

**ONTARIO**  
**SUPERIOR COURT OF JUSTICE**  
**(Commercial List)**

IN THE MATTER OF THE *COMPANIES' CREDITORS*  
*ARRANGEMENT ACT*, R.S.C. 1985, c. C-36, AS AMENDED

AND IN THE MATTER OF A PROPOSED PLAN  
OF COMPROMISE OR ARRANGEMENT WITH RESPECT TO  
GROWTHWORKS CANADIAN FUND LTD.  
(the "APPLICANT")

**APPLICATION RECORD**

**(Re: Initial Order pursuant to the**  
***Companies' Creditors Arrangement Act*)**

**(Volume 1 of 2)**

September 30, 2013

**McCARTHY TÉTRAULT LLP**  
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Lawyers for the Applicant,  
Growthworks Canadian Fund Ltd.

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**Court File No:**

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**Tab 1**

Court File No.

**ONTARIO  
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(the "APPLICANT")

**APPLICATION UNDER THE *COMPANIES' CREDITORS  
ARRANGEMENT ACT*, R.S.C. 1985, C. C-36, AS AMENDED**

**NOTICE OF APPLICATION**

TO THE RESPONDENT:

A LEGAL PROCEEDING HAS BEEN COMMENCED by the applicant. The claim made by the applicant appears on the following page.

THIS APPLICATION will come on for a hearing on October 1, 2013, at 10:00 a.m., at 330 University Avenue, Toronto, Ontario.

IF YOU WISH TO OPPOSE THIS APPLICATION, to receive notice of any step in the application or to be served with any documents in the application, you or an Ontario lawyer acting for you must forthwith prepare a notice of appearance in Form 38A prescribed by the Rules of Civil Procedure, serve it on the applicant's lawyer or, where the applicant does not have a lawyer, serve it on the applicant, and file it, with proof of service, in this court office, and you or your lawyer must appear at the hearing.

IF YOU WISH TO PRESENT AFFIDAVIT OR OTHER DOCUMENTARY EVIDENCE TO THE COURT OR TO EXAMINE OR CROSS-EXAMINE WITNESSES ON THE APPLICATION, you or your lawyer must, in addition to serving your notice of appearance, serve a copy of the evidence on the applicant's lawyer or, where the applicant does not have a lawyer, serve it on the applicant, and file it, with proof of service, in the court office where the application is to be heard as soon as possible, but at least four days before the hearing.

IF YOU FAIL TO APPEAR AT THE HEARING, JUDGMENT MAY BE GIVEN IN YOUR ABSENCE AND WITHOUT FURTHER NOTICE TO YOU. IF YOU WISH TO OPPOSE THIS APPLICATION BUT ARE UNABLE TO PAY LEGAL FEES, LEGAL AID MAY BE AVAILABLE TO YOU BY CONTACTING A LOCAL LEGAL AID OFFICE.

Date September 30, 2013

Issued by \_\_\_\_\_  
Local registrar

Address of 330 University Avenue  
court office 7th Floor  
Toronto, ON M5G 1R7

### APPLICATION

1. The applicant makes application for an order in the form attached hereto as Appendix "1", *inter alia*:
  - (a) abridging the time for service of the Notice of Application and the materials filed in support of the application such that the application is properly returnable on October 1, 2013, at 10:00 a.m. and dispensing with further service thereof;
  - (b) declaring that the Applicant is a debtor company to which the CCAA applies;
  - (c) authorizing the Fund to carry on its business in a manner consistent with the preservation of the property of the Fund and to make certain payments in connection with its business and the proceedings herein;
  - (d) granting a stay of proceedings against the Applicant;
  - (e) declaring the Manager, GWC (defined below), and each person engaged or contracted by the Manager and/or GWC (not including employees of the Manager or GWC) in connection with the services provided pursuant to the Management Agreement (defined below) "critical suppliers";
  - (f) providing an Administration Charge, Director's Charge and Critical Suppliers' Charge;
  - (g) appointing FTI Consulting Canada Inc. as monitor in these proceeding;  
and
  - (h) granting such other relief as may be appropriate.
  
2. The grounds for the application are:
  - (a) The Fund is a labour-sponsored venture capital fund that has a diversified portfolio (the "**Venture Portfolio**") of investments in small and medium-



sized Canadian businesses (the “**Portfolio Companies**”). The Fund invests funds raised from its Class A shareholders, who are retail investors.

- (b) The Fund is insolvent because a \$20 million payment obligation to Roseway Capital S.a.r.l. (“**Roseway**”) pursuant to a Participation Agreement (defined below), along with certain related obligations, became due on September 30, 2013, which the Fund is unable to pay.
- (c) The Fund does not have access to short-term financing. Its only source of liquidity is the proceeds realized upon disposition of assets in the Venture Portfolio. However, a significant portion of the Fund’s investments are held in illiquid securities of private companies and a forced sale of such investment assets, prior to an appropriate exit opportunity (such as an initial public offering or merger or acquisition) arising, generally results in depressed values and portfolio losses.
- (d) The Fund has been in serious discussions with a possible merger partner and has recently received a letter agreement proposing a potential transaction.
- (e) A stay of proceedings would permit the Fund time to continue discussions with the merger partner, with the goal of a successful merger transaction, while at the same time enabling it to explore other options, such as a refinancing, merger or judicious divestitures, without the threat of a forced sale of its interests and related losses.
- (f) The Fund has retained The Commercial Capital Corporation (operating as CCC Investment Banking) as financial advisor to assist it in exploring possible merger or other transactions.
- (g) The Fund employs the services of a manager (the “**Manager**”) pursuant to an amended and restated management agreement dated July 15, 2006 (the “**Management Agreement**”) to manage its daily operations, monitor

the Fund's investments and provide other management and operational oversight. The Manager delegated all its obligations pursuant to the Management Agreement to GrowthWorks Capital Ltd. ("GWC"), an affiliate of the parent corporation of the Manager. The Fund seeks to have the Manager, GWC and each person engaged or contracted by the Manager and/or GWC (not including employees of the Manager or GWC) in connection with the services provided pursuant to the Management Agreement declared a critical supplier to ensure the Fund continues to receive critical services, which are essential for a successful restructuring.

- (h) Under the protection of the CCAA, the Fund will also seek to resolve a dispute with Roseway regarding certain assets subject to, and amounts owing under the Participation Agreement.
- (i) The Fund seeks the protection of the Court pursuant to the CCAA including a stay of proceedings, to provide a safe context to restructure the Fund by refinancing, merger or judicious divestitures, and to resolve certain legal and factual disputes, while at the same time ensuring the Fund has access to its critical documents and systems and the assistance of the Manager, GWC and each person engaged or contracted by the Manager and/or GWC as needed to provide transitional services that enable the Fund to continue to operate and service its Venture Portfolio pending such a restructuring.
- (j) The board of directors of the Fund believes that, with the benefit of the protection of a stay of proceedings and critical supplier order under the CCAA and the assistance of the Court in resolving the legal and factual issues, all creditors will be paid in full and substantial equity will remain for the Fund's shareholders.
- (k) The Applicant is a company to which the CCAA applies.

- (l) The Applicant is insolvent, with total claims against it in excess of \$5 million.
  - (m) FTI Consulting Canada Inc. has consented to act as monitor.
  - (n) The provisions of the *Companies' Creditors Arrangement Act*, R.S.C. 1985, c. C-36, as amended, and the equitable jurisdiction of this Honourable Court.
  - (o) Rules 2.03, 3.02, 14.05(2) and 38 of the *Rules of Civil Procedure*, R.R.O. 1990, Reg. 194, as amended.
  - (p) Section 106 of the *Courts of Justice Act*, R.S.O. 1990 c.C.43, as amended.
  - (q) Such other grounds as counsel may advise and this Honourable Court may permit.
3. The following documentary evidence will be used at the hearing of the application:
- (a) Affidavit of C. Ian Ross, sworn September 30, 2013 and attached Exhibits;
  - (b) Consent of the proposed Monitor; and
  - (c) Such further and other evidence as counsel may advise and this Honourable Court may permit.

September 30, 2013

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IN THE MATTER OF THE COMPANIES' CREDITORS ARRANGEMENT ACT,  
R.S.C. 1985, c. C-36, AS AMENDED  
AND IN THE MATTER OF GROWTHWORKS CANADIAN FUND LTD.

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Proceeding commenced at Toronto

**NOTICE OF APPLICATION**

**McCARTHY TÉTRAULT LLP**

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Tab 2

**ONTARIO  
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(the "APPLICANT")

**AFFIDAVIT OF C. IAN ROSS,  
SWORN SEPTEMBER 30, 2013  
(Initial Order Affidavit)**

I, C. Ian Ross, of the Town of The Blue Mountains, in the Province of Ontario,  
MAKE OATH AND SAY:

1. I am the Chairman of GrowthWorks Canadian Fund Ltd. (the "**Fund**"), the Applicant in these proceedings. I am a director of the Fund and as such have personal knowledge of the facts to which I depose, except where I have indicated that I have obtained facts from other sources, in which case I believe those facts to be true. Unless otherwise described herein, copies of original documents attached and marked as exhibits hereto are true copies of the original documents.

**OVERVIEW**

2. The Fund is a labour-sponsored venture capital fund (also sometimes referred to as a "labour sponsored investment fund") that has a diversified portfolio (the "**Venture Portfolio**") of investments in small and medium-sized Canadian businesses (as set out in Schedule "A" hereto, the "**Portfolio Companies**").

3. The Fund is insolvent because a \$20 million payment obligation to Roseway Capital S.a.r.l. ("**Roseway**") pursuant to a Participation Agreement (defined below), along with certain related obligations, has become due on September 30, 2013, which the Fund is unable to pay. While it has negotiated extensions in the past, the Fund has been unable to negotiate a further extension for this payment and Roseway has indicated that it will deliver notice under the Security Agreement (defined below) demanding payment of the \$20 million obligation and accelerating payment of all other amounts owing under the Participation Agreement (the "**Roseway Obligations**") on October 1, 2013.

4. The Fund does not have access to short-term financing and its only source of liquidity is the proceeds realized upon disposition of assets in the Venture Portfolio.

5. The Fund's investments in the Portfolio Companies are held in illiquid securities consisting of minority equity interests in private companies and restricted equity securities in a publicly traded company. The Fund's ability to divest of its relatively illiquid investments at a profit is largely dependent on favourable market conditions to provide opportunities for the Fund to exit profitably, typically at the stage of an initial public offering ("**IPO**") or merger or acquisition involving a Portfolio Company. Such opportunities have been limited as a result of the 2008 financial crisis and other constraints to the IPO and mergers and acquisitions ("**M&A**") markets.

6. Despite its insolvency, the Fund's investments in many of the Portfolio Companies remain viable. I am advised by the former manager of the Fund, GrowthWorks WV Management Ltd. (the "**Manager**"), that the total net asset value (the "**NAV**") of the Fund as at September 30, 2013 was approximately \$84.62 million.



However, a forced sale of such investment assets, prior to an appropriate exit opportunity arising, generally results in depressed values and portfolio losses.

7. The obligations owing to Roseway pursuant to the Participation Agreement represent the only outstanding secured debt or other secured payment obligations of the Fund.

8. If the Fund is protected from the negative effects of a fire sale of its assets by a stay in these proceedings, and if it is able to continue to service its Venture Portfolio to preserve the value of its assets pending a restructuring, the Fund expects to be able to satisfy the obligations owing to Roseway in full through a combination of judicious dispositions, new debt financing and/or a merger or other transaction.

9. The Fund has been in serious discussions with a possible merger partner and as received a letter agreement setting out a proposed transaction, as described below. A stay of proceedings would permit the Fund time to continue discussions with the merger partner, with the goal of a successful merger transaction, while at the same time enabling it to explore other options without the threat of a forced sale of its interests and related losses.

10. The Fund has retained The Commercial Capital Corporation (operating as CCC Investment Banking) ("CCC") as financial advisor to assist it in exploring possible merger or other transactions. FTI Consulting Canada Inc. ("FTI" or the "**Proposed Monitor**") has been retained as financial advisor to assist in its preparation of this Application. FTI has provided a consent to its appointment as the monitor as required by the CCAA.

11. While the Fund is working to achieve a transaction to maximize the value of its investment assets, it is crucial that it be able to continue to service the Venture Portfolio appropriately throughout this process. This is complicated by the fact that (i) the Fund operated without employees by outsourcing of all of its day-to-day operations, monitoring of the Fund's investments and other management and operational oversight, to the Manager pursuant to the amended and restated management agreement dated July 15, 2006 (the "**Management Agreement**") between the Fund and the Manager; and (ii) the Management Agreement was terminated by the Fund in accordance with its terms on September 30, 2013 as a result of the Manager's material defaults in respect of certain of its obligations thereunder. Attached hereto and marked as **Exhibit "A"** is a copy of the Management Agreement.

12. To continue to operate and service its Venture Portfolio appropriately, which is crucial to preserving the value of the Venture Portfolio and therefore to any restructuring involving a refinancing, merger or judicious divestiture, the Fund requires access to the documents and systems previously used by the Manager in the management of the Fund and assistance from the Manager in providing transitional services. As described below, the Fund seeks to have the Manager, together with its delegate, GWC (defined below), declared critical suppliers to ensure they continue to provide critical services to the Fund, which are essential for a successful restructuring.

13. Under the protection of the CCAA, the Fund will also seek to resolve a dispute with Roseway regarding certain assets subject to, and amounts owing under, the Participation Agreement, and a dispute with the Manager regarding amounts payable under the Management Agreement.

14. In these circumstances, the Fund seeks the protection of the Court pursuant to the *Companies' Creditors Arrangements Act* ("CCAA"), including a stay of proceedings, to provide a safe context to restructure the Fund by refinancing, merger or judicious divestitures, and to resolve its legal and factual disputes with Roseway and the Manager, while at the same time ensuring the Fund has access to its critical documents and systems and the assistance of the Manager and GWC as needed to provide transitional services that enable the Fund to continue to operate and service its Venture Portfolio pending such a restructuring.

15. The board of directors of the Fund (the "**Board of Directors**" or the "**Board**") believes that, with the benefit of the protection of a stay of proceedings and critical supplier order under the CCAA and the assistance of the Court in resolving the legal and factual issues with Roseway and the Manager, all creditors will be paid in full and substantial equity will remain for the Fund's shareholders.

#### **DESCRIPTION OF THE FUND**

16. The Fund is a corporation incorporated under the *Canada Business Corporations Act* (the "**CBCA**"). The Fund is a labour-sponsored venture capital corporation registered under the *Income Tax Act* (Canada) and the *Labour-Sponsored Venture Capital Corporations Act* (Manitoba) (the "**Manitoba Act**"), a labour-sponsored investment fund corporation registered under the *Community Small Business Investment Funds Act* (Ontario) and is an approved fund under the *Labour-sponsored Venture Capital Corporations Act* (Saskatchewan). The Fund is also an "investment fund" and a "mutual fund" for purposes of the *Securities Act* (Ontario) and a "reporting issuer" under applicable securities laws in each of the provinces and territories of Canada.

