

# TOWN OF FORT FRANCES

## Administration & Finance Executive Committee

### AGENDA - May 4, 2021, 12:00 PM

#### MEETING - Civic Centre

Session #7

#### Microsoft Teams meeting

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1. **Call to Order / Roll Call**
2. **Disclosure of pecuniary interest and the general nature thereof**
3. **Approval of Previous Committee Minutes**
  - 3.1 Session no 6 - 20 April 2021 2 - 3
4. **Items Referred from Council**
  - 4.1 Letter from Jackie Lampi-Hughes - Report & Information on Grants 4 - 9
5. **New Business**
  - 5.1 BIA Levy - Report & PDF 10 - 12
  - 5.2 Seniors Centre - Report & Input from CSEC 13 - 15
  - 5.3 Bank Agreement - Report & Agreement 16 - 27
  - 5.4 POA Financial Statements - Reports & Statements 28 - 35
6. **Outstanding Items - None**
7. **Information - None**
8. **In-Camera - None**
9. **Adjourn / Next Meeting Date - 18 May 2021**

TOWN OF FORT FRANCES

MINUTES

SESSION NO. #6

April 20, 2021

The meeting of Administration & Finance Executive Committee of the Town of Fort Frances was held in the Committee room and virtually on April 20, 2021 from 1159 hrs to 1209 hrs

PRESENT: Chairperson W. Brunetta, Councillors D. Judson and A. Hallikas, Mayor J. Caul (ex-officio)

ALSO PRESENT: D. Brown, CAO, D. Galusha, Treasurer, T. Moffit, Fire Chief/CEMC, J. Forbes, Human Resources Manager, K. Haney, Deputy Clerk, L. Slomke, Municipal Clerk, Merna Emara/Natali Trivunic, Fort Frances Times

REGRETS:

**1. Call to Order @ 1159 hrs**

**2. Disclosure of pecuniary interest and the general nature thereof**

- 2.1 Councillor Brunetta disclosed an interest in item 5.1 below as this is her per diem claim for attendance at NOMA.

**3. Approval of Previous Committee Minutes**

- 3.1 Session no 5 - 16 March 2021 - Approved as presented

**4. Items Referred from Council - None**

**5. New Business**

- 5.1 Per Diem Claims - Accepted as presented
- 5.2 2117 By Law 12-21 Potential Amendment - All members in favor. D. Galusha to initiate by-law amendment.
- 5.3 AFEC - Policy Review - Accepted as presented.
- 5.4 Fire Safety Grant - Approved as presented. Recommendation to move forward.

**6. Outstanding Items - None**

**7. Information**

- 7.1 Fire Rescue Reports - Accepted as presented

**8. In-Camera - None**

**9. Adjourn @ 1209 hrs / Next Meeting Date - 04 May 2021**

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Executive Committee Chair



**Treasury Report 2021/20**

**To: Mayor Caul & Members of Council**  
**FROM: Dawn Galusha, Treasurer**  
**DATE: April 29, 2021**  
**SUBJECT: Letter from Jackie Lampi-Hughes re: Tax break**

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**BACKGROUND**

At the Council meeting of April 26, 2021, the attached letter from Jackie Lampi-Hughes, owner of Energy Fitness Centre was referred to the Administration and Finance Committee. Jackie's letter is requesting Council to put a policy in place for businesses to receive a tax break when closed during a world-wide pandemic.

Due to the type of business that Energy Fitness Centre is, it was closed 7 of 12 months in 2020 and 9 out of 14 weeks in 2021, so far.

In further discussions with Jackie, her request is essentially to reimplement a vacancy rebate program. With vacancy rebate programs, the building must be completely vacant and available for sale or lease. This would not have been the case for the building where Energy Fitness Centre is located as it was set up as a gym. In addition, we completely removed the vacancy rebate programs in 2020 with support from the Ministry of Finance. This is one way that the Ministry was allowing Municipalities to control their tax policies and provide fairness to taxpayers. Finally, vacancy rebate programs are difficult to budget for and require a higher tax rate to collect the same amount of tax dollars, while balancing the budget.

I have provided Jackie information on Tax Relief for Ontario Businesses and have also attached this information for reference in this discussion. In addition to these tax specific business options, I also want to note that there was a Canada Emergency Business Account (CEBA) Loan program available where a business could receive \$40,000 to \$60,000. This loan program allows for 0% interest for a certain period with the Government of Canada Forgiving \$20,000 if it is paid back by the end of that period.

The past year has been an absolute struggle for so many businesses and residents in our community.

<https://www.app.grants.gov.on.ca/msrf/#/>

## Overview of available funding

Your business can apply online for funding from one or more of the following initiatives:

If you are looking to learn more on how to apply for the COVID-19 Business Support Grants, [click here](#)

**Property Tax and Energy Cost Rebate Grants** for businesses that were required to shut down or significantly restrict services due to provincial public health measures ([modified Stage 2 restrictions](#) or, going forward, in [areas categorized as control, Lockdown or Provincewide Shutdown](#)). This provincial application-based grant provides a rebate to eligible businesses in respect of property taxes and energy bills.

- The following types of businesses are eligible for support in regions subject to modified Stage 2, Control, Lockdown or Provincewide Shutdown public health measures
  - Restaurants and bars
  - Facilities for indoor sports and recreational fitness activities (for example: fitness centres, gyms, dance studios, karate/martial arts facilities)
  - Conference centres and convention centres
  - Community centres and multi-purpose facilities
  - Museums, galleries, aquariums, zoos, science centres, landmarks, historic sites, botanical gardens and similar attractions
  - Performing arts and cinemas
  - Personal care services relating to the hair or body (with exception of oxygen bars)
  - Racing venues, casinos, bingo halls and gaming establishments
  - Meeting or event space for rental
  - In person teaching and instruction
- The following types of businesses are eligible for support in regions subject to Lockdown or Provincewide Shutdown public health measures:
  - Retail required to close for in-person shopping
  - Shopping malls
  - Personal services (for example: party and wedding planners, personal organizer services, and personal physical fitness and sport trainers)
  - Driving instruction
  - Tour and guide services
  - Photography services
  - Campgrounds
  - Cannabis retail stores
  - Outdoor markets (excluding grocery)
- The following types of businesses are eligible for support in regions subject to Provincewide Shutdown public health measures:
  - Hardware stores (including Big Box stores) required to close for in-person shopping

- Drive-in cinemas, concerts, events and performances
- Garden centres
- Outdoor sports and recreation facilities
- Day camps for children
- Pet/animal food and services
- Ski hills
- Safety, medical and assistive devices retail (excluding pharmacies)
- Rental and leasing services (including automobile, commercial and light industrial machinery and equipment rental)
- Domestic services (for example: house cleaning, housekeeping, cooking, indoor and outdoor cleaning, and janitorial services)
- Vehicle and equipment repair services
- Veterinary services
- Cell Phone and computer providers & repairs
- Media industries including film and television production (excluding radio/television broadcasting)
- Before- and After- School Programs

Note: some business types have not been required to close or significantly restrict services during the entirety of their regions' Control, Lockdown and/or Provincewide Shutdown periods. Rebate amounts will reflect the actual periods of time a business has been required to close or significantly restrict services.

Before applying, you will be prompted to complete a brief checklist to ensure that your business is eligible.

**For the Property Tax Rebate and Energy Cost Rebate Grant:**

- Property tax bill or proof of costs associated with property taxes pertaining to the [modified Stage 2, Control, Lockdown or Provincewide Shutdown period](#).
- Electricity bill and natural gas bill (or heating oil/propane bill) pertaining to the [modified Stage 2, Control, Lockdown or Provincewide Shutdown period](#).

**Note that businesses owned by the federal, provincial, or a municipal government, or by a person holding federal or provincial office, are not eligible for the Property Tax Rebate and Energy Cost Rebate Grants.**

**Canada Emergency Rent Subsidy**

<https://www.canada.ca/en/revenue-agency/services/subsidy/emergency-rent-subsidy.html>

Canadian **businesses, non-profit organizations, or charities** who have seen a drop in revenue during the COVID-19 pandemic may be eligible for a subsidy to cover part of their commercial rent or property expenses, starting on September 27, 2020, until June 2021.

This subsidy will provide payments directly to qualifying **renters** and **property owners**, without requiring the participation of landlords.

If you are eligible for the base subsidy, you may also be eligible for lockdown support if your business location is significantly affected by a public health order for a week or more.

**Next deadline**

**May 20, 2021:** Last day to apply for claim period 2

**Next period opens**

**May 9, 2021:** First day you can apply for claim period 8

**From:** [Town](#)  
**To:** [Lisa Slomke](#)  
**Subject:** FW: [External] Tax Relief 2021?  
**Date:** Tuesday, April 13, 2021 9:02:45 AM

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**From:** Jackie Lampi-Hughes <jackenergy@shaw.ca>  
**Sent:** Tuesday, April 13, 2021 8:11 AM  
**To:** town@fort-frances.com  
**Subject:** [External] Tax Relief 2021?

