other distributions to the shareholders which would impair the surplus available for the payment of dividends to the investor and other shareholders. It might also contain restrictions against the creation of any new share classes or further issuances of shares which would dilute the interests of the shareholders.

Extraordinary acts such as amending the articles or by-laws of the corporation, changing the directors, reducing capital, repaying shareholders' loans, changing the nature of the business, incurring major capital expenditures, disposing of all or substantially all of the business, or winding-up might require the consent of a certain percentage or all of the shareholders.

b) Debt Financing

Debt financing or loan capital is capital advanced to the borrower temporarily, for an expressed term or repayable on demand, in consideration of the payment of a fixed or floating rate of interest on the outstanding balance thereof during the term of the loan.

The interest rate is dependent upon many factors, including the degree of risk to the lender and the amount of security available. The maturity date of a fixed-term loan may be accelerated by certain expressed events of default on the part of the borrower.

A floating rate of interest is ordinarily expressed as being a certain number of percentage points above or below the lender's prime rate of interest, being the interest rate charged on Canadian dollar loans to its most creditworthy commercial customers.

Note that a reference to prime rate alone in any loan or security documentation is insufficient. Prime rate must be defined, at least in as much detail as above, so that it is an amount determinable by a third party (most importantly, a court).

Debt financing may be extended on a short or long-term basis.

Short-term debt (often a demand rather than a term loan) is ordinarily used to finance current assets, such as inventory and accounts receivable, which are easily liquidated and collected. The lender usually requires, at the very least, a security interest in the assets being financed.

Long-term debt is normally debt with a fixed term and a repayment date which matures more than one year after its creation. Long-term debt is ordinarily used to acquire or improve fixed assets, such as plant, machinery and equipment, or to buy an existing business or property, or to increase working capital (the excess of current assets over current liabilities). Again, the lender usually requires, at the very least, a security interest in the assets being financed.

Shareholders may make loans to their corporations and become unsecured or secured debt creditors. They are considered to be an inferior type of lender and an unsecured debt creditor will be repaid after all other debt creditors (but before distributions on shareholdings to shareholders). A secured debt creditor will generally be subordinated to all other secured debt creditors and will be repaid after all other secured debt creditors and priority debt creditors.

Lenders and investors generally prefer debt financing to equity financing due to:

- a guaranteed return on capital through the payment of interest (assuming the borrower can service the debt from the successful operation of the borrower's business);
- the ability to take security on the debt;
- the right to be paid, if secured, in priority to unsecured creditors, and, if unsecured, in priority to shareholders.

Borrowers generally prefer debt financing to equity financing because:

- interest payable on any loan is deductible by corporate borrowers for tax purposes, whereas dividends, being a distribution of profits, are not;
- the shareholders or partners of the corporate borrower may retain a higher degree of control over the operation of the corporation's business.

However, a borrower may prefer equity financing since there is no requirement to repay the invested amount and, unlike debt financing, the shareholders are not required to provide a personal guarantee for all or part of the monies invested by the investor.

c) Leverage/Dilution

A key factor for the businessperson as to whether to seek to borrow or to raise additional equity will be the availability of leverage.

For example, if a corporation earns pre-tax income of 20% on the fair market value of the owner's total investment (equity and shareholders' loans), it would be to the owners' advantage to raise debt capital, so long as the interest rate is less than 20%. The return on the borrowed money would be higher than the interest cost, with the result that the owners would increase their profits.

The opposite of leverage is dilution. If a profitable corporation unnecessarily introduces new equity participants into the corporation, there will be more equity holders to share in future profits, and the claim of the original shareholders to future profits will be reduced or diluted.

It is not in a creditor's interest to have its corporate borrower over-leveraged, because the equity base protecting the creditor may be inadequate. For example, if the debt is four times the equity and the corporation's business decreases in value by one-quarter through business setbacks, the equity will have been depleted and the assets will be insufficient to retire the debt. More new businesses fail because they are initially under-capitalized by the owner than for any other reason.

Creditors want to see as much equity and debt which is junior (lower ranking in priority) as possible, to provide an additional cushion for their investment. Generally speaking, they do not like the ratio of equity to debt to fall below 1:3 and they much prefer a 1:2 or 1:1 ratio.

It should be noted that even if debt financing is preferred, applicable legislation may force investors to make an equity investment. Where a corporate borrower wishes to raise equity capital but cannot because to do so would contravene, for example, the *Competition Act* or *The Farm Lands Ownership Act*, the reverse may be true as well.

3. Sources of Financing

a) The Prudent Borrower

All sources of financing should be approached early enough for an informed decision to be made by the lender. Government sources especially should be approached as soon as is reasonably possible, because under most government programs assistance will be provided only if government approval has been obtained before any commitment is made to the borrower.

The more information about the business a borrower can initially supply to the prospective lender, the faster and easier it will be for the lender to make a decision. A borrower should prepare a business plan and a financing proposal.

A business plan should be a written summary of the overall activities of the borrower. It should include information detailing markets, competition, products and marketing strategy, production technique and research programs, management, accurate costs of production and the business's sources and uses of funds. It should also include past financial statements as well as future cash flow and capital use projections. It should describe the past, present and future of the business.

When it is properly prepared, a business plan becomes a blueprint for financing. It should be complete, organized and factual.

b) The Prudent Lender

The prudent lender will seek substantial information concerning a proposed borrower to determine the amount of risk being assumed.

First, the lender will wish to know the purpose of the loan: whether the business is at the very early stage of being established, has started up, is in a mature state of development, is seeking to expand, or has been in a downturn but is about to improve its financial situation.

Also, the lender will wish to know a fair amount concerning the persons running the business. It will be relevant to know their business experience, their skills and whether the business is viewed as a full-time operation.

A lender will carefully examine the borrower's financial statements, if any (if the business is just starting, the business plan will be all the borrower has). Although audited financial statements are more expensive for a business to prepare than unaudited statements, it is often the case that a business with audited financial statements will be able to obtain a loan more quickly than a business with unaudited

statements, since a prudent lender will wish to examine the assets and affairs of a business with unaudited financial statements much more carefully than would otherwise be the case.

The balance sheet will be reviewed item by item by the lender to compute the real net worth or shareholders' equity of the business, having regard not just to the amount shown on the balance sheet but also to the market value of the assets of the borrower. Attempts will be made to compute the return on investment, namely the profit of the business after taxes as a percentage of the net worth. A high return on investment will likely result in a lender being far more willing to advance funds.

A prudent lender will normally consider what the working capital of the business is (i.e. the excess of current assets over current liabilities), to be satisfied that it can pay its debts as they come due. If the ratio of current assets to current liabilities is less than 2:1, a lender will proceed with caution.

Chartered banks have set formulas for calculating margins, or how much they will lend against how much value in different classes of assets, e.g., inventory, equipment, real property and accounts receivable.

c) Financing Advice

If a client requires sophisticated advice as to possible sources and types of financing, the client should consider retaining a management consultant. There are management consultants who specialize as financing counsellors, including those who specialize in obtaining government financing.

d) Internal Financing

i. Cash

A business may be able to use cash on hand from time to time to meet its obligations. It may be able to generate more cash by staggering the dates on which accounts are paid.

ii. Accounts Receivable

A business should determine how quickly it is collecting its accounts receivable and whether the speed with which it is collecting them is in line with others in the same industry. In most industries, terms of cash or 30, 60 or 90 days are standard.

A business should consider whether its accounts receivable could be collected more quickly by offering incentives, such as a discount, or disincentives, such as charging interest (expressed as an annual rate) on accounts remaining due after a certain period.

A business should also ensure that it is billing for its services and merchandise as quickly as possible after they are provided. If accounts receivable can be more quickly converted to cash, the need for external financing can be reduced.

iii. Inventories

A business should determine whether it has an acceptable level of inventories or whether it has too much slow-moving inventory. An excess of inventory or work in progress results in the tying up of money (and, perhaps warehouse or other space) and is an additional drain on the business's finances.

iv. Fixed Assets

Many businesspeople feel comfortable owning all of their buildings and equipment. They must consider whether this is the most efficient use of their money.

For example, a building can be mortgaged to raise funds or sold and leased back from the purchaser to free up capital.

Equipment can often be leased (sometimes with an option to purchase) rather than owned or purchased under a conditional sales contract, so that the cost of acquisition is spread out over time.

v. Accounts Payable

Trade creditors are an important source of funds for most businesses. Often the terms of purchase from tradespersons and suppliers do not require a purchaser to pay until 30, 60 or 90 days after purchase. By allowing a business time to pay for inventory or raw materials or supplies, the business's trade creditors, in effect, are granting to the business an unsecured, interest-free loan of the amount owing.

However, in today's economy, many suppliers who grant time to pay will have the business sign an agreement which grants them a security interest in the assets supplied. Note also the ability of a supplier, without any express agreement, to claw back what it has supplied in certain circumstances.

vi. Owners

The owners of a business, whether shareholders, partners, a sole proprietor, etc., should be prepared to commit a sufficient amount of their personal resources to fund the equity of the business. They should also be prepared for the fact that many external sources of financing will often require that the owners commit as much of their personal holdings as they reasonably can to the business and personally guarantee the repayment of any borrowed funds.

Owners may contribute funds by way of subscriptions for shares in their corporation, by shareholder loans to their corporation (which can be

unsecured or secured), by depositing funds into their internal partnership account, by not declaring dividends if a corporation, or not paying out of profits if a partnership, by not drawing director's or officer's fees if a corporation, and by not drawing any (or more than a minimum) salary, whatever the business entity.

e) **External Financing**

i. **Banks and Credit Unions**

Banks and credit unions are often the most direct, most readily accessible and cheapest source of funding. They typically provide two sorts of loans to the commercial borrower:

- **An operating loan or a revolving line of credit is a form of short-term debt financing.** This is an agreement whereby the lender agrees with the borrower to honour cheques drawn on it up to a specified amount, and as funds are received by the borrower from its operation, they are applied to reduce the operating loan, thus restoring the amount which may be borrowed again when needed.

This type of loan is normally payable on demand by the lender and is shown as a current liability of the borrower. In practice, such a loan is often left outstanding for several years, as long as the borrower is servicing the credit facility (paying interest) and not in default of any of its covenants with the lender, and as long as there exist sufficient current assets of the borrower to support the security granted in support of the loan. See section B. Security below.

- **A term loan is often used for the purchase of a capital asset or to increase the working capital of the borrower.** In long-term lending (as contrasted with short-term lending), the risk is heightened for the lender through the extended exposure of the loan funds to the operating hazards of the business, the dependence for normal repayment on the uncertainties of future operating cash flow, and the possible depreciation of the assets charged to secure the loan. See section 2. b) Debt Financing above.

Credit analyses must involve a greater emphasis on earnings trends and strengths and weaknesses during cycles of the business. As well, the industry's outlooks and management's competence must be assessed. Greater margins of safety will be required than for a short-term or demand loan.

The provisions of a term loan are often set out in a loan agreement or what is sometimes referred to as a commitment letter, a credit facilities letter, or a confirmation of credit facilities letter ("loan agreement"). A loan agreement may also encompass the provisions regarding a lender's short-

term loan to a borrower and any other credit arrangements between the parties including, credit card facilities, overdraft facilities, foreign exchange facilities and leasing facilities. See section B. 5. Loan Agreement below.

ii. Institutional Lenders

Depending upon the kind of fixed assets it owns in which it may grant security, a borrower may be able to borrow from a variety of institutional lenders such as insurance companies, trust companies or finance companies.

For example, industrial finance companies will ordinarily supply credit to a borrower to finance machinery and equipment using either a conditional sales agreement or a leasing agreement.

Loans by institutional lenders range from short to long-term, moderate to very high interest rates and with or without some equity participation on the part of the lender.

iii. Manufacturers

Frequently a manufacturer and supplier of equipment will, to meet or beat the competition, provide financing for the purchase of the equipment. This type of financing may involve a conditional sales contract, a lease or extended credit terms.

iv. Leasing Companies

Leasing companies and other similar companies, such as bank leasing subsidiaries, will finance the purchase of plant, machinery and equipment through lease financing.

The leasing company acts as an intermediary: the borrower undertakes all negotiations with the manufacturer, and the leasing company, acting on instructions, purchases the asset selected by the borrower and leases it to the borrower at a rental sufficient to cover the cost of the asset and interest. The term of the lease will be negotiated between the borrower and the leasing company and may be for as long as the economic life of the asset.

Leasing may be advantageous to a corporate borrower from an income tax point of view. Generally speaking, a corporation can write off as an expense against income the full amount of the lease payments under an equipment lease, but cannot write off the principal portion of monies borrowed to buy equipment. Depending upon the amount of depreciation a corporation could claim on equipment and the size of loan payments as compared to the size of lease payments, the corporation may be able to reduce expenses if it leases equipment rather than purchases it.

Care should be taken in drafting the terms of an equipment lease to ensure that Canada Revenue Agency treats it as a lease and not as a disguised conditional sales agreement.

Financing leases will generally have a term of longer than one year and therefore fall within the provisions of *The Personal Property Security Act* (the “PPSA”) and should be registered. Conditional sales contracts should also be registered in the [Personal Property Registry](#).

v. Factoring

There are several factoring companies in Canada that will purchase or lend against a borrower’s accounts receivable (at a discount), which may include the lender undertaking to collect them on a notification or non-notification basis and with or without recourse to the borrower itself. Factoring is more common in startup entities that do not have sufficient assets or operating history to obtain regular financing from a bank or credit union; however, factoring can be used as an additional form of financing for established borrowers.

Financing of stock through warehouse receipts is also available, although this method of financing is used to a much lesser extent.

vi. Venture Capital Companies

There are many sources of venture capital funding in Canada. Venture capitalists are usually private or publicly sponsored pools of capital, such as labour-sponsored funds. Usually, they are interested in substantial but minority equity investments (20 - 49%).

While not involving themselves in the day-to-day operations of the business, venture capitalists will expect to have a say in all significant decisions. Often, they will require a seat on the board of the corporate borrower and a shareholders’ agreement which will include a buy-sell arrangement among the major shareholders, control over major capital expenditures and financing, control over salaries and dividend policies, frequent periodic reporting, etc.

Venture capitalists believe their security is in the competence and performance of management. Most venture capitalists invest in private companies. They are not long-term investors, as equity investors go, but expect to see a return of their capital within five to eight years of investment.

Manitoba has tax incentives available for venture capital investors for companies that meet the requirements of the *Small Business Venture Capital (SBVC) Tax Credit Regulation Man Reg. 181/2007* under *The Income Tax Act (Manitoba)*.

vii. Customers

Occasionally, customers may be encouraged to make advance payments before the production or delivery of goods or services, especially where customers are seeking a steady and reasonably priced source of merchandise. Such prepayments may form a fairly permanent source of working capital.

viii. Public Offering

A corporation or limited partnership may raise funds by way of a public offering of its shares or limited partnership interests, using an Offering Memorandum or Prospectus as prescribed by the Securities Commission and following the National Instrument obligations.

This type of financing is usually attempted only by very large businesses, as generally very large amounts of money are involved. The process is complicated and can be expensive, partly because fees paid to legal counsel and investment dealers tend to be substantial.

ix. Employees

Frequently employees have capital or access to capital that they may be willing to commit to a business whose products, processes and people they know and trust and whose progress they can monitor. Key employees may be happy to share some of the risks and rewards of the business and will doubtless be better motivated once they have invested. Such investment may be by way of equity or debt financing.

x. Government Agencies

There are numerous federal and provincial programs under which grants, loans and other incentives may be available to a business. Some of the loans are forgivable and some are interest-free. Some require that a business locate in a certain area or hire from a certain group of people to qualify for funds. Some are designed to offer assistance only in specific areas of industrial activity.

See the federal government [Innovation, Science and Economic Development Canada](#) website for further information.

The [*Business Development Bank of Canada*](#) ("BDC") is a well-known alternative source of funding. It is a small to medium-size enterprise business-only lender. The objectives of the BDC are to promote and assist in the establishment and development of business enterprises in Canada, giving particular consideration to the needs of small businesses.

Transactions are carefully structured having regard to the assets of the business, the assets of the applicants for the loan and the cash flow of the business. The BDC lends at slightly higher rates than the chartered banks, but has more flexibility on credit risk criteria and may provide better payment terms.

The BDC also offers management counselling and training services to assist owners and managers in improving their methods of doing business. See the BDC website for further information.

Other government agencies that provide debt financing include [*Farm Credit Canada*](#) and [*Export Development Canada*](#).

B. SECURITY

1. Introduction

In connection with a loan to finance a purchase, the lender will take security over the assets of the purchaser/borrower. This means that the borrower signs certain agreements in favour of the lender which will allow the lender to seize and sell the borrower's assets if it does not repay the loan.

There are two types of security over assets, security over real property (security over the borrower's land and buildings) and security over personal property (property other than land and buildings). Typical examples of personal property are the borrower's inventory, accounts receivable, manufacturing or other equipment, furniture, motor vehicles and cash.

Except for one narrow type of security which is provided for in the *Bank Act*, security and the registration of security are matters governed by provincial law and, accordingly, vary by jurisdiction. The Yukon, the Northwest Territories, British Columbia, Alberta, Saskatchewan, New Brunswick, Nova Scotia, Prince Edward Island and Newfoundland all have Personal Property Security Acts which are substantially similar to the PPSA in Manitoba, from a legal point of view, but the forms and procedures may vary. Ontario has a *Personal Property Security Act* which remains different from the Personal Property Security Acts in the other provinces. Quebec's security law is governed by its *Civil Code*. See Chapter 4 of this Corporate Commercial module for a more complete discussion of the PPSA.

The provinces also have different legislation for the registration of security against real property. The legislation in provinces with a Torrens land titles system is markedly different from those with a Registry system.

2. Real Property Security

a) Mortgages

Mortgages taken in connection with financing may resemble the typical mortgage taken on the purchase of residential property, where the mortgage sets out the interest rate, the term of the mortgage and the amounts and dates of each payment. However, often the terms of the financing (interest rate, payment amounts and dates) will be set out in a separate loan agreement and not in the mortgage itself.

In that case, the borrower will sign a demand mortgage which, instead of the usual payment terms, sets out only the amount borrowed and a maximum interest rate. If the borrower fails to make payments under the loan agreement, the lender is then entitled to demand payment under the mortgage.

The lender's mortgage instructions should always be reviewed carefully to determine:

- the type of mortgage to be given;
- details on completion of the mortgage document;
- the lender's requirements regarding building location certificate, zoning memorandum and title insurance;
- any other documents to be completed or other requirements of the lender which must be satisfied.

As with all mortgage transactions, it is necessary to review the title to the lands and determine whether any prior registrations exist that must be discharged. Before funds are advanced under a mortgage for financing, it is necessary to conduct an "after 3:00 p.m. search" on the day of the advance to make sure that no builders' liens have been filed.

b) Assignment of Lease(s)

If the borrower owns real property and leases the property to one or more tenants, the lender may require an assignment of lease(s) whereby the borrower assigns its interest in the lease(s) to the lender. If the borrower fails to repay the lender, the lender is entitled to assume the borrower's position under the lease.

A "specific" assignment of lease refers to an assignment of a particular lease whereas a "general" assignment of leases covers all leases of property.

An assignment of lease(s) should be registered against the title to the lands by way of caveat. The exact wording of the caveat will depend on the wording contained in the assignment.

Although an assignment of lease is a security over real property, it will generally include an assignment of the rent payable under the lease. Therefore, notice of the assignment of the rents should be registered in the Personal Property Registry and a Personal Property Security Notice concerning the rents should be registered against the title to the lands.

3. Personal Property Security

Personal property is anything other than lands and buildings. Common types of personal property security in the context of financing include general security agreements, assignment of accounts receivable, assignments of rent and guarantees where the

guarantee grants a security interest (generally in respect of amounts owed by the borrower to the guarantor). Notice of personal property security is registered by way of a financing statement in the Manitoba Personal Property Registry.

a) General Security Agreement

The most common security over personal property is the general security agreement.

It is usually on a pre-printed form and gives the lender security over all of the borrower's personal property, tangible and intangible, present and future, and wherever situate, including inventory, equipment, accounts receivable, contracts, patents and trademarks. The general security agreement usually allows the borrower to deal with the secured personalty in the ordinary course of business. It also usually provides for the lender to appoint a receiver or receiver/manager. Any type of borrower may grant this type of security.

A security agreement should be registered in every PPSA jurisdiction where the assets charged are located.

When preparing a financing statement, it is important to determine whether there are any "serial numbered goods" as defined in the *Personal Property Registry Regulation* and, if so, to list them in the serial numbered goods section of the financing statement. The most common serial numbered goods are motor vehicles.

If the debtor has an interest in real property, a [Personal Property Security Notice](#) concerning fixtures charged under the security agreement should be registered against the title to the lands. (Note that the registry will be undergoing changes which will make it a digital-first self-managed system in approximately the fall of 2025. Changes to the Regulations are also expected.)

b) Assignment of Accounts Receivable/Book Debts

An assignment of accounts receivable or book debts is similar to a general security agreement except that it covers only the borrower's accounts receivable and not all of the borrower's property. Under an assignment of accounts receivable, if the borrower fails to pay its loan, the lender can notify parties who owe money to the borrower that such money should be paid directly to the lender instead of the borrower.

c) Assignment of Rents

An assignment of rents is taken where the borrower owns property which is occupied by one or more tenants. Notice of an assignment of rents is registered in the Personal Property Security Registry and can be registered in the Land Titles Office as well by registration of a Personal Property Security Notice. An assignment of rents is usually combined with an assignment of leases.

d) Debentures

A debenture is a security agreement which usually combines security over personal property and security over real property. Debentures are less common than other types of securities, but they are used from time to time. Debentures are most often used in connection with loans that cross jurisdictions so that the same debenture can be registered in each applicable jurisdiction.

A debenture is registered under the PPSA in the same manner as a general security agreement. It is also registered in the appropriate land titles office if it secures realty. This may be done in several different ways:

- by having the District Registrar “fiat” the debenture and register it as a mortgage; or
- by filing the debenture as a set of standard charge mortgage terms and referring to them in a mortgage, and registering it as such against the charged realty (rarely used).