17. The Fund's head office and registered office is located at Suite 2200, Exchange Tower, 130 King Street West, Toronto, Ontario.
18. The Fund was formed in 1988 with the investment objective of achieving long-term capital appreciation for its Class A shareholders, each of whom is a retail investor. The Fund aimed to achieve this objective by investing the net proceeds realized from the sale of Class A Shares ("**Class A Shares**") to the public, and later disposing of those investments at a profit, thereby providing investors with a return on their investment in the Fund by increasing the NAV of the Class A Shares over the longer term.
19. The Fund invested in venture investments made in a diversified portfolio of small and medium-sized Canadian businesses. The Fund has typically made venture investments in early to mid-stage private companies. The Fund also invests from time to time in non-venture investments such as guaranteed investment certificates.
20. Currently, the Fund has a mature venture capital portfolio. As such, the Fund's activities are focussed on pursuing divestments and, to a lesser extent, making selected follow-on investments in existing portfolio companies. A significant portion of the Fund's existing holdings in the Portfolio Companies are minority equity holdings in private companies.
21. I am advised by the Manager that, as at September 27, 2013, the Fund had total assets of \$115,879,821. As at September 30, 2013, the Fund had cash and cash equivalents of approximately \$6,586,662.
22. As a labour-sponsored venture capital corporation, the Fund must have a labour sponsor. The Fund's labour sponsor is the Canadian Federation of Labour (the

"Sponsor"), which is an unincorporated national central labour body. The Sponsor agreed to serve as the Fund's labour sponsor under an agreement (the "Sponsor Agreement") dated November 3, 2004. The Sponsor Agreement will continue indefinitely unless terminated upon the mutual written agreement of the parties, upon the effective date of the Sponsor's resignation, or upon the dissolution, winding-up or termination of the Fund. The Sponsor, which does not receive any fees from the Fund, holds all of the issued and outstanding Class B shares ("Class B Shares") of the Fund. The Class B Shares do not entitle the holder thereof to any dividends.

### GOVERNANCE OF THE FUND

23. Prior to the termination of the Management Agreement, the day-to-day operations of the Fund had been delegated to the Manager pursuant to the Management Agreement.

24. Under the Management Agreement, the Manager was entitled, subject to applicable laws, to delegate to third parties any part of its duties and powers set out in the Management Agreement as it considered necessary or appropriate in the course of providing the Services (defined below). Prior to the termination of the Management Agreement, the Manager advised the Fund that the Manager had delegated all of its obligations under the Management Agreement to GrowthWorks Capital Ltd. ("GWC"), an affiliate of Matrix Asset Management Inc. ("Matrix"), the parent corporation of the Manager.

25. The Board of Directors is responsible for oversight of the management of the Fund and consists of 12 members. The directors of the Fund are:

John C. Hardy  
Nancy E. Hopkins  
David Levi

C. Ian Ross  
Dermot A. Cain  
John E. Cole  
Peter S. Crombie  
André Chartrand  
E.M. Jane Davis  
Michel A. Grenier  
Joseph Maloney  
Edward W. Power

26. Of the 12 members of the Board of Directors, eight are elected by the Sponsor under its rights as holder of the Class B Shares. In order to comply with the Manitoba Act, holders of Class A Shares are asked to approve up to three nominees elected to the Board of Directors by the Sponsor. The remaining four directors of the Fund are elected by the holders of Class A Shares.

27. The Fund does not have any employees. As noted above, prior to the termination of the Management Agreement, the day-to-day business, affairs and operations of the Fund were managed by the Manager (and/or GWC) pursuant to the Management Agreement between the Fund and the Manager. If a merger can be completed, replacement management for the Fund may be unnecessary or the Fund's merger partner may provide independent management. Until that time, or until a replacement manager is appointed, I have taken on the role of interim chief executive officer of the Fund and am responsible for the daily operations of the Fund, acting under the oversight of a special committee of the Board of Directors.

### **THE MANAGER**

28. Under the Management Agreement, the Manager was required to provide or arrange for the provision of day-to-day management services, including investment management and administration services (the "**Services**"), to the Fund under the terms of the Management Agreement. The scope of the Services contemplated by the

Management Agreement is very broad. However, the Fund is no longer marketing and offering its Class A Shares for sale to the public. In addition, it is no longer evaluating investment opportunities in new portfolio companies or negotiating proposed investments and the Fund has suspended redemptions of Class A Shares. Therefore, the Services required of the Manager (and/or GWC) at the time of the termination of the Management Agreement were focused on the following:

- (a) the daily operations of the Fund;
- (b) monitoring compliance with all agreements entered into by the Fund;
- (c) ensuring compliance with all relevant securities laws;
- (d) preparing and making recommendations for follow-on investments in the Portfolio Companies to the Investment Committee of the Board of Directors or to the Board;
- (e) monitoring the Fund's portfolio investments, which may have included actively participating on portfolio companies' boards of directors and evaluating financial and other key performance indicators;
- (f) reporting to the Board on the Fund's investment portfolio;
- (g) dealing with portfolio dispositions;
- (h) calculating the net asset value per share of each series of Class A Shares in accordance with policies and procedures approved by the Board and the Audit and Valuation Committee of the Board on the relevant valuation date; and

- (i) providing administrative and support services to the Board and committees of the Board, and providing office premises and information technology systems, including shareholder database, transaction processing and accounting.

29. The Manager received from the Fund annual management and administration fees based upon the net assets of the Fund from time to time (collectively, the “**Management Fees**”), which are payable monthly. The Management Fees were substantial. I am advised by CCC that, over the last two fiscal years, the Fund has paid Management Fees of approximately \$14.3 million.

30. The Manager was obligated to pay from its own resources, without reimbursement, all normal operating expenses of the Fund incurred in providing the Services, including audit and legal fees; premiums for directors and officers liability insurance and comprehensive business insurance and other expenses described in the Management Agreement. The Fund was responsible for paying the Management Fees, fees of the Directors and certain other expenses and tax obligations of the Fund. There is an outstanding dispute with the Manager regarding expenses totalling approximately \$2 million that the Fund alleges ought to have been paid by the Manager from its own resources pursuant to the Management Agreement but were instead charged to the Fund.

31. Under the Management Agreement, the Manager agreed, among other things, that:

- (a) the Manager will have, and will ensure that all persons associated with providing the Services will have, the necessary registrations and



approvals under applicable securities laws and regulations to provide the component of the Services they are providing; and

- (b) the Manager will comply with the securities laws and regulations, the requirements of the Canadian Securities Administrators and policy statements of securities regulatory authorities insofar as such relate to the Manager's duties and obligations under the Management Agreement.

32. Pursuant to Section 8.2(c) of the Management Agreement, the Management Agreement may be terminated by the Fund upon a material breach of the Management Agreement by the Manager where written notice of such breach is given to the Manager by the Fund and, if such breach is capable of being remedied, the Manager has not remedied the breach within 60 days after such notice is received by the Manager.

33. On April 18, 2013, the Manager advised me that the British Columbia Securities Commission (the "BCSC") had, by letter dated April 16, 2013, provided GWC with the results of the BCSC's most recent compliance field examination. The letter indicated that the "purpose of the examination was to assess GWC's overall business conduct, system of compliance, and internal controls against the regulatory requirements of BC's securities legislation". As set out in its letter of April 16, 2013, the BCSC determined that, among other things, contrary to the *Securities Act* (British Columbia), the Manager and GWC breached their fiduciary duty to the Fund by failing to consider all the scenarios and actions for dealing with the Fund's distressed financial situation. As a result, the BCSC determined that the Manager and GWC "did not exercise the powers and discharge the duties of [their] office in the best interests of

the Fund, nor did [the Manager and GWC] exercise the degree of care, diligence, and skill that a reasonably prudent person would exercise in the circumstances". The BCSC also determined that the Manager and GWC did not deal fairly with the Fund by recommending that it borrow \$33.5 million dollars over the period May 2010 to May 2012, contrary to applicable securities laws and the provisions of GWC's own policies and procedures manual (which it is required to maintain as a registrant for securities laws purposes). The BCSC also determined that, contrary to applicable securities laws, the Manager and GWC "failed to establish, maintain, and apply policies and procedures that establish a system of controls and supervision sufficient to provide reasonable assurance that the firm and each individual acting on its behalf complies with securities legislation and manage the risks associated with its business in accordance with prudent business practices".

34. On August 22, 2013, the Manager advised the Board that GWC was in breach of National Instrument 31-103 *Registration Requirements, Exemptions and Ongoing Registrant Obligations* of the Canadian Securities Administrators and that certain conditions had been placed on GWC by the British Columbia Securities Commission.

35. By letter dated September 30, 2013, the Fund gave written notice to the Manager that the Manager was in breach of certain of its obligations under the Management Agreement, including its duty of care to the Fund and its obligation to comply with applicable securities laws in the discharge of its duties under the Management Agreement, and terminating the Management Agreement pursuant to section 8.2(c), stating:

None of the material breaches of the Management Agreement described in paragraphs (a), (c), (d) and (e) above is capable of being remedied, and the material breaches of the Management Agreement described in paragraph (f) above have not been cured by the Manager within 60 days of notice thereof by the Fund to the Manager. Accordingly, the Fund hereby gives notice to the

Manager that the Management Agreement is terminated effective immediately.

Attached hereto as **Exhibit "B"** is a copy of the letter to the Manager terminating the Management Agreement.

36. Pursuant to the Management Agreement, the Manager has continuing obligations to the Fund following the termination of the Management Agreement, including the obligation to co-operate with the Fund in a transition and to deliver records:

**8.4 Successor** – Upon termination of this Agreement under Sections 8.2 or 8.3:

*(a) the Manager shall use reasonable commercial efforts to co-operate with the Fund and any successor manager to facilitate an orderly transition such that the Services will be provided to the Fund by the successor without delay or compromise of service; and,*

*(b) the successor manager shall fully assume, without recourse to the Manager, the balance on the date of termination of all borrowings approved by the Fund under Section 6.3.*

While any borrowings approved by the Fund under Section 6.3 are outstanding, neither Fund will seek a dissolution, winding-up or termination of the Fund without the written concurrence of the Manager.

**8.5 Delivery of Records** – *Upon termination of this Agreement under Sections 8.2 or 8.3, the Manager shall promptly deliver to the Fund all records, including electronic records or data in a form accessible to the Fund, of or relating to the affairs of the Fund in its custody, possession or control.* [emphasis added]

37. The Management Agreement also provides for payment of transition costs incurred by the Manager as follows:

**8.6 Payments on Termination** – Upon termination of this Agreement, the Fund shall pay to the Manager:

*(a) any unpaid Management Fees and Administration Fees, calculated in accordance with Section 5.5, and any reimbursable expenses accruing to the date of termination; and*

*(b) if this Agreement is terminated pursuant to Section 8.2, all reasonable transfer, wind-down and transition costs incurred by or put to the*

***Manager as a result of having to transition operations to a successor manager.***

The Manager shall calculate the amounts payable to the Manager under (a) and (b) above and the Fund shall pay such amounts to the Manager on or about the 25th Business Day after receipt by the Fund of an invoice for the same. [emphasis added]

38. The Manager and/or GWC continue to be in possession of key records of the Fund including (i) a current list of the shareholders of the Fund; (ii) copies of all requests seeking redemption of Class A shares of the Fund that are outstanding; (iii) other information relating to the holders of Class A shares of the Fund on a per series and per shareholder basis; (iv) contracts to which the Fund is a party or is otherwise bound; (v) the accounting books and records of the Fund, including the general ledger, trial balances, sub ledgers, excel work sheets and other work product used to support accounting balances and/or financial statement note disclosure and all working papers prepared for the auditors of the Fund, KPMG LLP, in order to complete the Fund's fiscal 2013 financial statement audit; (vi) records relating to investments held by the Fund in any Portfolio Company; (vii) the identity, contact name, telephone number and email address of all third party suppliers who provide services to the Fund, GWC or any of their respective affiliates to assist the Manager with its obligations under the Management Agreement, including auditors, valuers, shareholder recordkeeping service providers, technology licensors, and commissions payable service providers; (viii) tax records; and (ix) bank and brokerage account records.

39. Until termination of the Manager because of its defaults under the Management Agreement, all of the daily operations of the Fund and other management and administrative services to the Fund were delivered by the Manager and/or GWC, and the Manager and/or GWC is in possession of key records of the Fund, as described above. As a consequence of such termination, the Fund must take over these

management and administrative tasks and/or enter a new management agreement with an alternate provider. The Management Agreement requires the Manager to assist the Fund and any replacement manager and to provide transition services. The provision of these transition services is critical to the Fund and its operations and is necessary to protect the value of the Fund's investment assets while it explores restructuring options. With transitional services from the Manager and/or GWC in place, I expect that, in my role as interim CEO under the oversight of a special committee of the Board of Directors, I can temporarily handle the critical elements of management of the Fund, with the help of CCC and the Proposed Monitor.

#### **EQUITY CAPITAL OF THE FUND**

40. The authorized capital of the Fund consists of (i) an unlimited number of Class A Shares ("**Class A Shares**"), issuable in series; (ii) an unlimited number of Class B Shares ("**Class B Shares**"); and (iii) an unlimited number of Class C shares ("**Class C Shares**"), issuable in series.

#### **Class A Shares**

41. The Class A Shares may be issued to individuals, registered retirement savings plans and other persons permitted by legislation. Class A Shares are voting shares and have historically been issued to the public on a "continuous offering basis" by way of a prospectus filed with Canadian securities regulatory authorities. Class A Shareholders receive tax credits equal to a fraction of the purchase price of the holder's Class A Shares.

42. The Fund currently has ten series of Class A Shares outstanding. Each group of series of Class A Shares offers the holders different investment content on the

portion of the Fund's Venture Portfolio invested in non-venture investments and venture investments.

43. The Class A Shares (i) are retractable (i.e. redeemable on demand by the holder), subject to certain conditions and the restrictions in the CBCA generally applicable to the purchase and redemption of shares; (ii) subject to some restrictions, entitle the holders to receive dividends at the discretion of the Board of Directors; and (iii) entitle the holders to share rateably with other Class A Shareholders in distributions on wind up or dissolution of the Fund.

44. A Class A Shareholder that elects to redeem Class A Shares prior to the eighth anniversary of the date the shareholder purchased the Class A Shares, will generally have to repay an amount in respect of the tax credit received by the shareholder on the purchase of their Class A Shares and will be required to pay an early redemption fee to the Manager which will vary according to the series of Class A Shares held.

45. I am advised by the Manager that there are currently 30,630,098.8815 Class A Shares outstanding, all of which are held by individuals or registered plans established for the benefit of individuals.

#### Class B Shares

46. The Class B Shares may be issued only to the sponsor of the Fund and all of the outstanding Class B Shares are held by the Sponsor. The Fund cannot register or otherwise recognize a transfer of Class B Shares unless the transferee is an eligible labour body and the transfer is approved by the Board of Directors. The holder of the Class B Shares is not entitled to receive dividends.

47. The holder of the Class B Shares is entitled to elect a majority of the Fund's directors. Of the 12 members of the Board of Directors, 8 were elected by the holder

of Class B Shares. On a dissolution of the Fund, the holder of the Class B Shares would only be entitled to receive an amount equal to the purchase price paid for such shares, which is a nominal amount. This amount will be paid before any assets are distributed to the holders of the Class A Shares and Class C Shares.

#### Class C Shares

48. All of the outstanding Class C Shares are held by the Manager. The Class C Shares are issuable in series, each series consisting of such number of shares as may be determined by the Board. The rights, privileges, restrictions and conditions attached to Class C Shares are subject to the approval of the Minister of Finance (Canada) and the Minister of Finance (Ontario).