**[EXTERNAL]** Don't click links or attachments unless you recognize the sender and know the content is safe. You can forward suspicious messages to [support@fortfrances.ca](mailto:support@fortfrances.ca).

**Mayor & Council,**

I am writing to Council to ask that they kindly put a policy in place for businesses to receive a TAX break when closed during a WORLD WIDE PANDEMIC.

I have now been forced to close in 2021, yet AGAIN! Which means I have been CLOSED 9 OUT OF 14 WEEKS...

I was penalized for paying 19k late on my property taxes in 2020 when I was closed 7 out of 12 months. It was upsetting as many areas in our district waved late fees!

I am sure after one year into this pandemic we can reassess for LOCAL business owners for this year as we continue to be CLOSED!

I look forward to hearing from you...and how Town Council can help a LOCAL BUSINESS owner who has promoted health in the district for over 16 years!

Thanks for your time and understanding,

Jackie Lampi-Hughes



## Energy Fitness Centre Owner/Manager

Sent from [Mail](#) for Windows 10



## TREASURY REPORT 2021/19

**TO:** Administration & Finance Executive Committee

**FROM:** Dawn Galusha, Treasurer

**DATE:** April 29, 2021

**SUBJECT:** BIA 2021 Budget & Tax Rates

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### BACKGROUND

The BIA have forwarded their 2021 Budget requirement for the purpose of levying and collection of a special charge of taxes upon the Business Improvement Area as provided for under Section 208 of the *Municipal Act, 2001*.

The BIA levy in the amount of \$45,000 is required by the Board of Management of the Business Improvement Area for the year 2021 as shown in Schedule "A" to support their approved budget of \$125,765 as submitted. The tax rates for the special charge, based on the 2021 tax ratios, are set out in Schedule "B" as attached to this report.

Schedule "A" to By-Law No. \_\_/21

**FORT FRANCES BUSINESS IMPROVEMENT ASSOCIATION  
2021 BUDGET**

	<b>New Account Number</b>	<b>2020 Budget</b>	<b>2020 Actuals</b>	<b>2021 Budget</b>
<b>Revenue:</b>				
BIA Taxation - Commercial	60-180-1823-0140-40014	(45,000)	(44,324.42)	(45,000)
BIA Taxation - Industrial	60-180-1823-0150-40014			
BIA Supp/Omit or Write-off	60-180-1823-0140-50014			
W/O Vacancy Rebates	60-180-1823-0122-50024	103	6.41	103
W/O Charity Rebates	60-180-1823-0122-54512		847.93	
Promotions Income	60-180-1823-0430-40688		(1,705.66)	
Transfer To/From Surplus	60-180-1823-0000-71030	(60,173)		(80,868)
		<b>(105,070)</b>	<b>(45,175.74)</b>	<b>(125,765)</b>
<b>Expenditures:</b>				
Part-time Salaries/Wages	60-180-1823-1101-60020	4,000	2,583.76	4,000
CPP	60-180-1823-1101-60025		110.73	
EI	60-180-1823-1101-60030		58.59	
EHT	60-180-1823-1101-60040		51.63	
WSIB	60-180-1823-1101-60055		61.43	
Telephone/Communications	60-180-1823-1200-71251	1,200	537.13	1,200
Postage	60-180-1823-1200-71252	50		50
Memberships	60-180-1823-1200-71260	50	229.20	0
Office Supplies	60-180-1823-1400-71410	500		500
Meeting Expenses	60-180-1823-1500-71532	200		200
Building & Office Rent	60-180-1823-1500-71552	2,034	1,831.68	2,034
Advertising & Public Notice	60-180-1823-1500-71591	20,000	6,457.28	20,000
Social Media	60-180-1823-1500-71592	500		500
Events/Activities	60-180-1823-1500-71593	2,500	47.70	5,000
Banners & Poles	60-180-1823-1900-71902	500		2,000
Seasonal Decorations	60-180-1823-1900-71903	10,000	176.39	10,000
Future Projects	60-180-1823-1900-71906	2,000		
Rainy Lake Market Square Project	60-180-1823-1900-71907	10,000	10,000.00	10,000
Soil/Plants/Trees	60-180-1823-2740-71440	7,000	2,335.39	1,000
Grounds Repairs/Maintenance	60-180-1823-2740-71545			2,000
Materials	60-180-1823-2750-71471			7,000
Surplus		44,536		60,281
		<b>105,070</b>	<b>24,480.91</b>	<b>125,765</b>
<b>Accumulated (Surplus)/Deficit</b>		<b>0</b>	<b>(20,694.83)</b>	<b>0</b>

Schedule "B" to By-Law No. \_\_/21

2021 BIA TAX RATES

Class	RTC/ RTQ	2020 Assessment	Tax Rate Discount	Discounted CVA	Tax Ratios	Weighted CVA	Effective Tax Rate	2020 BIA Tax Levy
Commercial	CT	9,684,900	1	9,684,900	1.943520	18,822,797	0.00464641	45,000.00
Industrial	IT	-	1	-	2.644372	-	0.00632195	-
<b>Total</b>		<b>9,684,900</b>		<b>9,684,900</b>		<b>18,822,797</b>		<b>45,000.00</b>

Base Rate       $\frac{45,000.00}{18,822,797}$       Dollars Required  
Weighted Assessment

**0.002390718**      Base Rate equal to tax ratio of 1



## Treasury Report 2021/21

**TO:** Administration & Finance Executive Committee

**FROM:** Dawn Galusha, Treasurer

**DATE:** April 29, 2021

**SUBJECT:** Letter from Irene Laing re: Seniors Month in June

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### BACKGROUND

At the April 26, 2021 Council Meeting, the letter received from Irene Laing Board Chair of the Fort Frances Senior Centre for support was referred to the Administration & Finance Executive Committee for recommendation with input from the Community Services Executive Committee.

The request is for the following:

1. Proclamation of June as Seniors Month
2. Mayor or a representative attend the Senior Centre to kick off the event at noon on June 1
3. Donation of up to 200 ice cream cones at the Marina for those participating in the walk

The Community Services Executive Committee recommends that we consider a monetary donation of \$500 be made from the Council Public Relations budget to help with activities planned during Seniors Month as the Town will not be running the Marina.

April 19, 2021

Report To: Administration and Finance Executive Committee

From: Michael Behan, Chair of Community Services Executive Committee

**RE: Donation of Ice Cream Cones Request**

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The Fort Frances Senior Centre is preparing to celebrate Seniors Month during June. They are looking at hosting events for Seniors in the community and are asking that the Town donate an ice cream cone per senior during one of the activities planned to be held down on the waterfront.

The request indicates that attendance will be capped at 200 for the event and based on the cost of an ice cream cone in 2020 of \$2.50 that would be a donation up to approximately \$500.00. Complicating the potential donation is the fact that the Sorting Gap Marina will potentially be operated by an operator other than the Town of Fort Frances and the cost of this potential donation could be significantly higher but at this point would be unknown.

Due to the uncertainties around the Sorting Gap Marina operations and the numbers of individuals attending the events, it may be most beneficial to consider a set monetary donation toward the activities planned during Seniors Month.

**Recommendation**

The Community Services Executive Committee recommends to the Administration and Finance Executive Committee to consider a monetary donation of \$500 be made from the Council Public Relations budget to help with the activities planned during Seniors Month.

Respectfully Submitted,

Michael Behan,  
Chair of Community Services Executive Committee



**FORT FRANCES SENIOR CENTRE  
401 NELSON STREET, FORT FRANCES, ON P9A 1B3**

Mayor and Council  
Town of Fort Frances

April 6, 2021

Dear Mayor and Council:

The Fort Frances Senior Centre is planning a series of events to celebrate Seniors Month in June. To date our plans include an exhibition and Riverwalk on June 1, a Scavenger Hunt on June 9, a Sports Day on the 22<sup>nd</sup> and a Barbecue on the 29th.

We would appreciate it if the Town could proclaim June as Seniors Month and if the Mayor or a representative could attend the Senior Centre to kick off the event at noon on June 1. As well, could the Town donate ice cream cones at the Marina for seniors participating in the walk? Tickets would be handed out to participants at the Centre at the beginning of the walk. Participation will be capped at 200.

We will be adhering to whatever COVID regulations might be in effect at that time. Our current plan is to have activities outdoors in our parking lot. In the event of rain we will postpone and do the events the following day.

Thanking you for your attention to these matters,

Sincerely

Irene Laing  
Board Chair





## Treasury Report 2021/22

**TO:** Administration & Finance Executive Committee

**FROM:** Dawn Galusha, Treasurer

**DATE:** April 29, 2021

**SUBJECT:** Bank Agreement

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### BACKGROUND

The Town of Fort Frances is in the process of changing over to the Public Sector and Not-for-Profit Group within CIBC in order for CIBC to support us better as a Municipality. In doing so, they want a new Credit Facilities Agreement signed. We have a similar agreement which is attached as Schedule A to By-Law 71/06. This new agreement will also be covered by By-Law and the previous By-Law will be rescinded.