The first registration method is the most commonly used. There are specific requirements for Debentures that must be followed to satisfy the requirements of the District Registrar if you want the fiat, including appropriate page numbering, appropriate schedule reference requirements and a *Farm Lands Ownership Act* statutory declaration.

e) Guarantees

Where the borrower is a corporation, in addition to security over the borrower’s property, the lender will often require that the shareholders who own the corporation or other related corporations, such as a holding company or a subsidiary, guarantee the loan. Under this guarantee, the shareholders or related companies guarantee that the borrower will repay the loan. If the borrower doesn’t repay the loan, the lender can pursue the party who signed the guarantee.

Guarantees will often be supported by additional security given by the parties who sign the guarantee. For instance, if a lender made a loan to X corporation and the loan was guaranteed by Y corporation, the lender would not only take security over the assets of X corporation but would take security over the assets of Y corporation in support of Y corporation’s guarantee. In that case, it would be necessary to register the additional security taken over Y corporation’s assets as well.

Guarantees also usually contain an “assignment of creditor’s claim.” Using the example above, the guarantee signed by Y corporation would say that if X corporation owes any money to Y corporation, that money is “assigned” to the lender. Guarantees which contain such assignments should be registered in the Personal Property Registry by filing a financing statement when the guarantee is taken, which registration should refer to the assignment of claims noted in the guarantee.

4. Security under Section 427 of the *Bank Act*

Only a chartered bank (or BDC) may obtain security under [section 427 of the *Bank Act*](#).

Section 427 security covers:

- wholesale or retail purchasers, shippers or dealers;
- manufacturers;
- farmers/aqua culturists;
- fishermen; and
- forestry producers.

The assets against which security may be taken by a bank are generally described as being inventory, although in the case of farmers and fishermen security may also be taken against agricultural implements, fishing vessels, etc. Security is also available under section 426 of the *Bank Act* for minerals and hydrocarbons, such as oil and gas.

The procedure for taking section 427 security is as follows:

- The bank files a Notice of Intention with the Bank of Canada indicating that it intends to take security under section 427 of the *Bank Act*. A notice of intention must be filed no more than three years before the actual granting of the security. It must also be filed before the advance of any funds. It does not secure past indebtedness – only future advances are secured, unlike the general security agreement and the debenture;
- After the notice of intention has been registered with the Bank of Canada, the borrower executes one of two assignments of property on the specific form prescribed by and scheduled to the *Bank Act* - an assignment of particularly described property or an assignment of all property of a particularly described kind (see *Registration of Bank Special Security Regulations*);
- After the borrower executes the appropriate assignment, the borrower completes a prescribed form referred to as an agreement concerning loans and advances. This document is essentially the loan agreement between the bank and the borrower and governs how the bank is entitled to dispose of the collateral;

- Under the *Bank Act* Regulation *Registration of Bank Special Security Regulations* in section 7, the bank must inform the Bank of Canada in March of each calendar year, of the notices of intention that are older than 5 years it wishes to maintain. The registration of any notice that is older than five years but is not listed on the bank's information to the Bank of Canada will be cancelled.

The *Bank Act* contains a very minimum statutory framework to be complied with by the bank when disposing of section 427 collateral. Such disposition is further governed by the agreement concerning loans and advances between the bank and the borrower. This statutory framework should be compared to the PPSA Part 6 Rights and Remedies on Default which contains a complete statutory code to be complied with by a secured party when realizing on collateral, subject, in certain aspects, to the express security agreement between the secured party and the debtor.

5. Loan Agreement

Often when a long-term loan is involved or several different types of credit facilities are being made available, a lender will require the borrower to sign a loan agreement that contains all of the pertinent provisions of the parties' arrangements. It permits the lender to use standard form security documents and to express any contrary or additional or special provisions in the loan agreement (expressly stated not to merge with any security) so that they need not be repeated in every security document.

A loan agreement will usually set out the following:

- the amount of principal being borrowed;
- the purpose for which it is required;
- the form in which it is being lent;
- the interest rates (which should be expressed as per annum rates in light of the *Interest Act*) applicable to each credit facility;
- the repayment terms and any prepayment terms, including any penalties, applicable to each credit facility;
- any non-refundable commitment fees to be paid to the lender to compensate it for its expenses in negotiating and structuring the transaction;
- any stand-by fee to compensate the lender for having funds available for the borrower to draw upon;
- any availability of funds expiry dates;
- a list of the security to be given by the borrower and, if applicable, guarantees and security in support to be given by the guarantors;
- a list of the certificates to be furnished by the borrower;

- any conditions precedent in favour of the lender (e.g. that all security be registered and a favourable legal opinion be received before advancing any funds);
- the representations and warranties of the borrower;
- the borrower's negative and positive covenants (including the covenant to pay, which allows the lender to dispense with the traditional promissory note);
- events of default, etc.

The borrower's representations and warranties may include, among many other things, representations and warranties as to the following:

- the due incorporation or constitution of the borrower;
- the borrower's capacity and authority to borrow the funds, provide the security and enter into all necessary agreements;
- the absence of any fact which would materially adversely affect the lender's decision to advance funds, etc.

The borrower's covenants may include, among many other things, the following:

- to maintain a certain level of working capital;
- to refrain from incurring additional debt or granting security in priority to or *pari passu* with that of the lender;
- to maintain a certain debt to equity ratio;
- to carry on its business in a proper and efficient manner;
- to maintain and repair its assets;
- to maintain a certain type and amount of insurance;
- to perform all obligations;
- to furnish financial information on an agreed periodic basis;
- to permit the lender to examine the borrower's business and its books and records on a reasonable basis;
- not to pay any dividends or management fees to non-arm's length persons;
- not to reduce its capital or distribute its assets to its shareholders;
- not to make any loans to or to guarantee the obligations of any third party;
- not to make any capital expenditures over a certain specified amount;
- not to reduce or satisfy any outstanding shareholder loan;
- not to increase the salaries of its management, etc.

Definitions should be reviewed carefully; they are not always standard and can have a significant effect on such things as the calculation of required ratios, etc.

The loan agreement often refers to all credit facilities as being repayable on demand, but goes on to state that demand will not be made so long as the borrower is complying with the terms of the loan agreement and all security. In any event, if the loan is a true demand loan, jurisprudence is clear that the borrower must be given a reasonable time in which to repay.

C. DUE DILIGENCE - SEARCHES AND CERTIFICATES

1. The Capacity of the Borrower to Borrow Funds/Grant Security/Issue Shares

a) Corporations

Lenders/investors ordinarily wish to be satisfied that the corporation to which they are lending money or in which they are investing money can borrow the money and give security, in the first case, and issue the shares, in the second case. They may, if the particular facts support it, rely upon the principle of the apparent authority of directors to bind the corporation, but most will wish to satisfy themselves of the corporation's (and its directors') actual authority.

A lender to a corporate borrower will wish to satisfy itself that:

- If the lender is a chartered bank or credit union, the board of directors of the corporation has established by resolution that the lender will be the banker or one of the bankers for the corporation and that certain named persons or, preferably, certain officers of the corporation have the authority (together, or alone, or in some combination, as the directors deem best) to act for and on behalf of the corporation in all matters concerning the bank, including, expressly, the borrowing of money and the giving of security;
- If the lender is not a chartered bank, the board of directors of the corporation has established by resolution that certain named persons or, preferably, certain officers of the corporation, have the authority (together, or alone, or in some combination, as the directors deem best) to act for and on behalf of the corporation concerning the borrowing of money and the giving of security;
- The corporation is in good standing;
- The corporation has the capacity and authority to borrow the money and to give security. The corporate statute of the province where the corporation was incorporated should be reviewed to determine if such capacity and authority exist. For all *Canada Business Corporations Act* corporations, as well as for those incorporated in the province of Manitoba under *The Corporations Act*, no special authority is required and, accordingly, the directors of such corporations may borrow and pledge security without the necessity of specific shareholder or other confirmation and authority. In other provinces, however, a special by-law (which is a by-law passed by the directors and then confirmed by not less than two-thirds of the shareholders) may be required before the directors are entitled to borrow funds and to grant security.

To satisfy itself, a bank (and most other lenders) will require the following from the corporate borrower:

- A copy of the directors' resolution(s) for banking, borrowing funds and giving security, certified by the corporation's secretary (or other officer authorized to do so) as being a true copy of such resolution passed at a duly constituted meeting of the directors. The certification should not be sealed with the corporate seal because it is a personal certification of the individual officer and not the certification of the corporation;
- A certificate of incumbency (or list of officers and directors) also certified by the appropriate officer;
- A certificate of status from the Companies Office indicating the corporation is in good standing (i.e., all annual returns being current);
- A certificate of authority and non-restriction. This may be two separate documents. A certificate of authority is a document in which an officer of the corporation, ordinarily the president or a senior officer, certifies that the corporation does have the capacity and authority to borrow the funds and to give the security.

A certificate of non-restriction is a document in which an officer of the corporation, ordinarily the president or a senior officer, certifies that there are no provisions in any of the constating documents of the corporation (the articles, by-laws, shareholders agreements, etc.) which would restrict the power of the corporation contained in its incorporating statute to borrow funds and to give security. The latter may also certify that the borrowing of the funds and the giving of the security will not constitute default under any prior or other security entitling the holder thereof to demand payment before the maturity date.

b) Partnerships

A lender to a partnership will likely wish to see a certified extract of the partnership agreement authorizing the partnership to borrow money and give security, together with a resolution of the partners authorizing the specific financing transaction. The documents used for a corporation are of the same nature as those required for a partnership in terms of what they tell the lender, and can thus be adapted accordingly.

c) Sole Proprietorship

As the borrower is an individual, the lender need only satisfy itself that the person is of the age of majority, has the mental capacity to enter into the transaction, and is not a bankrupt.

2. Searches and Certificates Checklist

A checklist of the various searches you may have to conduct and the various certificates you may have to obtain to conduct proper due diligence on behalf of your client (usually on behalf of the lender, although the borrower's solicitor should not be caught unawares) is found in the precedents. Not all searches and certificates enumerated in the checklist will be required in all circumstances. Some of the searches may be solely applicable to the City of Winnipeg as all municipalities may not have the departments or the information mentioned.

It is very important to note that all searches will be as at a certain date. It is usual for those searches that are applicable to be conducted upon opening the file as a matter of initial investigation, and again upon closing the transaction to render your final opinion.

It is also very important to note in the case of many work order and environmental type searches that you will only receive the information which the particular government agency has on file in its records at the time of your request. A clear search does not necessarily mean that your client or its property is, in fact, in compliance with the applicable legislation. To determine that fact, current inspections would have to be requested, which may add some considerable cost to your client. You and your client must discuss how the client wishes to proceed based on the risks and, ultimately, you must base your opinion upon the search results only and give no broader opinion.

The following are brief descriptions of the searches and certificates and unless otherwise expressed by your client's instructions or expressly excepted from your opinion, the circumstances in which they may be warranted.

a) Business Entity

i. Corporate Certificate of Status

Issued by the Companies Office, it confirms that the borrower is in good standing (i.e., all annual returns are current).

ii. Copy of Corporation's Last Annual Return

Provides the names and addresses of the directors and officers of a corporation, as well as shareholders who own 10% or more of a voting class of shares, and the location of the registered office, as at the date the last Annual Return was filed.

You will require this for comparison against corporate certificates and for completing and registering security.

iii. Certified Copy of Partnership Registration

The Partnership Act requires that all partnerships register their firm names under *The Business Names Registration Act*. This document will confirm the name and address of the partnership and the names and addresses of the partners.

You will require this information for completing security documents and, most importantly, for registering them.

iv. Certified Copy of Business Name Registration

The Business Names Registration Act requires that all persons (individual and otherwise) carrying on business other than under their legal name must register their business name under the Act. This document will confirm the correct business name used by your sole proprietor.

This is important for completing your security documentation.

v. Insurance – Copy of Policy or Certificate or Note of Insurance

You will rarely receive a copy of the policy. A certificate or note of insurance is a document certified by the insurer or its agent to be a summary of the pertinent coverage in place.

If you are taking an assignment of life insurance proceeds as security, you will require this document.

If the management of the borrower is key to the success of the business, a lender may insist that key person insurance be taken out so that the proceeds can be used to repay any indebtedness of the business if that individual dies.

b) Real Property

Note: For further details on the following real property searches, consult the Real Estate module on the Law Society website.

i. Status of Title

Issued by the Land Titles Office, it identifies the legal description of the property, the registered owners and how they hold the title, and the encumbrances registered against the title and the status of the encumbrances.

ii. Copies of Registered Encumbrances

Review the encumbrances registered against the title and consider ordering copies of them to determine which of them will have to be discharged.

iii. Tax Certificate (Realty Taxes)

From the City of Winnipeg or other applicable municipality, this indicates whether the payment of realty taxes are current on any real property in which the borrower has an interest.

iv. Local Improvement Levies Search

From the City of Winnipeg or other applicable municipality, this indicates whether or not the payment of local improvement levies on newly constructed buildings have been made.

This search is necessary if the lender is taking security against the new property.

v. Insurance - Copy of Policy or Note or Certificate of Insurance

A lender taking security on real property will want to see proof of insurance coverage endorsed with the standard mortgage clause and endorsed in favour of the lender as first payee as its interest may appear.

vi. Goods and Services Tax Declaration

This document is generally given by the purchaser of land to indicate that it will self-assess and pay any applicable tax and indemnify the vendor for it.

vii. Surveyor's Building Location Certificate/Title Insurance

A lender will generally want a surveyor's building location certificate if it is taking security on real property.

This certificate (one original and usually two certified duplicate originals) is obtained from a surveyor and shows that any buildings and other erections forming part of real property in which a lender is taking security stand within the property lines of the subject parcel of land and do not encroach in any manner upon any adjoining property. Any such encroachment would require either a variance order from the applicable municipality or an easement agreement with the adjoining property owner evidenced by the registration of a caveat against both properties.

If a Building Location Certificate and Zoning Memorandum are not available, the lender may accept title insurance instead.

viii. Zoning Memorandum

It will also be necessary to obtain a zoning memorandum if taking security on real property. Upon presentation of a certified duplicate building location certificate, the City of Winnipeg Zoning and Permits Branch will issue a zoning memorandum indicating whether the subject real property complies with all zoning by-laws as regards frontages, yards, alignments and clearances, and, if

not, the nature and degree of any non-compliance and the existence of any variance orders with respect thereto.

ix. City of Winnipeg (or Municipal) Occupancy Certificate

States that newly constructed or renovated real property may be occupied, and is of interest to a lender who is advancing funds against the value of such property.

x. City of Winnipeg Verification of Use Letter

Confirms that the subject real property complies with all applicable use by-laws. Your request for this letter must be very explicit and detailed about the nature of the business being carried on or to be carried on from the property.

A lender wants to be assured that its borrower may proceed to operate its business from the subject premises especially if it is a change in the property's use.

xi. Aeronautics Act Letter

Under the *Aeronautics Act*, this letter requests information as to whether any height restrictions apply to the specified real property, any pending permits to improve the property exist, or any outstanding orders concerning the property exist.

This is important if the lender is advancing funds for the borrower who is expanding its premises by constructing additional stories, and generally if security is being taken on the subject realty.

xii. The Transportation Infrastructure Act Re: Ingress and Egress

(Replaces the *Highways Protection Act et al* for City of Winnipeg or other Municipality). This search is designed to determine whether any property which is adjacent or contiguous to any highway or freeway is controlled in any respect as to its use, access and egress, or otherwise, and whether or not there are any outstanding orders with respect thereto.

If the lender is relying upon security on real property which may be so located, it will want to see a satisfactory answer to such a search.

xiii. Waterways Letter

If the borrower owns property adjacent to any waterway, the borrower may be restricted from building or expanding or using the property in certain ways. A lender relying upon the value of the property upon which it has taken security will want to conduct a [waterways record search](#).

Requests for waterway records are made in writing by email PPD-WaterwaysApplications@winnipeg.ca or by regular mail to the City of Winnipeg, Waterways Section, Unit 15 - 30 Fort Street, Winnipeg, Manitoba, R3C 4X5. The

request must include a description, including street address, legal description, legal survey (if available), and the required fee. For further information see the City of Winnipeg's [City Planning Riverbank Management website](#).

c) Utilities

i. Manitoba Hydro Letter

This letter asks if any outstanding accounts or monies are owing concerning rental units or liens.

ii. City of Winnipeg Water Request

The submission of the [Request](#) for Final Water Account Balance (see a blank form reproduced at the end of this chapter) will confirm whether or not there are arrears for unpaid water charges. Such arrears may be added to the real property tax bill for the property.

d) Work Orders

i. City of Winnipeg Property and Development Services (Planning and Land Use Division)

This search will determine whether or not any property vital to the borrower's financing package has been or is in the process of being designated a historical building. Such a designation may drastically curtail the owner's ability to make any alterations to it. The lender will want to know this if it is taking security against the property or simply against the borrower's operations. If an older building is going to require upgrading to be profitable, this search should be conducted.

ii. City of Winnipeg - Centralized Property File Search

This application asks the Zoning Developments, Buildings Inspections, Fire Preventions and Health Inspections Departments whether there are any outstanding work orders on their records and the date of their last inspection.

iii. Manitoba Department of Labour and Immigration - Inspection and Technical Services

This letter will determine if there are any outstanding work orders and the date of the last inspection of the subject property.

iv. Manitoba Department of Labour and Immigration - *Workplace Safety and Health Act*

A search request of the Workplace Safety and Health Division will inform you as to whether or not there are any outstanding improvement orders or "stop work orders" as well as any outstanding permits or complaints.

v. Manitoba Sustainable Development - Environment Search

This search not only asks whether there are any outstanding work orders but also if there are any outstanding complaints or violations and if the government has conducted any work to rectify a potentially dangerous environmental situation, whether there is money outstanding from the borrower to the government.

The Department is asked to answer this inquiry from the point of view of *The Environment Act*, *The Dangerous Goods Handling and Transportation Act*, *The Waste Reduction and Prevention Act*, *The Ozone Depleting Substances Act* and *The Contaminated Sites Remediation Act*.

e) Status of Debtor and Personal Property: Statutory Liens

i. Bank of Canada – Section 427 of the *Bank Act* Certificate

From the Bank of Canada, this sets out whether security has been taken under section 427 of the *Bank Act* (applies to wholesale or retail purchasers or shippers of or dealers in goods, wares and merchandise of a very wide description, farmers, fishermen and other producers).

If a lender is lending to any of the borrowers described in section 427 or is taking security in any of the kinds of personal property described therein, this search should be conducted to see if a bank has a prior interest.

ii. Registrar of Bankruptcy Certificate

This is a certified written confirmation as at an expressed date from the Office of the Superintendent of Bankruptcy (Canada) that there are no bankruptcy orders or assignments for the benefit of creditors or applications for bankruptcy concerning the borrower(s) named.

iii. Business Tax Certificate

The City of Winnipeg's (or other applicable municipality's) confirmation of the currency of the borrower's business taxes. The borrower's consent to search is required.

iv. *The Personal Property Security Act* Search

This is a request for a certified search under section 48 of the PPSA. Searches can be and usually are performed electronically.

v. Court of King's Bench Online

You may obtain an online printout of any statements of claim or judgments outstanding against the borrower(s) named. If specific filed documents are required, the court offices should be searched if circumstances warrant.

vi. Sheriff's Certificate - Province-wide

A certified written confirmation from the Sheriff's Office of Manitoba that there are no writs of execution or attachments filed in that office as at an expressed date concerning the borrower(s) named.

vii. Manitoba Department of Labour and Immigration – Employment Standards Branch

A letter from the Manitoba Department of Labour and Immigration indicating whether or not any claims or judgments are outstanding concerning the borrower under *The Employment Standards Code*. It can only be obtained with the consent of the borrower.

viii. The Corporation Capital Tax Act and The Health and Post Secondary Education Tax Levy Act Certificate

A letter from the Manitoba Department of Finance, Taxation Division confirming the borrower's filing or returns and the payment of tax under *The Corporation Capital Tax Act* and the payment of the levy under *The Health and Post-Secondary Education Tax Levy Act*. This may only be obtained with the prior authorization of the borrower.

ix. Canada Revenue Agency – District Taxation Office – Source Deductions

This letter requests that the Canada Revenue Agency confirm that the borrower has fulfilled its obligations for *remittances of source deductions* of employment insurance, Canada pension plan and income tax for the period indicated. The taxpayer's consent to this search is required

x. The Tax Administration and Miscellaneous Taxes Act – Section 45 Certificate

Confirms the payment of any retail sales tax payable for a bulk sale of the borrower's assets.

xi. The Workers Compensation Act Compliance Certificate

This is a letter from the *Workers Compensation Board* indicating whether the borrower is in good standing with the Board. The borrower's consent is required to obtain this certificate.

xii. The Workers Compensation Act Section 81.1 Bulk Sales Certificate

Confirms the borrower's compliance with section 81.1 of *The Workers Compensation Act* for claims by the Workers Compensation Board where an employer is disposing of all or a substantial part of its business enterprise.

xiii. Goods and Services Tax Search

This *letter* is designed to determine if the borrower is in good standing concerning the remittance of goods and services taxes under the *Excise Tax Act Part IX*. The borrower's consent is required.

D. OPINIONS IN COMMERCIAL TRANSACTIONS

1. Introduction

Many business affairs, particularly those involving the purchase of assets or shares, or financing transactions, require opinions of counsel to close the transaction.

Black's Law Dictionary defines an opinion letter as:

A formal expression of judgment or advice based on an expert's special knowledge; esp., a document, usu. prepared at a client's request, containing a lawyer's understanding of the law that applies to a particular case.

Solicitors are most often called upon to give opinions on transactions that often involve, in one transaction, a wide range of complex and varied business and legal issues.

You will be asked to prepare a formal document expressing your informed understanding of the legal principles generally applicable to a specific transaction to confirm that the transaction has been effectively completed and was, at law, the transaction for which the client bargained.

Solicitor's opinions can be delivered by you to:

- your client, or,
- to another party to a transaction as a condition of closing, or,
- to a third party, such as to a regulatory authority, at your client's request.

There are few Canadian cases concerning opinions, but Wilfred M. Estey's book entitled [*Legal Opinions in Commercial Transactions*](#), 4th ed, (Toronto: LexisNexis Canada, 2022) is a valuable resource in understanding and dealing with the topic of solicitors' opinions.

The purpose of this section is to provide a brief overview of the topic of solicitors' opinions from a practical perspective. No attempt is made to deal in any detailed way with any particular aspect of solicitors' opinions but rather it is hoped that you will read publications and speak to more experienced colleagues to further your education in this area.