49. The Fund has created a series of Class C shares designated as "IPA Shares" and issued 100 IPA Shares to the Manager. The IPA Shares have the following rights and restrictions:

- (a) the IPA Shares are not transferable;
- (b) the holder of IPA Shares is entitled to receive dividends ("**IPA Dividends**") based on realized gains and income from venture investments. For venture investments made after November 29, 2002 (the "**IPA Start Date**"), the IPA Dividends will be equal to 20% of the realized gains and income from each such venture, subject to certain adjustments;
- (c) before any IPA Dividends can be paid in respect of any venture investment, the following conditions must be met:

- (i) the total net realized and unrealized gains and income of the Fund from its portfolio of venture investments since the IPA Start Date must have generated a minimum annualized rate of return;
  - (ii) the compounded annual internal rate of return (including realized and unrealized gains and income from prior partial dispositions of that venture investment or otherwise) from the venture investment since its acquisition by the Fund must equal or exceed 12% per year; and
  - (iii) the Fund must have fully recovered a cash amount at least equal to the principal invested in the venture investment. In addition, the payment of any IPA Dividend is subject to the restrictions in the CBCA generally applicable to the payment of dividends;
- (d) IPA Dividends in respect of venture investments made prior to the IPA Start Date will be equal to 15% of the realized gains and income from each such venture investment subject to certain adjustments;
- (e) IPA Dividends are calculated and payable quarterly. To the extent they are not declared by the Board and paid when payable, they are cumulative;
- (f) except as required by law, the holder of IPA Shares is not entitled to vote;
- (g) subject to the restrictions in the CBCA generally in respect to the payment of dividends, if the holder of the Class C shares is terminated



as a manager or investment manager of the Fund, the holder of the IPA Shares will be entitled to receive all declared but unpaid IPA Dividends and an amount equal to the IPA Dividend that would be payable assuming all venture investments were sold at that time, with the holder's entitlement to such dividends arising as and when a particular venture investment is disposed of; and

- (h) the holders of the Class A Shares will rank equally with holders of the IPA Shares on dissolution.

#### **NO MARKET FOR SHARES OF THE FUND**

50. The Class A Shares are not listed or quoted on any stock exchange or over-the-counter market and no market exists through which holders of Class A Shares may be sold. As a practical matter, Class A Shareholders must rely on redemptions to dispose of their Class A Shares and, as described above, redeeming Class A Shares prior to the eighth year anniversary of the date of purchase may result in the shareholder incurring material costs of disposition. I am advised by the Manager that, as of September 30, 2013, holders of 6,350,771 Class A Shares had held their Class A Shares for less than eight years.

51. The Fund ceased offering Class A Shares for sale to the public on September 30, 2011 due to poor sales activity primarily resulting from changes in the tax incentives available in the Province of Ontario for labour sponsored investment funds.

52. As noted above, Class B Shares are only held by the Sponsor and are of nominal value and Class C Shares are only held by the Manager.

**DIVIDENDS AND REDEMPTIONS HAVE BEEN SUSPENDED**

53. In the fall of 2011, the Board of Directors reviewed the Fund's cash requirements for follow on investments in existing companies within the Venture Portfolio and its operating commitments and determined to close Class A Share redemptions in order to preserve the Fund's capital resources for those purposes and to comply with the requirements of the CBCA.

54. Under applicable securities laws, Class A Shareholders may still request redemptions of their Class A Shares and I am advised by the Manager that, as at September 20, 2013, there were outstanding redemption requests from Class A Shareholders for a total of approximately 4,165,589 Class A Shares, which, based on the applicable NAV of those Class A Shares, had an aggregate redemption price of \$11,460,905.

55. In addition to suspending redemptions of Class A Shares and for the same reason, the Fund has suspended payment of dividends on, and redemptions of, Class C Shares.

**THE PORTFOLIO OF INVESTMENTS: DIVESTMENT CONSTRAINTS**

56. The Fund is a retail venture capital fund and, therefore, raised capital, made investments and divests (or "exits") investments in the ordinary course of its business. Divestment activity has formed part of the Fund's operating plan from the inception of the Fund. The timing of divestments is driven by a number of factors, including the Fund's liquidity needs, the stage of development and prospects of companies within the Fund's Venture Portfolio, and the state of the IPO and M&A markets, which are the typical means by which the Fund divests of its venture investments.

57. In order to achieve the Fund's objective of disposing of an investment at a time that will maximize returns for the Fund's shareholders, the Fund generally makes an initial investment in a company, which is followed by rounds of subsequent or "follow-on" investments. Follow-on investing is a key element of the investment life cycle of a venture capital fund such as the Fund because venture capital funds do not provide initial funding that will fully support the portfolio company's development to a stage at which it can generate income sufficient to sustain its operations. Rather, additional (or follow-on) investments are made by the Fund as the portfolio company achieves financial or operational milestones. In addition, failure to participate in follow-on rounds of financing can often lead to adverse consequences for the Fund, including (i) significant dilution of the Fund's shareholdings in a Portfolio Company, (ii) penalties such as loss of anti-dilution rights and board representation, and (iii) forced conversion of preferred shares into common shares.

58. Venture capital investments in private companies are not immediately saleable and it takes some time for exit opportunities to arise. Forced sales of venture investments prior to the occurrence of viable exit opportunities generally result in exit values that are lower than prevailing carrying values, which would result in portfolio losses. This means that venture capital funds like the Fund rely to a significant extent on favourable M&A and/or IPO market conditions for full value, cash generating exit events, conditions over which the Fund has no control.

59. Levels of venture capital fundraising in the retail context, including those experienced by the Fund, have fallen off sharply in recent years, particularly in Ontario, as a result of a variety of factors, including the collapse of the technology sector in 2000, the Ontario Government's announcement in 2005 that the Ontario labour-

sponsored investment fund tax credit would be phased out by 2011, and the financial crisis of 2008.

### **ROSEWAY AND THE PARTICIPATION AGREEMENT**

60. In 2009, given declining levels of fundraising and increasing levels of mature capital in the Fund, the Manager began to explore possible sources of external financing that would provide the Fund with additional capital for follow-on investments in order to preserve the value potential in the Fund's venture portfolio and to enhance the Fund's operating and financial flexibility over the medium term.

61. In order to achieve these objectives, the Fund entered into a Participation Agreement dated May 28, 2010 with Roseway Capital L.P. (as amended, the "**Participation Agreement**"), pursuant to which Roseway Capital L.P. advanced \$20 million to the Fund (the "**Roseway Proceeds**") in exchange for a participating interest in selected venture investment holdings of the Fund (the "**Roseway Transaction**"). Attached hereto as **Exhibit "C"** is a copy of the Participation Agreement and amendments thereto, in the form it appears on SEDAR, with certain third party information not relevant to these proceedings redacted.

62. The Roseway Proceeds provided additional capital for follow-on investments by the Fund and enhanced the Fund's operating and financial flexibility. According to the Participation Agreement, the Roseway Proceeds were to be repaid on May 28, 2013, together with certain other amounts. This date has been extended by agreement, as more fully described below, to September 30, 2013.

63. Roseway Capital L.P. subsequently assigned the Participation Agreement to Roseway. It is my understanding that Roseway is a venture capital investor funded by

entities advised by Rosetta Capital Limited, an independent advisor to private equity firms based in London, UK.

64. In connection with the execution of the Participation Agreement, the Fund executed a security agreement dated May 28, 2010 (the "**Security Agreement**") in favour of Roseway whereby the Fund's payment obligations under the Participation Agreement are secured by a continuing security interest in the Fund's property, assets and undertakings, other than "Excluded Assets". The term Excluded Assets is defined in the Security Agreement. In essence, all the equity and debt investments held by the Fund (other than those securities which are not subject to a restriction on assignment under an applicable contract, articles or by-laws or applicable law), are Excluded Assets. Liquid proceeds (including cash divestiture proceeds and dividends) of Excluded Assets are subject to the security interests created by the Security Agreement. Attached as **Exhibit "D"** is a copy of the Security Agreement and related waivers.

65. At the time of the advance of \$20 million by Roseway under the Participation Agreement, Roseway's participating interest extended to 15 investments in the Fund's Venture Portfolio (the "**Participation Holdings**"), with a total carrying value of approximately \$100 million. In addition, Roseway agreed to provide up to \$3 million in follow-on funding for these companies, of which approximately \$2 million has been invested to date. The participating interest entitles Roseway to receive 20% of the proceeds (cash or shares) of divestment ("**Participation Payments**") of the Participation Holdings.

66. Pursuant to the Participation Agreement, there is a guaranteed minimum Participation Payment of \$5.7 million per year for each of the three years following

closing (the "**Guaranteed Minimum Participation Payment**"). Under the terms of the Participation Agreement, the amount of the Guarantee Minimum Participation Payment is reduced on a dollar-for-dollar basis by the amount of divestment proceeds received by the Fund upon the disposition of securities comprising the Participation Holdings. The amounts received by Roseway from divestment proceeds in relation to follow-on investments do not reduce the Guaranteed Minimum Participation Payment.

67. Under the Participation Agreement, Roseway is also entitled to participate in follow-on investments in companies forming part of the Participation Holdings, either by way of a direct investment (a "**Direct Investment**") in the securities of the relevant company or through an indirect investment (an "**Indirect Investment**") in the Fund:

- (a) in either case, Roseway's investment would represent a dollar amount equal to 20% of the total amount which the Fund is permitted to invest in the particular follow-on round of financing, with the Fund investing the remaining 80%;
- (b) in the case of an Indirect Investment, Roseway would be entitled to 20% of the proceeds received by the Fund upon a disposition of the relevant securities; and
- (c) in circumstances in which Roseway elects to make a Direct Investment in a follow-on financing in which the Fund does not invest and Roseway is not able to obtain third-party consents required to complete the follow-on financing by way of a Direct Investment, then Roseway would be entitled to make an Indirect Investment, provided that the Fund is able to obtain third-party consents for its investment. Such Indirect Investment would be owned by the Fund for its own account and

Roseway would be entitled to 100% of the divestment proceeds, related rights and payment entitlements thereunder.

68. I am advised by the Manager that, since the date of the Participation Agreement, Roseway has participated in a number of follow-on investments.

69. Under the terms of the Participation Agreement, the Fund is required to:

- (a) make a payment to Roseway in the amount of \$20 million on May 28, 2013, which date has been extended by agreement to September 30, 2013. This amount remains unpaid. Roseway has indicated that it intends to deliver notice under the Security Agreement demanding payment of this amount on October 1, 2013; and,
- (b) make a payment to Roseway in the amount of \$5,700,000, representing the outstanding balance owing and due to Roseway on account of the Guaranteed Minimum Participation Payment, of which a total of \$11.4 million has been paid by the Fund since May 28, 2010, leaving an additional \$5,700,000 outstanding. This amount is due within five business days after the \$20 million payment is due and has not been paid.. Roseway has indicated that it intends to deliver notice under the Security Agreement on October 1, 2013 accelerating all other Roseway Obligations as a result of the default.

70. Concurrent with the closing of the Roseway Transaction, Roseway entered into a Services Agreement with the Manager whereby the Manager agreed to assist with managing Roseway's participating interest and related follow-on investments in exchange for a services fee amounting to \$100,000 per year.

## DEBT FINANCING

71. Subsequent to May 2010, levels of fundraising by the Fund continued to decline and the Fund encountered difficulties in disposing of investments within the Venture Portfolio in a manner sufficient to fund its operating commitments, including minimum Participation Payments, payments required to redeem Class A Shares, and Management Fee payments. Economic conditions prevalent since the financial crisis in 2008 had a significantly negative impact on the ability of the Fund to seek out and develop successful full value exits, which resulted in longer periods of time to realize on the Fund's venture investments. In order to fund those operating commitments, the Fund established a medium term financing facility and entered into a note indenture (the "**Note Indenture**") in May 2011.

72. Under the Note indenture, the Fund may issue secured promissory notes of various maturities (the "**Notes**") to accredited investors. Base interest rates on the Notes vary and the Fund may pay capped bonus interest on Notes. Notes are secured by a charge over all of the Fund's chargeable assets and the proceeds derived from non-chargeable assets.

73. In 2011, Working Opportunity Fund ("**WOF**") advanced a total of \$9.5 million to the Fund by way of a loan (the "**WOF Loan**"). The WOF Loan was evidenced by an interest-bearing Note issued by the Fund to WOF pursuant to the Note Indenture. The WOF Loan matured on December 20, 2012 and was repaid in full in December, 2012.

74. In 2012, the Fund obtained a \$4 million loan (the "**Matrix Loan**") from Matrix, which loan was evidenced by an interest bearing Note issued by the Fund to Matrix pursuant to the Note Indenture. I understand that Matrix is the parent company of the Manager. The Matrix Loan was repaid in full in July 2013.



75. Presently, the Fund does not have any outstanding debt obligations in relation to the Note Indenture. The Fund has been seeking and continues to seek alternative financing but has been unable to secure any such financing to date. Its only outstanding secured payment obligations are the Roseway Obligations.

#### **ESTABLISHMENT OF THE SPECIAL COMMITTEE**

76. The Board of Directors has established a special committee (the “**Special Committee**”) comprised entirely of directors that are independent of the Manager. The duties of the Special Committee include examining strategic alternatives available to the Fund and monitoring the liquidity and capital resources of the Fund. Having ceased sales of Class A Shares, the Fund’s only means of generating liquidity are through replacement debt financing and/or through dispositions of investments in the Venture Portfolio.

77. Divestment activity is highly sensitive to market conditions for sales of private companies. Securities of private companies are illiquid, which has materially adversely affected the ability of the Fund to generate the capital resources necessary to meet its operating commitments, including the Roseway Obligations.

78. In June 2012, the Special Committee, as part of its review of the Fund’s liquidity and capital resources, began exploring ways in which to repay the WOF Loan and address the Fund’s liquidity requirements, including by way of a sale of a portion of the Venture Portfolio. As part of this process, the Special Committee retained Triago Americas, Inc. as its financial advisor to conduct a solicitation of potential purchasers of certain of the Fund’s venture investments.

79. The sale process generated interest from several potential purchasers but the Fund received only one written offer to purchase certain of the Fund's venture investments and, after considering and negotiating the terms of the offer and taking in to account the immediate and projected near term liquidity needs of the Fund, the Board elected to pursue that offer. The sale transaction (the "**2012 Sale Transaction**") was completed on December 31, 2012. I am advised by the Manager that the Fund disposed of the venture investments in the 2012 Sale Transaction at a discount of approximately 58% to the Fund's carrying value of the investments.

80. In February 2013, the Special Committee, as part of its strategic review process (the "**Strategic Review Process**"), retained CCC as independent financial advisor to the Board of Directors, to examine the strategic alternatives available to the Fund and report to the Board on its findings. In April 2013, CCC delivered its report to the Special Committee.

81. In its report, CCC considered a number of potential alternatives available to the Fund, including renegotiation of the Fund's obligations to its secured creditors and Roseway; raising new financing to fund payment of the Fund's secured obligations; an orderly disposition of the Fund's Investment Portfolio; an *en bloc* sale of the Investment Portfolio; and a merger with another labour-sponsored investment fund.

82. CCC has concluded that a merger with a similar fund, coupled with a refinancing of the Roseway Obligations, is likely to produce the best outcome for the Fund and its stakeholders. If such an option cannot be identified and completed, then CCC has concluded that an orderly disposition of the holdings of the Fund in the Portfolio Companies is likely to generate greater proceeds of disposition to the Fund

than an *en bloc* sale of such holdings at this time, which would likely generate the least proceeds to the Fund.