Canadian Imperial Bank of Commerce  
David Cohen, Manager  
Public Sector and Not-for-Profit Group  
222 Queen Street, 2<sup>nd</sup> Floor  
Ottawa, Ontario K1P  
5V9

April 20, 2021

The Corporation of the Town of Fort Frances  
320 Portage Ave  
Fort Frances, Ontario  
P9A 3P9

Attention: Dawn Galusha, Treasurer

Dear Ms. Galusha:

Re: Credit Facilities

Canadian Imperial Bank of Commerce (“CIBC”) is pleased to establish the following credit facility(ies) in favour of The Corporation of the Town of Fort Frances (the “Borrower”).

#### **Credit A: Revolving Facility**

Credit Limit: \$4,000,000.

Purpose: All amounts obtained under this Credit are to be used for expenses incurred in the normal course of business by the Borrower.

Description and Rate: A revolving Credit, available as follows:  
► Canadian dollar loans, which will also be available by way of overdrafts.  
► Interest on Canadian dollar loans will be calculated at the Prime Rate minus 0.50% per annum.

Repayment: All amounts under this Credit are repayable immediately on demand by CIBC, and this Credit may be terminated in whole or in part by CIBC at any time.

#### **Credit B: Demand Instalment Loan**

Loan Amount: \$551,968

Purpose: All amounts obtained under this Credit were used to combine two loans that matured on Dec 31, 2017. These loans were

originally used for the Honeywell project.

**Description and Rate:**

A non-revolving Instalment Loan. Principal that is repaid is not available to borrow. Interest on this loan is payable monthly.

Interest on this loan will be calculated at a fixed rate of 4.397% per year for a period maturing December 31, 2022.

**Repayment:**

On demand. Until demand, this facility is repayable as follows:

21 regular monthly payments of CDN\$26,284.18 each, plus accrued interest payable monthly are due on the last day of the month with next payment due April 30, 2021.

The last regular instalment payment plus any outstanding principal and interest and any other amount due but unpaid with respect to this Facility is due on the Last Regular Scheduled Payment Date.

You may only prepay this Facility in accordance with the terms outlined in Schedule A of the agreement dated January 4, 2018.

### **Security**

All Credits are provided on an unsecured basis.

### **Documentation**

**Borrowing By-Laws:**

By-law authorizing Facility A in form and substance satisfactory to CIBC. A new resolution is to be provided annually as required.

**Borrowing By-Laws:**

By-Law #47/12 and 67/10 from the Corporation of the Town of Fort Frances RE: Borrowing to Meet Specific Expenditures (with respect to Capital Expenditure), authorizing Facility B.

### **Reporting Requirements**

**Reporting Requirements:**

The Borrower will provide to CIBC:

- ▶ within 180 days after the end of each fiscal year, the audited consolidated financial statements of the Borrower for such year
- ▶ within 180 days after the end of each fiscal year, a

business plan/forecast for the Borrower for its next fiscal year, including projected balance sheets, income statements and cash flows and financial covenant calculations for such next fiscal year

### Other Provisions

Schedule A: The attached Schedule A, which contains certain additional provisions applicable to the Credits, and certain definitions, forms part of this Agreement.

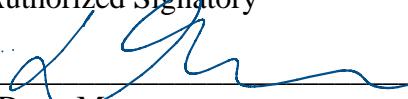
Replacement: This letter supersedes and replaces all prior discussions, letters and agreements (if any) describing the terms and conditions of any credit facility established by CIBC in favour of the Borrower.

Please indicate your acceptance of these terms by signing below and returning the enclosed copy to our attention no later than May 14, 2021.

Yours truly,

**CANADIAN IMPERIAL BANK OF COMMERCE**

By:  \_\_\_\_\_  
Name: David Cohen  
Title: Authorized Signatory

By:  \_\_\_\_\_  
Name: Doug Mara  
Title: Authorized Signatory

Accepted this \_\_\_\_ day of \_\_\_\_\_.

The Corporation of the Town of Fort Frances

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

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

**SCHEDULE A - ADDITIONAL DEFINITIONS AND PROVISIONS  
FOR DEMAND FACILITIES**

**1. GENERAL**

**1.1 Use of Funds, Returns.** The Borrower will use the Credits only for the purposes specified in this Agreement. The Borrower may not at any time exceed the limit of any Credit, and CIBC may, without notice to the Borrower, return any item that, if paid, would result in the limit of any Credit being exceeded. If, on the other hand, CIBC in its sole discretion elects to pay any such item, the Borrower will pay to CIBC immediately the amount by which the limit of the applicable Credit has been exceeded.

**1.2 Notice of Failure.** The Borrower will promptly notify CIBC of the occurrence of any failure to perform or observe any of its covenants in this Agreement.

**1.3 Confidentiality.** The terms of this Agreement are confidential between the Borrower and CIBC, and accordingly the Borrower will not disclose the contents of this Agreement to anyone except its professional advisors.

**1.4 Applying money received.** At any time that the Borrower has failed (beyond any period of grace permitted by CIBC) to perform or observe any of its covenants in this Agreement, all moneys received by CIBC from the Borrower or from any Security may be applied on such parts of the Borrower's liabilities to CIBC as CIBC may determine.

**1.5 Right of Set-Off.** At any time that the Borrower has failed (beyond any period of grace permitted by CIBC) to perform or observe any of its covenants in this Agreement, CIBC is authorized at any time to set-off and apply any deposits held by it and any other amounts owed by it to or for the credit of the Borrower against any and all of the obligations of the Borrower with respect to the Credits, irrespective of whether or not CIBC has made any demand and even though any such obligations may not yet be due and payable.

**1.6 Registration of Security.** The Security will be registered or filed in all jurisdictions and in all offices as CIBC considers necessary or advisable from time to time to create, perfect or protect any Lien created thereby.

**1.7 Expenses.** The Borrower will reimburse CIBC for all fees and out of pocket expenses (including fees and expenses of CIBC's solicitors and of any other experts and advisors hired by CIBC) incurred in preparing, registering and renewing any Security, in responding to requests from the Borrower for waivers, amendments and other matters, in enforcing CIBC's rights under this Agreement or any Security, and in discharging any Security.

**1.8 Further information requirements.** The Borrower will provide such further information about its business and its Subsidiaries as is reasonably requested by CIBC from time to time, and such information shall be in a form acceptable to CIBC.

**1.9 Consent to release information.** CIBC may from time to time give any credit or other information about the Borrower to, or receive such information from, (i) any financial institution, credit reporting agency, rating agency or credit bureau, (ii) any person, firm or corporation with whom the Borrower may have or proposes to have financial dealings, and (iii) any person, firm or corporation in connection with any dealings the Borrower has or proposes to have with CIBC. The Borrower agrees that CIBC may use that information to establish and maintain the Borrower's relationship with CIBC and to offer any services as permitted by law, including services and products offered by CIBC's Subsidiaries when it is considered that this may be suitable to the Borrower.

**1.10 Instructions by fax, phone and e-mail.** The Borrower may deliver, and CIBC may accept, instructions by fax, telephone (including cellular phone) and internet e-mail ("Electronic Communication"), according to CIBC-approved procedures, which procedures may be limited to particular types of communications or services. Unless the Borrower expressly indicates otherwise, the Borrower agrees that CIBC may also communicate with the Borrower by e-mail or fax. This may include (i) CIBC sending confidential information to the Borrower, at the Borrower's request; or (ii) the Borrower sending confidential information to CIBC. An Electronic Communication may not be a secure means of communication and the Borrower assumes responsibility for the risks of using Electronic Communications including, without limitation, the possibility that an Electronic Communication is: intercepted by or sent to an unauthorized person, misunderstood, lost, delayed, or not received by CIBC at all. CIBC is entitled to rely upon any Electronic Communication from or purporting to be from the Borrower, as if such instructions were given in writing. However, CIBC may choose not to act upon an Electronic Communication if it believes that the Electronic Communication is unauthorized, incorrect or unclear. CIBC shall not be liable for, and the Borrower will indemnify and save CIBC harmless from, any claims, losses, damages, liabilities and expenses that CIBC incurs (other than those due to CIBC's gross negligence or wilful misconduct) including among other things all legal fees and expenses, arising from CIBC acting or declining to act on any of your Electronic Communications given under this Agreement. This indemnity is in addition to any other indemnity or assurance against loss provided by you to CIBC under this Agreement or otherwise.

**1.11 Further Assurances.** The Borrower will, and will ensure that each of its Subsidiaries will, from time to time promptly upon request by CIBC do and execute all such acts and documents as may be reasonably required by CIBC to give effect to the Credits and the Security, and to any transfer pursuant to section 1.16 of this Schedule.