2. When is an Opinion Necessary?

Not every transaction requires an opinion letter. One of the first things you must decide in a transaction is whether an opinion letter is necessary. In many commercial situations, the decision may already have been made for you.

Practice over the years has determined that transactions such as the taking of security by a financial institution or the purchase of assets will require the opinion of counsel. You must decide, at a very early stage in the transaction, what principles of law apply to the transaction and decide what opinions from opposing counsel, if any, are required to satisfy both you and client that the transaction has been, at law, effectively completed.

Opinion letters are often one of the last things with which you must deal. Clients are not usually concerned with opinion letters and, as opinion letters are routinely settled between counsel, they are usually delayed until after the transaction is well underway and the business and legal concerns of the clients have been addressed. You cannot determine whether an opinion letter is required and what must be provided in it until you get a grasp of the facts and the client's intentions. As soon as the business and legal concerns of the clients have been addressed the issue as to whether a legal opinion is required, and, if so, what should go in it, should be immediately addressed for the following reasons:

- It prompts you to consider the legal issues involved in the transaction at a very early stage. If there is any legal impediment to the transaction it is better to discover this early rather than in the days leading up to a Closing after much time and effort has been expended by all parties.
- Early drafting of the proposed opinion will serve as a checklist of the investigations and certificates which will be required.
- Settling the form of opinion at an early stage of the transaction avoids the pressure which can be placed on you to give an opinion with which you are not comfortable. If it is only addressed in the days immediately preceding Closing when both clients want the transaction to close, you may be in the uncomfortable position of having your concerns over what may appear to be legal technicalities, or your liability for your opinion, getting in the way of closing the transaction.
- As all opinions are based on facts, addressing the opinion early will enable you to consider and prepare officer's certificates or other fact-based documents that must then be presented to the client for consideration. The early supply of the certificates may reduce the chance that you and the client will proceed upon a mutual misunderstanding of the facts surrounding the transaction. This can be particularly troublesome if the client is a large corporation and certificates are to be provided by persons with whom you may have no dealing. Discovering at the eleventh hour that facts you assumed were correct and upon which certain legal aspects of the transaction depend are not correct can be, at worst, fatal to the transaction and, at least, embarrassing to you.

3. Professional Approach When Requesting or Giving an Opinion

You should always bear in mind the following considerations:

- Never ask for another lawyer to give you an opinion that you would not be prepared to give yourself in comparable circumstances. **Adhere to this rule at all times.**

- Never seek to gain improper advantages for your client. For example, it is improper to ask the lawyer for the other party to certify or warrant certain facts or to guarantee compliance with the law.
- As with all legal documents, strive for brevity, clarity and precision. In particular, take great care to limit any statement that might be misleading.
- Never render an opinion on facts, assumptions or qualifications you believe, or have reason to believe, are not true.

- Never render an ambiguous opinion. If you are unable to reach a conclusion in your opinion, say so and give your reasons.

- Take care to maintain lawyer and client privilege when negotiating the contents of and preparing opinion letters. Do not disclose to the other lawyer to the transaction any confidential aspects of your client's business without your client's permission. For example, opinion letters often seek counsel's opinion concerning knowledge of any outstanding litigation or any agreements which may restrict or be contravened by the transaction. Any response to such a request must always be discussed in advance with your client.
- Do not take an adversarial approach to the resolution of opinion letters. The settling of an opinion should not be an exercise in gamesmanship. Having regard to the purpose of an opinion and having regard to the foregoing considerations, counsel should work together to sort out difficult problems as to the content of the opinion.
- Remember that an opinion is not a guarantee. Opinion letters often become an extremely difficult exercise if the lawyer attempts to deal with any possible eventuality by way of assumptions upon which the opinion is based and qualifications to the opinion given. As a lawyer, you should not be spending excessive time on opinions and the client's money on legal fees in attempting to deal with any possible

eventuality because you are driven by the fear of liability for a misstatement. Focus on the reasonably possible.

- Beware of precedents and standard form opinions. Legal precedents are both helpful and dangerous. Previous opinions done by a thoughtful lawyer can save time and be educational, but precedents and, particularly, standard form opinions provided by institutions or law firms for typical transactions take on a dangerous aura of acceptability. There is a tendency to use or provide them because they have been given so often in the past. Never let the use of precedents or standard form opinions discourage your independent inquiry and analysis that are the purpose of any opinion.

4. Opinion Format

While there is little uniformity as to the substantive parts of solicitors' opinion letters, the format of setting out the opinion has achieved some uniformity. Opinions should be self-contained documents that stand on their own. Opinions can often be lengthy, but the use of schedules and incorporation of definitions and other matters by reference to other transaction documents can keep the text at a reasonable length and make it more readable. The following are the components of most opinions:

a) Date

The opinion should always be dated with the date that it is to be effective, despite the date that it is prepared, signed and delivered. The opinion will always speak from the date of the letter and care must be taken that all information is current as of that date unless otherwise expressly stated. It may be that given inherent delays in search and document registration procedures, an opinion will be provided in escrow to be held and not released until confirmatory sub-searches have been completed.

b) Addressees

The addressees of an opinion letter are entitled to rely on the opinion. Lawyers have historically attempted to limit the number of addressees in anticipation of limiting the number of people to whom they may be liable for an incorrect opinion, but since *Hedley Byrne & Co. Ltd. v. Heller & Partners Ltd.* [1965] A.C. 465 the law appears to be that if you write an erroneous professional opinion, you can be liable in negligence to all persons whom you could reasonably expect to rely on the opinion. As a result, a person may have a right of action whether or not that person is listed as an addressee on the opinion. It is therefore important that when writing your opinion, you clearly understand and take into account the purpose of the opinion and consider who may reasonably be expected to rely on it.

In an attempt to limit the application of the *Hedley Byrne* doctrine, lawyers often include a paragraph in the body of the opinion letter to the effect that only the addressees may rely on the opinions given.

c) The Reference (Re:)

This can be a complete statement of the subject matters and the parties involved or simply a brief reference for identification purposes. The more common practice is the latter with the subject matter being dealt with in the introductory paragraph.

d) Introductory Paragraph

The introductory paragraph will normally describe:

- for whom you act;
- the capacity in which you represent your client;
- the manner in which you have acted;
- any restrictions on your retainer;
- the parties involved in the transaction; and
- the subject matter of the transaction.

A typical example is:

We have acted on behalf of ABC Bank (the “Bank”) in all legal matters pertaining to the granting of a General Security Agreement by EFG Corporation (the “Corporation”) as security for the present and future indebtedness of the Corporation to the Bank.

The introductory paragraph should clearly state the purpose of the opinion for, as previously mentioned, it will restrict those people who may be expected to rely upon the opinion.

5. Scope of Investigations

The opinion will usually set out the documents reviewed and the investigations made to give the opinion. There are two approaches you can take to accomplish this. The first approach is general and provides:

We have examined such corporate records, certificates and other documents, made such searches and investigations and considered such questions of law as we have considered necessary for this opinion.

The second approach is specific and lists all documents reviewed and all investigations made. The drawback to this method is that it lengthens the opinion, but it may have the benefit of satisfying the recipient as to the scope of the investigations made and therefore give the recipient some comfort as to the effectiveness of the opinion. You may also wish to use this method to limit your liability to the matters specifically addressed and to impose a very limited context to the opinion which follows. In any event, the second approach is unsatisfactory to the person receiving the opinion unless it goes on to provide one or more of the following statements:

These documents are the results of all searches that we consider necessary or advantageous for giving this opinion.

or

We have also examined such other documents, made such investigations or considered such questions of law as we have considered necessary in the circumstances.

If particular or unusual instructions have been given as to the scope of the investigations, then these instructions should be specifically stated.

This section of the opinion will often also identify any registrations made and provide particulars of the registrations. This information is not usually included in the substantive portion of the opinion as it is based upon facts as opposed to the legal principles which led to the registrations being made.

6. Facts and Assumptions

All opinions rely on certain facts and assumptions. Some lawyers prefer to set out the assumptions in detail while others regard them as necessarily implied. Most lawyers use a combination of these approaches.

Most lawyers feel it is not necessary to assume things such as:

- all signatures are genuine and all documents are authentic;
- the authenticity of documents purporting to be originals.

On the other hand, lawyers will specifically assume facts which are impossible or impractical for the lawyer to verify and which may have, in particular, given rise to the request for the opinion. For example, it is always advisable to assume due authorization and execution of documents by parties who are not your client, for otherwise it may be assumed that the writer has fully investigated this issue.

If you are relying on facts provided on an officer's certificate this should be specifically set out here.

If you are relying on an opinion of counsel in another jurisdiction you should expressly refer to that opinion and your reliance on it.

Care must be taken to set out in your assumptions any salient facts the accuracy of which are fundamental to your opinion, or which have given rise to the request for the opinion so that the facts upon which the opinion is based are clear to the reader.

7. Substantive Part of the Opinion

Having set out the scope of the investigations and the assumptions, the substantive part of the opinion follows. The best way to introduce this part of the opinion is:

Based and relying on the foregoing, our opinion is that ...

or, if the opinion expresses qualifications,

Based and relying on the foregoing and subject to the qualifications hereinafter expressed, our opinion is that...

It is not possible in the scope of this section to deal with all of the actual substantive parts of an opinion which may arise in a given set of circumstances. This section will focus on a selected number of substantive matters which are often found in opinions.

a) Corporate Status

A frequently requested opinion is:

The Corporation is duly incorporated, validly exists and is in good standing under the laws of the Province of Manitoba.

This opinion comprises three different opinions.

i. Duly Incorporated

This statement represents an opinion that the corporation was duly incorporated under the governing legislation then in force. What is important is not whether the incorporation complied with the legislation in force at the time of the opinion, but rather whether it complied with the legislation in force at the time of incorporation, amalgamation, or continuance. The word “incorporated” encompasses incorporation of a corporation by filing articles of incorporation, articles of amalgamation or articles of continuance.

On occasion the opinion will be extended to encompass the words “duly organized.” This involves an in-depth review of the corporate minute book to consider the proper appointment of directors, allotment of shares and other matters. An opinion on organization is difficult unless the solicitor giving the opinion has done the organization of the corporation. It is also unnecessary in most circumstances.

ii. Validly Exists

This means that at the time of the opinion the corporation is in existence and has not been liquidated or wound-up by some action of creditors or shareholders or been dissolved for failure to file annual returns. This can be verified by obtaining a certificate of status from the Director of the Companies Office.

iii. Is in Good Standing Under the Laws of the Province of Manitoba

The concept of good standing is a carry-over from the days when failure to file an annual return affected the ability of a corporation to carry on its business. Persons now requesting this opinion still want to know that the corporation is properly protecting its corporate existence and is not subject to dissolution for failure to file the required annual returns, but the phrase can technically be seen to extend to the corporation being in good standing under all legislation, by-laws and regulations of the Province of Manitoba.

The wording on a certificate of status now provided under *The Corporations Act* indicates only that the corporation is still in existence and it is a better practice to say that the corporation is in good standing concerning the filing of annual returns under *The Corporations Act*.

b) Extra-Provincial Registration

This opinion arises where a solicitor from another jurisdiction asks for an opinion that a corporation incorporated elsewhere has been duly registered under *The Corporations Act* of Manitoba. The phrase "is duly registered as an extra-provincial corporation under *The Corporations Act*" can be used. This opinion can be given upon obtaining a certified copy of the certificate of extra-provincial registration and a current certificate of status issued by the Companies Office.

Care should be taken that the opinion is restricted to qualification as an extra-provincial corporation under *The Corporations Act* and not simply to qualification to do business under the laws of the Province of Manitoba. The latter would involve a much broader scope of searches and investigations to ensure that the corporation has obtained all such business or other licenses which apply to Manitoba, as well as extra-provincial, corporations.

In some circumstances, a Manitoba lawyer will be asked to opine that the corporation has been duly registered in all jurisdictions in which the nature of the corporation's business or its property and assets makes such registration necessary. The extent of the jurisdictions involved should be determined by an officer's certificate setting out the jurisdictions in which the corporation carries on business.

Manitoba solicitors should not give opinions on the qualification of corporations in other provinces or in foreign jurisdictions based solely on the certificate of the appropriate government official in that jurisdiction. The opinion of local counsel should be obtained in all cases and relied upon for the opinion.

c) Corporate Power and Authority

A party to a transaction will often want a solicitor to opine that a corporation has the power and capacity to own its property and assets, to conduct its business and to enter into and perform its obligations under the transaction. To give this opinion, it is imperative to review the articles of incorporation of the corporation and any shareholder agreements to confirm that there are no restrictions on the power and authority of the corporation.

Unlike the due incorporation opinion, the corporation statute in existence at the time of the opinion is the relevant statute to review. The use of the word “corporate” clearly limits the opinion, to matters arising under the incorporating statute as opposed to other types of qualifications such as under business by-laws and licensing statutes.

In reviewing the articles of incorporation particular attention must be given to the part of the articles which sets out any restrictions on the business the corporation may carry on. In most Canadian jurisdictions a corporation has the capacity and the rights, powers and privileges of a natural person unless those rights are specifically limited in the articles of incorporation, or any other constating documents, or any shareholder agreement.

In Manitoba, those corporations incorporated before the passage of *The Corporations Act* in 1976 may still contain objects clauses that set out the specific business the corporation is entitled to carry on to the exclusion of all other types of business. Most corporations incorporated before 1976 have had their articles amended to delete these objects clauses so that the corporation will have the capacity, rights, powers and privileges of a natural person but, beware, some remain. Also, as mentioned, it is still possible to incorporate a corporation that has such restrictions on its objects as the incorporators may desire.

Notice of unanimous shareholders’ agreements must be filed with the [Companies Office](#) according to the provisions of *The Corporations Act* and if such a notice has been filed, or if the opinion giver knows of a unanimous shareholder agreement, a review of that document must also be made. It is advisable to rely on an officer’s certificate as to the existence of a unanimous shareholders’ agreement if no such notice of a unanimous shareholders’ agreement has been made in the Companies Office.

If the corporation does have an objects clause an officer’s certificate should be obtained specifying the businesses carried on for the opinion giver to verify that they are within the objects stated. Notwithstanding the production of an officer’s certificate, the opinion giver will be fixed with knowledge of the particular business contemplated by the transaction at hand and must also independently address the corporation’s corporate authority to carry on that business.

d) Agreement has been Duly Authorized, Executed and Delivered

i. Duly Authorized

This means that all corporate action necessary to make the agreement valid and binding on the corporation has been properly taken. This requires an examination of the articles of the corporation and other constating documents to determine what corporate action is required, and a review of the corporate action to determine whether it complies.

In particular, the lawyer should consider whether a resolution of directors will suffice. It is not proper to rely upon the common law principles of usual or apparent authority in an opinion of this nature. The solicitor should receive a certified copy of the resolution or minutes of the meeting at which the action was authorized. If presented with minutes of the meeting, consider whether adequate notice of the meeting was given, whether a proper quorum was in attendance at the meeting and whether the resolution has been rescinded or amended in the interim.

ii. Duly Executed

This requires the solicitor to be satisfied that the persons shown as having signed the agreement were properly authorized. This usually requires the designation of specific officers in the authorizing resolution. Again, it is not proper to rely on the common law principles of usual or apparent authority to give an opinion of this nature.

A solicitor will often acquire a certificate of incumbency setting out the names and offices held by individuals and often incorporating a specimen of their signatures. It is good practice to obtain a certificate of incumbency setting out the names of the officers and the offices held by them, but a solicitor has no responsibility as to the authenticity of the signatures on the document and therefore the specimen signature on the certificate of incumbency is of little value.

iii. Duly Delivered

This requires the lawyer to be satisfied that the document has not merely been executed by all parties but that it has been delivered and released by the corporation without conditions attached. In some cases, a document may be delivered in escrow upon conditions, and it is therefore important to confirm that the conditions upon which the document has been delivered have been fulfilled or withdrawn.

iv. Agreement Constitutes a Legal, Valid and Binding Agreement

This means that the document is not contrary to law, is not void, and is not voidable at the election of any party. The lawyer must be satisfied that the agreement is certain, that there is consideration and that the steps taken are within the corporate capacity of the corporation.

It is unnecessary to inquire any further into whether or not there may be a mistake, misrepresentation, duress or undue influence behind the execution of the agreement. If the lawyer is aware of any of the foregoing, then the lawyer cannot give the opinion.

If the granting of the document is subject to the happening of a condition which may be within the control of one of the parties, it is not possible to give an opinion that the agreement is binding unless the opinion is qualified by express reference to such condition. The lawyer must also be satisfied that no provisions of the agreement are contrary to public policy (e.g. be satisfied that a covenant not to compete is not unlawful).

v. Enforceable in Accordance with Its Terms

This is usually an extension of the opinion that the agreement is legal, valid and binding. The purpose of this opinion is to ensure the recipient of the opinion that if the other party does not perform there will be a remedy at law.

Some solicitors view this opinion as applying only to material or essential terms of the agreement. The preferable view is that the opinion provides that every obligation contained in the agreement is enforceable. This requires a review of each provision of the agreement.

This phrase in opinions causes more difficulties than any other and, in all cases, caution is recommended in the giving of opinions on enforceability.

Before a solicitor can give an opinion on enforceability, the solicitor must be able to identify a remedy that would be available to the damaged party. In documents such as mortgages or general security agreements used in more than one jurisdiction, a secured party may insert provisions even though it recognizes that they may not be enforceable under certain circumstances.

Other provisions may be quite proper and certain but not enforceable because the remedy of specific performance, being an equitable remedy, may not be available in the circumstances. Often mortgages provide remedies pursuant to the power of sale contained in the mortgage, which cannot practically be enforced because the foreclosure provisions of *The Real Property Act* take precedence.

Another example is a provision in a general security agreement that states that upon default the secured party may take possession of the collateral and sell the collateral without notice. In most circumstances, *The Personal Property Security Act* requires that notice be given to the debtor and other persons with an interest in the collateral before a sale takes place. As a result, a solicitor must carefully consider the enforcement provisions of a document and the availability of any remedies and, in particular, the availability of the specific remedies set out in the documents.

Some covenants are simply unenforceable, such as affirmative covenants under a debenture to maintain a specified shareholder's equity or a specified debt to equity ratio.

Enforceability opinions are almost always qualified by excepting equitable remedies such as specific performance, which are available only at the discretion of the court, and by making the opinions subject to bankruptcy laws and other laws of general application affecting creditor's rights.

The only unqualified opinion as to an agreement being enforceable in accordance with its terms is where the only obligation of the agreement is to pay money. Even in this circumstance, care should be taken if the document contains things such as acceleration clauses which may be subject to equitable principles of relief and therefore require a qualification.

e) No Contravention and No Conflict

Often a solicitor is asked to opine that the transaction does not contravene or conflict with:

- the articles of the corporation;
- any law to which the corporation is subject;
- any judgment or order of a court or other tribunal to which the corporation is subject; or
- the terms of any contract or instrument to which the corporation is a party or by which its property or assets may be bound.

Any opinion concerning judgments and contractual provisions should be qualified as to the scope and extent and the knowledge of the opining solicitor by the inclusion of the words "to the best of our knowledge." It is important to remember when practicing in a firm that this includes the knowledge of all of your partners and associates. It is also a good idea for you to set out in the opinion the specific

investigations undertaken as a basis for your knowledge or, if no independent investigations have been undertaken, to state this.

Notwithstanding the foregoing, it is an accepted principle that the solicitor is under an obligation to make some form of inquiry for knowledge-based opinions and such inquiry must be reasonable in the circumstances. If this duty of inquiry is intended to be limited, then such limitations should be expressed.

You should at all times be wary of opinions which are an attempt to seek out the solicitor's inside knowledge. An opinion such as one which asks the solicitor to state that "the solicitor is not aware of any fact or circumstance which would render untrue any of the representations and warranties contained in the agreement" is not directed primarily at legal conclusions, but rather at information which the lawyer has received in the course of acting for the client. Such attempts to elicit confidential knowledge are improper and should be resisted. Above all, the solicitor should be wary of breaching solicitor-client privilege in these circumstances.

f) Shares Duly Authorized, Validly Issued and Outstanding as Fully Paid

i. Duly Authorized

This means that:

- the shares were created by and have attached to them the attributes permitted by the relevant incorporating statute and the articles of incorporation;
- the appropriate resolutions were passed and all other necessary corporate action taken and documents filed to authorize the creation of the shares; and
- a sufficient number of each particular class or series of shares has been duly created and were available for issuance at the time of issuance.

In particular, this involves a review of the conditions attaching to the shares to ensure they are not contrary to the incorporating statute or the articles of incorporation (e.g. voting rights which attach to a class of shares and which depend upon the owner of the shares are unlawful in some circumstances: [*Bowater Canadian Ltd. v. R.L. Crain Inc.*](#), 1987 CanLII 4037 (ON CA)), and a review of the stock records of the corporation to ensure that the issuance of the shares does not create an over issuance (i.e. exceeding the authorized number under the Articles).

ii. Validly Issued

This means that the shares have been properly issued according to the provisions of the incorporating statute and the corporation's articles. This is generally regarded to relate only to compliance with corporate law. Compliance with such other regulations as securities legislation and contractual obligations such as shareholders' agreements is to be covered in the non-contravention opinion explained above.

In addition to being fully paid, the solicitor must confirm that the number of shares issued does not exceed the authorized capital of the corporation at the time of issuance and that restrictions such as a pre-emptive right to acquire shares in favour of existing shareholders and private corporation provisions which limit the number of shareholders, and which are often found in the articles of incorporation, have not been contravened.

In giving this opinion, the solicitor should review:

- a certified copy of the authorizing resolution;
- the appropriate incorporating statute;
- the articles of incorporation and all amendments; and
- the corporate records of the corporation including stock records.

iii. Fully Paid

This means that:

- the type of consideration received by the corporation is authorized by its incorporating statute;
- the appropriate resolutions have been passed to establish the issue price and to confirm the value of the consideration to be received by the corporation if it is other than money;
- the full amount of the consideration that has actually been paid by the purchaser and received by the issuer.

Both *The Corporations Act* and the *Canada Business Corporations Act* provide in sections 25(3) and (5) that a share is not to be issued until consideration for the share is fully paid in money or in property or past services that are not less in value than the fair equivalent of the money that the corporation would have received if the share had been issued for money. The term property, as used in this section, does not include a promissory note or a promise to pay.