### **ROSEWAY EXTENSION DISCUSSIONS**

83. Since early January of 2013, representatives of the Fund, under the oversight of the Special Committee, have been engaged in on-going negotiations with Roseway with a view to amending the terms of the Participation Agreement to enable the Fund to pay amounts owing to Roseway under that agreement over a period of time and otherwise on terms which coincide with the Fund's projections for an orderly disposition of the Venture Portfolio.

84. On each of May 28, 2013, June 14, 2013, June 27, 2013, July 15, 2013, August 16, 2013 and August 30, 2013, the Fund and Roseway amended the Participation Agreement. As a result of the amendments, the date upon which the payment of \$20 million is due to Roseway was extended from May 28, 2013 to September 30, 2013. In addition, the payment of the remaining Roseway Obligations in the amount of \$5.7 million became due on October 7, 2013 but Roseway has indicated they will deliver a notice on October 1, 2013 accelerating payment due to the default. On each date that the Participation Agreement was amended (other than May 28, 2013), Roseway also waived certain covenant defaults. In each case, a press release was issued to disclose each amendment and the waiver. Attached hereto as **Exhibits "E", "F", "G", "H", "I" and "J"** are copies of the press releases issued by the Fund on May 28, 2013, June 14, 2013, June 27, 2013, July 15, 2013, August 16, 2013 and September 3, 2013, respectively.

85. Since May 28, 2013, the parties have continued their negotiations with respect to amending the Participation Agreement on mutually acceptable terms but have yet to reach such an agreement.

86. The Fund has also had regular discussions with Roseway regarding the Fund's strategy for meeting the Roseway Obligations. This has included discussions with Roseway regarding the CCAA filing and I understand that Roseway is supportive of the CCAA application and will have counsel present at the Court hearing to make submissions. The discussions with Roseway have also included ongoing discussions about the need for an orderly liquidation should the Fund be unable to complete a merger, financing or other transaction. I expect that such discussions will continue with Roseway after the CCAA filing, in consultation with the Monitor, should the Court grant the requested order.

87. As part of the Fund's negotiations with Roseway, the Fund provided Roseway and its advisors with access to the Fund's records and to representatives of the Manager for the purpose of reconciling Participation Payments that have been made by the Fund to Roseway in the past and that may remain outstanding. Additionally, the Fund arranged meetings with management of many of its Portfolio Companies to assist Roseway in its consideration of the Fund's request that Roseway agree to an extended timetable for payment of the Roseway Obligations owed to it.

88. In the course of its attempt to reconcile its entitlement to Participating Interest Payments under the Participation Agreement, Roseway came to the conclusion that certain securities of affiliates of Cytochroma Inc. ("**Cytochroma**") received by the Fund in connection with a March 2012 follow-on financing made by Cytochroma in which the Fund did not participate belonged beneficially to Roseway. The Fund disagrees with

this conclusion and believes that those securities of Cytochroma belonged beneficially to the Fund. In March 2013, Cytochroma was acquired by OPKO Health, Inc. (“OPKO”), a U.S. public company, and the securities of Cytochroma held by the Fund were exchanged for common shares of OPKO. Subsequently, and with the consent of Roseway, the Fund sold all of the OPKO common shares held by it for cash. The amount in dispute between the Fund and Roseway with respect to this matter is US\$1,978,328. The disputed amount (being the proceeds of the disputed OPKO common shares) are held in the trust account of McCarthy Tétrault LLP.

### **POSSIBLE MERGER PARTNER**

89. The Fund has continued to explore options to secure sufficient financing to satisfy the Roseway Obligations without attempting to sell its investments in the Venture Portfolio prematurely or under circumstances that will impair its value.

90. The Fund has been in serious discussions with a possible merger partner (the “**Potential Merger Partner**”) and received a confidential letter agreement from the Potential Merger Partner today, September 30, 2013, proposing terms of a potential transaction. The proposed transaction would involve the Potential Merger Partner acquiring the assets and assuming certain liabilities of the Fund in exchange for shares of the Potential Merger Partner. Among other things, the letter agreement provides that:

- (a) The Potential Merger Partner is prepared to immediately assume a role as a transition manager to the Fund, reporting to the Board of Directors, and is prepared to accrue all manager fees while in the transition role and accept a fee that is less than the Manager’s fee; and,

- (b) There would be no discount imposed on the NAV of the Fund in the Transaction, although there may be Board-approved valuation adjustments in the transition period.

91. This letter agreement has just been received today and will be reviewed by the Fund, together with CCC and the Monitor, if appointed.

92. I believe that a merger with the Potential Merger Partner would be preferable to a forced, premature sale of the Fund's investment assets and that the Fund and its stakeholders would benefit from having sufficient time and the protection of a CCAA stay to enable discussions regarding a possible merger, and a review of the letter agreement and proposed transaction with the Potential Merger Partner, to continue.

#### **NEED FOR CCAA PROTECTION**

93. The \$20 million payment is now due and payable to Roseway, and since the Fund is unable to meet that obligation, and the Fund and Roseway have been unable to reach agreement on the terms of an extension of the Fund's payment obligations to Roseway under the Participation Agreement at this time, the Fund is requesting the Court's assistance through the granting of an Initial Order.

94. The Fund is seeking the opportunity, under the protection of a stay of proceedings, to explore opportunities to refinance, merge or make judicious divestitures without the threat of an untimely, forced sale of the Venture Portfolio.

95. The Fund is also seeking the Court's assistance to ensure that it has access to its critical documents and systems and the assistance of the Manager in providing necessary transition services in order to continue to operate and service its Venture Portfolio throughout this process.

96. If the Fund is protected from the negative effects of a fire sale of its assets and given access to its documents and systems, the Fund expects to be able to satisfy the Roseway Obligations in full through a combination of judicious dispositions, new debt financing and/or a merger or other transaction.

97. Since it is a reporting issuer for purposes of applicable securities laws, the Fund has publicly disclosed its financial performance, financial statements and defaults. In contrast to the public disclosure of the Fund's challenges, the efforts of the Board of Directors and the Manager to address these challenges have, in large measure, necessarily been kept confidential because they involved sensitive negotiations with Roseway and related refinancing efforts. Accordingly, the Fund may be better positioned to find a source of finance or potential partner under the protection of the CCAA when more complete information will be disclosed.

98. The Court's assistance under the auspices of the CCAA is critical for an outcome that maximizes value and provides for the continued operation of the Fund as a going concern. Under the CCAA, the Court may ensure the fair working out of the restructuring process by authorizing and instructing the monitor appointed under the CCAA to supervise its implementation of the resulting restructuring transaction whether through a sale, merger or refinancing.

99. Attached to this Affidavit as **Exhibit "K"** is a cash flow projection for the 13 week period ending December 27, 2013 (the "**Cash Flow Projection**"). As set out in the Cash Flow Projection, the Fund must retain the cash and cash equivalents that it currently holds in order to provide sufficient working capital to fund its operations. The Fund has no source of liquidity other than its cash on hand and the proceeds from the sale of investments.

100. The Cash Flow Projection has been reviewed by the Proposed Monitor and I am advised by Paul Bishop of FTI that, in the view of the Proposed Monitor, the Cash Flow Projection is reasonable.

### **THE FUND'S FINANCIAL POSITION**

#### ***Cashflow and Funding of Operations***

101. The Fund does not have access to revolving credit facilities or other forms of short-term financing. The Fund's only source of liquidity is the proceeds realized by the Fund upon dispositions of investments held in the Venture Portfolio. The Fund has, with the benefit of the cash flow generated from the disposition of investments, accumulated cash and cash equivalents in the approximate amount of \$6,560,000 as at close of business on September 30, 2013.

#### ***Financial Statements***

102. Attached hereto as **Exhibits "L", "M" and "N"**, respectively, are copies of all financial statements, audited or unaudited, prepared during the year before this Application as well as audited financial statements prepared in 2011 and 2012; specifically:

- (a) audited financial statements of the Fund for the fiscal year ending August 31, 2012;
- (b) audited financial statements of the Fund for the fiscal year ending August 31, 2011; and
- (c) semi-annual financial statements as at February 28, 2013 recording the unaudited financial results of the Fund for the six months ended



February 28, 2013, which have not been reviewed by the Fund's auditors.

103. The unaudited financial statements of the Fund for the six months ended February 28, 2013 and the related Management Report of Fund Performance disclose the following:

- (a) cash flow from operating activities for the six months ended February 28, 2013 was \$(8,587,000);
- (b) net expenses for the six months ended February 28, 2013 totalled \$6,486,000, a decrease of \$3,986,000 compared to \$10,472,000 for the same period in 2012;
- (c) cash, short-term investments, bonds and guaranteed investment certificates totalled \$1,056,000 on February 28, 2013; and
- (d) accounts payable and accrued liabilities, liabilities under the Participation Agreement and principal due within one year on long-term debt totalled \$32,569,000 on February 28, 2013 compared to \$46,913,000 on February 28, 2012.

## **THE PROPOSED ORDER**

### ***Stay of Proceedings***

104. The proposed Order contemplates an order staying Proceedings (as defined therein) against the Fund or the Monitor until and including October 31, 2013 or such later date as the Court may order.

105. In addition, the proposed Order includes an order that any rights or obligations affecting or relating to a Portfolio Company that arise, come into effect or are “triggered” by the insolvency of the Applicant, by the commencement of the CCAA proceedings or the making of the Order shall be of no effect and no person shall be entitled to exercise any rights or remedies in connection therewith.

106. Since the Fund’s assets are investments in the Portfolio Companies, this provision is intended to protect the Fund’s assets to the extent the Fund’s insolvency or the CCAA filing triggers a default, right of purchase or forced sale of securities held by the Fund or other adverse consequences pursuant to the terms of existing contractual arrangements to which the Fund is a party in connection with the Portfolio Companies. In certain cases, those adverse consequences would occur in the absence of the proposed Order being granted.

*Critical Supplier*

107. The proposed Order includes an order and declaration that the Manager, GWC and each person engaged or contracted by the Manager and/or GWC (not including employees of the Manager or GWC) in connection with the services provided pursuant to the Management Agreement is a critical supplier to the Fund (each a “**Critical Supplier**”).

108. The proposed Order further provides that each Critical Supplier shall supply the Fund with transitional services pursuant to the Management Agreement and no Critical Supplier may require the payment of a deposit or posting of any security in the connection with the supply of such services after the date of the Order.

109. As detailed above, supply of the transition services by the Manager and GWC and by extension by the people engaged or contracted by the Manager and/or GWC in connection with the Services, is critical to the Fund's continued operation.

110. The proposed Order also contemplates a Critical Supplier Charge in an amount equal to the lesser of (a) the value of the services supplied by the Critical Suppliers after the date of the Order; (b) the amount to which the Manager is entitled to be paid under section 8.6 (b) of the Management Agreement; and (c) \$50,000 (the "**Critical Suppliers' Charge**").

111. In the proposed Order, the Critical Suppliers' Charge ranks third after the Administration Charge and the Directors' Charge (each defined below), each of which has a capped maximum amount. The Critical Supplier Charge is intended to provide the Critical Suppliers with protection for their fees for providing the transition services to the Fund, while ensuring that the Fund continues to have access to these critical services.

112. The Manager was notified of these proceedings both through the participation of David Levi, as a director of the Fund, in discussions relating to the CCAA application, and through delivery of drafts of the application materials to the Manager.

#### ***Administration Charge***

113. The proposed Order provides for the payment of certain advisors who will assist the Fund throughout the process; specifically, the proposed Order provides for payment of the Fund's legal advisors, the Monitor, the Monitor's legal advisors, and CCC.

114. The maximum amount of the Administration Charge of \$500,000 was established based on estimates provided by the various parties who benefit from this charge.

***Indemnity and Directors' Charge***

115. The proposed Order contemplates an indemnification of former, current or future directors and officers of the Fund (the "**Directors**") for any liability that they may incur by continuing as directors and/or officers except to the extent the liability arose as a result of the Director's gross negligence or wilful misconduct.

116. The proposed Order also provides for the creation of a charge over the present and after-acquired assets of the Fund as security to protect them from statutory claims and liabilities that they may incur as directors and officers relating to the failure of the Fund to pay or perform certain obligations that may arise after the filing date (the "**Directors' Charge**").

117. The Directors do have insurance coverage (the "**D&O Insurance**") with primary coverage through Chubb Insurance Company of Canada (the "**Insurer**") with a limit of liability (for all types of coverage, described below) of \$3 million, and excess liability policies in the same form from Liberty International Underwriters (\$2 million), Ironshore Canada Ltd. (\$5 million) and Travellers Insurance Company of Canada (\$5 million). Based on my experience in obtaining this D&O Insurance policy, I believe that these are the best policies available to the Directors, who would be unable to obtain more extensive coverage at a reasonable cost. Key elements of the D&O Insurance policy include:

- (a) it expires December 9, 2013; and

- (b) it provides coverage which includes Directors and Officers Insurance. Attached hereto as **Exhibit "O"** is a copy of the D&O Insurance policy issued by the Insurer.

118. However, the D&O Insurance coverage is provided pursuant to a policy maintained by the Manager for various affiliates of the Manager and the Fund and may have been terminated insofar as it applies to the directors of the Fund as a result of the Fund having terminated the Management Agreement. The proposed Directors' Charge is to protect the Directors against exposure that would otherwise be covered by the D&O insurance. In my opinion, it is important to have a Directors' Charge to keep the Directors in place during the restructuring and to protect them against liabilities that they could incur during the restructuring that are not covered by the D&O Insurance.

119. Accordingly, the proposed Order provides for a Directors' Charge to rank second in priority after the Administration Charge in the maximum amount of \$1,000,000.

#### ***Summary of Proposed Charges***

120. To summarize, the proposed Order provides for the following ranking of the Charges in relation to one another:

- (a) First – The Administration Charge (to the maximum amount of \$500,000);
- (b) Second – The Directors' Charge (to the maximum amount of \$1,000,000); and,

- (c) Third – The Critical Suppliers' Charge (to the maximum amount of \$50,000).

***The Monitor***

121. In accordance with the requirements of the CCAA, subject to the Court's approval, the Fund has engaged FTI to act as the monitor if the Court grants the relief sought herein. FTI has consented to its appointment as Monitor. I am advised by Marc Wasserman, counsel to FTI in these proceedings, that FTI is a trustee within the meaning of subsection 2(1) of the *Bankruptcy and Insolvency Act (Canada)* and not subject to any restrictions on who may be a monitor pursuant to section 11.7(2) of the CCAA.

**RELIEF REQUESTED**


122. Accordingly, this affidavit is sworn in support of an application by the Fund for an order pursuant to the CCAA, among other things:

- (a) declaring that the Applicants is a debtor company to which the CCAA applies;
- (b) authorizing the Fund to carry on its business in a manner consistent with the preservation of the property of the Fund and to make certain payments in connection with its business and the proceedings herein;
- (c) granting a stay of proceedings against the Applicant;
- (d) declaring the Manager, GWC and each person engaged or contracted by the Manager and/or GWC (not including employees of the Manager

or GWC) in connection with the services provided pursuant to the Management Agreement "critical suppliers";

- (e) providing an Administration Charge, Director's Charge and Critical Suppliers' Charge;
- (f) appointing FTI Consulting Canada Inc. as monitor in these proceeding; and
- (g) granting such other relief as may be appropriate.