**1.12 Insurance.** The Borrower will, and will ensure that each of its Subsidiaries will, keep all its respective assets and property insured (to the full insurable value) against loss or damage by fire and all other risks usual for similar property and for any other risks CIBC may reasonably require. If CIBC requests, these policies will include a loss payable clause (and with respect to mortgage security, a mortgagee

clause) in favour of CIBC. As further security, the Borrower assigns all insurance proceeds to CIBC. The Borrower will provide to CIBC either the policies themselves or adequate evidence of their existence. If any insurance coverage for any reason stops, CIBC may (but shall have no obligation to) insure the property. The Borrower will notify CIBC immediately of any loss or damage to any such asset or property.

**1.13 Environmental.** The Borrower will, and will ensure that each of its Subsidiaries will, carry on its business, and maintain its assets and property in accordance with all applicable environmental laws and regulations. If there is any release, deposit, discharge or disposal of pollutants of any sort (collectively, a "Discharge") in connection with the business or property of the Borrower or any of its Subsidiaries, and CIBC pays any fines or for any clean-up suffers any loss or damage as a result of the Discharge, the Borrower will reimburse CIBC, its directors, officers, employees and agents for any and all losses, damages, fines, costs and other amounts (including amounts spent preparing any necessary environmental assessment or other reports, or defending any lawsuits) that result. If CIBC asks, the Borrower will defend any lawsuits, investigations or prosecutions brought against CIBC or any of its directors, officers, employees and agents in connection with any Discharge. The Borrower's obligation under this section continues even after all Credits have been repaid and this Agreement has terminated.

**1.14 Related Transactions.** None of the Borrower and its Subsidiaries will enter into any transaction, including the purchase, sale or exchange of any property or the rendering of any services, with any of its shareholders or with any of its Affiliates, or with any of its or their directors or officers, or enter into, assume or permit to exist any employment, consulting or analogous agreement or arrangement with any such shareholder or Affiliate or with any of its directors or officers, except a transaction or agreement or arrangement which is in the ordinary course of business of the Borrower or such Subsidiary and which is upon fair and reasonable terms not less favourable to the Borrower or its applicable Subsidiary than it would obtain in a comparable arms-length transaction.

**1.15 Waiver.** No delay on the part of CIBC in exercising any right or privilege will operate as a waiver thereof, and no waiver of any failure or default will operate as a waiver thereof unless made in writing and signed by an authorized officer of CIBC, or will be applicable to any other failure or default.

**1.16 Assignment.** CIBC may assign, sell or participate (herein referred to as a "transfer") all or any part of its rights and obligations under all or any of the Credits to any third party, and the Borrower agrees to sign any documents and take any actions that CIBC may reasonably require in connection with any such transfer. Upon completion of the transfer, the third party will have the same rights and obligations under this Agreement as if it were a party to it, with respect to all rights and obligations included in the transfer. The Borrower may not assign any of its rights or obligations under any of the Credits.

**1.17 Authorized Debits.** The Borrower authorizes CIBC to debit its Operating Account for any interest, fees or other amounts that are payable by the Borrower to CIBC with respect to the Credits, as and when such amounts are payable.

**1.18 Communications.** Any communication or notice to be given with respect to the Credits may be effectively given by delivering the same at the addresses set out on the signature page of this Agreement, or by sending the same by facsimile or prepaid registered mail to the parties at such addresses. Any notice so mailed will be deemed to have been received on the tenth day next following the mailing thereof, provided that postal service is in normal operation during such time. Any facsimile notice will be deemed to have been received on transmission if sent on a Business Day and, if not, on the next Business Day following transmission. Either party may from time to time notify the other party, in accordance with this section, of any change of its address which thereafter will be the address of such party for all purposes of the Credits.

**1.19 Governing Law.** This Agreement shall be governed by the laws of Ontario, and the Borrower submits itself to the jurisdiction of any competent federal or provincial court in such jurisdiction.

**1.20 Certain Definitions.** In this Agreement the following terms have the following meanings:

**"Affiliate"** means, with respect to any person, any other person who directly or indirectly controls, is controlled by, or is under direct or indirect common control with, such person, and includes any person in like relation to an Affiliate. A person shall be deemed to control another person if the first person possesses, directly or indirectly, the power to direct or cause the direction of the management and policies of the other person, whether through the ownership of voting securities, by contract or otherwise.

**"Agreement"** means the attached letter agreement between CIBC and the Borrower, including this Schedule and any other Schedules thereto, as the same may be amended or supplemented from time to time.

**"Business Day"** means (i) with respect to any amount denominated in Canadian dollars and all matters pertaining thereto, any day excluding Saturday, Sunday and any day which is a legal holiday in Toronto, Canada, and (ii) with respect to any amount denominated in US dollars and all matters pertaining thereto, any day excluding Saturday, Sunday or any day which is a legal holiday in Toronto, Canada.

**"Compliance Certificate"** means an Officer's Certificate in the form prescribed by CIBC and stating, as of the applicable date, (i) that the Borrower is not in default of the observance or performance of any of its covenants in this Agreement (or describing any default then existing), (ii) that all representations and warranties contained in this Agreement are true and accurate as if made on and as of such date (or describing any thereof that are not then true and accurate), (iii) the particulars and calculation of all financial covenants of the Borrower contained in this Agreement.

**"GAAP"** means those accounting principles which are recognized as being generally accepted in Canada from time to time as set out in the handbook published by the Canadian Institute of Chartered Accountants. If the Borrower, or the party to which references to GAAP are intended to apply, has adopted International Financial Reporting Standards ("IFRS"), then the applicable references in this Agreement to GAAP or Generally Accepted Accounting Principles may be interpreted to mean IFRS, but only if CIBC has consented to such change.

**"Investment"** means, with respect to any person, any direct or indirect investment in or purchase or other acquisition of the securities of or any equity interest in any other person, any loan or advance to, or arrangement for the purpose of providing funds or credit to (excluding extensions of

trade credit in the ordinary course of business in accordance with customary commercial terms), or capital contribution to, any other person, or any purchase or other acquisition of all or substantially all of the property of any other person.

**“Lien”** includes without limitation a mortgage, hypothec, whether legal or conventional lien, Prior Ranking Claims, security interest, prior claim, charge or encumbrance of any sort on any property or asset, and includes conditional sales contracts, title retention agreements, capital trusts, capital leases and leasing.

**“Material Adverse Effect”** means a material adverse effect on the business, property, condition (financial or otherwise) or prospects of the Borrower and its Subsidiaries, considered as a whole, or a material adverse effect on the ability of any of the Borrower and its Subsidiaries to perform its obligations under any of this Agreement and the Security to which it is a party.

**“Monthly Statement of Available Credit”** means an Officer’s Certificate stating, the amount and particulars of calculation of Receivable Value, Inventory Value (if applicable) and Prior Ranking Claims, and the resulting maximum available amount and undrawn amount of the Demand Operating Credit, as of a specified date.

**“Normal Course Lien”** means, at any time, the following:

- (i) Liens for taxes and other undetermined or inchoate Liens arising in the ordinary course of business which relate to amounts not overdue or a claim for which has not been filed or registered pursuant to applicable law;
- (ii) easements, rights-of-way, restrictions and other similar encumbrances arising in the ordinary course of business which, in the aggregate, are not substantial in amount, and which do not in any case materially detract from the value or use of the property subject thereto;
- (iii) Liens created by the Security and other Liens consented to in writing by CIBC;

**“Officer’s Certificate”** means a certificate, in form satisfactory to CIBC, signed by a senior officer of the Borrower.

**“Operating Account”** means any Canadian dollar or US dollar account of the Borrower with CIBC as is selected by CIBC from time to time for the purposes hereof.

**“Prior Ranking Claims”** means, at any time, any liability of any of the Borrower and its Subsidiaries that ranks, in right of payment in any circumstances, equal to or in priority to any liability of the Borrower or such Subsidiary to CIBC, and may include unpaid wages, salaries and commissions, unremitted source deductions for vacation pay, arrears of rent, unpaid taxes, amounts owed in respect of worker’s compensation, amounts owed to unpaid vendors who have a right of repossession, and amounts owing to creditors which may claim priority by statute or under a Purchase Money Lien.

**“Purchase Money Lien”** means any Lien which secures a Purchase Money Obligation permitted by this Agreement, provided that such Lien is created not later than 30 days after such Purchase Money Obligation is incurred and does not affect any asset other than the asset financed by such Purchase Money Obligation.

**“Purchase Money Obligation”** means any Debt (including without limitation a capitalized lease obligation) incurred or assumed to finance all or any part of the acquisition price (and not exceeding the fair market value) of any asset acquired by any of the Borrower and its Subsidiaries.

**“Security”** means, collectively, all of the items of security held by CIBC for the indebtedness and liabilities, or any part thereof, of the Borrower to CIBC.