In giving this opinion, a solicitor should receive a certificate of an officer of the corporation or the auditors of the corporation stating that the consideration for which the shares have been issued has been received, and a certified copy of the resolution authorizing the issuance of the shares that recites the

establishment of the issued price and states that the consideration received is sufficient consideration.

It is appropriate for the opining solicitor to rely on the determination of the directors of the issuing corporation for the sufficiency of the consideration paid for the issued shares.

g) Title

An opinion as to a vendor's title to personal property is not usually required in Manitoba as there is no method for recording title to most types of personal property in this province. It is theoretically possible to give an opinion on the title of personal property if the title to an asset can be traced from the manufacturer of the asset to the vendor by reviewing relevant bills of sale and documents supporting each transaction. If there is a central registry for the type of asset being sold, such as motor vehicles and aircraft, it may be possible to give an opinion on the title to personal property as shown in that registry. However, such registries are not always up-to-date and any such opinion should be resisted, or if given, limited to the knowledge of the solicitor.

It is possible to give an opinion on the title to shares, even though they are personal property because both *The Corporations Act* and the *Canada Business Corporations Act* contain provisions that give attributes to shares similar to those of negotiable instruments under the *Bills of Exchange Act*. *The Corporations Act* and the *Canada Business Corporations Act* provide that a bona fide purchaser, in addition to acquiring the rights of a purchaser, also acquires the security free of any adverse claim. As a result, the solicitor can give an opinion as to title if the solicitor is satisfied that:

- the purchaser has possession of the share certificates representing the transferred shares;
- the share certificates evidencing the purchase shares are properly endorsed for transfer; and
- the certificates appear to be regular on their face and are not subject to any liens, restrictions or other limitations conspicuously noted and referenced.

h) Perfection of Security Interests

A secured party requires a perfected security interest on personal property to protect that security interest against claims by third parties, including other secured parties. As a result, a secured party often requires that a solicitor opine on the issue of the perfection of the security interest. A sample form of clause is:

The security interest created by the Security Agreement in all right, title and interest of the Debtor in the Collateral located in the Province of Manitoba has, to the extent capable of perfection by registration under The Personal Property Security Act of Manitoba, been duly perfected.

The inclusion of the phrase “to the extent capable of perfection by registration” under the PPSA is necessary to exclude certain security interests not governed by the PPSA such as:

- interests in real property if the security agreement is broad enough to include such interest;
- interests expressly excluded by section 4 of the PPSA; and
- interests where perfection is governed by the laws of another jurisdiction.

Giving an opinion as to perfection under the PPSA necessarily involves attachment of the security interest per the criteria outlined in section 12 of the PPSA being:

- value is given to the debtor;
- the debtor has rights in the collateral;

unless the parties specifically agree to postpone the time of attachment, in which case it attaches at the time specified in the agreement.

The foregoing elements of attachment cannot be independently verified by the solicitor, and therefore attachment should always be an assumption in a solicitor’s opinion when dealing with the issue of perfection.

If you give an opinion as to the perfection of the security interest it necessarily involves confirmation that the financing statement has been properly completed in the prescribed form. This includes correct information regarding the description of the collateral and also of the debtor, (including full name, address and date of birth). The solicitor should always set forth the basis upon which the description of the debtor was determined, including the situation where no independent investigation or verification has been made.

In giving an opinion on perfection, the solicitor must also be wary of the conflict of laws provisions of the PPSA. These provisions may indicate that perfection relating to certain types of collateral, such as equipment commonly used in more than one jurisdiction (e.g. aircraft) or intangibles (e.g. book debts), will not be governed by Manitoba law but rather will be governed by the laws of the jurisdiction where the debtor is located, including its conflict of laws rules. The solicitor should carefully consider the types of collateral covered by the security agreement and review the conflict of laws provisions in the PPSA to ascertain whether the solicitor is in a position to opine at all concerning perfection of the security interest.

An opinion that deals with perfection should also go on to advise what must be done to maintain perfection. Of particular interest is the necessity for renewal of financing statements and the need to register a financing change statement upon transfer of any or all of the collateral by the debtor.

i) Priority

It is common for solicitors to resist giving priority opinions regarding security interests in personal property.

Examples of some of the reasons for resisting the giving of such opinions are:

- the priority rules within the PPSA are complex;
- searches may not disclose certain types of security interests or adequately indicate the relative priority of those interests;
- in certain circumstances priority issues may not be determined by the PPSA; and
- to give a priority opinion in such circumstances will involve a lengthy and complex discourse on personal property security law which will, by necessity, involve considerable expense to the client.

It is more common for an opinion to confirm registration particulars and whether there are prior registrations in the Personal Property Registry without opining on the priority of any of the registrations. One popular way of describing the registrations is to rely on a certified search result under the PPSA, and to say that there are no other security interests registered or recorded in Manitoba affecting the property and/or assets of the corporation except for the prior registrations listed in the certificate. (Note that the registry will be undergoing changes which will make it a digital-first, self-managed system in approximately the fall of 2025. Changes to the Regulations are also expected.)

This can be misleading. In the absence of any other explanation, a reader may be left with the mistaken notion that subsequent registrations cannot gain priority over the registration in question, or gain the mistaken impression that to obtain priority a security interest must be registered according to the PPSA. As discussed, priority in certain circumstances can be gained under other statutes or under the PPSA by possession of the collateral by another secured party or by obtaining a purchase-money security interest.

Although an opinion does not at law mean more than what is contained in the opinion, from a business and public relations point of view, being legally right with an unhappy client is not what you are attempting to achieve.

As a result, unless you are giving a priority opinion, it is advisable to expressly state in the opinion that no opinion is being given as to priority to confirm in advance that all parties understand the basis upon which the opinion is given.

8. Qualifications

Qualifications are usually found at the end of an opinion letter but are vitally important to the meaning of the opinion letter and the solicitor's liability for the opinion. To keep the substantive part of the opinion letter readable, concise and meaningful to the reader the practice has developed not to include qualifications in the substantive portion of the opinion but to set them out either before or, more usually, after the substantive portion of the opinion.

An opinion letter can rarely be given without qualifications. The solicitor must address the issue of qualifications in each opinion letter by considering how the opinion needs to be qualified to make it legally correct.

The following are some examples of qualifications often found in opinion letters:

a) Bankruptcy Qualification

This is particularly important to any opinion on the enforceability of documents and recognizes that the enforceability of obligations is subject to the laws of general application relating to creditors' rights and the enforcement and collection of debts.

b) Equitable Remedies Qualification

This is a very common qualification to an enforceability opinion and recognizes that remedies such as specific performance and injunctive relief are discretionary and may not necessarily be awarded by a court, notwithstanding what is provided in the transaction document.

c) Applicable Law

It is common for Manitoba solicitors to provide that the opinions apply only to the applicable laws of the Province of Manitoba and the laws of Canada. If the transaction is entirely conducted within the Province of Manitoba this qualification would be unnecessary but, if the solicitor's firm has offices in more than one jurisdiction or the parties are located in more than one jurisdiction, or the property which is the subject of the transaction is located in more than one jurisdiction, a qualification as to the applicable laws is appropriate, together with expressed reliance on solicitors' opinions in other jurisdictions where applicable.

d) Perfection Qualification

i. Mobile Goods and Intangibles

This provides that the validity and perfection of the security interest in certain types of goods, such as goods commonly used in more than one jurisdiction, and intangibles, are governed by the laws of the jurisdiction where the debtor is located, including its conflict of laws rules.

An opinion which deals with security interests in property of these types must either assume that the laws of Manitoba will be applicable or include this qualification. Moreover, in the case of an aircraft, a qualification should be included to state that no opinion is expressed as to the application of the *Convention on International Interests in Mobile Equipment and the Protocol to the Convention on International Interests in Mobile Equipment on Matters Specific to Aircraft Equipment*, or the *International Interests in Mobile Equipment (Aircraft Equipment) Act* (Canada), unless, of course, such an opinion is required.

ii. Description of Debtor

Particularly if no reliable independent verification can be done, it may be necessary to assume that the description of the debtor provided to you is complete and accurate, as the validity of the financing statement registration depends upon it. This assumption may be necessary in the case of a sole proprietorship or individual debtor.

Certificates of status and certified copies of registrations under *The Business Names Registration Act* can be expressed to be relied upon when opining to the description of a debtor which is a corporation or partnership.

iii. Collateral Description

At law, the security agreement and the financing statement must contain a description of collateral in compliance with section 10(1)(b) of the PPSA. It may be necessary to assume the description is appropriate, as the solicitor may not be familiar in all respects with the exact collateral which is or may be the subject of the transaction.

Also, the PPSA provides that motor vehicles, aircraft, outboard motors and certain other property which are not the inventory of the debtor must be specifically set out in the appropriate section of the financing statement and described in some detail for the security interests therein to be perfected. If the security contains a general charge on goods and equipment which may include aircraft or motor vehicles, then the appropriate qualification should be inserted pointing out the requirements of the PPSA regarding these types of chattels.

iv. Perfection by Possession

An opinion on perfection will almost always require a qualification that while a security interest in instruments, securities, letters of credit and advices of credit or negotiable documents of title can be perfected, registration priority will be given, in certain circumstances, to a secured party which perfects its security interest.

v. Fixtures Qualification

To protect interests in personal property that may become fixtures, a secured party must make a registration upon the title of the real property affected. At the time an opinion is given, no fixtures filing may have been made. It is, therefore, appropriate to include a qualification providing that no such registrations have been made by you against real property and therefore the security interest in personal property which may become fixtures will be ineffective until the appropriate notice is registered against such real property in the appropriate land titles office and that this security interest will be subject to registrations made prior in time against that real property.

e) Priority Opinion Qualification

As mentioned, if no priority opinion is being given this qualification should be inserted so that the opinion may be clear in that regard. If a priority opinion is to be given then, depending upon the nature of the transaction, several qualifications will be necessary, some of which include:

- the interest will be subject to the rights of any person who has a perfected security interest pursuant to the PPSA without having registered a financing statement, by virtue of having possession of the collateral;
- the rights of any person who acquires a purchase-money security interest in personal property;
- the rights of a person in personal property arising out of such personal property having been previously seized or taken into possession for the benefit of a creditor;
- the lien of any person who, in the ordinary course of business, has furnished materials or services concerning the collateral;
- the possibility that the security interest will be defeated if the collateral is removed from the Province of Manitoba to another jurisdiction;
- federal and provincial legislation purporting to create statutory or deemed trusts or liens which may affect the priority of the security interest in the collateral (e.g., The City of Winnipeg Charter which purports to grant a first lien on personal property for failure to pay business tax).

f) Registry System Qualification

The computerized records maintained by the Personal Property Registry will only disclose registrations against the name submitted in the search. The Personal Property Registry will often also provide registrations in a similar name but these cannot be relied upon as being exhaustive. The use of previous names for corporate debtors can generally be ascertained by searches conducted at the Companies Office.

All previous names should be searched, as a change of name does not in and of itself require the registration of a transfer statement in the Personal Property Registry. (Note that the registry will be undergoing changes which will make it a digital-first self-managed system in approximately the fall of 2025. Changes to the Regulations are also expected.)

g) Qualification Regarding Remedies

The PPSA sets forth specific rules regarding remedies that are available, many of which limit the rights of the secured party to enforce remedial provisions notwithstanding their inclusion in the security agreement. As a result, a qualification is often inserted into the opinion providing that the PPSA may affect the enforcement of certain remedies in the security agreement to the extent that those remedies are inconsistent with or contrary to the provisions of the PPSA, but that in the solicitor's opinion such limitations will not make the remedies provided for under the security agreement inadequate for the practical realization in the Province of Manitoba of the benefit of the security constituted by the security agreement according to applicable law.

9. Signature

The opinion letter should be closed by the typewritten name of the firm followed by the signature of a lawyer authorized to sign on behalf of the firm or simply by the name of the firm handwritten by a lawyer authorized to sign on behalf of the firm.

E. FORMS, PRECEDENTS AND CHECKLISTS

1. Debenture

DEMAND DEBENTURE¹

(Name of Corporation)

1. DEBENTURE

The above-named corporation (the “Borrower”) for value received promises to pay to The Money Bank (the “Bank”) at its _____ Branch (or such other place in Canada as the Bank may designate in writing to the Borrower) on demand the sum of _____ (\$_____) Dollars (the “principal”) together with Expenses and interest on such principal and Expenses or on so much thereof as shall from time to time remain due, owing or unpaid at the rate or rates of interest prescribed by the various evidences of indebtedness representing the principal secured hereby from time to time, calculated and payable as so prescribed as well after as before maturity, default or judgment with interest on overdue interest at the same rate as on the principal. The annual rates of interest to which the rates calculated according to the foregoing provisions of this Section 1 are equivalent, are the rates so determined multiplied by the actual number of days in the calendar year and divided by 365.

2. SECURITY INTEREST

- (a) As security for the payment of the principal and for all other monies from time to time owing hereunder, and as continuing collateral security for the payment and satisfaction to the Bank on their due dates, or if no due date, on demand, of all obligations, debts and liabilities, present or future, direct or indirect, absolute or contingent, matured or not, extended or renewed, at any time owing by the Borrower to the Bank or remaining unpaid by the Borrower to the Bank heretofore or hereafter incurred or arising and whether incurred by or arising from agreement or dealings between the Borrower and the Bank or from any agreement or dealings with any third

¹ For a Manitoba Debenture that will be fiated as a mortgage, always review the Land Titles Guide for specific requirements for the Debenture to be fiated as a mortgage, including page numbering requirements and requirements for any Schedules.

party by which the Borrower may be or become in any manner whatsoever a creditor of the Bank and all damages or obligations incurred by the Bank as a result of its dealings with the Borrower, or obligations howsoever otherwise incurred or arising anywhere within or outside Canada and whether the Borrower be bound alone or with another or others and whether as principal or surety and any ultimate unpaid balance thereof and whether the same is from time to time reduced and thereafter increased or entirely extinguished and thereafter incurred again (all of the foregoing being referred to herein as the "Indebtedness"), but it being agreed that this Debenture at any one time shall secure only that portion of the aggregate principal component of the Indebtedness outstanding at such time which does not exceed the principal hereinbefore expressed, the Borrower:

- (i) grants, mortgages, charges, assigns and transfers to the Bank as and by way of a fixed and specific mortgage, pledge and charge all freehold and leasehold real property or interest therein now owned or leased by or on behalf of the Borrower including, but not limited to, the lands and premises described in Schedule "A" as amended from time to time, together with all buildings, erections and fixtures now or hereafter constructed or placed on such freehold and leasehold real property;
- (ii) grants a Security Interest in all the moveable property described in Schedule "B", as amended from time to time, and in all of the other assets and undertakings of the Borrower, including without limitation, all Goods, Chattel Paper, Documents of Title, Instruments, Intangibles and Securities now owned or hereafter owned or acquired by or on behalf of the Borrower (including such as may be returned to or repossessed by the Borrower) and all proceeds and renewals thereof, accretions thereto and substitutions therefor, including without limitation, all of the following now owned or hereafter owned or acquired by or on behalf of the Borrower:
 - (A) all Inventory of whatever kind and wherever situate;
 - (B) all Equipment of whatever kind and wherever situate, including without limitation, all machinery, tools, apparatus, plant, furniture, fixtures and vehicles of whatsoever nature or kind;
 - (C) all Intangibles including without limitation, all Debts;
 - (D) all deeds, documents, writings, papers, books of account and other books relating to or being records of Intangibles, Chattel Paper or Documents of Titles or by which such are or may hereafter be secured, evidenced, acknowledged or made payable;
 - (E) all contractual rights and insurance claims and all goodwill, patents, trademarks, copyrights, and other industrial property; and

(F) all money other than trust money lawfully belonging to others.

- (b) **Last Day of Lease Not Included** – The Collateral shall not include the last day of the term of any lease or lease agreement but upon the enforcement of the Debenture the Borrower shall stand possessed of such last day in trust to assign the same to any person acquiring such term.
- (c) **Definitions and Interpretation** – Unless otherwise provided, the capitalized terms used in this Debenture shall have the meanings assigned in Schedule “C”. Words in the singular include the plural and the words in the plural include the singular. Words of the masculine gender include the feminine gender and vice-versa. The division of this Debenture into sections and sub-sections and the insertion of headings are for convenience of reference only and do not affect the construction or the interpretation of this Debenture.

3. **BORROWER’S COVENANTS**

The Borrower represents, warrants and covenants that, so long as this Debenture remains in effect:

- (a) **No Encumbrances** – the Collateral (except after-acquired property), and every part thereof, is lawfully owned by the Borrower free and clear of all mortgages, charges, liens and other encumbrances save and except as follows:
- (b) **Defense of Title** – it shall warrant and defend the Collateral against the claims and demands of all other parties claiming the same or an interest therein;
- (c) **Restrictions on Collateral** – it shall not be at liberty to sell, exchange, transfer, assign, lease or otherwise dispose of the Collateral or any interest therein without the prior written consent of the Bank; provided that, until default, the Borrower may, in the ordinary course of the Borrower’s business, sell or lease Inventory, other than Inventory listed in Schedule “B” and, subject to subsection (j) and Paragraph 5, use monies available to the Borrower; and the Borrower shall notify the Bank promptly of:
 - (i) any change in the information provided to the Bank in this Debenture or the Schedules,
 - (ii) the details of any significant acquisition of Collateral,
 - (iii) the details of any claims or litigation before any court, administrative board or other tribunal affecting the Borrower or the Collateral,
 - (iv) any loss or damage to the Collateral,
 - (v) any default by any significant debtor of the Borrower in any payment or other performance of its obligations regarding the Collateral,

- (vi) the return to or repossession by the Borrower of the Collateral, and
 - (vii) any removal of any Collateral from any jurisdiction in which this Debenture is registered or the acquisition of any Collateral in any jurisdiction in which this Debenture is not registered.
- (d) **Conduct of Business** – it shall keep the Collateral in good order, condition and repair and not use the Collateral in violation of the provisions of this Debenture or any other agreement relating to the Collateral or any policy insuring the Collateral or any applicable statute, law, by-law, rule, regulation or ordinance;
 - (e) **Insurance** – it shall insure and keep insured the Collateral with extended coverage against loss or damage by fire, theft, collision or other insurable hazards commonly insured against to the full insurable value thereof, with all such insurance to be maintained with such insurer or insurers as may be approved by the Bank, and the loss under all such insurance shall be payable to the Bank and the Borrower will cause to be affixed to each policy of insurance a mortgage section or mortgage endorsement in form satisfactory to the Bank and provide for a minimum of thirty days' notice to the Bank of cancellation or lapse, and the Borrower shall pay all premiums in connection with such insurance and will deposit certified copies of the insurance policies with the Bank or otherwise deal with them as the Bank may require;
 - (f) **Payment of Taxes, Etc.** – it shall pay all rents, taxes, rates, levies, assessments, government fees or dues and other charges of every nature which shall be levied, assessed or imposed in respect of the Borrower or the Collateral or any part thereof as and when the same shall become due and payable, and shall exhibit to the Bank when required, the receipts and vouchers establishing such payment;
 - (g) **Observance of Governmental Requirements & Covenants** – it shall comply with all applicable laws, ordinances, regulations, rules and by-laws, and that it shall obtain all licences and permits required to maintain its business and operate the Collateral;
 - (h) **Provide Subsequent Charges** – it shall do, execute, acknowledge and deliver such financing statements and further mortgages, charges, assignments, transfers, documents, acts, matters and things (including further schedules) as may be reasonably requested by the Bank of or regarding the Collateral to give effect to this Debenture and to pay all costs for searches and filings:
 - (i) **Further Documentation** – it will deliver to the Bank from time to time promptly upon request:
 - (i) any Documents of Title, Instruments, Securities and Chattel Paper constituting, representing or relating to the Collateral,

- (ii) all books of account and all records, ledgers, reports, correspondence, schedules, documents, statements, lists and other writings relating to Collateral to inspect, audit or copy the same,
 - (iii) all financing statements prepared by or for the Borrower regarding the Borrower's business,
 - (iv) all policies and certificates of insurance relating to the Collateral, and
 - (v) such information concerning the Collateral, the Borrower and the Borrower's business and affairs as the Bank may reasonably request;
- (j) **No Further Encumbrances** - it shall not, without the prior written consent of the Bank create any Security Interest upon the Collateral or any part thereof;
- (k) **Inspection** - the Bank shall have the right at any time and from time to time to verify the existence and state of the Collateral in any manner the Bank may consider appropriate and the Borrower agrees to furnish all assistance and information and perform all such acts as the Bank may reasonably request in connection with such inspections and for such purpose grant to the Bank or its agents access to all places where the Collateral may be located and to all premises occupied by the Borrower;
- (l) **Consent of Landlord** - it shall obtain the consent of the landlord to the charging of the leasehold lands and premises referred to in Section 3(a);
- (m) **Prevent Accession** - it shall prevent the Collateral, save inventory sold or leased as permitted by this Debenture, from being or becoming an accession to other property not covered by this Debenture;
- (n) **Strict Compliance** - it shall strictly comply with every covenant and undertaking given to the Bank including any further covenants set out in Schedule "D". If the Borrower should fail to perform any covenant or agreement, the Bank may (but is not obligated to) itself perform or cause to be performed the same and all expenses incurred or payments made by the Bank in so doing shall be paid by the Borrower and be secured by this Debenture, with interest thereon at a rate equal to Money Bank Prime (MBP); and
- (o) **Debts, Instruments and Chattel Papers** - each Debt, Instrument and Chattel Paper is enforceable according to its terms against the party obliged to pay the same, and the amount represented by the Borrower from time to time as the amount owing under any and all Debts, Instruments and Chattel Papers will be correct, and no party obligated to the Borrower will have any defense, set-off, claim or counter-claim against the Borrower which can be asserted against the Bank in any proceeding to enforce collateral or otherwise.