SWORN BEFORE ME at the )  
 City of Toronto, in the Province )  
 of Ontario, this 30th day of )  
 September, 2013 )  
 \_\_\_\_\_ )  
 Kelly Pat )  
 Commissioner for taking )  
 affidavits )

  
 \_\_\_\_\_  
 C. IAN ROSS

**SCHEDULE "A" – LIST OF PORTFOLIO COMPANIES**



**Schedule "A"**

Opko Health

Ambit Biosciences (Canada) Corporation

Morega Systems Inc.

Targeted Growth Canada Inc.

Camilion Solutions Inc.

ViOptix Canada Inc.

CFN Precision Ltd.

Viron Therapeutics Inc.

Perspecsys Inc.

Digital Payment Technologies Inc.

Natrix Separations Inc.

Med-Eng Systems Inc.

Ascentify Learning Media Inc.

MultiCorpora R&D Inc.

Gemin X Biotechnologies Inc.

CanPro Ingredients Ltd.

Blueprint Software Solutions

Aizan Technologies Inc.

Orthopaedic Synergy, Inc.

MedInnova Partners Inc.

Monteris Medical Inc.

LibreStream Technologies Inc.

Western Life Sciences

Advanced Glazing Technology Limited

inPowered Inc.

1281216 Ontario Inc.

8191808 Canada Inc.

Viron Therapeutics Inc.

MCN BioProducts Inc.

Niagara Growth Fund Inc.

Trillium Therapeutics Inc.

7842317 Canada Inc.

Panorama Software Inc.

Linnet LP I

Protocase Inc.

Peerset Inc

Aegera Oncology Inc.

Acorn Income Corp. (Formerly Internation

Receptor Therapeutics Inc

Cytochroma Inc.

3483690 Canada Inc.

AR Plus Sites Equipment Rentals (Canada) Inc.

Bid Freight Global Inc. / Hegyi GeoTechnologies International Inc.

Chitogenics Pharmaceuticals Ltd.

Cogency Semiconductor Incorporated

Ember Ec3 Inc.

Empex

Fidus International Inc.

Inocom Inc.

IS2 Medical Systems Inc.

iStopOver Inc.

iW Technologies Inc.  
Lexicon Value Management Inc.  
Man Agra Capital Inc.  
Mathis Instruments Ltd.  
MetaMorphix Inc.  
Molecular Templates Inc.  
NPS Pharmaceuticals Inc.  
NxtPhase T&D Corp.  
Orisar Inc.  
Peerset Inc  
Protocase Inc.  
Receptor Therapeutics Inc  
SaskAlta Base Oil Corporation  
SimEx Inc  
Spotwave Wireless Inc.  
Tarquin Group Inc.  
The Puratone Corp.  
Thinkpath Inc.  
Twinstrand Therapeutics Inc.  
Websar Innovations Inc.

**Tab A**

This is Exhibit A referred to in the 54  
affidavit of E. Ian Ross  
sworn before me, this.....  
day of September 2013

**MANAGEMENT AGREEMENT**

THIS AMENDED AND RESTATED AGREEMENT is dated for reference the 5th day of July, 2006

Kelley P. [Signature]  
A COMMISSIONER FOR TAKING AFFIDAVITS

**BETWEEN:**

**GROWTHWORKS CANADIAN FUND LTD.**, a corporation incorporated under the laws of Canada, having an office at 20 Queen Street West, Suite 3504, Toronto Ontario, M5H 3R3. Facsimile No.: (416) 929-4390

(the "Fund")

**AND:**

**GROWTHWORKS WV MANAGEMENT LTD.**, a corporation incorporated under the laws of Canada, having an office at 20 Queen Street West, Suite 3504, Toronto Ontario, M5H 3R3. Facsimile No.: (416) 929-4390

(the "Manager")

**WHEREAS:**

- A. The Fund is labour-sponsored venture capital corporation sponsored by the Canadian Federation of Labour;
- B. The Manager is part of the GrowthWorks group of companies which has extensive experience in making venture capital investments and managing labour sponsored funds;
- C. The Fund wishes to retain the services of a manager to direct the day to day affairs and manage the business of the Fund on the terms and conditions set out in this Agreement;
- D. The Fund wishes to appoint the Manager as the manager of the Fund, and the Manager wishes to accept such appointment; and
- E. The Fund merged with GrowthWorks Opportunity Fund Ltd., Canadian Science and Technology Growth Fund Inc. and Capital Alliance Ventures Inc. effective November 29, 2005 and with First Ontario Labour Sponsored Investment Fund Ltd. effective July 14, 2006 and may merge with other funds from time to time;

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

**ARTICLE 1 – INTERPRETATION**

- 1.1 Interpretation** - In this Agreement, unless otherwise provided:
- (a) “**Additional Administration Fee**” has the meaning ascribed thereto in Section 5.2;
  - (b) “**Administration Fees**” means the administration fees calculated and payable in accordance with Sections 5.2 and 5.5;
  - (c) “**Administration Services**” has the meaning ascribed thereto in Section 3.2;
  - (d) “**Agreement**” means this agreement, including any schedules to this agreement, as amended, supplemented or restated from time to time;
  - (e) “**Annual Abatement**” has the meaning ascribed thereto in Section 5.4;
  - (f) “**Applicable Laws**” in respect of any Person, property, transaction or event, means all present and future laws, statutes, regulations, treaties, judgements and governmental decrees applicable to that Person, property, transaction or event;
  - (g) “**Articles**” means the restated articles of incorporation of the Fund, as amended from time to time;
  - (h) “**Average Net Asset Value**” for a specified period means the Net Asset Value of the Fund on each Valuation Date in the period, divided by the number of Valuation Dates in the period;
  - (i) “**Average Original Purchase Price**”, in respect of Series Shares having Commission I or Series Shares having Commission II for a specified period, means the sum of the original purchase price of such shares issued less than 8 years after their original issue date on each Valuation Date in that period divided by the number of Valuation Dates in the period;
  - (j) “**Base Administration Fee**” has the meaning ascribed thereto in Section 5.2;
  - (k) “**Board**” means the board of directors of the Fund, as constituted from time to time;
  - (l) “**Business Day**” means a day on which banks are open for business in the City of Toronto, but does not include a Saturday, Sunday or holiday in the Province of Ontario. The Business Day will end at 5:00 p.m. on that day;
  - (m) “**CAVI**” means Capital Alliance Ventures Inc.;
  - (n) “**Class A Shares**” means the Class A shares in the capital of the Fund;
  - (o) “**CSTGF**” means Canadian Science and Technology Growth Fund Inc.;
  - (p) “**Effective Date**” means November 1, 2003;

- (q) “**First Ontario Fund**” means First Ontario Labour Sponsored Investment Fund Ltd.;
- (r) “**Fund Group**” has the meaning ascribed thereto in Section 9.7;
- (s) “**LSVCC**” has the meaning ascribed thereto in Section 7.1;
- (t) “**LSVCC Legislation**” means the provisions of the *Income Tax Act* (Canada) relating specifically to labour-sponsored venture capital corporations registered thereunder, the provisions of the *Community Small Business Investment Funds Act* (Ontario) (as amended) relating specifically to labour-sponsored investment fund corporations registered thereunder, the provisions of the *Securities Act* (Ontario) relating specifically to labour-sponsored investment fund corporations as defined therein, and any other legislation in other provinces and territories of Canada which provides a matching tax credit to purchasers of Class A Shares;
- (u) “**Management Fee**” has the meaning ascribed thereto in Section 5.1;
- (v) “**Management Services**” has the meaning ascribed thereto in Section 3.1;
- (w) “**Manager Group**” has the meaning ascribed thereto in Section 9.2;
- (x) “**Merged Funds**” means CSTGF, CAVI, First Ontario Fund and any other fund that is merged into the Fund and is designated (and remains so designated) as a “Merged Fund” for the purposes of this Agreement by the Board and “**Merged Fund**” means any one of the Merged Funds;
- (y) “**Mergers**” means the merger of CSTGF, CAVI and GrowthWorks Opportunity Fund Ltd. into the Fund, effective as of November 29, 2005, the Merger of First Ontario Fund into the Fund, effective as of July 14, 2006, and any other merger of a Merged Fund, as designated by the Board, effective as of the date designated by the Board of the Fund, into the Fund and “**Merger**” any one of the Mergers;
- (z) “**Merger Shares**” means the Class A Shares of the Fund issued to former shareholders of the Merged Funds in connection with the Mergers (for greater certainty, this does not include shares issued to former shareholders of GrowthWorks Opportunity Fund);
- (aa) “**Net Asset Value**” means the value of the Fund’s assets minus the Fund’s liabilities as determined in accordance with the Fund’s valuation policies (and recognizing as an asset for this calculation any unamortized balance of sales commissions previously paid by the Fund which is permitted to be recognized for Class A Share pricing purposes under applicable securities regulatory policy);
- (bb) “**Original Class A Shares**” means the Class A Shares of the Fund designated as “WV Canadian – Commission I” series shares;
- (cc) “**Other Fund**” means any labour sponsored venture capital corporation or labour sponsored investment fund other than the Fund, GrowthWorks Commercialization Fund

Ltd., GrowthWorks Atlantic Venture Fund Ltd. and Working Opportunity Fund (EVCC) Ltd.;

- (dd) **“Persons”** means and includes individuals, corporations, limited partnerships, general partnerships, associations, trusts, or other organizations whether or not legal entities and governments and agencies and political subdivisions thereof;
- (ee) **“Prospectus”**, at any given time, means the then current prospectus of the Fund (including any amendments thereto);
- (ff) **“Sales Commissions”** means the sales commissions payable by the Manager to dealers in respect of the sale of Series Shares as described in the applicable prospectus offering such shares and as agreed to from time to time by the Manager and the Fund (and, for greater certainty, any amount payable by the Manager to dealers at the time of sale of Series Shares having Commission II in lieu of any service fees being paid before the eighth anniversary of the date of purchase shall be construed as a sales commission and not as a “service fee” under this Agreement);
- (gg) **“Series Shares”** means each series of Class A shares in the capital of the Fund (other than the Original Class A Shares and the Merger Shares);
- (hh) **“Series Shares having Commission I”** means Series Shares designated as having Commission I by the Board (other than the Original Class A Shares);
- (ii) **“Series Shares having Commission II”** means Series Shares designated as having Commission II by the Board (other than the Original Class A Shares);
- (jj) **“Services”** means the Administration Services and the Management Services;
- (kk) **“Shares”** means the Class A Shares and the Class B and Class C shares in the capital of the Fund;
- (ll) **“Transition Abatement”** has the meaning ascribed thereto in Section 5.4; and
- (mm) **“Valuation Date”** means a date as of which Net Asset Value is calculated, the frequency for such calculation to be determined by the Manager and the Board from time to time.

Any words or phrases defined elsewhere in this Agreement shall have the particular meanings assigned thereto.

**1.2 Business Day** - If under this Agreement any payment or calculation is to be made, or any other action is to be taken, on or as of a day which is not a Business Day, that payment or calculation is to be made, and that other action is to be taken, as applicable, on or as of the next day that is a Business Day.

**1.3 Time of Day** - Unless otherwise specified, references to time of day or date mean the local time or date in the City of Toronto, Province of Ontario.



**1.4 Headings and Table of Contents** - The division of this Agreement into sections, the insertion of headings and the provision of a table of contents are for convenience of reference only and are not to affect the construction or interpretation of this Agreement.

**1.5 Number and Gender** - Unless otherwise specified, words (including defined terms) importing the singular include the plural and vice versa and words importing gender include all genders.

**1.6 References** - Unless otherwise specified, references in this Agreement to Articles, Sections and Schedules are to articles of; sections of; and schedules to, this Agreement. "Herein", "hereof", "hereby", "hereunder" and similar expressions refer to this Agreement in its entirety and any and every schedule hereto, each as amended from time to time, and not to any particular article, section or portion hereof and include any and every instrument supplemental or ancillary to this Agreement and any and every schedule thereto.

**1.7 Scope** - The word "including", when following any general statement, term or matter, shall not be construed to limit such general statement, term or matter to the specific items or matters set forth immediately following such word or to similar items or matters, whether or not non-limiting language, such as "without limitation" or "but not limited to" or words of similar import, are used with reference thereto but rather shall be deemed to refer to all other items or matters that could reasonably fall within the broadest possible scope of such general statement, term or matter.

**1.8 Statutory References** - Each reference to an enactment is deemed to be a reference to that enactment, and to the regulations including rules with binding legal force and effect made under that enactment, as amended or re-enacted from time to time.

**1.9 Currency** - Unless otherwise specified, all references herein to currency shall be references to currency of Canada.

**1.10 Series Shares Conversions** - All references herein to the "original purchase price" or "original issue date" of Series Shares shall be, respectively, to:

- (a) the purchase price paid for and date upon which those shares were originally issued from treasury by the Fund; or
- (b) if the Series Shares were issued as a result of one or more conversions of other Series Shares in accordance with the rights, privileges, restrictions and conditions attached to such shares, then the purchase price paid for and date upon which those shares were originally issued from treasury prior to all such conversions.

**1.11 Merger Shares Issuance** - All references herein to the "original purchase date" of Merger Shares issued under a particular Merger shall be read as the date that the applicable Merged Fund first issued shares to its former shareholders who were subsequently issued Merger Shares as part of such Merger.

**1.12 Shares Issued under Merger of GrowthWorks Opportunity Fund** - All references herein to the "original purchase price" or "original issue date" of Original Class A Shares or

Series Shares issued under the Merger of GrowthWorks Opportunity Fund into the Fund shall be, respectively, to the original purchase price paid for and the original date of issue (prior to any conversions affecting such shares) of the Class A shares of GrowthWorks Opportunity Fund that were exchanged for such Original Class A Shares or Series Shares in connection with that Merger.

## ARTICLE 2 – APPOINTMENT

2.1 **Appointment** - Upon and subject to the terms and conditions set out in this Agreement, the Fund hereby appoints the Manager as the manager of the Fund with full authority and responsibility to provide or cause to be provided to the Fund the Services and facilities described in this Agreement, and the Manager hereby accepts such appointment.

2.2 **Effective Date** - The appointments, duties and obligations of the parties under this Agreement shall commence on the Effective Date.

## ARTICLE 3 – DUTIES OF THE MANAGER

3.1 **Management Services** - The Manager will provide or cause to be provided to the Fund the following management services (the “**Management Services**”):

- (a) manage the day to day operations of the Fund;
- (b) portfolio advisory and investment management services including identifying and evaluating investment opportunities; structuring and negotiating prospective investments; monitoring performance of investments; recommending investment policies; recommending the timing, terms and method of acquiring and disposing of investments; and management of non-venture portfolio investments, the foregoing services subject always to the direction of the Board and subject to the investment objectives and strategies of the Fund, as amended from time to time;
- (c) ensure compliance from the Effective Date in all material respects with securities laws, regulations and policies relating to the operation of the Fund, the continuous offering of Class A Shares of the Fund, and with the Articles and LSVCC Legislation, including, without limitation, the preparation and filing of the Prospectus with securities regulatory authorities and seeking the execution and delivery of all necessary documents and instruments in connection therewith and making all necessary arrangements in connection with the holding of meetings of shareholders of the Fund;
- (d) monitor, supervise and enforce agreements entered into by or on behalf of the Fund;
- (e) select, instruct and supervise all service providers to the Fund deemed necessary by the Manager for the due operation of the business of the Fund and to support provision of the Services including service providers of custodial and safekeeping services, audit services and legal services; and

- (f) provide such other services as are reasonably required to conduct the Fund's usual daily operations in an efficient manner.