**“Subsidiary”** of any person means any other person of which shares or other equity units having ordinary voting power to elect a majority of the board of directors or other individuals performing comparable functions, or which are entitled to or represent more than 50% of the owners’ equity or capital or entitlement to profits, are owned beneficially or controlled, directly or indirectly, by any one or more of such first person and the Subsidiaries of such first person, and shall include any other person in like relationship to a Subsidiary of such first person.

## 2. INTEREST RATES; PAYMENTS; CALCULATIONS

2.1 **Variable interest.** Each variable interest rate provided for in this Agreement will change automatically, without notice, whenever the Prime Rate or the US Base Rate, as the case may be, changes.

2.2 **Payment of interest.** Interest is calculated on the applicable balance at the end of each day. Interest is payable in arrears once a month on the day required by CIBC, unless otherwise specified in this Agreement, and interest on amounts in default is payable on demand.

2.3 **Interest Rate Applicable to Credit Limit Excesses.** The Interest Rate Applicable to Credit Limit Excesses will be charged on the amount outstanding under a Credit that exceeds the limit of such Credit, and if there are several parts of a Credit, the Interest Rate Applicable to Credit Limit Excesses will be charged if the limit of a particular part is exceeded. To determine if the limit of a Credit has been exceeded, any amount in a currency other than the currency in which the limit is designated will be converted into that currency, as described in section 2.10 of this Schedule.

2.4 **Interest on Overdue Amounts.** Except as otherwise specified herein, if any principal is not paid when due, such overdue principal will bear interest (as well after as before judgement), payable on demand, at the interest rate applicable to such principal prior to default, and interest will be payable on overdue interest (as well after as before judgement) at the same rate as is applicable to the related principal. If any amount is not paid by the Borrower when due and there is no interest otherwise applicable to such amount specified herein, such overdue amount will bear interest (as well after as before judgement), payable on demand, at a rate per annum equal at all times to the Prime Rate plus 5% (in the case of any such amount payable in Canadian dollars) or the US Base Rate plus 5% (in the case of any such amount payable in US dollars) from the date of non-payment until paid in full.

2.5 **Reductions of Limit of Credits.** On or prior to each date on which the limit of any Credit is reduced, the Borrower will repay such outstanding amounts thereunder, if any, as are necessary so that, after giving effect to the repayment, the total of all amounts outstanding under such Credit does not exceed the limit as so reduced.

2.6 **Payments.** If any payment is due on a day other than a Business Day, such payment will be due on the next Business Day.

2.7 **CIBC's pricing policy.** The fees, interest rates and other charges for the Borrower's banking arrangements with CIBC are dependent upon each other. Accordingly, if the Borrower cancels or does not follow through with, in the manner originally contemplated, any of these arrangements, CIBC reserves the right to require payment by the Borrower of increased or added fees, interest rates and charges as a condition of the continuation of the Borrower's banking arrangements.

2.8 **Calculations.** The following terms apply to all calculations under the Credits:

(a) CDOR, Federal Funds Rate, Prime Rate and US Base Rate shall be determined by CIBC if and whenever such determination is required for the purpose of this Agreement, and such determination by CIBC shall be conclusive evidence of such rate.

(b) All interest and fees hereunder shall be computed on the basis of the actual number of days elapsed divided by 365. Any such applicable interest rate, expressed as an annual rate of interest for the purpose of the *Interest Act* (Canada), shall be equivalent to such applicable interest rate multiplied by the actual number of days in the calendar year in which the same is to be determined and divided by 365.

(c) In calculating interest or fees payable hereunder for any period, unless otherwise specifically stated, the first day of such period shall be included and the last day of such period shall be excluded.

2.9 **CIBC's Records.** CIBC's loan accounting records will provide conclusive evidence of all terms and conditions of the Credits such as principal loan balances, interest calculations, and payment dates.

2.10 **Foreign Currency Conversion.** If it is necessary for any purpose relating to the Credits that an amount denominated in a currency other than Canadian dollars be expressed in or equated to an amount of Canadian dollars (such as, for example, to determine whether amounts denominated in US dollars that are outstanding under a Credit which has a limit specified in Canadian dollars exceed the limit of such Credit so as to make applicable the Interest Rate Applicable to Credit Limit Excesses), the applicable amount of Canadian dollars shall be determined by CIBC in accordance with its normal practice.

2.11 **Deemed Re-Investment Principle.** For the purpose of the *Interest Act* (Canada) and any other purpose, the principle of deemed re-investment of interest is not applicable to any calculation under this Agreement, and the rates of interest and fees specified in this Agreement are intended to be nominal rates and not effective rates or yields.

2.12 **Certain Definitions.** If and whenever required for the purpose of this Agreement, the following terms have the following definitions:

**"CDOR"** means, for any day, the average of the annual discount rates for bankers' acceptances denominated in Canadian dollars of certain banks named in Schedule 1 to the *Bank Act* (Canada) for a specified term that appears on the CDOR page of the Reuters Screen as of 10:00 a.m. on such day (or, if such day is not a Business Day, as of 10:00 a.m. on the next preceding Business Day).

**"Federal Funds Rate"** means, for any day, an annual interest rate equal to the weighted average of the rates on overnight United States federal funds transactions with members of the Federal Reserve System arranged by United States federal funds brokers, as published for such day (or, if such day is not a business day in New York, for the next preceding business day in New York) by the Federal Reserve Bank of New York, or for any such business day on which such rate is not so published, the arithmetic average of the quotations for such day on such transactions received by CIBC from three United States federal funds brokers of recognized standing selected by it.

**"Interest Rate Applicable to Credit Limit Excesses"** means the annual interest rate generally established by CIBC from time to time for the purpose of calculating interest on overdrafts in accounts maintained with CIBC in Canada.

**"Prime Rate"** means a fluctuating annual interest rate equal at all times to the greater of (i) the reference rate of interest (however designated) of CIBC for determining interest chargeable by it on loans in Canadian dollars made in Canada and (ii) 1% per annum above the CDOR for 30-day bankers' acceptances from time to time.

**"US Base Rate"** means a fluctuating annual interest rate equal at all times to the greater of (i) the reference rate of interest (however designated) of CIBC for determining interest chargeable by it on loans in US dollars made in Canada, and (ii) 1% per annum above the Federal Funds Rate from time to time.

### 3. NOTICE OF BORROWING; NOTICE OF REPAYMENT; OVERDRAFTS

3.1 **Notice of Borrowing.** Whenever the Borrower desires to obtain any amount under a Credit (other than a loan by way of a permitted overdraft), it will give to CIBC irrevocable prior written notice (a "Notice of Borrowing") specifying the Credit under which such amount is to be obtained and the particulars of such amount including the Business Day on which such amount is to be obtained. A notice requesting any loan in an amount exceeding \$10,000,000 or US \$10,000,000 must be given not later than 10:00 a.m. on the Business Day preceding the applicable borrowing date.

3.2 **Notice of Repayment.** Whenever the Borrower desires to make any repayment or repayments under one or more of the Credits in an aggregate amount exceeding \$10,000,000 (or an equivalent amount in any other currency) on any day, it will give to CIBC irrevocable written notice specifying the particulars of such repayment not later than 10:00 a.m. on the Business Day preceding the applicable repayment date.

3.3 **Overdrafts.** If the Borrower is entitled under any Credit to obtain loans in Canadian dollars or US dollars by way of overdraft, the debit balance in the Borrower's applicable Operating Account from time to time will be deemed to be a loan in Canadian dollars or US dollars, as the case may be, outstanding to the Borrower under such Credit and bearing interest as set out in this Agreement for loans in such currency under such Credit. If at any time the Borrower is a party to a cash concentration arrangement with CIBC, the amount of any overdraft from time to time in the Canadian dollar or US dollar concentration account of the Borrower established pursuant to such arrangement will also be deemed to be a loan in Canadian dollars or US dollars, as applicable, outstanding to the Borrower under the applicable Credit and bearing interest as set out above on the basis of the Prime Rate or the US Base Rate, as the case may be.

#### 4. INDEMNITIES

4.1 **Reserve Indemnity.** If subsequent to the date of this Agreement any change in or introduction of any applicable law, or compliance by CIBC with any request or directive by any central bank, superintendent of financial institutions or other comparable authority, shall subject CIBC to any tax with respect to the Credits or change the basis of taxation of payments to CIBC of any amount payable under the Credits (except for changes in the rate of tax on the overall net income of CIBC), or impose any capital maintenance or capital adequacy requirement, reserve requirement or similar requirement with respect to the Credits, or impose on CIBC any other condition or restriction, and the result of any of the foregoing is to increase the cost to CIBC of making or maintaining the Credits or any amount thereunder or to reduce any amount otherwise received by CIBC under the Credits, CIBC will promptly notify the Borrower of such event and the Borrower will pay to CIBC such additional amount calculated by CIBC as is necessary to compensate CIBC for such additional cost or reduced amount received. A certificate of CIBC as to any such additional amount payable to it and containing reasonable details of the calculation thereof shall be conclusive evidence thereof.