4. SECURITIES

If the Collateral at any time includes Securities, the Borrower authorizes the Bank to transfer the same or any part thereof into its own name (or that of its nominee) so that the Bank or its nominee may appear on record as the sole owner thereof; provided that, until default, the Bank may, at its discretion, deliver promptly to the Borrower all notices or other communications received by it or its nominee as such registered owner and, upon receipt of payment of any necessary expenses thereof, may issue to the Borrower or its order a proxy to vote and take all action with respect to such Securities. The Borrower hereby irrevocably constitutes and appoints the Manager or Acting Manager from time to time of the branch of the Bank to which this Debenture is addressed the true and lawful attorney of the Borrower, with full power of substitution, to do any of the foregoing in the name of the Borrower whenever and wherever it may be deemed necessary or expedient. The Bank or its nominee may, at its discretion, deposit any Securities with The Canadian Depository for Securities Limited, its successors or assigns ("CDS"). Any such deposit will result in the physical evidence of the Security being destroyed. The sole evidence of the Security shall be a ledger position maintained by the Bank. Any such deposit shall be governed by the laws of Manitoba.

5. COLLECTION OF DEBTS

Before or after default under this Debenture, the Bank may notify all or any of the Borrower's debtors of the Security Interest and may also direct such debtors to make all payments on the Collateral to the Bank. The Borrower acknowledges that any payments on other proceeds of income from or interest on the Collateral received by the Borrower from such debtors, whether before or after notification of this Security Interest and whether before or after default under this Debenture shall be received and held by the Borrower in trust for the Bank and shall be turned over to the Bank upon request.

6. REVOLVEMENT

It is intended that this Debenture be continuing collateral security for the payment and satisfaction to the Bank of the Indebtedness and all monies whatsoever secured hereby whether the same is from time to time reduced and thereafter increased or entirely extinguished and thereafter incurred again.

7. INCREASES, PROFITS, PAYMENTS OR DISTRIBUTIONS

- (a) Whether or not default has occurred, the Borrower authorizes the Bank:
- (i) to receive any increase in or profits on the Collateral (other than money) and to hold the same as part of the Collateral;
 - (ii) to receive any payment or distribution upon redemption or retirement or upon dissolution and liquidation of the issuer of the Collateral and to surrender such Collateral in exchange therefor, and to hold any such payment or distribution as part of the Collateral;

- (b) If the Borrower receives any such increase or profits (other than money) or payments or distributions, the Borrower will deliver the same promptly to the Bank to be held by the Bank.

8. **DISPOSITION OF MONIES**

All monies collected or received by the Bank pursuant to or in exercise of any right it possesses with respect to the Collateral shall be applied on account of Indebtedness in such manner as the Bank deems best or, at the option of the Bank, may be held unappropriated in a collateral account or released to the Borrower, all without prejudice to the liability of the Borrower or the rights of the Bank and any surplus shall be accounted for as required by law.

9. **EVENTS OF DEFAULT**

Subject to applicable bankruptcy and insolvency legislation, the Indebtedness secured by this Debenture shall immediately become payable and the security hereby constituted shall immediately become enforceable if the Borrower makes default in payment of any of the Indebtedness or of any covenant or condition hereunder or under any other agreement to which the Borrower and the Bank are parties, or:

- (a) **Bankruptcy or Insolvency** - if an order is made or if a resolution is passed which results in the bankruptcy of the Borrower or if the Borrower ceases or threatens to cease to carry on business, becomes insolvent or makes an authorized assignment or a proposal or makes or agrees to make a bulk sale of its assets with or without complying with applicable law or commits or threatens to commit an act of bankruptcy or if a bankruptcy petition or a petition for winding-up is filed or presented against the Borrower or if a receiver or trustee is appointed for the Borrower or for any assets of the Borrower or if any proceedings with respect to the Borrower are commenced under any statute designed to compromise the claims of creditors;
- (b) **Executions, Etc.** - if any execution, sequestration, extent or other process of any court becomes enforceable against the Borrower or if a distress or analogous process is levied upon the assets of the Borrower or any part thereof;
- (c) **Encumbrances** - if any encumbrance affecting the Collateral becomes enforceable against the Collateral;
- (d) **Change of Ownership or Amalgamation** - if there is any change in ownership of the shares of the Borrower without the prior written approval of the Bank, or if the Borrower merges or amalgamates with any other corporation without the prior written approval of the Bank;

- (e) **Cross-Default** - if the Borrower is in default under the provisions of any agreement evidencing or relating to any outstanding indebtedness or liability of the Borrower, or if the execution and delivery of the Debenture or any other security document delivered to the Bank in connection with the Debenture should constitute a breach of any agreement to which the Borrower is a party or by which it may be bound;
- (f) **Litigation** - if there is litigation pending or threatened against the Borrower before any court, administrative board or other tribunal which, if determined adversely to the Borrower, in the opinion of the Bank would materially affect the Collateral or would have a material adverse effect on the financial condition of the Borrower;
- (g) **Dissolution, Liquidation, Winding-Up** - if there is instituted by or against the Borrower any formal or informal proceeding for the dissolution or liquidation of, settlement of claims against or winding-up of affairs of the Borrower;
- (h) **False Report** - if any certificate, statement, representation, warranty or audit report heretofore or hereafter furnished by or on behalf of the Borrower pursuant to or in connection with this Debenture, or otherwise (including, without limitation, the representations and warranties contained herein) or as an inducement to the Bank to extend any credit to or to enter into this or any other agreement with the Borrower, proves to have been false or in any material respect at the time as of which the facts herein set forth were stated or certified, or proves to have omitted any substantial contingent or unliquidated liability or claim against the Borrower; or if upon the date of execution of this Debenture, there shall have been any material adverse change in any of the facts disclosed by any such certificate, representation, statement, warranty or audit report which change shall not have been disclosed to the Bank at or prior to the time of such execution; or
- (i) **Material Adverse Change** - if, in the opinion of the Bank, there is a material adverse change in the financial condition, ownership, or operation of the Borrower.

The provisions of this section are not intended in any way to affect any rights of the Bank with respect to any indebtedness which may now or hereafter be payable on demand.

10. **BANK MAY WAIVE EVENT OF DEFAULT**

The Bank may by written notice to the Borrower waive any default on the part of the Borrower on such terms and conditions as the Bank may determine, but no such waiver shall be taken to affect any subsequent default or the rights resulting therefrom.

11. **BANK'S RIGHTS UPON SECURITY BECOMING ENFORCEABLE**

Whenever this Debenture becomes enforceable and so long as it remains enforceable the Bank may (to the extent permitted by law):

- (a) **Take Possession** - immediately take possession of, collect, demand, sue on, enforce, recover and receive the Collateral and, whether or not the Bank has so taken possession, may sell, lease or otherwise dispose of the Collateral either as a whole or in separate parcels at public auction, by public tender or by private sale, either for cash or upon credit and at such time or times and upon such terms and conditions as the Bank may determine with or without notice, advertising or any other formality, all of which are hereby waived by the Borrower; and the bank may also rescind or vary any contract of sale that may have been entered into and resell with or under any other powers conferred without being answerable for any loss and may adjourn any such sale from time to time; and the Bank may execute and deliver to any purchaser of the Collateral or any part thereof good and sufficient deeds and documents for the same, the Bank being irrevocably constituted the attorney of the Borrower for the purpose of making any such sale and executing such deeds and documents;
- (b) **Appointment of Receiver, etc.** - by instrument in writing appoint any person qualified under applicable legislation, whether an officer or employee of the Bank or not, to be a receiver (which term shall include a receiver and manager) of the Collateral or of any part thereof and remove any receiver so appointed and appoint another instead; and, subject to the provisions of the instrument appointing such receiver, any such receiver so appointed shall have power (to the extent permitted by law):
 - (i) to take possession of the Collateral or any part thereof,
 - (ii) to carry on (or to concur in the carrying on of) all or any part of the business of the Borrower relating to the Collateral and to use the Collateral directly in carrying on the Borrower's business or as security for loans or advances to enable the receiver to carry on the Borrower's business or otherwise,
 - (iii) to make any arrangement or compromise which the receiver shall think expedient,
 - (iv) to borrow money on the security of the Collateral and in priority to this Debenture for the purpose of the maintenance, preservation or protection of the Collateral or any part thereof or for carrying on all or any part of the business of the Borrower relating to the Collateral (and in so doing the receiver may issue certificates called "Receiver's Certificates"). Receiver's Certificates may be payable either to order or to bearer and may be payable at such time or times as the receiver may think expedient and shall bear interest as shall be stated therein and the amounts from time to time payable by virtue of

Receiver's Certificates shall form a charge upon the Collateral in priority to the charge of this Debenture, and

- (v) to sell, lease or otherwise dispose of the whole or any part of the Collateral (or to concur therein) at public auction, by public tender or by private sale, with or without advertisement, for cash or upon credit or partly for cash and partly for credit, at such time and such terms and conditions as the receiver shall determine with or without notice and with or without advertising and without any formality all of which are hereby waived by the Borrower, with power to vary or rescind any contract of sale or other contract, buy at any such auction, resell with or under any of the powers conferred hereunder without being answerable for any loss and adjourn any sale from time to time; and the receiver may execute and deliver to any purchaser of the Collateral or any part thereof good and sufficient deeds and documents for the same, the receiver being irrevocably constituted the attorney of the Borrower for the purpose of making any such sale and executing such deeds and documents, provided that such receiver shall be deemed the agent of the Borrower and not that of the Bank and the Bank shall not be in any way responsible for any misconduct, negligence or nonfeasance of any such receiver, or the receiver's servants, agents or employees. To facilitate the foregoing powers, any such receiver may, to the exclusion of all others, including the Borrower, enter upon, use and occupy all premises owned or occupied by the Borrower wherein the Collateral may be situate, maintain the Collateral upon such premises, borrow money and use Collateral directly in carrying on the Borrower's business or as security for loans or advances to enable the Receiver to carry on the Borrower's business or otherwise, as such receiver shall, in the Receiver's discretion, determine. Except as may be otherwise directed by the Bank, the net profits of carrying on the said business and the net proceeds of sale shall be applied by the receiver, subject to claims ranking in priority to this Debenture:
- 1) firstly, in payment of all costs, charges and expenses of and incidental to the appointment of the receiver and the exercise by the receiver of all or any of the powers aforesaid, including the reasonable remuneration of the receiver and all outgoings properly paid by the receiver,
 - 2) secondly, in payment to the Bank of all interest, principal and other monies which may from time to time be or become due hereunder in such order as the Bank in its discretion shall determine, and
 - 3) thirdly, subject to claims ranking subsequently to this Debenture, by remitting any surplus to the Borrower;

- (c) **Consultants** - require the Borrower to engage a consultant of the Bank's choice, such consultant to receive the full cooperation and support of the Borrower and its employees including, without limitation, unrestricted access to the premises, books and records of the Borrower; all fees and expenses of such consultant shall be for the account of the Borrower and the Borrower hereby authorizes such consultant to report directly to the Bank as well as to the Borrower and to disclose to the Bank any and all information obtained in the course of such consultant's employment;
- (d) **Further Rights** - exercise any of the other rights to which the Bank is entitled as holder of this Debenture, including the right to take proceedings in any court of competent jurisdiction for the appointment of a receiver and manager, for the sale of the Collateral or any part thereof or for foreclosure, and the right to take any other actions, suit, remedy or proceeding authorized or permitted thereunder or by law or by equity in order to enforce the security constituted by this Debenture;
- (e) **Statutory Rights** - in addition to those rights granted herein and in any other agreement now or hereafter in effect between the Borrower and the Bank and in addition any other rights the Bank may have at law or in equity, the Bank shall have, both before and after default all rights and remedies of a secured party under applicable statutes provided always that the Bank shall not be liable or accountable for any failure to exercise its remedies, take possession of, collect, enforce, realize, sell, lease or otherwise dispose of Collateral or to institute any proceedings for such purposes. Furthermore, the Bank shall have no obligation to take any steps to preserve rights against prior parties to any Instrument or Chattel Paper whether Collateral or Proceeds and whether or not in the Bank's possession and shall not be liable or accountable for failure to do so;
- (f) **Power of Attorney** - the Borrower grants to the Bank its irrevocable power of attorney (which power shall be binding upon the borrower and all third parties) to execute and deliver on behalf of the Borrower all documents and instruments as may be necessary to effect the transfers, assignments and enforcement procedures contemplated in this Section 11; and
- (g) **Bank May Purchase Collateral** - the Bank, any subsidiary of the Bank or any agent or representative thereof may become purchasers at any sale of the Collateral, whether made under the powers of sale contained in this Debenture or pursuant to judicial proceedings.

12. **BANK NOT OBLIGED TO REALIZE SECURITY**

The Bank shall not be liable or accountable for any failure to collect, enforce or realize any Intangible and shall not be bound to institute proceedings for the purpose of collecting, enforcing or realizing the same for the purpose of preserving any right of the Bank, the Borrower or any other person, firm or corporation in respect of the same, and shall have no obligation to take any steps to preserve rights against prior parties to any Debt,

Instrument or Chattel Paper whether Collateral or Proceeds and whether or not in the Bank's possession and shall not be liable or accountable for any delay in or failure to do so.

13. DISCHARGE

If the Borrower pays to the Bank the Indebtedness secured hereby or makes arrangements with respect thereto which are to the complete satisfaction of the Bank, and otherwise observes and performs the terms and conditions hereof, then the Bank shall at the request and at the expense of the Borrower cancel and discharge the mortgage(s) and charge(s) of this Debenture and the Security Interest created hereby and execute and deliver to the Borrower such deeds and other instruments that shall be requisite therefor; provided that until such cancellation and discharge this Debenture shall remain in full force and effect; provided further that this Debenture may be assigned, pledged, hypothecated or deposited by the Borrower as security for advances or loans to or for indebtedness or other obligations or liabilities of the Borrower, and in such event, this Debenture shall not be deemed to have been discharged or redeemed by reason of the account of the Borrower having ceased to be in debit.

14. NOTICES

Any notice or demand required or permitted to be given or made by the Bank to the Borrower may be served personally on a director, officer or employee of the Borrower or may be given or made by mailing the same by prepaid registered mail addressed to the Borrower at the most recent address on the records of the Branch and shall be conclusively deemed to have been received by the Borrower if served personally on the day served and if given or made by mailing by prepaid registered mail on the third business day following the date of such mailing.

15. DEBENTURE TO BE CONTINUING SECURITY

The remedies of the Bank under this Debenture may be exercised from time to time separately or in combination and are in addition to and not in substitution for any other rights of the Bank however created. The execution and delivery of this debenture shall not act as a merger of any simple contract debt or suspend the fulfilment of, or affect the rights, remedies or powers of the Bank in respect of, any present or future debts, liabilities or obligations of the Borrower to the Bank or any security now or hereafter held by the Bank for the payment or fulfilment thereof.

16. SET-OFF

The Indebtedness secured hereby shall be paid and this Debenture shall be assignable without regard to any set-off, counter-claim or equities between the Borrower and the Bank. Notwithstanding the foregoing, and any other provision of this Debenture, the Bank may at any time, without notice to the Borrower or to any other person, and from time to time, set-off, appropriate and apply any and all deposits by or for the benefit of the Borrower with any branch of the Bank, general or special, matured or unmatured, and any

other indebtedness of the Bank to the Borrower, against and on account of the indebtedness secured hereby irrespective of whether or not the Bank has made any demand for payment or the Indebtedness secured hereby is due.

17. GOVERNING LAW

This Debenture shall be governed in all respects by the law of the Province/Territory of Manitoba.

18. MANITOBA LEGISLATION

In the event of default by the Corporation hereunder, and in the event that proceedings are commenced to foreclose this Debenture in Manitoba, then as of and from the time of application for order nisi in said proceedings, the rate of interest on the principal secured by this Debenture shall be fixed at the Money Bank Prime plus the amount set forth in Section 1 as at the day of commencing such proceedings and shall remain at such rate unless and until the said foreclosure action shall have been settled and discontinued.

19. MANITOBA REALIZATION

In the event of default by the Corporation hereunder, and in the event that proceedings are commenced to foreclose this Debenture in Manitoba, then as of and from the time of application for order nisi in said proceedings, the rate of interest on the principal secured by this Debenture shall be fixed at the Money Bank Prime plus the amount set forth in Section 1 as at the day of commencing such proceedings and shall remain at such rate unless and until the said foreclosure action shall have been settled and discontinued.

20. FURTHER ACTS

The Borrower authorizes the Bank to file such financing statements and other documents and do such acts, matters and things (including completing and adding schedules identifying the Collateral or any permitted encumbrances affecting the Collateral or identifying the locations at which the Borrower's business is carried on and the Collateral and records relating thereto are situate) as the Bank may deem appropriate to perfect and continue the grant(s), mortgage(s), charge(s), assignment(s), transfer(s) of this Debenture and the Security Interest created hereby, to protect and preserve the Collateral and to realize upon the Debenture and the Borrower hereby irrevocably constitutes and appoints the Manager or Acting Manager from time to time of the above mentioned branch of the Bank the true and lawful attorney of the Borrower, with full power of substitution, to do any of the foregoing in the name of the Borrower whenever and wherever it may be deemed necessary or expedient.

21. **SUCCESSORS AND ASSIGNS**

This Debenture shall ensure to the benefit of and be binding upon the parties and their respective successors and assigns including, without limitation, any entity with which the Borrower may be amalgamated. In any action brought by an assignee of this Debenture and the Security Interest or any part thereof to enforce any rights hereunder, the Borrower shall not assert against the assignee any claim or defence which the Borrower now has or hereafter may have against the Bank.

22. **AMENDMENTS**

Save for any schedules which may be added hereto pursuant to the provisions hereof, no modification, variation or amendment of any provision of this Debenture shall be made except by a written agreement, executed by the parties hereto and no waiver of any provision hereof shall be effective unless in writing.

23. **INVALIDITY**

In the event the terms and provisions of this Debenture, as amended from time to time, shall be deemed invalid or void, in whole or in part, by any Court of competent jurisdiction, the remaining terms of this Debenture shall remain in full force and effect.

24. **ATTACHMENT**

The Security Interest created by this Debenture is intended to attach when this Debenture is signed by the Borrower; provided that, with respect to after-acquired property, the Security Interest created by this Debenture is intended to attach when the Borrower acquires an interest in such property.

IN WITNESS WHEREOF, the Borrower has executed this Debenture this ___day of _____, 20__.

(Corporate Name)

By: _____

By: _____

Title: _____

Title: _____

SCHEDULE "C"

DEFINITIONS

In the attached Debenture:

- (a) "Accessories" means Goods that are installed in or affixed to other Goods;
- (b) "Chattel Paper" means one or more than one writing that expresses both a monetary obligation and a Security Interest in specific Goods;
- (c) "Collateral" means all property, real or other, that is granted, mortgaged, charged, assigned or transferred to the Bank pursuant to this Debenture;
- (d) "Consumer Goods" means Goods that are used or acquired for use primarily for personal, family or household purposes;
- (e) "Debt" means an Intangible which is a book account, book debt or generally any account, debt, due, claim, chose in action or demand of any nature or kind however arising or secured including letters of credit and advices of credit, which are now due, owing or accruing or growing due to or owned by or which may hereafter become due, owing or accruing or growing due to or owned by the Borrower;
- (f) "Document of Title" means any writing, negotiable or not, that purports to be issued by or addressed to a bailee and purports to cover such goods in the bailee's possession as are identified or fungible portions of an identified mass, and that in the ordinary course of business is treated as establishing that the person in possession of it is entitled to receive, hold and dispose of the document and the goods it covers;
- (g) "Equipment" means Goods that are not Inventory or Consumer Goods;
- (h) "Expenses" means all expenses incurred in recovering any Indebtedness secured by the Debenture or in enforcing the security thereby constituted, including but not limited to the expenses incurred by consultants appointed pursuant to Section 12(c) in connection with the repossession, holding, repairing, processing, preparing for disposition and disposing of any of the Collateral (including reasonable legal costs on a solicitor and client basis and other expenses), with interest thereon from the date of incurring such expenses at a rate equal to the interest rate in effect hereunder from time to time;
- (i) "Goods" means all chattels, personal, other than choses in action, Consumer Goods and money, and includes emblements and industrial growing crops, and oil, gas and other minerals to be extracted, and timber to be cut including all parts, accessories, attachments, special tools, additions and accessions; and Goods are either Consumer Goods, Equipment or Inventory;

- (j) "Instrument" means a bill, note or cheque within the meaning of the *Bills of Exchange Act* (Canada), or any other writing that evidences a right to the payment of money and is of a type that in the ordinary course of business is transferred by delivery with any necessary endorsement or assignment, but does not include a writing that constitutes part of Chattel Paper, a Document of Title or Securities;
- (k) "Intangible" means all personal property, including choses in action, that is not Goods, Chattel Paper, Documents of Title, Instruments or Securities;
- (l) "Inventory" means Goods that are held by a person for sale or lease, or that are to be furnished or have been furnished under a contract of service, or that are raw materials, work in process or materials used or consumed in a business or profession and shall include livestock and their young after conception and crops grown within one year of the execution of the Debenture;
- (m) "Proceeds" means personal property in any form or fixtures derived directly or indirectly from any dealing with Collateral or proceeds or that indemnifies or compensates for Collateral destroyed or damaged;
- (n) "Money Bank Prime" or "MBP" means the annual rate of interest announced from time to time by the Bank as a reference rate then in effect for determining interest rates on Canadian dollar commercial loans in Canada;
- (o) "Securities" means shares, stock, warrants, bonds, debentures, debenture stock or the like issued by a corporation or other person, or a partnership, association or government; and
- (p) "Security Interest" means a grant, mortgage, charge, assignment or transfer of any interest in personal property and includes, without limitation, a security interest created pursuant to personal property security legislation.

ADDITIONAL SECURITY/APPOINTMENT OF RECEIVER

1. This Mortgage is in addition to, and not in substitution for, all other security given by the Mortgagor to the Mortgagee for the indebtedness secured hereby, including, without limitation, a General Security Agreement.