**3.2 Administration Services** - The Manager will provide or cause to be provided to the Fund the following services (the "Administration Services"):

- (a) provide or cause to be provided to the Fund services pertaining to Board approved distribution of income and gains to shareholders, including deemed dividends;
- (b) develop and implement the Fund's communications, marketing, distribution and capital retention strategies, including without limitation:
  - (i) preparation and delivery of shareholder communications including meeting materials, annual reports, semi-annual reports and other shareholder reporting;
  - (ii) preparation of marketing literature and coordinating appropriate personnel to provide information and seminars;
  - (iii) co-ordinating with the Fund's principal distributors to establish and maintain a network of registered brokers and dealers to distribute Class A Shares; and
  - (iv) responding to enquiries from shareholders, prospective shareholders, their advisors, brokers, dealers and the press;
- (c) execute and deliver or cause to be executed and delivered proxies and vote or cause to be voted securities held as part of the assets of the Fund as considered advisable from time to time;
- (d) calculate in accordance with policies and procedures approved by the Board and the audit and valuation committee of the Board the Net Asset Value and the Net Asset Value per share of each series of Class A Shares on each Valuation Date;
- (e) select principal distributor(s) for the Fund and co-ordinate the offering of the Class A Shares with such principal distributor(s), or, if an other Person is not so selected as principal distributor(s), act as principal distributor of the Fund and perform all necessary services in connection with acting as principal distributor;
- (f) arrange for the payment of Sales Commissions on the sale of Class A Shares as described in the applicable prospectus offering such shares;
- (g) arrange for the payment of service fees to dealers on behalf of the Fund in accordance with past and/or current prospectuses as applicable;
- (h) share registrar and transfer agency services and Share transaction processing;
- (i) RRSP trust administration services as required in respect of the RRSP program supported by the Fund;
- (j) bookkeeping and internal accounting services;

- (k) arrange for the provision of all requisite office accommodation, office facilities and personnel, telephone, computer and telecommunications services, stationery, office supplies, reporting services, and other usual and ordinary office services;
- (l) provide administrative and support services to the Board and its committees;
- (m) maintain such insurance coverage for the Fund as is currently in place (or such other coverage as the Board and the Manager, acting reasonably, may agree on from time to time) and make recommendations to the Board from time to time based upon the normal and customary industry practice;
- (n) arrange for the preparation and filing of all returns, reports and filings which may be required from time to time by any municipal, provincial, federal or other governmental authority, including without limitation the preparation and filing on behalf of the Fund of all returns, reports and filings which may be required pursuant to the *Income Tax Act* (Canada), LSVCC Legislation and Canadian securities legislation;
- (o) if acting as principal distributor, complete and file, within the required time period, all reports required under Canadian securities legislation to be completed and filed by a principal distributor of a mutual fund;
- (p) co-ordinate with the Fund's custodian regarding the custody of the Fund's assets required to be held by the custodian;
- (q) provide information technology systems and application thereof, including shareholder database, transaction processing and accounting, to the extent necessary to perform the Services; and
- (r) such other administration services to support the usual day to day operation of the Fund.

**3.3 Authorization to Act** - The Manager shall have the authority to act for, in the name of and on behalf of, the Fund in the provision of the Services described herein, including opening, maintaining, conducting and closing such accounts with any bank, trust company, credit union, broker, dealer or investment concern as may be necessary, appropriate or advisable for the performance of the Services. Accordingly, the Fund hereby delegates to the Manager the authority to take such action and to execute such agreements, deeds, instruments, certificates and other documents, including the execution of any and all documents required by securities regulatory authorities, in the name of the Fund, as attorney for the Fund, or as manager thereof, as the Manager deems advisable or necessary or appropriate for the performance of the Services. No Person dealing with the Manager or any officer, employee or agent thereof shall be bound to make any inquiry concerning the validity of any transaction purporting to be made by or on behalf of the Fund, and any Person shall be entitled to rely upon a certificate, statutory declaration or resolution executed by either the Fund, the Manager, or an officer thereof as to the capacity and authority of the officers, employees and agents of the Fund or the Manager to act for and on behalf of and in the name of the Fund. However, certain of the responsibilities of the Manager are required by law or the investment policies of the Fund

to be the responsibility of the Board, and the Fund and the Manager agree that such matters shall be subject to the direction of the Board.

**3.4 Conduct of Business** - The Manager agrees to comply with the securities laws and regulations, the requirements of the Canadian securities administrators and policy statements of securities regulatory authorities insofar as such relate to its duties and obligations hereunder. The Manager acknowledges that the appropriate personnel of the Manager have read carefully and are aware of the Fund's investment objective, strategy and restrictions as described in the Prospectus, and the statutory and other restrictions applicable to the Fund as set out in the Articles, the LSVCC Legislation and the Prospectus. The Manager agrees that it will take appropriate steps to properly inform such personnel of such matters at regular intervals during the term of this Agreement.

The Manager agrees to comply with any directions given to it by the Fund hereunder provided that:

- (a) the Fund shall consult with the Manager with respect to any such proposed directions;
- (b) any such direction complies with Applicable Laws; and
- (c) any such direction does not conflict with an express provision of this Agreement, unless mutually agreed to by the Manager and the Fund.

**3.5 Standard of Care** - The Manager shall exercise the powers and authorities granted hereunder and discharge its duties hereunder honestly, in good faith and in the best interests of the Fund and, in connection therewith, shall exercise the degree of care, diligence and skill that a reasonably prudent person would exercise in the circumstances.

**3.6 Delegation of Responsibilities** - Subject to Applicable Laws, the Manager may engage, contract or employ any Persons as agents, representatives, service providers, independent contractors, or employees (including, without limitation, lawyers, bankers, portfolio advisers, notaries, registrars, underwriters, accountants, sub-distributors, brokers or dealers) the Manager deems advisable in connection with providing the Services, and may delegate any part of its duties and powers set out in this Agreement as it considers necessary or appropriate in the course of providing the Services. The Manager acknowledges and agrees that any such arrangement or delegation in no way diminishes the obligation of the Manager to the Fund for the Services or the standard of care owed to the Fund with respect to the provision of the Services.

**3.7 Registrations** - As of and from the Effective Date, the Manager shall have and the Manager shall ensure that all persons associated with providing the Services shall have the necessary registrations and approvals under applicable securities laws and regulations to provide the component of the Services they are providing.

**3.8 Access and Confidentiality** - The Fund hereby authorizes the Manager to have full access to the Fund's books, records and business premises and also to whatever other information and material the Manager may require from time to time to discharge its duties hereunder. Unless required by law or regulatory policy or requested by legal process or

regulatory authority, the Manager covenants to keep confidential all confidential information concerning the Fund's business and affairs which is not otherwise available to the public.

**3.9 Reporting Obligations** - The Manager shall:

- (a) keep proper books of account and records for the Fund and make the same accessible for inspection by representatives, including the auditors, of the Fund at any time during ordinary business hours;
- (b) provide such reports and information as the Fund may from time to time reasonably request; and
- (c) shall promptly notify the Fund of the occurrence of any event, or upon being notified by any service provider of the occurrence of any event which would pursuant to Applicable Laws disqualify the Manager or such service provider from providing the Services, or of the commencement of any formal investigation of the Manager (or of any service provider if the Manager becomes aware of such investigation) by any securities regulatory authority.

**3.10 Pacing Requirements** - The Manager shall work diligently to honour the investment commitments of the Fund, including working with the governments in the provinces of Saskatchewan and New Brunswick.

**3.11 Commingling of Assets** - The Manager covenants and agrees that it shall not commingle the assets of a Fund with the Manager's assets.

#### **ARTICLE 4 – DUTIES OF THE FUND**

**4.1 Duties of the Fund** - The Fund shall:

- (a) subject at all times to any limitation or prohibition to which the Fund is subject at law, take such corporate proceedings and other action as may be necessary to comply with its Articles, statements made by the Fund in its Prospectus in respect of the issuance and redemption of Class A Shares and the increase of stated capital attributable to such securities;
- (b) promptly notify the Manager of the particulars of any change in the Fund, that the Fund but not the Manager is aware of, that may render the Prospectus misleading or untrue in any material respect;
- (c) ensure that any investment objectives, strategies, policies or procedures adopted by the Fund to which the Manager is subject to under this Agreement comply with Applicable Laws and do not conflict with an express provision of this Agreement, unless mutually agreed to by the Manager and the Fund;

- (d) not issue any Class C shares in the capital of the Fund to any person without the prior written consent of the Manager;
- (e) work with the Manager to ensure that expenses incurred by or for the account of the Fund which are to be paid by the Manager under Article 6 are commercially reasonable and as cost-efficient as possible, to the extent the incurring of such expenses is within the control of the Fund; and
- (f) do such other things and execute such other contracts, documents and/or instruments as may be reasonably required by law or to enable the Services to be duly provided in accordance with this Agreement.

#### ARTICLE 5 – MANAGER COMPENSATION

**5.1 Management Fee** - As compensation for the Management Services, the Manager shall be entitled to receive, in respect of each fiscal year of the Fund beginning on the Effective Date, a management fee equal to 2.0% of the Average Net Asset Value of the Fund (the “**Management Fee**”), calculated and paid in accordance with Section 5.5.

**5.2 Administration Fees** - As compensation for the Administration Services, the Manager shall be entitled to receive, in respect of each fiscal year of the Fund beginning on the Effective Date:

- (a) a base administration fee (the “**Base Administration Fee**”), calculated and paid in accordance with Section 5.5 and based on the following schedule:
  - (i) 1.909882% of the Average Net Asset Value of the Fund of less than \$300 million; plus
  - (ii) 1.738318% of the Average Net Asset Value of the Fund between \$300 million and \$500 million; plus
  - (iii) 1.551402% of the Average Net Asset Value of the Fund greater than \$500 million; and
- (b) an additional administration fee (the “**Additional Administration Fee**”), calculated and paid in accordance with Section 5.5 and based on the following schedule:
  - (i) *Series Shares*
    - (A) 0.75% of the original purchase price of Series Shares having Commission I which remain issued and unredeemed; and
    - (B) 1.1625% of the original purchase price of Series Shares having Commission II which remain issued and unredeemed;

provided that such fee shall not apply in respect of any Series Shares which remain issued and unredeemed for more than 8 years after their original issue date.

(ii) *Merger Shares*

0.75% of the portion of the Average Net Asset Value attributable to the Merger Shares;

provided that such fee shall not apply in respect of any Merger Shares which remain issued and unredeemed for more than 8 years after their original purchase date.

## 5.3 (Intentionally Deleted)

5.4 **Fee Abatements/Adjustments** - The aggregate Management Fees and Administration Fees payable to the Manager by the Fund shall be reduced by:

- (a) an amount equal to the sum of \$1,500,000 plus 7% per annum on the unpaid balance thereof (accruing from the date hereof until the abatement of such sum is applied in full hereunder) (such total amount being the "**Transition Abatement**"), during the first 12 months following the Effective Date; and
- (b) an amount equal to amounts which the Manager is obligated to treat as "Additional Amounts", as agreed with the Fund, plus 7% per annum on the unpaid balance thereof (accruing from the date of the advance by the Fund until the abatement of such sum is applied in full hereunder) (such total amount being the "**Additional Abatement**"), during the first 12 months following the Effective Date;
- (c) a total of \$500,000 in each 12 month period (the "**Annual Abatement**") for the first five 12 month periods following the Effective Date; and
- (d) an amount intended to compensate the Fund for taking on responsibility for paying directors' compensation (the "**Directors' Compensation Abatement**") calculated as follows:

$\$349,280 \text{ minus (Average Net Asset Value of the Fund} \times 0.10881\% \times 1.07)$

but disregarding any negative number.

The Management Fees and Base Administration Fees shall be adjusted to account for any change in the rate of federal goods and services tax so that the Manager will in effect bear the cost or receive the benefit of the rate change in relation to those fees. For clarity, this adjustment shall not apply in respect of any Additional Administration Fees or amounts in respect of interest payable to the Manager under Section 6.3. The benefit of the abatement in (c) above shall be applied to all Class A Shares except the Merger Shares.

5.5 **Calculation and Payment of Fees** - The Fund shall pay the Manager on or about the 9<sup>th</sup> Business Day following the end of each month:

- (a) an aggregate amount calculated as follows:
  - (i) the Management Fee, being an amount equal to 2.5% of the Average Net Asset Value of the Fund for that month (less any adjustment pursuant to Section 5.3) divided by 12; plus



- (ii) the Base Administration Fee, being an amount equal to the sum of the amounts in subsections 5.2(a)(i) through (iii) calculated based on the Average Net Asset Value of the Fund for that month (less any adjustment pursuant to Section 5.3), divided by 12; less
- (iii) for each of the first 12 months after the Effective Date, 1/12 of the Transition Abatement and 1/12 of the Additional Abatement; less
- (iv) for each of the first 60 months after the Effective Date, 1/12 of the Annual Abatement.

In the event the above calculation results in a negative number for any given month, an amount equal to the difference shall be deducted from the Management Fees and Base Administration Fees payable to the Manager by the Fund for the next month; and

- (b) the Additional Administration Fee, being an amount equal to the sum of the amounts calculated under subsection 5.2(b) based on the Average Original Purchase Price of Series Shares having Commission I and Series Shares having Commission II, respectively, for that month and the portion of the Average Net Asset Value attributable to the Merger Shares for that month, divided by 12.

As of the end of each month, the Manager shall calculate the above amount and deliver to the Fund an invoice showing the calculation and the resulting net amount.

Any payment of Management Fees or Administration Fees for a period of less than one month shall be pro-rated daily based on the number of days in the period.

**5.6 Early Redemption Fees payable by Shareholders** - It is acknowledged and agreed that the early redemption fees on Class A Shares described in the applicable prospectus offering such shares or information circular describing such shares, as the case may be, are payable by Fund's shareholders, not the Fund, and are:

- (a) in the case of the Original Class A Shares, charged by the Fund and are for the account of the Fund; and
- (b) in the case of the Series Shares and Merger Shares, charged by the Manager and are for the account of the Manager.

## **ARTICLE 6 – EXPENSES**

**6.1 Expenses Generally** - The Manager shall pay all normal operating expenses of the Fund incurred in providing the Services, including without limitation:

- (a) provincial capital taxes and provincial sales taxes;
- (b) audit and legal fees;
- (c) insurance premiums for directors and officers liability, errors and omissions and comprehensive business insurance equal to the current aggregate annual amount of insurance coverage carried by the Fund for the most recently completed financial year

prior to the date of this Agreement or such higher amount as is reasonably required by the Fund (or such other coverage as is approved by the Board and the Manager from time to time);

- (d) interest expenses on overdrafts by the Fund to meet normal course cash requirements, except for overdrafts arising as a result of a Board direction;
- (e) valuation fees in connection with valuation services provided by third parties for the annual valuation of the Net Asset Value of the Class A Shares conducted as at the fiscal year end or at such greater frequency if required by LSVCC Legislation, or such other valuations that may be required under Applicable Laws;
- (f) all required trustee, registrar, transfer agency fees, custodian and safekeeping charges and share transaction processing fees;
- (g) costs of printing and delivering to shareholders of the Fund required financial statements and meeting materials, the costs of filing and printing the Prospectus and all amendments to or renewals of the Prospectus and costs of printing marketing materials;
- (h) costs of distribution of Class A Shares associated with the Manager's role in such distribution (which currently includes Sales Commissions);
- (i) fees payable to portfolio managers selected by the Manager, including liquid portfolio management fees;
- (j) fees payable to regulatory authorities with respect to annual corporate filings and the offering of Class A Shares; and
- (k) reasonable fees and expenses payable to members of advisory bodies appointed by the Fund as compensation for serving in those capacities.