4.2 **Currency Indemnity.** Interest and fees hereunder shall be payable in the same currency as the principal to which they relate. Any payment on account of an amount payable in a particular currency (the "proper currency") made to or for the account of CIBC in a currency (the "other currency") other than the proper currency, whether pursuant to a judgement or order of any court or tribunal or otherwise and whether arising from the conversion of any amount denominated in one currency into another currency for any purpose, shall constitute a discharge of the Borrower's obligation only to the extent of the amount of the proper currency which CIBC is able, in the normal course of its business within one Business Day after receipt by it of such payment, to purchase with the amount of the other currency so received. If the amount of the proper currency which CIBC is able to purchase is less than the amount of the proper currency due to CIBC, the Borrower shall indemnify and save CIBC harmless from and against any loss or damage arising as a result of such deficiency.

4.3 **Default Indemnity.** The Borrower shall indemnify and save harmless CIBC from all claims, demands, liabilities, damages, losses, costs, charges and expenses, including any loss or expense arising from interest or fees payable by CIBC to lenders of funds obtained by it in order to make or maintain any amount under the Credits and any loss or expense incurred in liquidating or re-employing deposits from which such funds were obtained, which may be incurred by CIBC as a consequence of (i) default by the Borrower in the payment when due of any amount hereunder or the occurrence of any other default relative to any of the Credits, (ii) default by the Borrower in obtaining any amount after the Borrower has given notice hereunder that it desires to obtain such amount, (iii) default by the Borrower in making any optional repayment of any amount after the Borrower has given notice hereunder that it desires to make such repayment, or (iv) the repayment of any loan on which interest is payable at a fixed annual rate otherwise than on the expiration of the fixed interest rate period applicable thereto, or the repayment of any other amount otherwise than on any specified maturity date thereof. A certificate of CIBC as to any such loss or expense and containing reasonable details of the calculation thereof shall be *prima facie* evidence thereof.

#### 5. CONDITIONS PRECEDENT

##### 5.1 Conditions Precedent to the Initial Amount

CIBC shall not be obliged to make available the initial amount under any Credit unless it shall have received (a) all required Security, which shall have been duly registered and filed as required hereby, (b) such financial and other information relating to the Borrower and its Subsidiaries, and any guarantor, as CIBC shall have reasonably requested, (c) confirmation of all insurance maintained by the Borrower and its Subsidiaries, and such insurance shall comply with the requirements of this Agreement, (d) payment of all fees and other amounts which shall have become due and payable by the Borrower to CIBC on or prior to the initial borrowing date, and (e) the following documents in form, substance and execution acceptable to CIBC: (i) a certified copy of the constating documents and by-laws of each of the Borrower and its Subsidiaries, and of each corporate guarantor, and of all corporate proceedings taken and required to be taken by each of them to authorize the execution and delivery of such of this Agreement and the Security to which it is a party and the performance of the transactions by it contemplated therein; (ii) a certificate of incumbency for each of the Borrower and its Subsidiaries, and for each corporate guarantor, setting forth specimen signatures of the persons authorized to execute such of this Agreement and the Security to which it is a party; (iii) such legal opinions addressed to CIBC relative to the Borrower, this Agreement and the Security as CIBC may require; and (iv) such other documents relative to this Agreement and the transactions contemplated herein as CIBC may reasonably require.

##### 5.2 Conditions Precedent to All Amounts

CIBC shall not be obliged to make available any amount under any Credit unless (a) CIBC shall have received any applicable Notice of Borrowing, (b) on the applicable borrowing date the Borrower shall not have failed to observe or perform any of its covenants in this Agreement, and the Borrower shall have delivered to CIBC, if so requested by CIBC, an Officers' Certificate to such effect, (c) the representations and warranties contained in this Agreement shall be true on and as of the applicable borrowing date with the same effect as if such representations and warranties had been made on and as of the applicable borrowing date, and the Borrower shall have delivered to CIBC, if so requested by CIBC, an Officers' Certificate to such effect, (d) all other conditions specified herein, to the extent not previously satisfied for any reason, other shall have been satisfied, and (e) in respect of any amount that would result in the aggregate amount outstanding under the Credits being increased, there shall not have occurred subsequent to the date of last annual financial statements of the Borrower, in the opinion of CIBC, any event which (individually or with any other events) has had, or which has a reasonable possibility of having, a Material Adverse Effect.

#### 6. REPRESENTATIONS AND WARRANTIES



6.1 **Representations and Warranties.** To induce CIBC to establish and maintain each Credit, the Borrower represents and warrants as follows:

- (a) Each of the Borrower and its Subsidiaries has all necessary power and authority to own its property, to carry on the business carried on by it, to enter into and perform its obligations under such of this Agreement and the Security to which it is a party.
- (b) This Agreement, and upon delivery thereof the Security, have been duly executed and delivered by each of the Borrower and its Subsidiaries as are parties thereto, and constitute the legal, valid and binding obligation of each of them enforceable in accordance with their terms.
- (c) The execution and delivery by the Borrower and its Subsidiaries of this Agreement and the Security and the performance by them of their obligations thereunder, and the obtaining by the Borrower of amounts under the Credits, will not conflict with or result in a breach of any applicable law, and will not conflict with or result in a breach of or constitute a default under any of the provisions of its constituting documents or by-laws or any agreement or restriction to which it is a party or by which it is bound.
- (d) The Borrower has delivered to CIBC a true and complete copy of its most recent financial statements, and such financial statements present fairly the financial position of the Borrower, in accordance with GAAP, as of the date thereof and for the fiscal period then ended. All financial statements of the Borrower delivered by the Borrower to CIBC after the date of this Agreement will present fairly the financial position of the Borrower, in accordance with GAAP, as of the dates thereof and for the fiscal periods then ended.
- (e) Since the date of the most recent financial statements of the Borrower delivered to CIBC, there has occurred no event which (individually or with any other events) has had, or which has a reasonable possibility of having, a Material Adverse Effect.
- (f) The Borrower has not failed to observe or perform (beyond any period of grace permitted by CIBC) any of its covenants in this Agreement.
- (g) Except as disclosed in writing by the Borrower to CIBC prior to the date of this Agreement with specific reference to this paragraph, to the best knowledge of the Borrower, (i) the business carried on and the property owned or used at any time by any of the Borrower and its Subsidiaries and their respective predecessors have at all times been carried on, owned or used in compliance with all environmental laws; (ii) there are no circumstances that could reasonably be expected to give rise to any civil or criminal proceedings or liability regarding the release from or presence of any hazardous substance on any lands used in or related to the business or property of any of the Borrower and its Subsidiaries (iii) there are no proceedings and there are no circumstances or material facts which could give rise to any proceeding in which it is or could be alleged that any of the Borrower and its Subsidiaries is responsible for any domestic or foreign clean up or remediation of lands contaminated by hazardous substances or for any other remedial or corrective action under any environmental laws; and (iv) each of the Borrower and its Subsidiaries has maintained all environmental and operating documents and records relating to its business and property in the manner and for the time periods required by any environmental laws and has never had conducted an environmental audit of its business or property
- (h) No representation or warranty made by the Borrower herein or in any other document furnished to CIBC from time to time contains or will contain any untrue statement of a material fact or omits or will omit to state any material fact necessary to make the statements herein or therein, in light of the circumstances under which they are made, not misleading. All projections and *pro forma* information delivered to CIBC from time to time by the Borrower were prepared in good faith based on assumptions believed by the Borrower to be reasonable at the time of delivery.

6.2 **Survival.** All representations and warranties contained in this Agreement shall survive the execution and delivery of this Agreement and the obtaining of amounts under any Credit, and the delivery of each Notice of Borrowing and the obtaining of any amount under any Credit shall constitute a reaffirmation on and as of such delivery date and such borrowing date, in each case by reference to the then-existing facts and circumstances, of all representations and warranties contained in this Agreement.

## 7. FINANCIAL COVENANTS

7.1 **Calculation.** All financial covenants will be calculated including the Borrower and its Subsidiaries on a consolidated basis (or, if agreed upon by CIBC in its sole discretion, including the Borrower but excluding its Subsidiaries on an unconsolidated basis), and each amount derived from the Borrower's profit and loss statement shall be calculated as the total of such amount during the Borrower's four most recently-completed fiscal quarters (or, if agreed upon by CIBC in its sole discretion, during the Borrower's most recently-completed fiscal year), as shown in the Borrower's most recent financial statements delivered to CIBC.

7.2 **Certain Definitions.** In this Agreement the following terms have the following meanings:

**"Adjusted Debt Service Ratio"** means, for any period, the ratio of (a) the sum of (i) EBITDA for such period, (ii) all management bonuses and similar payments deducted in the calculation of such EBITDA but not paid out during such period (and with respect to which the entitlement to receive payment thereof has been postponed in a manner satisfactory to CIBC) and (iii) all management bonuses and similar payments deducted in the calculation of such EBITDA and paid out during such period, and which have then been loaned back to the Borrower during such period by way of Postponed Debt, to (b) Debt Service Requirements.