2. The Mortgagee may by instrument in writing appoint any person qualified under applicable legislation, whether an officer or employee of the Mortgagee or not, to be a receiver (which term shall include a receiver and manager) of the Mortgaged Property or of any part thereof and remove any receiver so appointed and appoint another receiver instead; and, subject to the provisions of the instrument appointing such receiver, any such receiver so appointed shall have power (to the extent permitted by law):

- (i) to take possession of the Mortgaged Property or any part thereof,
- (ii) to carry on (or to concur in the carrying on of) all or any part of the business of the Mortgagor relating to the Mortgaged Property and to use the Mortgaged Property directly in carrying on the Mortgagor's business or as security for loans or advances to enable the receiver to carry on the Mortgagor's business or otherwise,
- (iii) to make any arrangement or compromise which the receiver shall think expedient,
- (iv) to borrow money on the security of the Mortgaged Property and in priority to this Mortgage for the purpose of the maintenance, preservation or protection of the Mortgaged Property or any part thereof or for carrying on all or any part of the business of the Mortgagor relating to the Mortgaged Property (and in so doing the receiver may issue certificates called "Receiver's Certificates"). Receiver's Certificates may be payable either to order or to bearer and may be payable at such time or times as the receiver may think expedient and shall bear interest as shall be stated therein and the amounts from time to time payable by virtue of Receiver's Certificates shall form a charge upon the Mortgaged Property in priority to the charge of this Mortgage, and
- (v) to sell, lease or otherwise dispose of the whole or any part of the Mortgaged Property (or to concur therein) at public auction, by public tender or by private sale, with or without advertisement, for cash or upon credit or partly for cash and partly for credit, at such time and such terms and conditions as the receiver shall determine with or without notice and with or without advertising and without any formality all of which are hereby waived by the Mortgagor, with power to vary or rescind any contract of sale or other contract, buy at any such auction, resell with or under any of the powers conferred hereunder without being answerable for any loss and adjourn any sale from time to time; and the receiver may execute and deliver to any purchaser of the Mortgaged Property or any part thereof good and sufficient deeds and documents for the same, the receiver being irrevocably constituted the attorney of the Mortgagor for the purpose of making any such sale and executing such deeds and documents, provided that such receiver shall be deemed the agent of the Mortgagor and not that

of the Mortgagee and the Mortgagee shall not be in any way responsible for any misconduct, negligence or nonfeasance of any such receiver, the receiver's servants, agents or employees. To facilitate the foregoing powers, any such receiver may, to the exclusion of all others, including the Mortgagor, enter upon, use and occupy all premises owned or occupied by the Mortgagor wherein the Mortgaged Property may be situate, maintain the Mortgaged Property upon such premises, borrow money and use Mortgaged Property directly in carrying on the Mortgagor's business or as security for loans or advances to enable the receiver to carry on the Mortgagor's business or otherwise, as such receiver shall, in the receiver's discretion, determine. Except as may be otherwise directed by the Mortgagee, the net profits of carrying on the said business and the net proceeds of sale shall be applied by the receiver, subject to claims ranking in priority to this Mortgage:

- 1) firstly, in payment of all costs, charges and expenses of and incidental to the appointment of the receiver and the exercise of all or any of the powers aforesaid, including the reasonable remuneration of the receiver and all outgoings properly paid,
- 2) secondly, in payment to the Mortgagee of all interest, principal and other monies which may from time to time be or become due hereunder in such order as the Mortgagee in its discretion shall determine, and
- 3) thirdly, subject to claims ranking subsequently to this Mortgage, by remitting any surplus to the Borrower.

FARM LANDS OWNERSHIP DECLARATION

Referred to in the annexed Demand Debenture dated as of _____, ____, and issued by _____ to THE MONEY BANK.

Province of Manitoba

To Wit:

I, _____, of the City of _____, in Manitoba,
MAKE OATH AND SAY:

1. I am the _____ of _____, the mortgagor under the demand debenture to which this declaration is attached and as such have knowledge of the matters herein declared by me.
2. I am of the full age of majority.
3. The registration of this instrument does not contravene the provisions of *The Farm Lands Ownership Act C.C.S.M. c. F35* (Manitoba) because the within land is not farm land as defined in *The Farm Lands Ownership Act* (Manitoba). ***[Amend for applicable exception]***

SWORN before me at the City)
of _____ in _____, this)
____ day of _____, 20 ____ .) _____
)

A Notary Public in and for
the Province of Manitoba

2. Pledge of Debenture

PLEDGE OF DEBENTURE

[] (the "Borrower") having lodged and deposited with The Money Bank (the "Bank") its debenture (the "Debenture") dated the ___ day of _____, 20__, in the principal amount of _____in lawful money of Canada payable to the Bank, for valuable consideration hereby covenants and agrees as follows:

1. The Debenture is hereby assigned, pledged and hypothecated to and deposited with the Bank to be held by the Bank as general and continuing collateral security for the payment and fulfilment of all debts, liabilities and obligations, present or future, direct or indirect, matured or not, of the Borrower to the Bank of whatsoever nature or kind and whether arising from agreement or dealings between the Bank and the Borrower or from any agreement or dealings between the Bank and any third party by which the Bank may be or become in any manner whatsoever a creditor of the Borrower or howsoever otherwise arising and whether the Borrower be bound alone or with another or others and whether as principal or surety.
2. If the security constituted by the Debenture shall become enforceable in accordance with the terms thereof, then the Bank or its or their nominee shall be entitled to sell at public or private sale or otherwise realize upon the security of the Debenture and to otherwise exercise and enforce all the rights and remedies of a holder of the Debenture free from any control of the Borrower provided, however, that the Bank shall not be bound to deal with the Debenture in any way or to exercise any rights or remedies as aforesaid and shall not be liable for any loss which may be occasioned by any failure to do so.
3. The Bank may grant extensions of time and other indulgences, take and give up securities, accept compositions, grant releases and discharges and otherwise deal with the Borrower and all other parties and securities as the Bank may see fit, all without prejudice to the debts, liabilities or obligations of the Borrower to the Bank or to the Bank's rights in respect of the Debenture and the security hereby constituted.
4. The Debenture and the security hereby constituted are in addition to and not in substitution for any other security now or hereafter held by the Bank and shall not operate as a merger of any simple contract debt or suspend the fulfilment of, or affect the rights, remedies or powers of the Bank in respect of, any present or future debts, liabilities or obligations of the Borrower to the Bank or any securities now or hereafter held by the Bank for the payment or fulfilment thereof.

5. Payment by the Borrower to the Bank of interest for any period in respect of the debts, liabilities and obligations of the Borrower to the Bank shall be deemed payment in full satisfaction of the interest payment for the same period provided for under the terms of the Debenture.
6. This agreement shall be binding upon and enure to the Borrower and its successors and assigns and shall enure to the benefit of the Bank and its successors and assigns.
7. If any provision 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.

IN WITNESS WHEREOF the Borrower has executed this Pledge by the hand of its proper officers duly authorized in that behalf as of this ____ day of _____, 20__.

Per: _____

Per: _____

3. Guarantee

GUARANTEE AND POSTPONEMENT OF CLAIM

TO: THE MONEY BANK

FOR VALUABLE CONSIDERATION, receipt hereof is hereby acknowledged, the undersigned and each of them (if more than one) hereby jointly and severally guarantee(s) payment on demand to The Money Bank (hereinafter called the "Bank") of all debts and liabilities, present or future, direct or indirect, absolute or contingent, matured or not, at any time owing by _____ (hereinafter called the "customer") to the Bank or remaining unpaid by the customer to the Bank, heretofore or hereafter incurred or arising and whether incurred by or arising from agreement or dealings between the Bank and the customer or by or from any agreement or dealings with any third party by which the Bank may be or become in any manner whatsoever a creditor of the customer or however otherwise incurred or arising anywhere within or outside the country where this guarantee is executed and whether the customer be bound alone or with another or others and whether as principal or surety (such debts and liabilities being hereinafter called the "liabilities") [*; the liability of the undersigned hereunder being limited to the sum of _____ DOLLARS (\$ _____) together with interest thereon from the date of demand for payment at a rate equal to the Bank's Prime Interest Rate per annum, in effect from time to time plus ____ percent per annum as well after as before default and judgment*].

AND THE UNDERSIGNED AND EACH OF THEM (IF MORE THAN ONE) HEREBY JOINTLY AND SEVERALLY AGREE(S) WITH THE BANK AS FOLLOWS:

(1) The Bank may grant time, renewals, extensions, indulgences, releases and discharges to, take securities (which word as used herein includes other guarantees) from and give the same and any or all existing securities up to, abstain from taking securities from or from perfecting securities of, cease or refrain from giving credit or making loans or advances to, accept compositions from and otherwise deal with, the customer and others and with all securities as the Bank may see fit, and may apply all monies at any time received from the customer or others or from securities upon such part of the liabilities as the Bank deems best and change any such application in whole or in part from time to time as the Bank may see fit, the whole without in any way limiting or lessening the liability of the undersigned under the guarantee, and no loss of or in respect of any securities received by the Bank from the customer or others, whether occasioned by the fault of the Bank or otherwise, shall in any way limit or lessen the liability of the undersigned under this guarantee.

(2) This guarantee shall be a continuing guarantee and shall cover all the liabilities, and it shall apply to and secure any ultimate balance due or remaining unpaid to the Bank.

(3) The Bank shall not be bound to exhaust its recourse against the customer or others or any securities it may at any time hold before being entitled to payment from the

undersigned of the liabilities. The undersigned renounce(s) to all benefits of discussion and division.

(4) The undersigned or any of them may, by notice in writing delivered to the manager of the branch or agency of the Bank receiving this instrument, determine their liability under this guarantee in respect of liabilities thereafter incurred or arising but not in respect of any liabilities theretofore incurred or arising even though not then matured, provided, however, that notwithstanding receipt of any such notice the Bank may fulfil any requirements of the customer based on agreements express or implied made prior to the receipt of such notice and any resulting liabilities shall be covered by this guarantee; and provided further that in the event of the determination of this guarantee as to one or more of the undersigned it shall remain a continuing guarantee as to the other or others of the undersigned.

(5) All indebtedness and liability, present and future, of the customer to the undersigned or any of them are hereby assigned to the Bank and postponed to the liabilities, and from and after demand hereunder all monies received by the undersigned or any of them in respect thereof shall be received in trust for the Bank and forthwith upon receipt shall be paid over to the Bank, the whole without in any way limiting or lessening the liability of the undersigned under the foregoing guarantee; and this assignment and postponement is independent of the said guarantee and shall remain in full effect notwithstanding that the liability of the undersigned or any of them under the said guarantee may be extinct. The term "Liabilities", as previously defined, for purposes of the postponement feature provided by this agreement, and this section in particular, includes any funds advanced or held at the disposal of the customer under any line(s) of credit.

(6) This guarantee and agreement shall not be affected by the death or loss or diminution of capacity of the undersigned or any of them or by any change in the name of the customer or in the membership of the customer's firm through the death or retirement of one or more partners or the introduction of one or more other partners or otherwise, or by the acquisition of the customer's business by a corporation, or by any change whatsoever in the objects, capital structure or constitution of the customer, or by the customer's business being amalgamated with a corporation, but shall notwithstanding the happening of any such event continue to apply to all the liabilities whether theretofore or thereafter incurred or arising and in this instrument the word "customer" shall include every such firm and corporation.

(7) This guarantee shall not be considered as wholly or partially satisfied by the payment or liquidation at any time or times of any sum, or sums of money for the time being due or remaining unpaid to the Bank, and all dividends, compositions, proceeds of security valued and payments received by the Bank from the customer or from others or from estates shall be regarded for all purposes as payments in gross without any right on the part of the undersigned to claim in reduction of the liability under this guarantee the benefit of any such dividends, compositions, proceeds or payments or any securities held by the Bank or proceeds thereof, and the undersigned shall have no right to be subrogated in any rights of the Bank until the Bank shall have received payment in full of the liabilities.

(8) All monies, advances, renewals and credits in fact borrowed or obtained from the Bank shall be deemed to form part of the liabilities, notwithstanding any of the following of which the Bank shall have no actual knowledge, namely: any lack or limitation of status or of power, incapacity or disability of the customer or of the directors, partners or agents thereof, or that the customer may not be a legal or suable entity; and notwithstanding any irregularity, defect or informality in the borrowing or obtaining of such monies, advances, renewals or credits, the whole whether known to the Bank or not; and any sum which may not be recoverable from the undersigned on the footing of a guarantee shall be recoverable from the undersigned and each of them as sole or principal debtor in respect thereof and shall be paid to the Bank on demand with interest and accessories.

(9) This guarantee is in addition to and not in substitution for any other guarantee, by whosoever given, at any time held by the Bank, and any present or future obligation to the Bank incurred or arising otherwise than under a guarantee, of the undersigned or any of them or of any other obligant, whether bound with or apart from the customer; excepting any guarantee surrendered for cancellation on delivery of this instrument.

(10) The undersigned and each of them shall be bound by any account settled between the Bank and the customer, and if no such account has been so settled immediately before demand for payment under this guarantee any account stated by the Bank shall be accepted by the undersigned and each of them as conclusive evidence of the amount which at the date of the account so stated is due by the customer to the Bank or remains unpaid by the customer to the Bank.

(11) This guarantee and agreement shall be operative and binding upon every signatory thereof notwithstanding the non-execution thereof by any other proposed signatory or signatories, and possession of this instrument by the Bank shall be conclusive evidence against the undersigned and each of them that this instrument was not delivered in escrow or pursuant to any agreement that it should not be effective until any conditions precedent or subsequent had been complied with, unless at the time of receipt of this instrument by the Bank each signatory thereof obtains from the manager of the branch or agency of the Bank receiving this instrument a letter setting out the terms and conditions under which this instrument was delivered and the conditions, if any, to be observed before it becomes effective.

(12) No suit based on this guarantee shall be instituted until demand for payment has been made, and demand for payment shall be deemed to have been effectually made upon any guarantor if, and five (5) business days after, an envelope containing such demand, addressed to such guarantor at the address of such guarantor last known to the Bank is sent by registered mail, postage prepaid, in the post office, and in the event of the death of any guarantor demand for payment addressed to any of such guarantor's heirs, executors, administrators or legal representatives at the address of the addressee last known to the Bank and posted as aforesaid shall be deemed to be effectually made upon all of them. Moreover, when demand for payment has been made, the undersigned shall also be liable to the Bank for all legal costs (on a solicitor and client basis) incurred by or on behalf of the

Bank resulting from any action instituted on the basis of this guarantee. All payments hereunder shall be made to the Bank at a branch or agency of the Bank.

(13) This instrument covers all agreements between the parties hereto relative to this guarantee and assignment and postponement, and none of the parties shall be bound by any representation or promise made by any person relative thereto which is not embodied herein.

(14) This guarantee and agreement shall extend to and enure to the benefit of the Bank and its successors and assigns, and every reference herein to the undersigned or to each of them or to any of them, is a reference to and shall be construed as including the undersigned and the heirs, executors, administrators, legal representatives, successors and assigns of the undersigned or of each of them or of any of them, as the case may be, to and upon all of whom this guarantee and agreement shall extend and be binding.

(15) Prime Interest Rate is the annual rate of interest announced from time to time by _____ Bank as a reference rate then in effect for determining interest rates on Canadian dollar commercial loans in Canada.

(16) The undersigned has expressly requested that this document be drawn up in the English language.

(17) This guarantee and postponement of claim shall be governed by and construed in accordance with the laws of the Province of Manitoba ("Jurisdiction"). The undersigned irrevocably submits to the courts of the Jurisdiction in any action or proceeding arising out of or relating to this guarantee and postponement of claim, and irrevocably agrees that all such actions and proceedings may be heard and determined in such courts, and irrevocably waives, to the fullest extent possible, the defence of an inconvenient forum. The undersigned agrees that a judgment or order in any such action or proceeding may be enforced in other jurisdictions in any manner provided by law; provided, however, that the Bank may serve legal process in any manner permitted by law or may bring an action or proceeding against the undersigned or the property or assets of the undersigned in the courts of any other jurisdiction.

GIVEN UNDER SEAL at _____

this _____ day of _____, 20 __

SIGNED, SEALED AND DELIVERED
IN THE PRESENCE OF

Witness _____ (Seal)

Witness _____ (Seal)

4. Loan Agreement

BANK LETTERHEAD

[Date] N.B. The words in "[]" represent instructions for preparation of Confirmation Letters and accordingly, are not to be included in the letters forwarded to Borrowers.

[To]

Attention:

Dear Sir:

CONFIRMATION OF CREDIT FACILITIES

Further to our recent discussions, and subject to the undernoted terms and conditions, we are pleased to *offer you financing/confirm your credit facilities as follows:
*[Delete whichever does not apply.]

LENDER: THE MONEY BANK (The "Bank")

BORROWER: [Insert Exact Name] (The "Borrower")

AMOUNT: Segment () [Insert amounts by numbered segments and describe facility i.e. Operating, Term, etc.]

CURRENCY: All dollar amounts in this letter refer to Canadian funds, unless otherwise specified.

PURPOSE: Segment () [Insert purposes by numbered segments]

MARGIN: Total Segment () advances plus all claims having priority to the Bank from time to time will not at any time exceed the total of:

- (a) ___% of good trade accounts receivable after deducting inter-company accounts, holdbacks and the entire balance of receivable accounts where any portion outstanding exceeds 90 days; and
- (b) ___% of the lesser of cost or market value of saleable, unencumbered inventory. The maximum amount available for margining against inventory shall be \$___.

The Borrower agrees that the Bank may, in its absolute discretion, restrict availability of Segment () facilities to the lesser of the above

credit amount or the most recent calculated margin loan limit, as per (a) and (b) above, pending receipt of new or updated receivables/inventory/other information.

INTEREST RATE:

Segment () Money Bank Prime Rate + % per annum, payable monthly.

Segment () [Floating Rate Term Loan] Money Bank Prime Rate + % per annum, payable monthly.

OR

At your option, fixed rate financing is available with terms of 1 to 5 years. The current indication rates are as follows. However, these are subject to change and the actual rate will be established at date of drawdown.

1 year term % per annum

3 year term % per annum

5 year term % per annum

The Borrower shall pay interest monthly in arrears on all loans at the annual rate set out above calculated on a daily basis and based on the actual number of days elapsed in the period for which interest is being calculated divided by 365. The annual rates of interest to which the rates calculated in accordance with the foregoing provisions are equivalent, are the rates so determined multiplied by the actual number of days in a one year period calculated from the first day on which interest is to be calculated and divided by 365. These rates apply after as well as before maturity, default, and judgement, with interest on overdue interest at the same rate as on the principal.

Money Bank Prime Rate (MBP) is the annual rate of interest announced from time to time by the Bank as a reference rate then in effect for determining interest rates on Canadian Dollar commercial loans in Canada.

Money Bank Prime Rate (MBP) is currently %. Accordingly, the initial effective rates will be as follows:

Segment () %.

Segment () %, if Term Loan drawn on a Floating Rate basis.

SERVICE PRICING:

- a) A stand-by fee of ___% per annum shall be payable on the unused portion of Segment () computed daily and payable monthly in arrears commencing _____.
- b) A monthly administration fee of \$___ will be charged to cover revolvment of operating loans. Drawdowns and repayments will be processed in multiplies of \$5,000 [or whatever amount is to apply].
- c) A non-refundable fee of \$_____ will be charged to cover the administration involved in setting up the loans.
- d) Late receipt of financial information detailed in the covenants section herein may be subject to a minimum fee of \$___ per occasion.
- e) Failure to meet the margin requirements detailed herein may result in the assessment of a fee of up to ___% of the deficiency, minimum \$___ per occasion.
- f) An analysis of current account activity will be conducted annually. Service charge pricing will be adjusted to reflect volume and pricing variances as applicable and subject to reasonable notice.

AVAILABILITY:

The right to borrow from time to time under Segment () operating facilities will be subject to the Borrower's compliance with all terms and conditions of this letter.

If the Floating Rate option is selected,

Segment () Term Loan will be advanced by way of a demand promissory note, with repayment as outlined in this letter.

[Delete if not applicable.]

The Borrower may drawdown Segment () on or before _____. After that date, no new borrowings will be made available under Segment (), unless extended in writing by the Bank.

REPAYMENT:

Segment () Revolving; repayment in full upon demand.

Segment () Consecutive monthly payments of \$___ plus interest.

Segment () Consecutive monthly payments of \$___ including interest.

Prohibited Interest - Nothing in this letter shall be construed as obliging the Borrower to pay any interest, charges or other expenses as provided by this agreement or in any other security agreement related thereto in excess of what is permitted by law.

PREPAYMENTS:

Segment () Term Loan (if granted on a floating rate basis) may be prepaid in whole or in part without penalty.

[N.B. This paragraph is not to be included for Match Funded Term Loans as there are no prepayment privileges.]

The following provisions apply to fixed rate

- a) At the Borrower's option, prepayment of up to 10% of the outstanding principal balance is permitted without penalty once during each 12 month period from the first anniversary date of the loan.
- b) Prepayment of more than 10% of the principal amount outstanding as provided in (a) above, may be made subject to a prepayment fee as follows:
 - 1) Prepayment in the First Year - six months interest on the amount being prepaid calculated at the rate of interest applicable to the loan being prepaid, whether partially or in full.
 - 2) Prepayment in the Second and Subsequent Years - three months interest on the amount being prepaid calculated at the rate of interest applicable to the loan being prepaid, whether partially or in full.

SECURITY:

[Sample items; describe security in sufficient detail.]

General Security for All Loans

All certified copies of directors' resolutions, bylaws and attendant documents as may be requested by the Bank.

\$_____ Fixed and Floating Charge Debenture with a fixed first charge covering all the Borrower's land and buildings and a floating charge covering all other assets of the Borrower, registered.

General Security Agreement, registered.

General Assignment under Section 427 under the *Bank Act* covering all inventory, registered.

Guarantee & Postponement of Claim for \$_____ signed by _____.

Postponement and Assignment of Claim signed by _____,
acknowledged and registered.

[Delete if not
applicable.]

Evidence of Environmental Risk Insurance coverage of \$_____ for
clean-up of the Borrower's property and \$_____ for third party liability
claims.

[Include in all
cases.]

In the event of any contradiction between the terms hereof and of any
security hereunder, the latter shall govern.

The provisions hereof shall not merge with any security given
hereunder, but shall continue in full force and effect for the benefit of
the Parties.

FIRE INSURANCE:

The Borrower will lodge with the Bank fire insurance policies
satisfactory to the Bank, covering buildings, equipment and inventory
with loss made payable firstly to the Bank.

LIFE INSURANCE:

The Borrower acknowledges that loans are (*not) life insured through
the Bank's Business Loan Insurance Plan (*for an amount up to \$_____)
covering the life/lives of _____.

*[Delete whichever does not apply.]