To the extent that the Fund agrees to initially pay any of the foregoing expenses on behalf of the Manager, the Fund shall be entitled to obtain reimbursement from the Manager on a basis acceptable to the Fund (as confirmed in writing by the Fund). In those circumstances, the expense shall continue to be entirely the Manager's alone and not in any way the Fund's.

**6.2 Fund Expenses** - Notwithstanding Section 6.1, the Fund shall be responsible for any expenses or charges incurred in respect of the following:

- (a) the service fees payable to dealers in accordance with the applicable Fund prospectus;
- (b) the amounts payable to the Manager under this Agreement;
- (c) the auditor's fees incurred in connection with more frequent audit of matters other than the annual audit;
- (d) the payment of any federal income and large corporation taxes to which the Fund is or might be subject and any applicable federal goods and services tax on the Management

Fees, Administration Fees, or payment or reimbursement of interest to the Manager under Section 6.3;

- (e) fees and expenses payable to directors of the Fund; and
- (f) any unusual or extraordinary expenses incurred by the Fund outside the normal scope of the Services such as, for illustrative purposes: expenses incurred as a result of litigation or arbitration involving the Fund, the previous manager of the Fund or the current or former portfolio companies, payments by the Fund to third parties pursuant to indemnity provisions between the Fund and such third parties under agreements entered into prior to the Effective Date, or interest on other than very short term borrowings to fund redemption of Class A Shares.

To the extent that the Manager chooses to pay any of the foregoing expenses on behalf of a Fund, the Manager shall be entitled to obtain reimbursement from the Fund on or before the 10<sup>th</sup> Business Day after providing a written account of such expenses. However, for greater certainty, the Manager is under no obligation to pay any of the foregoing expenses on behalf of the Fund. (It is acknowledged that the Manager is entitled to obtain reimbursement for the incremental "increase" portion of directors' fees approved by shareholders at the December 9, 2004 shareholders' meeting paid by the Manager in 2004.)

**6.3 Other Approved Expenses** - In recognition of the substantial expenditures the Manager will have to make to fulfill its obligations hereunder, the Fund will pay or reimburse the Manager for interest costs the Manager (or any affiliate of the Manager) incurs in connection with borrowings made to meet its obligations under this Agreement which have been pre-approved in writing by the Fund (as signed by the Chairman of the Board). The Manager will generally seek to borrow these funds from chartered banks or other financial institutions unless otherwise approved by the Board and will always seek to obtain the lowest borrowing rates available for comparable commercial transactions. Notwithstanding the foregoing, the Manager may borrow a minority of these funds from affiliates of the Manager at the same or lower rates as funds borrowed from chartered banks or other financial institutions.

**6.4 Expenses Relating to Third Parties** - In the event that the Manager arranges for the provision of any of the Services by a third party, the Manager shall be responsible for the payment of all costs and expenses associated with the provision of such Services by such third party (other than the expenses or charges described in Section 6.2 or 6.3 for which the Fund shall be responsible).

## **ARTICLE 7 – OTHER ACTIVITIES OF THE MANAGER**

### **7.1 Commitment to GrowthWorks Funds**

In this Section, "GrowthWorks Funds" means a labour sponsored venture capital corporation ("LSVCC") managed by the Manager and having the same sponsor and board members as the Fund, and includes for greater certainty the Fund and GrowthWorks Commercialization Fund Ltd..

The Manager covenants and agrees with the Fund that:

- (a) the GrowthWorks Funds will be the primary LSVCCs managed by the Manager (or its affiliates) outside of British Columbia and Atlantic Canada; and
- (b) the Manager's intent is to work with the Fund to achieve the objective of the GrowthWorks Funds
  - (i) being a national LSVCC leader;
  - (ii) ultimately being part of the largest LSVCC group in the country (outside of Quebec); and
  - (iii) ultimately being the largest LSVCC group managed by the Manager (or its affiliates).

As part of the foregoing, the Manager covenants and agrees to provide the Fund with 60 days written notice prior to the Manager (or an affiliate) assuming the management of any Other Fund. During that 60 day period, the Manager will meet with the Fund to consult with it regarding the management opportunity. Additionally, the Manager will not assume the management of any Other Fund with net assets in excess of \$75 million (at the time of such assumption), without the prior written consent of the Fund, such consent not to be unreasonably withheld. (For clarity, the standard of reasonableness shall be from an objective third party's perspective.)

**7.2 Services Not Exclusive** - Notwithstanding Section 7.1, the Fund acknowledges and agrees that the services provided by the Manager and its directors and officers are not exclusive to the Fund and that the Manager (and/or its affiliates) may provide similar services to other investment funds. However, the Manager covenants that it will devote sufficient resources to ensure that the Services for the Fund are performed in accordance with the terms of this Agreement.

**7.3 Allocation of Investment Opportunities** - In accordance with the terms of this Agreement, the Manager acknowledges that it is subject to the allocation of investment opportunities policy set out in Schedule A.

## **ARTICLE 8 – TERM AND TERMINATION**

**8.1 Term** - The term of this Agreement will commence on the Effective Date, and, unless terminated in accordance with the provisions of Sections 8.2 or 8.3, this Agreement will expire upon the dissolution, winding-up or termination of the Fund.

**8.2 Earlier Termination by a Fund** - The Fund may terminate this Agreement (subject to compliance with any applicable requirements of corporate or securities laws, regulations or policies) as follows:

- (a) immediately, upon the bankruptcy or insolvency of the Manager, the passing of a resolution providing for the winding-up or dissolution of the Manager or the issuance of

any order for the dissolution of the Manager or the making of a general assignment for the benefit of the Manager's creditors;

- (b) upon receiving the agreement of the Manager in writing to such termination;
- (c) upon a material breach of this Agreement by the Manager where written notice of such breach is given to the Manager by the Fund and, if such breach is capable of being remedied, the Manager has not remedied the breach within 60 days after such notice is received by the Manager;
- (d) immediately, upon the Manager failing to maintain all necessary securities registrations;
- (e) on the fifth anniversary of the passing of a special resolution by the shareholders of the Fund ratifying a resolution of the Board to terminate this Agreement.

**8.3 Earlier Termination by the Manager** - The Manager may terminate this Agreement (subject to compliance with any applicable requirements of corporate or securities laws, regulations or policies) as follows:

- (a) immediately, upon the bankruptcy or insolvency of the Fund, the passing of a resolution providing for the winding-up or dissolution of the Fund or the issuance of any order for the dissolution of the Fund or the making of a general assignment for the benefit of the Fund's creditors;
- (b) upon receiving the agreement of the Fund in writing to such termination;
- (c) upon a material breach of this Agreement by the Fund where written notice of such breach is given to the Fund by the Manager and, if such breach is capable of being remedied, the Fund has not remedied the breach within 60 days after such notice is received by the Fund; and
- (d) upon the Fund changing its fundamental investment objectives or policies.

**8.4 Successor** - Upon termination of this Agreement under Sections 8.2 or 8.3:

- (a) the Manager shall use reasonable commercial efforts to co-operate with the Fund and any successor manager to facilitate an orderly transition such that the Services will be provided to the Fund by the successor without delay or compromise of service; and
- (b) the successor manager shall fully assume, without recourse to the Manager, the balance on the date of termination of all borrowings approved by the Fund under Section 6.3.

While any borrowings approved by the Fund under Section 6.3 are outstanding, neither Fund will seek a dissolution, winding-up or termination of the Fund without the written concurrence of the Manager.

**8.5 Delivery of Records** - Upon termination of this Agreement under Sections 8.2 or 8.3, the Manager shall promptly deliver to the Fund all records, including electronic records or data in a form accessible to the Fund, of or relating to the affairs of the Fund in its custody, possession or control.

**8.6 Payments on Termination** - Upon termination of this Agreement, the Fund shall pay to the Manager:

- (a) any unpaid Management Fees and Administration Fees, calculated in accordance with Section 5.5, and any reimbursable expenses accruing to the date of termination; and
- (b) if this Agreement is terminated pursuant to Section 8.2, all reasonable transfer, wind-down and transition costs incurred by or put to the Manager as a result of having to transition operations to a successor manager.

The Manager shall calculate the amounts payable to the Manager under (a) and (b) above and the Fund shall pay such amounts to the Manager on or about the 25<sup>th</sup> Business Day after receipt by the Fund of an invoice for the same.

## **ARTICLE 9- LIABILITY**

**9.1 Limitation of Liability** - The Manager hereby acknowledges and agrees that the obligations of the Fund hereunder are not personally binding upon any of the shareholders, directors or officers of the Fund and that the Manager shall not resort to or seek redress, recourse or satisfaction from the private property of any of the shareholders, directors or officers of the Fund whether the liability be based on contract, tort or otherwise. The Manager agrees that only the Fund and property held by the Fund shall be bound by and subject to the obligations and liabilities of the Fund arising out of this Agreement.

**9.2 Indemnification of the Manager** - The Fund hereby agrees to indemnify and save harmless the Manager, its affiliates and associates and each of their officers, directors, employees, agents and shareholders (the "**Manager Group**") from any and all actions, claims, suits, causes of action, losses, charges, damages and expenses (including reasonable legal fees and disbursements) (collectively, "**losses**") brought, commenced, prosecuted suffered or incurred by any member of the Manager Group for or in respect of any act, deed, matter or thing whatsoever made, done, acquiesced in, permitted or omitted by any member of the Manager Group in or about or in relation to the obligations of the Fund pursuant to this Agreement and also from and against all other losses which any member of the Manager Group may sustain or incur in or about or in relation to the affairs of the Fund, save and except those which are the subject matter of indemnification by the Manager in this Agreement and save and except as contemplated in the next sentence of this section 9.2. Notwithstanding any of the foregoing, no member of the Manager Group shall be indemnified by the Fund for losses in connection therewith arising from wilful misconduct, negligence or fraud on the part of the particular member or members of the Manager Group, or a breach of this Agreement by such member or members of the Manager Group. The Fund constitutes the Manager as trustee for the indemnified members of the Manager Group in respect of the indemnity provided by this

Section 9.2, and the Manager agrees to accept such trust and to hold and enforce such covenants on behalf of such Persons.

**9.3 Manager's Liability** - The Manager shall not be liable to the Fund for any losses relating to any matter regarding the Fund, including any loss or diminution of the Net Asset Value, provided that nothing herein shall be deemed to protect the Manager against any liability to the Fund in circumstances where the Manager has failed to exercise the standard of care set out in Section 3.5; or any Person retained by the Manager to perform any of the Services to the Fund has failed to meet the same standard of care as that to be met by the Manager set forth in section 3.5; or in circumstances arising from the Manager's wilful misconduct, negligence or fraud.

**9.4 Liability Re: Prospectus** - The Manager shall not be liable to the Fund for any losses suffered by the Fund as a result of any misrepresentation or alleged misrepresentation in any Prospectus or other document relating to the Fund (except any such misrepresentation or alleged misrepresentation resulting from any information or statement furnished by any member of the Manager Group which such member knew or, if he, she or it had conducted a reasonable investigation would have known, constituted a misrepresentation).

**9.5 Liability Re: Prospectus** - The Fund shall not be liable to the Manager for any losses suffered by the Manager as a result of any misrepresentation or alleged misrepresentation in any Prospectus or other document relating to the Fund (except any such misrepresentation or alleged misrepresentation resulting from any information or statement furnished by any member of the Fund Group which such member knew or, if he, she or it had conducted a reasonable investigation would have known, constituted a misrepresentation).

**9.6 Reliance on Professionals** - The Manager shall be entitled to rely and act upon any statement, report or opinion prepared by or any advice received from portfolio advisers, auditors, solicitors, notaries or other professional advisors and shall not be responsible or held liable for any loss or damage resulting from relying or acting thereon if the advice was within the area of professional competence of the person from whom it was received and the Manager acted reasonably in relying thereon.

**9.7 Indemnification of the Fund** - The Manager hereby agrees to indemnify and save harmless the Fund and each of its affiliates and associates and each of their officers, directors, employees, agents and shareholders (the "**Fund Group**") from any and all losses brought, commenced, prosecuted suffered or incurred by any member of the Fund Group for or in respect of any act, deed, matter or thing whatsoever made, done, acquiesced in, permitted or omitted by any member of the Fund Group in or about or in relation to the execution of the duties of the Manager pursuant to this Agreement, save and except those which are the subject matter of indemnification by the Fund in this Agreement and save and except as contemplated in the next sentence of this section 9.7. Notwithstanding any of the foregoing, no member of the Fund Group shall be indemnified by the Manager for losses in connection therewith arising from wilful misconduct, negligence or fraud on the part of the particular member or members of the Fund Group, or a breach of this Agreement by such member or members of the Fund Group. The Manager constitutes the Fund as trustee for the indemnified members of the Fund

Group in respect of the indemnity provided by this Section 9.7, and the Fund agrees to accept such trust and to hold and enforce such covenants on behalf of such Persons.

## **ARTICLE 10 – GENERAL PROVISIONS**

**10.1 Nature of the Agreement** - This Agreement is not intended to be and shall not be treated as anything other than a management agreement relating to the conduct and operation of the business of the Fund, with the rights of the parties hereto being none other than the rights ascribed to them hereunder. Nothing in this Agreement shall be deemed in any way or for any purpose to constitute a party hereto a partner or agent of any other party hereto in the conduct of any business or otherwise or a member of a general partnership, limited partnership, joint venture, corporation, company or joint stock company.

**10.2 Survival** - The provisions of Sections 3.8, 8.4, 8.5 and 8.6 and Article 9 shall survive the termination of this Agreement and shall continue in full force and effect.

**10.3 Notices** - Any notice, request or direction required or permitted to be given hereunder shall be in writing and shall be properly given by personal delivery or by sending same by telecopier or other form of telecommunication device to the party for whom it is intended to the respective address first written above or to such other address as either party may from time to time specify by notice given in accordance herewith. Except as expressly otherwise provided in this Agreement, any notice, if delivered as aforesaid, shall be effective on the date of delivery; and, if sent by telecopier or other similar form of telecommunication device, shall be effective on the Business Day on which it was sent.

**10.4 Governing Law** - This Agreement is governed by, and is to be construed and interpreted in accordance with, the laws of the Province of Ontario and the laws of Canada applicable in the Province of Ontario.

**10.5 Arbitration** - Unless otherwise provided for in this Agreement, any and all disputes arising out of or in any way connected to this Agreement, except those which involve a party seeking an injunction, shall promptly be referred to an arbitrator under the provisions of the *Arbitration Act, 1991* (Ontario). Within 10 Business Days after a party notifies the other party of its desire to seek arbitration, the parties shall jointly appoint a single arbitrator. If the parties fail to appoint an arbitrator within such time, an arbitrator shall be designated by a judge of the Ontario Superior Court of Justice upon application by either party. The decision of the arbitrator shall be final and binding on the parties hereto. In the event of a dispute arising under this Agreement which involves a party seeking an injunction, the courts of Ontario (and the Supreme Court of Canada if necessary) shall have exclusive jurisdiction to hear and determine that dispute. In such event, each of the parties hereto irrevocably attorns to the jurisdiction of the courts of Ontario and consents to the commencement of proceedings in those courts. This paragraph shall not be construed to affect the rights of a party to enforce an award or judgment outside Ontario, including the right to record and enforce an award or judgment in any other jurisdiction.