**"Adjusted Fixed Charge Coverage Ratio"** means, for any period, the ratio of (a) the sum of (i) EBITDA for such period, (ii) all management bonuses and similar payments deducted in the calculation of such EBITDA but not paid out during such period (and with respect to which the entitlement to receive payment thereof has been postponed in a manner satisfactory to CIBC) and (iii) all management bonuses and similar payments deducted in the calculation of such EBITDA and paid out during such period, and which have then been loaned back to the Borrower during such period by way of Postponed Debt to (b) the sum of (i) Debt Service Requirements for such period, [and] (ii) cash income taxes for such period [and (iii) Unfunded Capital Expenditures for such period] [and (iii) capital expenditures for such period].

**"Current Assets"** means assets that would be shown as current assets on the balance sheet prepared in accordance with GAAP, less all amounts due from Affiliates.

**“Current Liabilities”** means liabilities that would be shown as current liabilities on a balance sheet prepared in accordance with GAAP.

**“Current Ratio”** means the ratio of Current Assets to Current Liabilities.

**“Debt”** means, with respect to any person, (i) an obligation of such person for borrowed money, (ii) an obligation of such person evidenced by a note, bond, debenture or other similar instrument, (iii) an obligation of such person for the deferred purchase price of property or services, excluding trade payables and other accrued current liabilities incurred in the ordinary course of business in accordance with customary commercial terms, (iv) a capitalized lease obligation of such person, (v) a guarantee, indemnity, or financial support obligation of such person, determined in accordance with GAAP, (vi) an obligation of such person or of any other person secured by a Lien on any property of such person, even though such person has not otherwise assumed or become liable for the payment of such obligation, or (vii) an obligation arising in connection with an acceptance facility or letter of credit issued for the account of such person.

**“Debt Service Requirements”** means, for any periods (i) all principal payments in respect of Debt made or required to be made during such period, (ii) Interest Expense for such period, and (iii) all dividends paid during such period on all preferred shares of the Borrower.

**“EBIT”** means, for any period, Net Income for such period plus all amounts deducted in the calculation thereof on account of Interest Expense and income taxes.

**“EBITDA”** means, for any period, Net Income for such period plus all amounts deducted in the calculation thereof on account of Interest Expense, income taxes, depreciation and amortization.

**“Effective Tangible Net Worth”** means the sum of (i) Shareholders’ Equity less any amount that would be included on a balance sheet prepared in accordance with GAAP as an Investment in or as amounts owed by any Affiliate or as an Intangible, and (ii) Postponed Debt.

**“Intangible”** includes without limitation such personal property as goodwill; copyrights, patents and trademarks; franchises; licences, leases; research and development costs; and deferred development costs.

**“Interest Coverage Ratio”** means the ratio of EBIT to Interest Expense calculated on a consolidated basis.

**“Interest Expense”** means, for any period the aggregate amount accrued (whether or not payable or paid) during such period in accordance with GAAP on account of (i) interest expense including amortization of Debt discount and Debt issuance costs, capitalized interest, standby fees, commissions, discounts and other fees and charges owed with respect to letters of credit and bankers’ acceptances and (ii) the interest expense components of all capitalized lease obligations.

**“Net Income”** means, for any period, the net income (loss) for such period, calculated in accordance with GAAP [before unusual and extraordinary items] [but excluding (i) the income (or loss) of any person accrued prior to the date it becomes a Subsidiary of the Borrower or is amalgamated with or consolidated into the Borrower or into any of its Subsidiaries or such person’s property is acquired by the Borrower or any of its Subsidiaries, and (ii) any after-tax gains (but not pre-tax losses) attributable to dispositions of property out of the ordinary course of business].

**“Postponed Debt”** means any Debt for borrowed money that is incurred at such time as no failure by the Borrower to perform or observe any of its covenants in this Agreement is continuing or would be created by the incurrence thereof (to be evidenced by *pro forma* financial statements delivered to CIBC) and which has the following attributes: (i) no principal thereof is repayable so long as any amount is owed by the Borrower to CIBC (or until such earlier date as CIBC may agree upon in writing), (ii) no covenant with respect to such Debt is more onerous than or in addition to the covenants specified herein, and (iii) all rights of the holder of such Debt are postponed and subordinated to all rights of CIBC under or in respect of the Credits pursuant to a subordination agreement satisfactory in form and substance to CIBC.

**“Senior Debt”** means all Debt less all Postponed Debt.

**“Senior Debt to EBITDA Ratio”** means the ratio of Senior Debt to EBITDA.

**“Shareholders’ Equity”** means, at any time, the amount which would, in accordance with GAAP, then be included as shareholders’ equity on a balance sheet.

**“Tangible Net Worth”** means the sum of Shareholders’ Equity less any amount that would be included on a balance sheet prepared in accordance with GAAP as an Investment in or as amounts owed by any Affiliate or as an Intangible.

**“Total Liabilities”** means, all Debt and other liabilities..

**“Unfunded Capital Expenditures”** means capital expenditures that are not specifically financed with long term Debt.

**“Working Capital”** means the excess of Current Assets over Current Liabilities.

## 8. INSTALMENT LOANS

8.1 **Instalment Loans.** The following terms apply to each Instalment Loan:

(a) **Non-revolving Loans.** Unless otherwise stated in this Agreement, any Instalment Loan is non-revolving. This means that any principal repayment is not available to be re-borrowed, and permanently reduces the amount of such Instalment Loan.

(b) **Floating Rate Instalment Loans.** Floating Rate Instalment Loans may have either (i) blended payments or (ii) payments of fixed principal amounts, plus interest, as described below:

(i) **Blended payments.** If a Floating Rate Instalment Loan has blended payments, the amount of the monthly payments is fixed for the term of such Loan, but the interest rate will vary with changes in the Prime Rate or the US Base Rate (as the case may be). If the Prime Rate or the US Base Rate during any month is lower than it was at the outset, a larger portion of the monthly payment will be allocated to principal and as a result such Loan may be repaid prior to its original maturity. If, however, the Prime Rate or the US Base Rate is higher than it was at the outset, the amount of principal that is repaid will be reduced, and as a result there may remain principal outstanding on the original maturity date.

(ii) **Payments of principal plus interest.** If a Floating Rate Instalment Loan has specified principal payments, in addition to interest, such principal payments are due on each specified payment date. The interest payment is also due on the same date, and will usually be a different amount each month due to the reducing balance of the Loan, the number of days in the month, and changes in the Prime Rate or the US Base Rate (as the case may be) during the month and from month to month.

(c) **Prepayment.** Unless otherwise specified in this Agreement:

(i) all or part of a Floating Rate Instalment Loan may be prepaid at any time without penalty; and

(ii) all (but not part) of a Fixed Rate Instalment Loan may be prepaid provided that the Borrower also pays to CIBC, on the prepayment date, any amount determined by CIBC pursuant to clause 4.3(iv) of this Schedule.

(d) **Demand of Fixed Rate Instalment Loans.** Upon demand for payment of a Fixed Rate Instalment Loan the Borrower will pay to CIBC the prepayment fee specified in clause 10.1(c)(ii) above.

(e) **Certain Definitions.** In this Agreement the following terms have the following meanings:

**“Fixed Rate Instalment Loan”** means an Instalment Loan with respect to which interest is payable at a fixed annual rate of interest (as opposed to being payable on the basis of the Prime Rate or the US Base Rate).

**“Floating Rate Instalment Loan”** means an Instalment Loan with respect to which interest is payable on the basis of the Prime Rate or the US Base Rate.

**“Instalment Loan”** means a principal amount that is repayable either in fixed instalments of principal, plus interest, or in blended instalments of both principal and interest, and that (notwithstanding any such specified instalments) is repayable on demand by CIBC at any time if so specified in this Agreement.



Treasury Report 2020/23

**To:** Administration & Finance Executive Committee

**FROM:** Dawn Galusha, Treasurer

**DATE:** April 28, 2021

**SUBJECT:** P.O.A. Audited Statements for the year ending December 31, 2020

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**BACKGROUND**

Attached is the Provincial Offences (P.O.A.) Fort Frances Court Services Area audited financial statement for the year ended December 31, 2020 as provided by BDO Canada LLP. The Auditor's report of Statement of Financial Position and Statement of Receipts and Expenditures for the Provincial Offences – Fort Frances Court Services Area Trust Fund, as at December 31, 2020 was prepared by BDO Canada LLP management.