COVENANTS:

The Borrower, by accepting this Offer or Confirmation covenants with
the Bank as follows:

The Borrower will deliver to the Bank such financial and other
information as the Bank may reasonably request from time to time,
including but not limited to the following:

- a) Annual Financial Statements [audited, review engagement, etc.]
within 90 days after each fiscal year end.
- b) Monthly company prepared financial statements within
20 calendar days following each month end.
- c) An aged List of Accounts Receivable, an aged List of Accounts
Payable and a List of Outstanding Cheques, together with a
statement of inventory on hand and a statement of amounts
owing to priority creditors, in sufficient detail to enable proper
calculation of the margin loan limit, within 20 calendar days
following each month end.

The Borrower will file all the required tax returns and will promptly pay
when due all business, income tax, G.S.T., P.S.T., real property taxes and

other taxes, levies, charges and assessments collected, charged or levied on operations and property.

G.S.T. means the goods and services tax as provided for in the *Excise Tax Act*, or any successor or parallel provincial or federal legislation that imposes a tax on the recipient of goods and services.

P.S.T. means the provincial sales tax as provided in any provincial legislation.

The Borrower agrees to remit as required under the *Income Tax Act* (Canada) all amounts required to be deducted or withheld and remitted under the Act as they fall due.

The Borrower agrees not to make capital expenditures for any purpose totaling more than \$_____ per fiscal year without the prior written approval of the Bank.

The Borrower covenants and agrees it will not without the prior written consent of the Bank.

- a) Declare dividends.
- b) Permit payment of shareholders' loans.
- c) Redeem or repurchase its capital stock.
- d) Make any distribution of assets.
- e) Change its name or merge, amalgamate or consolidate with any other corporation or corporations.

The Borrower agrees any bonuses declared, net of income tax, will be retained in the company as postponed shareholders' loans. Any exception to the foregoing requires the Bank's prior written consent.

The Borrower will maintain a current ratio (current assets to current liabilities) of not less than _____.

For the purposes of this calculation, "current assets" means inventory, accounts receivables, cash, term deposits, and prepaid expenses; "current liabilities" means direct operating loans owing to the Bank and other lenders, accounts payable, accrued charges including outstanding cheques, term debt due within one year, and all income and other taxes payable.

Debt to equity shall not exceed _____.

[insert ratio]

Equity shall be maintained at not less than \$_____.

“Equity” is defined as the total of share capital, contributed surplus, retained earnings and postponed shareholders’ loans minus intangible assets and amounts owed to the Borrower by shareholders/associated companies.

[Intangible assets should be defined in this paragraph by the Branch/Centre.]

“Debt” is defined as total debt, minus deferred taxes and postponed shareholders’ loans.

The Borrower will not without the prior written consent of the Bank grant, create or allow any security interest, lien, charge or encumbrance on its inventory or receivables, in favour of suppliers or other creditors.

The Borrower agrees the Bank may obtain an outside evaluation of inventory if the Bank deems it necessary as a condition of continued support. All costs, fees and expenses incurred will be for the account of the Borrower.

The Borrower will not, without the prior written consent of the Bank, directly or indirectly guarantee obligations of any third party.

The Borrower will comply with all applicable environmental laws and regulations and orders of any court or governmental body; will notify the Bank immediately of any breach of any certificate, approval, permit, consent order or direction concerning any of the Borrower’s property or concerning any structure, activity or facility on the land of the Borrower; will clean up any contamination with the utmost of due diligence; and will indemnify and save the Bank harmless for any costs or expenses which it incurs for any environment-related liabilities which exist now or in the future with respect to the Borrower’s property.

No part performance of any obligation under this Agreement shall be accepted, or be deemed to be accepted, by the Bank in full satisfaction of the entire obligation unless expressly accepted in writing.

All notices and other communications by the provisions hereof required or permitted to be given by one Party to the other(s) shall be given in writing and sent by mail, postage prepaid, or delivered in person; in the event that postal service is interrupted or substantially

delayed, delivered in person only; to such other(s) addressed as follows:

- a) in the case of the Bank, to:
- b) in the case of the Borrower, to:

or to any other address(es) in respect of which notice has been given pursuant hereto, and shall be deemed to have been effectively given and received on the third business day next following the date of the posting thereof, if mailed, and on the day of the delivery thereof, if delivered in person.

Any covenants contained herein will remain in force for the benefit of the Bank at all times before and after the making of advances hereunder and/or the taking of security pursuant hereto.

**EVENTS OF
DEFAULT:**

Without limiting the Bank's right to make demand for payment at any time on demand loans, the Bank may, subject to the provisions of federal bankruptcy legislation, demand repayment of all amounts outstanding, together with outstanding accrued interest; upon which demand the Bank's obligation to make any further advances under this Agreement shall immediately terminate; and realize on all or any portion of the security granted to the Bank if any of the following events of default occur:

Failure of the Borrower to pay any principal, interest, or other amounts when due pursuant to this letter;

Failure of the Borrower to observe or perform any covenant, condition or provision in this letter or other documentation or security;

If the Borrower becomes insolvent, commits an act of bankruptcy, makes an assignment of property for the benefit of its creditors, or enters into a bulk sale of its assets;

If any proceeding is taken with respect to a compromise or arrangement with the creditors of the Borrower, including under the *Companies' Creditors Arrangement Act R.S.C., 1985, c. C-36* or to have the Borrower declared bankrupt or wound up, or to have a Receiver appointed of any part of the mortgaged property or if any encumbrancer takes possession of any part thereof;

The breach at any time and in any material respect of the provisions of any applicable law, regulation, by-law, ordinance or work order of any lawful authority whether federal, provincial, state, municipal, local or otherwise, (including without restriction, those dealing with pollution of the environment and toxic materials or other environmental hazards,

or public health and safety), affecting any property of the Borrower or any activity or operation carried out thereon;

There occurs, in the sole opinion of the Bank;

- a) a material adverse change in the financial condition of the Borrower; or
- b) an unacceptable change in ownership of the Borrower; or
- c) legal implications detrimental to the affairs of the Borrower.

**CONDITIONS
PRECEDENT:**

The obligation of the Bank to make these credit facilities available to the Borrower is subject to and conditional upon:

- 1) All security and/or documentation being completed and registered in form and substance satisfactory to the Bank.
- 2) Receipt by the Bank of copies of approvals and certificates from federal, provincial and municipal regulatory bodies, certifying that the Borrower and its property are in compliance with all environmental laws and regulations, including but not limited to those dealing with the protection of the environment, waste disposal, fire codes, toxic materials or other environmental hazards and petroleum handling.

[Amend as
required or
delete if not
applicable.]

REVISION DATE:

Without limiting any rights the Bank may have to demand payment, these credit facilities will be subject to review at the Bank's discretion and at least annually, with the next review scheduled for _____.

LEGAL COSTS:

All legal costs, fees, expenses, etc. incurred in establishing these credit facilities, preparation and maintenance of security and documentation are for account of the Borrower.

GOVERNING LAW:

This agreement shall be governed by the laws of Manitoba and Canada applicable hereto.

ACCEPTANCE:

This offer expires if not accepted by _____, unless extended in writing by the Bank.

Please acknowledge your acceptance of the above terms and conditions by signing the attached copy of this Confirmation Letter in the space provided below and returning to the undersigned. This Confirmation of Credit Facilities cancels and supersedes any previous offers.

Yours truly,

THE MONEY BANK

Account Manager

Manager

WE ACKNOWLEDGE AND ACCEPT THE WITHIN TERMS AND CONDITIONS

[NAME OF BORROWER]

PER: _____

PER: _____ [DATE]

Must be authorized officer(s) of the company

ATTACHMENT 1

TOLERANCE OF DEFAULT AND WAIVER OF RIGHTS

[Customer and Address]

Dear Sirs:

The Money Bank (the "Bank") refers to the Confirmation Letter dated [] between [name of company] (the "Borrower") and the Bank.

The Bank hereby acknowledges the breach by the Borrower of [] section of the Confirmation Letter. [Insert sentence describing the particular breach.] The Bank hereby waives its rights in respect to such breach for the period between [date] and [date] [provided no further deterioration occurs during that period (insert if breach relates to financial tests)]. This waiver is granted only in respect of the aforementioned breach and only for the aforementioned period.

Yours truly,

THE MONEY BANK

ATTACHMENT 2

TOLERANCE OF DEFAULT AND NON-WAIVER OF RIGHTS

[Customer and Address]

Dear Sirs:

The Money Bank (the "Bank") refers to the Confirmation Letter dated [] between [name of company] (the "Borrower") and the Bank.

Upon examination of financial information furnished as at

_____, the Bank has determined that the Borrower was in non-compliance of section of the Confirmation Letter. [Insert sentence describing the particular breach]. The Bank requests written advice, by _____*, as to when and how the foregoing breach will be remedied. While the Bank does not waive its right in respect of such breach, it agrees to tolerate it until _____*.

Yours truly,

THE MONEY BANK

*Same date

ATTACHMENT 3

NON-TOLERANCE OF DEFAULT AND NON-WAIVER OF RIGHTS

[Customer and Address]

Dear Sirs:

The Money Bank (the "Bank") refers to the Confirmation Letter dated [] between [name of company] (the "Borrower") and the Bank.

Upon examination of financial information furnished as at

_____ the Bank has determined that the Borrower was in non-compliance of _____ section of the Confirmation Letter.

[Insert sentence describing the particular breach]. The Bank requests that this breach be remedied by no later than _____.

Yours truly,

THE MONEY BANK

ATTACHMENT 4

TEMPORARY ACCOMMODATION ADVICE

Dear Sirs:

CREDIT FACILITY WITH THE MONEY BANK

We refer to the Confirmation Letter (the "Agreement") between you and the Money Bank (the "Bank") dated _____. In accordance with our (telephone) discussion, the Bank hereby confirms that the amount available under Segment () of the Agreement is increased from \$_____ to \$_____ for the period between (Date) and (Date). This increase is granted for the above referenced period only and on (Date) the amount available under Segment () shall again be \$_____.

All other terms and conditions of the Agreement remain in full force and effect.

Yours truly,

THE MONEY BANK

5. Certificate of Incumbency

CERTIFICATE OF INCUMBENCY

I HEREBY CERTIFY that the following are the officers and directors
of _____:

OFFICERS

_____	President
_____	Secretary
_____	Vice-President

DIRECTORS

DATED at the City of Winnipeg, in Manitoba, this _____ day of _____, 20__.

..... - Secretary

6. Certificate of Authority

CERTIFICATE OF AUTHORITY

TO: _____

TO: _____

RE: DEMAND DEBENTURE - \$_____
_____ Bank

I, _____, the undersigned, am the President and a Director of _____, the Corporation in a Demand Debenture dated the _____ day of _____, 20__ between the said _____ and _____ BANK in the principal sum of \$_____ registered in the Winnipeg Land Titles Office against the realty legally described in Schedule "A" attached thereto and forming part thereof, and in the Manitoba Personal Property Registry against the personalty described in Schedule "B" attached thereto and forming part thereof.

1. Attached hereto as Exhibit "A" is a true and complete copy of the incorporating documents of the Corporation together with all amendments thereto (the "Articles"), which Articles are in full force and effect as at the date hereof. No steps or proceedings have been taken or are pending to amend, surrender or cancel the Articles or to dissolve or wind-up the Corporation. The Corporation is in good standing under the laws of all jurisdictions in which it carries on business or has assets, to the extent that the nature of such business or assets under the laws of said jurisdiction requires registration or qualification.

2. Attached hereto as Exhibit "B" is a true and complete copy of all of the by-laws of the Corporation (collectively, the "By-laws"). The By-laws were duly passed by the directors of the Corporation and duly sanctioned and confirmed by the shareholders of the Corporation. No steps or proceedings have been taken or are pending to repeal or amend the By-laws and they are in full force and effect as of the date hereof.

3. There is no unanimous shareholder agreement relating to the Corporation [or Attached hereto as Exhibit "●" is a true and complete copy of the shareholder agreement of the Corporation (collectively, the "Shareholder Agreement")].

4. Attached hereto as Exhibit "C" are the true and genuine signatures of the officers and directors of the Corporation and such persons hold the offices set forth opposite their respective names on the date hereof. Each of such officer is duly authorized to execute and deliver on behalf of the Corporation, as applicable, the credit agreement, each of the loan documents to which it is a party and any certificate, instrument or other documents to be delivered by the Corporation pursuant to such loan documents (collectively with the credit agreement and such loan documents, the "Documents"), and each such person is authorized to bind the Corporation and to act as a responsible officer on behalf of the Corporation under such Documents.

5. Attached hereto as Exhibit "D" is a list of:

- (a) the chief executive office of the Corporation;
- (b) all of the locations at which the Corporation has assets; and
- (c) all of the locations at which the Corporation maintains its records concerning its accounts receivable.

6. Attached hereto as Exhibit "E" is a true and complete copy of the resolution duly passed by the directors of the Corporation authorizing the execution and delivery by the Corporation of the Documents, which resolution is in full force and effect unamended as of the date hereof and there exist no other resolutions of the directors of the Corporation relating to the matters set forth in said resolution.

IN WITNESS WHEREOF I have signed the certificate this _____ day of _____, 20__.

DATED at the City of Winnipeg, in the Province of Manitoba this _____ day of _____, 20__.

7. Certificate of Non-Restriction

Canada	)	In the matter of	A Debenture of XYZ Ltd.
Province of Manitoba	)		in favour of The Money
	)		Bank of Canada
To wit:	)		dated the ____ day of ____, 2__.

I, _____, of the City of Winnipeg, in the Province of Manitoba do solemnly declare

1. THAT I am the President of XYZ LTD. and I am aware of all the circumstances in connection with the transaction hereby referred to and have personal knowledge of the facts herein deposed to.

2. THAT there are no provisions in the Articles of Incorporation, any amendments thereto, or any by-laws of the Corporation or in any Unanimous Shareholders Agreement which restrict or limit the powers of the Corporation or of its directors to borrow money, issue and pledge debt obligations of the Corporation and to mortgage, hypothecate, pledge or otherwise create a security interest in all or any property of the Corporation, owned or subsequently acquired, to secure any debt obligation of the Corporation.

AND I make this solemn declaration conscientiously believing it to be true, and knowing that it is of the same force and effect as if made under oath, and by virtue of the *Canada Evidence Act*.

DECLARED before me at the City of _____)
Winnipeg, in the Province of Manitoba,)
this ____ day _____ of 2___.) _____
)
)

A _____
in and for the Province of Manitoba.

8. Searches and Certificates Checklist

SEARCHES AND CERTIFICATES CHECKLIST

(a) Business Entity

- Corporate Certificate of Status
- Copy of Corporation's Last Annual Return
- Certified copy of Partnership Registration
- Certified copy of Business Names Registration
- Insurance - Life of Proprietor or "key man" - Copy of Policy or Certificate or Note of Insurance

(b) Real Property

- Status of Title
- Copies of Registered Encumbrances
- Tax Certificate (Realty Taxes)
- Local Improvement Levies Search (new building)
- Insurance - Copy of Policy or Certificate or Note of Insurance
- Goods and Services Tax Declaration
- Surveyor's Building Location Certificate/Title Insurance
- Zoning Memorandum
- City of Winnipeg (or Municipal) Occupancy Certificate
- City of Winnipeg (or Municipal) Verification of Use Letter
- *Aeronautics Act* Letter (height restrictions)
- *The Transportation Infrastructure Act* (replaces *The Highway Protection Act et al*)
Re: corner property - construction/change in roads, approaches
- Waterways Letter - construction, deposit of materials

(c) Utilities

- Manitoba Hydro Letter (outstanding balances)
- City of Winnipeg Water Request (outstanding balances)

(d) Work Orders

- City of Winnipeg - Property and Development Services (Planning and Land Use Division)
- City of Winnipeg - Centralized Property File Search
- Manitoba Department of Labour and Immigration - Technical and Inspection Services (boilers, pressure vessels, refrigeration and elevators)
- Manitoba Department of Labour and Immigration - *Workplace Safety and Health Act*
- Manitoba Sustainable Development – Environment Search (searches under various Acts)

(e) Status of Debtor and Personal Property; Statutory Liens

- Bank of Canada - s. 427 of the *Bank Act* Certificate
- Registrar of Bankruptcy Certificate (on-line search also available)
- Business Tax Certificate
- *Personal Property Security Act* s. 48 search - certified search result under s. 48
- Court of King's Bench Letter - conduct on-line search at King's Bench Registry site
- Sheriff's Certificate - Province-wide (available by e-mail request to SheriffCivil@gov.mb.ca)
- Manitoba Department of Labour and Immigration - *The Employment Standards Code*
- *Corporation Capital Tax Act* and *Health and Post Secondary Education Tax Levy Act* Certificate
- Canada Revenue Agency – District Taxation Office - source deductions
- *The Tax Administration and Miscellaneous Taxes Act* Certificate - bulk sale
- *Workers Compensation Act* Compliance Certificate
- *Workers Compensation Act* s. 81.1 Bulk Sales Certificate
- Goods and Services Tax Search

9. Occupancy Certificate Letter

The City of Winnipeg
Planning, Property & Development Centralized Property File Search
Unit 18 – 30 Fort Street
Winnipeg, Manitoba
R3C 4X3

Email: centralizedpropertyfilesearch@winnipeg.ca

Dear _____:

Re: (Street Address)
(Also Include List of Tenant(s) and Corresponding Unit(s))

Please provide us with a copy of the existing final Occupancy Permit(s) issued for the above noted property. We enclose our cheque payable to the City of Winnipeg in the amount of \$● (fee \$● plus GST of \$●).

Please also advise us if any application has been made to the City for an Occupancy Permit or Permits for the above noted property where the City of Winnipeg has refused the issuance of the permit or permits sought. The above noted property is legally described as:

(insert legal description)

Thank you for your attention.

Yours truly,

Per: _____

10. Verification of Use Letter

The City of Winnipeg
Planning, Property & Development
Zoning and Permits
Unit 31 - 30 Fort Street,
Winnipeg, Manitoba
R3C 4X7

Email: ppd-zdo@winnipeg.ca

Attention: Zoning Department – Commercial Properties

Dear _____:

Re: Company Name and Property Address

Please be advised that we are solicitors for _____, the purchaser of the above noted property legally described as follows:

Please note that the future intended use of the above noted property will be for (insert intended use of property). Please provide us with a Confirmation of Use Certificate for the property confirming that the intended use of the property complies with applicable zoning by-laws.

We enclose our cheque payable to The City of Winnipeg in the amount of \$● (\$● plus GST of \$●) being your fee for such Certificate.

Your prompt attention herein is greatly appreciated.

Yours truly,

Per: _____

11. *Aeronautics Act* Letter

Transport Canada (RANDD)
344 Edmonton Street
P. O. Box 8550
Winnipeg, MB R3C 0P6

Dear _____:

Re: *(Street address and if at all possible a description of the location of the property in relation to neighbouring streets/intersections (e.g. on the south side of Ness Avenue between X Street and Y Street (or) at the north-east intersection of X Street and Y Street) and if an existing building is at the property, a general description of it (e.g. a 2½ storey house, a 5-storey apartment building, etc.) and if available, the name of the registered owner of the property*

We are the solicitors for one or more persons who are or may be interested in the above property.

(Here state if the property is currently vacant or has a structure or structures upon it).

Please provide answers to the following questions regarding the *Aeronautics Act* (Canada) and its regulations:

1. What are the height restrictions applicable to this property?
2. What other restrictions are applicable to this property (if any)?
3. Are there any existing or pending applications for permits/licenses to construct and develop improvements at this property according to your records?
4. Do your records indicate the existence of any defaults or breaches or outstanding work orders applicable to this property, and if so, what is the current status thereof according to your records?

Please send your reply to this office, marked to my attention.

Thank you for your anticipated cooperation. Should any further information be required in order to expedite this request, please contact me.

Yours truly,

Per:_____

12. *The Transportation Infrastructure Act*

The Transportation Infrastructure Act (replaces the *Highways Protection Act*) Re: Ingress and Egress. Determine whether any property which is adjacent or contiguous to any highway or freeway is controlled in any respect as to its use, access and egress, or otherwise, and whether or not there are any outstanding orders with respect thereto.

As before, if the lender is relying upon security on real property which may be so located, it will want to see a satisfactory answer to such a search.

13. Waterways Letter

The City of Winnipeg
Planning, Property and Development
Centralized Property File Search
Unit 18 - 30 Fort Street
Winnipeg, MB
R3C 4X3

Email: centralizedpropertyfilesearch@winnipeg.ca

Dear Sirs:

Re: Property:
Vendor:
Purchaser:

We enclose a copy of a certified copy of the Surveyor's Building Location Certificate covering the above noted property, together with our cheque in the amount of \$____ to cover your search fee.

Would you kindly review your records with respect to the above property and confirm with our offices as follows:

1. whether or not a permit has been issued by the Rivers and Streams Authority for the construction of the project presently on the property;
2. whether or not you are aware of any breaches of the permit, if any, or conditions under which the permit, if any, was issued for the property; and
3. whether or not there have been any work orders issued by you pertaining to the property and if so, whether or not there has been compliance therewith.

As time is of the essence, your immediate attention to this matter would be greatly appreciated.

14. Utilities Letter

Fax No. (204) 360-5555

Via e-mail: customerservice@hydro.mb.ca

Manitoba Hydro / Natural Gas
360 Portage Avenue
Winnipeg, MB R3C 0G8

Attention: Customer Accounting / Lawyer Letters

Dear Sirs:

Re: Address:

Vendor:

Purchaser:

Possession Date: _____

We advise that we are the solicitors for the **prospective Purchaser** herein.

Please note that this letter is for the purpose of a **Due Diligence Search** only.

We will notify you **further** if the transaction will be proceeding.

For the purpose of our Due Diligence Search, we require a reply before (insert due diligence expiry date from Offer OR confirm date with counsel).

Please advise us whether there are any monies due and owing with respect to rental units, liens or accounts as well as unpaid amounts for rental equipment and outstanding finance contracts for heating and/or air conditioning equipment as they affect your firm.

OR

We advise that we are the solicitors for the (purchaser/vendor) herein.

Please advise us whether there are any monies due and owing with respect to rental units, liens or accounts as well as unpaid amounts for rental equipment and outstanding finance contracts for heating and/or air conditioning equipment as they affect your firm.

Please note that the Purchaser will be responsible for accounts from the possession date onwards.

15. Request for Final Water Account Balance

The Form below may be used. Lawyers may use the "Lawyer Gateway: Water and Waste Department" here: [Lawyer Gateway – Water and Waste Department – City of Winnipeg](https://lawyergateway.winnipeg.ca/signin) [https://lawyergateway.winnipeg.ca/signin]



Water and Waste Department • Service des eaux et des déchets

Request for Final Water Account Balance

(Only complete requests will be processed)

Date: Address of property being sold:
Possession date:

We will respond to your request within 10 working days from the date of receipt.

Section A: To be completed by seller's law firm			
Law firm information			
Name of law firm		Lawyer's name	
Address/Postal code		Fax	
Telephone		Email address	
Seller (vendor) information			
Name			
Billing name (if different)			
Mailing address for final bill			
Water bill account number			
Final meter reading			
Final meter reading date			
Is the current occupant different from the seller?	☐	No	☐ ✓
Yes	☐	No	☐ ✓
If, yes, will the current occupant continue residency?	☐	No	☐ ✓
Yes	☐	No	☐ ✓
According to the City of Winnipeg Charter, outstanding water and sewer charges can be added to property taxes even after a tax certificate is issued. Please ensure the above account is paid in full based on an actual meter reading.			
Section B: To be completed by the City of Winnipeg Water and Waste Department			
Outstanding amount owing:			
\$			
Remarks:			

Email

510 Main Street • Winnipeg • Manitoba R3B 3M1
Phone (204) 986-2455 • Fax (204) 954-1758 Email lawyerinfo@winnipeg.ca

16. Environmental Planning Letter

See also the contact sheet, based on communities:
<https://legacy.winnipeg.ca/ppd/Documents/CityPlanning/AboutUs/District-Planner-Assignments.pdf>

Fax No. (204) 986-7524

The City of Winnipeg
Planning, Property and Development
City Planning and Design
Unit 15 - 30 Fort Street
Winnipeg, MB R3C 4X5

Dear Madam:

Re: (Address of Property)

Please be advised that we act on behalf of (insert name of client), the purchaser of the above noted property.

Would you please advise whether the building located on the above noted property falls under The Historic Buildings By-law No. 1474/77 (as amended) of The City of Winnipeg and, if so, the designation of such building.

As time is of the essence your reply by return would be greatly appreciated.

Yours truly,

Per:_____

17. Department of Labour and Immigration - Inspection and Technical Services Letter

Fax No. (204) 948-2089

Email: technicalservices@gov.mb.ca

Department of Labour and Immigration
Inspection and Technical Services
508 – 401 York Avenue
Winnipeg, Manitoba
R3C 0P8

Dear _____:

Re: (Name of Property)

Please be advised that we are the solicitors for (insert name), the (purchaser/vendor) of the above noted property.

We would appreciate your reviewing your records and advising us whether there are, at present, any outstanding work orders issued by the Inspection and Technical Services Branch of the Department of Labour and Immigration in connection with the subject property.

As time is of the essence, your immediate attention to this matter would be greatly appreciated. Please forward your invoice for the search and we will remit payment upon receipt.

Yours truly,

Per: _____

18. Workplace Health and Safety Letter

Manitoba Department of Labour and Immigration
Workplace Safety and Health
200 – 401 York Avenue
Winnipeg, Manitoba R3C 0P8

Attention: Inspections Department

Dear Sirs:

Re: **Address:**
 Name of Workplace:
 Proposed Closing Date: _____

We enclose herewith a Consent and Authorization duly executed by .

Would you please advise us whether your records indicate the issuance of any permits for the above owners or occupiers thereof and any outstanding complaints, violations or work orders pertaining to the above. We are particularly interested in the existence of orders (including "improvements orders" and "stop work orders") and your records as to the status thereof which have been issued under *The Workplace Safety and Health Act* (Manitoba).

Thank you for your assistance in this regard.

Yours truly,

Per:_____

19. Manitoba Department of Environment and Climate Change - Environmental File Search Request Form

Email: EnvFS@gov.mb.ca

Online form: [Environmental File Search](#) | [Environment and Climate Change](#) | [Province of Manitoba](#)



FILE SEARCH REQUEST FORM

NOTE: Please **COMPLETE** the questions below in order that Manitoba Sustainable Development can effectively respond to your request for information as to outstanding Licenses, Orders or Violations, etc. against the indicated property. A cheque or money order, in the amount of \$● (\$● + \$● G.S.T.) made payable to the Minister of Finance, must accompany this request.

We will endeavor to respond to your request within 30 calendar days of receipt. Please direct all inquiries and return the completed form, along with your payment, to:

Environmental File Searches
Department of Sustainable Development
Box 10, 27 2nd Avenue SW
Dauphin, MB R7N 3E5

Email: EnvFS@gov.mb.ca

GST Registration #R107863847

Telephone: (204) 622-2030

Fax: (204) 638-8626

1. Applicant

Name: _____

Company Name: _____

Address: _____

Telephone: _____ Fax: _____

Email: _____

2. If you are representing someone else respecting this request, please provide the following information. (**not the property being searched)

Business/Individual Name: _____

Legal Name (if different from above): _____

Address: _____

Telephone: _____

Fax: _____

(a) BUSINESS NAME OF PRESENT OR PREVIOUS TENANT who is/was actually on the subject property (not numbered company name) MUST BE INCLUDED:

(If this is a shopping centre/strip mall please provide complete list of tenants)

3. (a) Legal description of property _____
involved: _____

(b) STREET ADDRESS (INCLUDING CITY/TOWN, RURAL MUNICIPALITY) OF PROPERTY INVOLVED MUST BE INCLUDED:

(Please provide a diagram if civic/numerical address is not available)

4. What information is being requested? Please be as specific as possible.

If known, and if applicable, please indicate what legislation the information being requested pertains to:

The Environment Act

The Contaminated Sites
Remediation Act

The Dangerous Goods
Handling and Transportation Act

Livestock Manure and Mortalities
Management Regulation
*** we only provide information on the
above for Rural properties*

5. For what purpose is the information required (i.e. sale of business/property, financing arrangements, etc.)?

6. Type/description of business/operation presently being carried out on subject property (if not currently in operation, and if known, please identify past business/operation carried out on subject property):

7. Description of intended use of subject property:

Request Date

Signature of Requestor

**** PLEASE NOTE THAT INCOMPLETE FORMS WILL CAUSE A DELAY IN THIS SEARCH BEING PROCESSED. PLEASE BE SURE TO INCLUDE ALL AVAILABLE DETAILS.

20. Section 427 of the *Bank Act* Letter

Online Registry: <https://cp.basr.ca/>

Offline searches can be conducted by using the form located here: [003 - BASR Search NOI.pdf](#)

Email: ask@basr.ca

Fax: 1-306-205-7844

Canadian Securities Registration Systems
1301 1st Avenue
Regina, Saskatchewan
S4R 8H2

Attention: Bank Act Security Department

Re: Insert Matter Description

Kindly conduct a search of your records with respect to the above noted name, and provide us with particulars of registration of Notice of Intention, if any, regarding security under Section 427 of *The Bank Act*, in the Province/Territory of insert name by return facsimile at your earliest convenience. Kindly quote our file number on the search results.

Thank you for your cooperation herein.

Yours truly,

21. Registrar of Bankruptcy Search

Online search available at

Login - Welcome - Bankruptcy and Insolvency Records Search - Office of the Superintendent of Bankruptcy - Bankruptcy - ISED

Password:
Account #

FAX No. 1 613 941 9490

22. Department of Labour Letter

Email: employmentstandards@gov.mb.ca

Phone: 1-204-945-3352

Fax: 1-204-948-3046

Manitoba Department of Labour
Employment Standards Branch
6th floor - 401 York Avenue
Winnipeg, Manitoba R3C 0P8

Dear Sirs:

Re: _____

Kindly advise us if there are any outstanding complaints and/or orders regarding any claims for wages or order for payment of wages under *The Construction Industry Wages Act* or *The Employment Standards Code* against the above noted company.

We enclose herewith a duly executed Consent and Authorization regarding the release of information from your Department and our cheque in the amount of \$● payable to Minister of Finance representing payment of your fee for the requested search.

Your immediate attention to this matter would be greatly appreciated.

Yours truly,

Per: _____

AUTHORIZATION

Re: (name of the undersigned)

We hereby authorize you to provide _____, Barristers and Solicitors, with any information you may have pertaining to the undersigned with respect to *The Construction Industry Wages Act* and/or *The Employment Standards Code*.

Yours truly,

Per: _____

23. *The Corporation Capital Tax Act* Request and Authorization

Email: MBTax@gov.mb.ca

Phone: 1-204-945-5603

Fax: 1-204-945-0896

Manitoba Department of Finance
Corporation Capital Tax Branch
101 - 401 York Avenue
Winnipeg, Manitoba R3C 0P8

Dear Sir:

Re: (Insert Name of Company)

Please kindly advise us whether the noted company is up to date in filing all returns and making all payments required pursuant to *The Corporation Capital Tax Act*.

We enclose herewith a duly executed Consent and Authorization regarding the release of information from your Department duly executed by the above noted Company.

For your information, the business operated by the above noted company in the Province of Manitoba is (insert type of business).

Your immediate attention to this matter would be greatly appreciated.

AUTHORIZATION

TO WHOM IT MAY CONCERN:

_____ hereby authorizes _____, Barristers and Solicitors, to make inquiries of the Province of Manitoba respecting compliance with *The Corporation Capital Tax Act* of Manitoba (or, *The Health and Post Secondary Education Tax Levy Act* of Manitoba) by the said

DATED at the City of Winnipeg, in the Province of Manitoba, this ____ day of _____, 20__.

PER: _____

24. *The Health and Post Secondary Education Tax Levy Act* Letter

Email: MBTax@gov.mb.ca

Phone: 1-204-945-5603

Fax: 1-204-945-0896

Manitoba Department of Finance
Health and Post Secondary Education Tax Branch
101 - 401 York Avenue
Winnipeg, Manitoba R3C 0P8

Dear Sir:

Re: (Insert Name of Company)

Would you kindly advise us whether the noted company is up to date in filing all returns and making all payments required pursuant to *The Health and Post Secondary Education Tax Levy Act*.

We enclose herewith a duly executed Consent and Authorization regarding the release of information from your Department duly executed by the above noted company.

For your information, the business operated by the company in the Province of Manitoba is (insert type of business).

Your immediate attention to this matter would be greatly appreciated.

25. Canada Revenue Agency District Taxation Office Letter and Authorization

Via Facsimile 204-984-5164

Canada Revenue Agency
Winnipeg Tax Centre,
Post Office Box 14000, Station Main,
Winnipeg, MB,
R3C 3M2

Attention: Source Deductions

Dear Sirs/Madam:

Re:

Carrying on Business as and (the "Vendor")

Please be advised that we are the solicitors for, the mortgagee/purchaser, in connection with the subject property/transaction. Enclosed herewith please find an executed Consent and Authorization.

Would you please review your records and advise us as to whether the vendor has fulfilled its obligations in making remittances of the source deductions in respect to Employment Insurance, Canada Pension Plan and Income Tax for all tax years for the vendor's employees up to and including the calendar year preceding the year in which this letter is written.

Thank you for your assistance in this regard.

Yours truly,

Per:_____

AUTHORIZATION

We hereby authorize you to provide to _____, Barristers and Solicitors, information respecting the payment of source deductions of Employment Insurance, Canada Pension Plan and Income Tax by the Undersigned.

Our Employer Account No. is _____. (This is a number with three letters and six digits. It is not the employer's own income tax account or social insurance number).

Yours truly,

Per:_____

Position

26. Excise Tax Letter (Goods and Services Tax Search)

Fax No. 204-984-5164

Canada Revenue Agency
Winnipeg Tax Centre,
Post Office Box 14000, Station Main,
Winnipeg, MB,
R3C 3M2

Dear Sirs/Madam:

Re: _____

Please be advised that we are the solicitors for the above noted company.

We enclose a Consent and Authorization duly executed by the above noted company.

Please provide us with your Certificate of Status or Letter of Confirmation regarding any taxes due from the said company under the *Excise Tax Act*.

As time is of the essence, your immediate attention to this matter would be greatly appreciated.

27. Business Tax Search

Phone: 1-877-311-4974

Fax: 1-204-986-6732

The City of Winnipeg
Assessment and Taxation Department
510 Main Street
Winnipeg, Manitoba R3B 3M2

Dear Sirs:

Re: **Address:**
 Tenant:
 Vendor:
 Purchaser:
 Proposed Closing Date: _____

Please advise as to the status of business taxes assessed for the above noted tenant / owner.

We are enclosing herewith our cheque payable to The City of Winnipeg in the amount of \$● to cover your fee herein.

Your immediate attention to this matter would be greatly appreciated.

28. *Workers Compensation Act* Compliance Certificate

Phone: 204-954-4321

The Workers Compensation Board of Manitoba
333 Broadway
Winnipeg, Manitoba R3C 4W3

Dear Sirs:

Re: Name of Business:
 Address of Business:
 Name(s) of Operator(s):
 Possession Date: _____

We represent the Purchaser/Vendor and are enclosing a Consent and Authorization duly executed by _____.

Please advise whether the above noted business is in good standing pursuant to *The Workers Compensation Act* of Manitoba and/or whether there are any assessments, levies or penalties of any nature outstanding.

Thank you for your assistance in this regard.

AND

Workers Compensation Board of Manitoba
210 – 363 Broadway
Winnipeg, Manitoba R3C 3N9

Dear Sirs:

Re: Name of Business:
 Address of Business:
 Name(s) of Operator(s):
 Possession Date: _____

We represent the Purchaser/Vendor and are enclosing a Consent and Authorization duly executed by _____.

Would you please provide our firm with a Disposition of Business Enterprise Certificate under Section 81.1(1) of *The Workers Compensation Act* of Manitoba. The Certificate is required as the business has been sold effective as of the above noted possession date.

Thank you for your assistance in this regard.

Yours truly,

Per: _____

AUTHORIZATION

TO WHOM IT MAY CONCERN:

_____ hereby authorizes _____, Barristers and Solicitors, to make inquiries of the Province of Manitoba respecting compliance with the Workers Compensation Board of Manitoba by the said _____.

Dated at Winnipeg, Manitoba this ____ day of _____, ____.

Name of Company

Per: _____

29. Opinion Letter

(date)

ABC Bank
201 Portage Avenue
Winnipeg, Manitoba

Dear Sirs:

Re: EFG Corporation

We have acted on behalf of ABC Bank (the "Bank") in all legal matters relating to the granting of a General Security Agreement (the "GSA") by EFG Corporation (the "Corporation") as security for the present and future indebtedness of the Corporation to the Bank.

In connection with the foregoing, we have examined the following documents:

1. Certificate of Status dated ●, 20__ issued in the name of the Corporation pursuant to *The Corporations Act* (Manitoba);
2. Certified copy of Resolution of the Directors of the Corporation dated ●, 20__, authorizing the Corporation to borrow money upon the credit of the Corporation and, to secure the debt created thereby, to create and grant the GSA in favour of the Bank;
3. the GSA;
4. a certified search result in the name of the Corporation dated ●, 20__ issued pursuant to the provisions of *The Personal Property Security Act* (Manitoba) (the "PPSA");
5. Officer's Certificate dated ●, 20__ signed by Angus Brown, President of the Corporation.

In addition to the foregoing, we have also examined such other documents, made such investigations and considered such questions of law we have considered necessary in the circumstances.

In giving the opinions hereinafter set forth we have assumed:

- (a) the accuracy of the statements contained in the aforementioned Officer's Certificate of Angus Brown; and

- (b) the jurisdiction in which the Corporation is located, within the meaning of the "PPSA" is the Province of Manitoba; and
- (c) the security interests granted pursuant to the GSA, insofar as they pertain to personal property in existence, have attached and, insofar as they pertain to after-acquired property, the Bank and the Corporation have not agreed to postpone the time of attachment.

On ●, 20__ we registered a Financing Statement in the Personal Property Registry pursuant to the provisions of the PPSA giving notice of the security interests granted by the Corporation pursuant to the GSA. The Financing Statement was registered as No. _____. The aforementioned certified search result indicates that there were no prior registrations pursuant to the PPSA against the Corporation on that date.

As Manitoba has no title registry for personal property, we are unable to express any opinion as to the Corporation's title to personal property intended to be charged by the GSA. In addition, we do not express any opinions to the priority of the security granted or purported to be granted by the GSA. However, we conducted those searches described in Schedule "A" hereto against the Corporation. If the Corporation has carried on business under a previous name or is part of a combination a further search may be necessary. The foregoing searches reveal no registrations. We have conducted no searches other than those set forth above.

Based and relying on the foregoing and subject to the qualifications hereinafter expressed, we are of the opinion that:

- 1. the Corporation is duly incorporated, validly exists and is in good standing with respect to the filing of Annual Returns pursuant to *The Corporations Act* (Manitoba).
- 2. the GSA has been validly authorized, executed and delivered by the Corporation.
- 3. the GSA constitutes a legal, valid and binding obligation of the Corporation, enforceable in accordance with its terms.
- 4. the security interest created by the GSA in all right, title and interest of the Corporation in collateral located in the Province of Manitoba, to the extent capable of perfection by registration under the PPSA, has been duly perfected.

The foregoing opinions are subject to the following qualifications:

- 1. the provisions of applicable bankruptcy, insolvency and other similar laws, rules or practice and procedure affecting the enforceability of creditors' rights generally;

2. the discretion of a Court of Competent Jurisdiction with respect to the exercise of any and all equitable remedies and relief, including without limitation, relief by way of specific performance and injunction;
3. the procedures for exercising certain remedies provided in the GSA may be affected by the PPSA, but in our opinion the PPSA will not affect the validity of the GSA or make impractical the realization of the benefit of the security afforded by the GSA;
4. the reservations with respect to the enforcement of the GSA involving the sale, transfer or assignment of leasehold interest or like rights may be limited by the requirement of obtaining the consent of the lessor, owner or other contracting party to such sale, transfer or assignments;
5. the validity and perfection and the effect of perfection or non-perfection of a security interest in intangibles (as defined in the Manitoba PPSA) and in property of a type normally used in more than one jurisdiction is governed by the laws where the debtor is located (as defined in the PPSA) when the security interest attaches, including its conflict of laws rules;
6. the validity and perfection and the effect of perfection or non-perfection of a non-possessory security interest in a security, an instrument, a negotiable document of title, money and chattel paper is governed by the laws where the debtor is located (as defined in the PPSA) when the security interest attaches, including its conflict of laws rules;
7. the validity, perfection and effect of perfection or non-perfection of a security interest in minerals or in an account resulting from the sale of the minerals at the minehead mine (as defined in the PPSA);
 - (a) that is provided for in a security agreement executed before the minerals are extracted; and
 - (b) that attaches to the minerals upon extraction or attaches to an account upon sale of the minerals;is governed by the law of the jurisdiction in which the minehead is located;
8. subject to the PPSA, the validity, perfection and effect of perfection or non-perfection of:
 - (a) a security interest in goods; or

- (b) a possessory security interest in a security, an instrument, a negotiable document of title, money and chattel paper;

is governed by the law of the jurisdiction where the collateral is situated when the security interest attaches. An uncertified security is situated where the records of the clearing agency are kept;

- 9. a security interest over or in any property which is in the nature of a trademark, copyright, patent, licence, approval, privilege, franchise, permit, lease, instrument, contract or agreement, or in any property subject to any of the *Canada Shipping Act* (Canada), the *Railway Act* (Canada), the *Copyright Act* (Canada), the *Patent Act* (Canada) and the *Trademarks Act* (Canada) may not be binding, valid or enforceable because of the terms of the particular property or to the extent that the terms of such particular property, or any statute, rule or regulation require a consent, approval or other authorization or registration which has not been given or made;
- 10. the security interest created by the Deed in any serial numbered goods (as defined in the Manitoba PPSA), which includes motor vehicles, trailers, boats, mobile homes, outboard motors for boats or aircraft, as those terms are defined under the regulations pursuant to the Manitoba PPSA, which is situated in the Province and which is goods that are equipment (as defined in the Manitoba PPSA), can only be registered or perfected by registration, by serial number description or registration marks, as prescribed under the aforesaid regulations;
- 11. to the extent that the charges under the GSA include fixtures or goods that may become fixtures, the security interest and such collateral may not be enforceable by the Bank against third parties unless the GSA describes the collateral, identifies the land concerned and necessary registrations are made in the appropriate land titles office;
- 12. to the extent the GSA purports to create a charge on real property, the GSA must be filed by the Registrar General of the Province of Manitoba and registered against identifiable real property in the appropriate land titles office in order to render enforceable the charges therein granted;
- 13. to the extent that the charges made under the GSA are expressed to cover certain property and assets which may be located outside the Province of Manitoba, we express no opinion as to the enforceability of the charges in Provinces other than Manitoba;
- 14. there is no perfected security interest in proceeds that are not identifiable or traceable;

15. in preparing the GSA we have relied upon the description of the collateral provided by the Corporation and the Bank;
16. the opinions hereinbefore set forth are limited to the laws of the Province of Manitoba and the laws of Canada applicable therein;
17. the PPSA provides that motor vehicles and aircraft must be specifically set forth in the appropriate sections of Financing Statements registered pursuant to that Act and if the security interest contained in the GSA now or at any time hereafter attaches to motor vehicles or aircraft further registrations must be made pursuant to the PPSA in order for the security interests therein to become perfected.

This opinion letter has been delivered to you in your capacity as Banker to the Corporation. Without our prior consent, this opinion letter, together with the opinions expressed herein, may not be:

- (a) relied upon by you in any other capacity;
- (b) relied upon by any other party or used for any other purpose;
- (c) quoted in whole or in part or otherwise reproduced in any report or document; or
- (d) furnished (either in its original form or by copy) to any other party.

Yours very truly,

30. SCHEDULE "A"

1. *The Personal Property Security Act* C.C.S.M. c. P35 (the "PPSA")
2. *Bank Act* S.C. 1991, c. 46 (Canada)
3. *The Executions Act* C.C.S.M. c. E160 (Manitoba)
4. *Bankruptcy and Insolvency Act* R.S.C., 1985, c. B-3 (Canada)
5. *The City of Winnipeg Charter Act* S.M. 2002, c. 39 (Business Tax)
6. *The Corporation Capital Tax Act* C.C.S.M. c. C226
7. *The Health and Post Secondary Education Tax Levy Act* C.C.S.M. c. H24
8. *The Workers Compensation Act* C.C.S.M. c. W200
9. *The Tax Administration and Miscellaneous Taxes Act* C.C.S.M. c. T2 (Manitoba)