**The Corporation of the Town  
of Fort Frances  
Provincial Offences -  
Fort Frances Court Services Area  
Trust Fund  
Financial Statements  
For the year ended December 31, 2020**

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## Independent Auditor's Report

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### To the Provincial Offences - Fort Frances Court Services Area Trust Fund

#### Qualified Opinion

We have audited the financial statements of the Provincial Offences - Fort Frances Court Services Area Trust Fund (the Entity), which comprise the statement of financial position as at December 31, 2020, and the statement of receipts and expenditures for the year then ended, and notes to financial statements, including a summary of significant accounting policies.

In our opinion, except for the possible effects of the matter described in the Basis of Qualified Opinion paragraph, the accompanying financial statements present fairly, in all material respects, the financial position of the Entity as at December 31, 2020, and the receipts and expenditures thereof, in accordance with the basis of accounting as described in Note 1.

#### Basis of Qualified Opinion

We conducted our audit in accordance with Canadian generally accepted auditing standards. Our responsibilities under those standards are further described in the *Auditor's Responsibilities for the Audit of the Financial Statements* section of our report. We are independent of the Entity in accordance with the ethical requirements that are relevant to our audit of the financial statements in Canada, and we have fulfilled our other ethical responsibilities in accordance with these requirements. The financial records of the Provincial Offences - Fort Frances Court Services Area Trust Fund are maintained and generated using the ICON system provided by the Province of Ontario. The scope of our audit did not include a review of the controls over this system nor was a service auditor's report made available to us. Therefore, we were not able to determine whether any adjustments might be necessary to fines, costs and fees revenue and net receipts over expenditures for the years ended December 31, 2020, and 2019, current assets as at December 31, 2020, and 2019, and net assets as at January 1 and December 31 for both the 2020 and 2019 years. Our audit opinion on the financial statements for the year ended December 31, 2020, was modified accordingly because of the possible effects of this limitation in scope.

#### Basis of Accounting

Without modifying our opinion, we draw attention to Note 1 to the financial statements which describes the basis of accounting. The financial statements are prepared to assist the Provincial Offences - Fort Frances Court Services Area Trust Fund to comply with the reporting requirements of the Ministry of the Attorney General of Ontario. As a result, the financial statements may not be suitable for another purpose.

#### Responsibilities of Management and Those Charged with Governance for the Financial Statements

Management is responsible for the preparation and fair presentation of these financial statements in accordance with the basis of accounting as described in Note 1, and for such internal control as management determines is necessary to enable the preparation of financial statements that are free from material misstatement, whether due to fraud or error.

In preparing the financial statements, management is responsible for assessing the Entity's ability to continue as a going concern, disclosing, as applicable, matters related to going concern and using the going concern basis of accounting unless management either intends to liquidate the Entity or to cease operations, or has no realistic alternative but to do so.



Those charged with governance are responsible for overseeing the Entity's financial reporting process.

#### **Auditor's Responsibilities for the Audit of the Financial Statements**

Our objectives are to obtain reasonable assurance about whether the financial statements as a whole are free from material misstatement, whether due to fraud or error, and to issue an auditor's report that includes our opinion. Reasonable assurance is a high level of assurance, but is not a guarantee that an audit conducted in accordance with Canadian generally accepted auditing standards will always detect a material misstatement when it exists. Misstatements can arise from fraud or error and are considered material if, individually or in the aggregate, they could reasonably be expected to influence the economic decisions of users taken on the basis of these financial statements.

As part of an audit in accordance with Canadian generally accepted auditing standards, we exercise professional judgment and maintain professional skepticism throughout the audit. We also:

- Identify and assess the risks of material misstatement of the financial statements, whether due to fraud or error, design and perform audit procedures responsive to those risks, and obtain audit evidence that is sufficient and appropriate to provide a basis for our opinion. The risk of not detecting a material misstatement resulting from fraud is higher than for one resulting from error, as fraud may involve collusion, forgery, intentional omissions, misrepresentations, or the override of internal control.
- Obtain an understanding of internal control relevant to the audit in order to design audit procedures that are appropriate in the circumstances, but not for the purpose of expressing an opinion on the effectiveness of the Entity's internal control.
- Evaluate the appropriateness of accounting policies used and the reasonableness of accounting estimates and related disclosures made by management.
- Conclude on the appropriateness of management's use of the going concern basis of accounting and, based on the audit evidence obtained, whether a material uncertainty exists related to events or conditions that may cast significant doubt on the Entity's ability to continue as a going concern. If we conclude that a material uncertainty exists, we are required to draw attention in our auditor's report to the related disclosures in the financial statements or, if such disclosures are inadequate, to modify our opinion. Our conclusions are based on the audit evidence obtained up to the date of our auditor's report. However, future events or conditions may cause the Entity to cease to continue as a going concern.
- Evaluate the overall presentation, structure and content of the financial statements, including the disclosures, and whether the financial statements represent the underlying transactions and events in a manner that achieves fair presentation.

We communicate with those charged with governance regarding, among other matters, the planned scope and timing of the audit and significant audit findings, including any significant deficiencies in internal control that we identify during our audit.

*BDO Canada LLP*


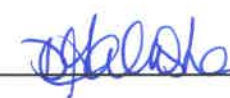
Chartered Professional Accountants, Licensed Public Accountants

Fort Frances, Ontario  
March 11, 2021

**The Corporation of the Town of Fort Frances  
Provincial Offences - Fort Frances Court Services Area  
Trust Fund  
Statement of Financial Position**

December 31	2020	2019
<b>Assets</b>		
<b>Current</b>		
Cash	\$ 23,401	\$ 10,478
Accounts receivable (Note 2)	3,868	7,553
Prepaid expenses	89	366
	<u>\$ 27,358</u>	<u>\$ 18,397</u>
<b>Liabilities</b>		
<b>Current</b>		
Accounts payable (Note 3)	\$ 27,358	\$ 18,397

On behalf of the Board:

 \_\_\_\_\_ Director  
 \_\_\_\_\_ Director



**The Corporation of the Town of Fort Frances  
Provincial Offences - Fort Frances Court Services Area  
Trust Fund  
Statement of Receipts and Expenditures**

<b>For the year ended December 31</b>	<b>2020</b>	<b>2019</b>
<b>Receipts</b>		
Fines, costs and fees	\$ 169,469	\$ 251,136
Interest earned	264	856
	<u>169,733</u>	<u>251,992</u>
<b>Expenditures</b>		
Administration	61,455	90,731
Remitted to Municipalities	10,134	62,461
Salaries and benefits	<u>98,144</u>	<u>98,800</u>
	<u>169,733</u>	<u>251,992</u>
<b>Net receipts over expenditures</b>	<b>\$ -</b>	<b>\$ -</b>

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**The Corporation of the Town of Fort Frances  
Provincial Offences - Fort Frances Court Services Area  
Trust Fund  
Notes to Financial Statements**

**December 31, 2020**

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**1. Summary of Significant Accounting Policies**

<b>Nature of Trust Fund</b>	<p>The Provincial Offences - Fort Frances Court Services Area Trust Fund is unincorporated and is exempt from tax.</p> <p>The trust fund administers and collects fines incurred under the Provincial Offences Act.</p>
<b>Management's Responsibility</b>	<p>The financial statements of the Provincial Offences - Fort Frances Court Services Area Trust Fund are the representation of management and have been prepared in accordance with accrual based accounting principles. Precise determination of some assets and liabilities may be dependent upon future events and estimates and approximations. These estimates and approximations have been based upon the available information, using careful judgement and review.</p>
<b>Accrual Basis of Accounting</b>	<p>Sources of financing and expenditures are reported on the accrual basis of accounting.</p> <p>The accrual basis of accounting recognizes revenues as they become available and measurable; expenditures are recognized as they are incurred and measurable as a result of receipt of goods or services and the creation of a legal obligation to pay.</p>
<b>Capital Assets</b>	<p>Capital assets are recorded as an expenditure on the Statement of Receipts and Expenditures in the year of acquisition.</p>
<b>Revenue Recognition</b>	<p>Revenue is generated from fines and penalties billed to offenders. The information regarding these fines and penalties is provided by the Province of Ontario ICON tracking system. The revenue is recorded when the amount can be reasonably estimated and collection is reasonably assured. These two items are satisfied when cash is collected. As a result, revenue is recognized on a cash basis.</p>

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**The Corporation of the Town of Fort Frances  
Provincial Offences - Fort Frances Court Services Area  
Trust Fund  
Notes to Financial Statements**

**December 31, 2020**

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**2. Accounts Receivable**

	<u>2020</u>	<u>2019</u>
Due from Municipalities	\$ 3,616	\$ 6,247
Due from Province	252	1,306
	<u>\$ 3,868</u>	<u>\$ 7,553</u>

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**3. Accounts Payable**

	<u>2020</u>	<u>2019</u>
Due to own Municipality	\$ 8,761	\$ 5,616
Due to other Municipalities	179	4,965
Due to Provincial Court	18,347	7,816
Other	71	-
	<u>\$ 27,358</u>	<u>\$ 18,397</u>