**10.6 Time of Essence** - For every provision of this Agreement, time shall be of the essence.



**10.7 Assignment** - This Agreement may be assigned by the Manager upon consent of the Fund and subject to compliance with applicable requirements of securities regulatory authorities.

**10.8 No Amendment** - This Agreement may not be amended or modified in any respect except by written instrument signed by the parties hereto and any proposed change shall not be effective without compliance with applicable requirements of securities regulatory authorities.

**10.9 Waiver** - No waiver of any provision of this Agreement is binding unless it is in writing and signed by all the parties to this Agreement entitled to grant the waiver. No failure to exercise, and no delay in exercising, any right or remedy, under this Agreement will be deemed to be a waiver of that right or remedy. No waiver of any breach of any provision of this Agreement will be deemed to be a waiver of any subsequent breach of that provision.

**10.10 Enurement** - This Agreement shall be binding upon and shall enure to the benefit of the Fund and the Manager and their respective successors and permitted assigns.

**10.11 Entire Agreement** - This Agreement constitutes the entire agreement of the parties concerning the subject matter hereof and supersedes all prior agreements, discussions and understandings.

**10.12 Further Assurances** - Each party shall from time to time promptly execute and deliver all further documents and take all further action reasonably necessary or appropriate to give effect to the provisions and intent of this Agreement.

**10.13 Severability** - If any provision of this Agreement is or becomes illegal, invalid or unenforceable in any jurisdiction, the illegality, invalidity or unenforceability of that provision will not affect:

- (a) the legality, validity or enforceability of the remaining provisions of this Agreement; or
- (b) the legality, validity or enforceability of that provision in any other jurisdiction.

**10.14 Counterparts** - This Agreement may be executed and delivered in any number of counterparts, each of which when executed and delivered is an original but all of which taken together constitute one and the same instrument.

**10.15 Use of Trade Names** - The parties consent to the use by each other of each party's corporate and trade names in the Prospectus and promotional and marketing materials regarding the Fund; provided that any such name(s) and material(s) are reviewed and approved by the respective party prior to the use thereof (such approval not to be unreasonably withheld).

**10.16 Delivery by Fax** - Any party may deliver an executed copy of this Agreement by fax but that party shall immediately deliver to the other parties an originally executed copy of this Agreement.

**10.17 Effective Date of Amendments** - The amendments made by this Amended and Restated Management Agreement to the predecessor Amended and Restated Management Agreement dated for reference the 5<sup>th</sup> day of December, 2005 shall become effective as at the effective date of the Merger of the Fund with First Ontario Fund.

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

**GROWTHWORKS CANADIAN FUND LTD.**



Per: (Authorized Signatory)

**GROWTHWORKS WV MANAGEMENT LTD.**



Per: (Authorized Signatory)

## Schedule A

### Allocation of Investment Opportunities Policy

#### Definition

In this Policy, the following term has the following meaning:

“**Funds**” means any labour sponsored venture capital corporation or labour sponsored investment fund managed by the Manager or its affiliates (other than Working Opportunity Fund (EVCC) Ltd.).

#### Policy

The Manager agrees that in the event of a proposed investment opportunity which it believes meets the investment criteria (“mandate”) of more than one of the Funds, then the investment will be offered to each Fund on the following basis:

- (1) if any of the Funds has a shortfall in their investment pacing requirements (whether under regulatory or contractual requirements) in a particular jurisdiction or where the Manager expects the Fund to otherwise experience such a shortfall over the next 12 months, then, if the investment opportunity is in that jurisdiction, it will be offered to the Fund on at least a *pro rata* basis relative to the Funds based on their respective dollar shortfalls in such investment pacing requirements in that jurisdiction (unless the Investment Committee of the Board approves of a lesser amount being invested to accommodate inclusion of other important co-investors in connection with its approval of the investment);
- (2) if all of the Funds are in compliance with their investment pacing requirements and:
  - (a) the investment opportunity is not within the mandate of GrowthWorks Commercialization Fund Ltd. (“GWCom”) will be offered to each Fund on a *pro rata* basis based upon their respective net asset values, subject to the following adjustments:
    - (i) where a Fund has a pre-existing stake in the proposed investee, it may participate in the investment opportunity to the extent necessary to maintain up to its proportionate ownership; and
    - (ii) any Fund who wishes to participate in the investment opportunity will be entitled to invest an amount of at least \$500,000 to make its participation worthwhile. (If the amount of the investment opportunity is not large enough to accommodate all such minimum amounts, then the investment will instead be offered to each Fund on a *pro rata* basis based upon the their respective minimum amounts or regular *pro rata* amounts, whichever is greater).
  - (b) if an investment opportunity falls within the mandate of GWCom and other Funds, the opportunity will be offered to each such Fund on a *pro rata* basis based upon their respective Weighted NAV.

“Weighted NAV” will be calculated for each Fund using the following formula:

$$\text{Weighted NAV} = \text{Preferred Portfolio \%} \times \text{Venture Portfolio Size}$$

where:

“Preferred Portfolio %”, in respect of a Fund, means the percentage amount set from time to time as the preferred percentage of its venture portfolio to be invested in research/commercialization of R&D oriented companies; and

“Venture Portfolio Size”, in respect of a Fund, means the greater of: the net asset value of the Fund invested in venture investments, or the estimated amount which must over time be invested in eligible investments under applicable LSIF legislation.

This calculation and determination may be performed in advance of issuing a term sheet in respect of an investment opportunity or in advance of making the investment, in either case using net asset value numbers obtained within the previous 30 days.

The foregoing is subject to the following adjustments:

- (i) where a Fund has a pre-existing stake in the proposed investee, it will be offered the investment opportunity to the extent necessary to at least maintain up to its proportionate ownership; and
  - (ii) any Fund who wishes to participate in the investment opportunity will be entitled to invest an amount of at least \$500,000 to make its participation worthwhile. (If the amount of the investment opportunity is not large enough to accommodate all such minimum amounts, then the investment will instead be offered to each Fund on a *pro rata* basis based upon their respective minimum amounts or regular Weighted NAV *pro rata* amounts, whichever is greater).
- (3) For clarity, any investment opportunities in entities that meet GWCom’s investment mandate but have:
- (a) less than \$800,000 in assets,
  - (b) 8 or fewer full time employees, and
  - (c) no permanent managerial expertise in place;

immediately prior to investment, will be deemed to be outside the mandates of GrowthWorks Canadian Fund for being too early stage.

Specific matters of concern to the Funds and exceptions to the general policy described above will be referred by the Manager to the Investment Committee of the Board of each Fund for specific decision. The foregoing policy may be amended from time to time by the Manager and the Funds, and the Fund(s) may, with approval of the Board(s), enter into specific co-investment agreements which provide additional or other rules concerning the sharing of investment opportunities among particular Funds.

**Tab B**

## GROWTHWORKS CANADIAN FUND LTD.

September 30, 2013

GrowthWorks WV Management Ltd.  
 Suite 2200  
 Exchange Tower  
 130 King Street West  
 Toronto  
 ON M5X 1E3

Attention: David Levi, President

Dear Sirs/Mesdames:

Re: Management Agreement

We refer to the Amended and Restated Management Agreement dated July 15, 2006 (the "Management Agreement") between GrowthWorks Canadian Fund Ltd. (the "Fund") and GrowthWorks WV Management Ltd. (the "Manager").

Pursuant to the Management Agreement, the Manager has been appointed as the manager of the Fund to provide or cause to be provided to the Fund certain management and administration services (the "Services"), including management of the day-to-day operations of the Fund; portfolio advisory and investment management services; ensuring compliance in all material respects with securities laws, regulations and policies relating to the operation of the Fund; selecting, instructing and supervising all service providers to the Fund deemed necessary by the Manager for the due operation of the business of the Fund; calculating the net asset value of the Fund and the net asset value per share of each series of Class A Shares of the Fund; and bookkeeping and internal accounting services.

Under the Management Agreement, the Manager has agreed, among other things, that (i) the Manager will comply with the securities laws and regulations, the requirements of the Canadian securities administrators and policy statements of the securities regulatory authorities insofar as they relate to the Manager's duties and obligations under the Management Agreement (Section 3.4 of the Management Agreement); and (ii) it will exercise the powers and authorities granted to it under the Management Agreement, and discharge its duties under the Management Agreement, honestly, in good faith and in the best interests of the Fund and, in connection therewith, will exercise a degree of care, diligence and skill that a reasonably prudent person would exercise in the circumstances (Section 3.5 of the Management Agreement).

Section 3.6 of the Management Agreement provides that the Manager may engage, contract or employ other persons the Manager deems advisable in connection with providing the Services and may delegate any part of its duties and powers set out in the Management Agreement as it considers necessary or appropriate in the course of providing the Services. In Section 3.6 of the Management Agreement, the Manager acknowledges and agrees that any such arrangement or delegation will in no way diminish the obligation of the Manager to the Fund for the Services or the standard of care owed to the Fund with respect to the provision of the Services. You have advised the board of directors of the Fund (the "Board") that the Manager

This is Exhibit B referred to in the  
 affidavit of C. Ian Ross  
 sworn before me, this 30  
 day of September 2013

  
 A COMMISSIONER FOR TAKING AFFIDAVITS

has delegated certain of its duties under the Management Agreement, to GrowthWorks Capital Ltd. ("GWC") including services requiring registration under applicable securities laws.

Under Section 3.7 of the Management Agreement, the Manager must have and ensure that all persons associated with providing the Services will have, the necessary registrations and approvals under applicable securities laws and regulations to provide the component of the Services they are providing.

Pursuant to Section 3.9(a) of the Management Agreement, the Manager is required to keep proper books of account and records for the Fund.

In consideration for providing the Services, the Manager is entitled to receive, and has received, management and administration fees which totalled approximately \$6,000,000 for the 12 months ended August 31, 2013.

Under Section 6.1 of the Management Agreement, the Manager has agreed to pay all normal operating expenses of the Fund incurred in providing the Services, including legal and annual audit and valuation fees.

Pursuant to Section 8.2(c) of the Management Agreement, the Management Agreement may be terminated by the Fund upon a material breach of the Management Agreement by the Manager where written notice of such breach is given to the Manager by the Fund and, if such breach is capable of being remedied, the Manager has not remedied the breach within 60 days after such notice is received by the Manager.

The Fund hereby gives notice to the Manager of the following material breaches of the Management Agreement by the Manager:

- (a) The Manager is in material breach of Sections 3.4 and 3.5 of the Management Agreement. By letters to GWC dated April 16, 2013 and April 30, 2013 and in comments made by Staff of the BCSC to GWC in a related meeting (copies of which are attached hereto as Exhibits "A", "B" and "C" (a written transcript of such comments, respectively), the British Columbia Securities Commission (the "BCSC") has, as part of its most recent compliance field examination of GWC, found, and it is the position of the Fund, that GWC and the Manager (as GWC conducts registerable activities for the Manager) breached a number of provisions of applicable securities laws in connection with the provisions of Services to the Fund following:
  - (i) In breach of section 125 of the *Securities Act* (British Columbia) (the "BC Securities Act") and Section 3.5 of the Management Agreement, GWC breached its fiduciary duty to the Fund. The BCSC found that GWC did not exercise the powers and discharge the duties of its office in the best interests of the Fund, nor did GWC exercise the degree of care, diligence, and skill that a reasonably prudent person would exercise in the circumstances, and that GWC has preferred its own interests to those of the Fund and other funds managed by the Manager and GWC. GWC's failure to consider all the scenarios and actions for dealing with the Canadian Fund's distressed financial situation was not in the best interests of the Fund.

- (ii) GWC violated section 2, chapter 3 of its Policies and Procedures Manual ("PPM"). The PPM requires GWC to act "in the best interest of an investment fund managed by GrowthWorks". In violating the provisions of its PPM, GWC also breached section 11.1 of NI 31-103 *Registration Requirements, Exemptions and Ongoing Registrant Obligations* ("NI 31-103"). Section 11.1 of National Instrument 31-103 required GWC to apply policies and procedures that establish a system of controls and supervision sufficient to manage the risks associated with its business in accordance with prudent business practices.
  - (iii) In breach of Section 14 of the Rules, made under the BC Securities Act, GWC did not deal fairly with the Fund when recommending that the Fund borrow \$33.5 million over the period from May 2010 to May 2012.
  - (iv) GWC violated section 2, chapter 3 of its PPM. The PPM requires GWC to avoid any activities, interest or associations which might interfere or give the appearance of interference with the independent exercise of their judgment, in the best interest of its managed funds. As GWC did not deal fairly when recommending the Canadian Fund borrow \$33.5 million over the period May 2010 to May 2012, it violated its PPM. In violating the provisions of its PPM, GWC also breached section 11.1 of NI 31-103. Section 11.1 of NI 31-103, required GWC to apply policies and procedures that establish a system of controls and supervision sufficient to manage the risks associated with its business in accordance with prudent business practices.
  - (v) In breach of Section 11.1 of NI 31-103, GWC failed to establish, maintain, and apply policies and procedures that establish a system of controls and supervision sufficient to provide reasonable assurance that the firm and each individual acting on its behalf complies with securities legislation and manage the risks associated with its business in accordance with prudent business practices.
- (b) The Manager is in material breach of Section 3.4 of the Management Agreement. By a memorandum dated August 22, 2013 from GWC to the Board, GWC advised the Board that GWC is in breach of Section 12.1 of NI 31-103 and that certain conditions have been placed on GWC as a registrant for purposes of applicable securities laws;
- (c) By a memorandum dated June 4, 2013 from the Manager to the Audit Committee to the Board, the Manager admitted that it had made an error in connection with a follow-on financing by the Fund in Cytochroma Inc. ("Cytochroma") in the first quarter of 2012 when the Manager improperly allocated to GrowthWorks Commercialization Fund Ltd. securities of Cytochroma that should have been allocated to the Fund. The Manager subsequently failed to make due inquiries when Cytochroma initially delivered securities to the Manager in respect of that financing. Those securities of Cytochroma were subsequently exchanged for common shares of OPKO Health, Inc. in connection with the sale of Cytochroma. As a result, 88,403 common shares of OPKO Health, Inc. remain in the control of GrowthWorks Commercialization Fund Ltd., a separate investment fund. The Manager has not taken any action to rectify this matter. Accordingly, the



Manager has materially breached its obligations under (i) Section 3.5 of the Management Agreement to (A) act in the best interests of the Fund, and (B) exercise the degree of care, diligence and skill that a reasonably prudent person would exercise in the circumstances, and (ii) Section 3.9(a) to provide proper books of account and records for the Fund;

- (d) In connection with the Cytochroma transaction referred to in clause (c) above, a senior employee of the Manager at the time, Joseph Regan, has advised representatives of the Fund that he did not carefully read, before signing on behalf of the Fund, an Acknowledgement and Receipt between the Fund and Roseway that purports to impose on the Fund material contractual obligations in favour of Roseway with respect to the beneficial ownership of, and entitlement to divestment proceeded from, the sale of securities of OPKO Health, Inc. That document is now relied upon by Roseway as a basis for claiming from the Fund approximately \$1.9 million in proceeds realized by the Fund in connection with the sale of those securities of OPKO Health, Inc. In executing that document without due (or any) consideration to its legal effect from the standpoint of the Fund, the Manager has materially breached its obligations under Section 3.5 of the Management Agreement, to (i) act in the best interests of the Fund, and (ii) exercise the degree of care, diligence and skill that a reasonably prudent person would exercise in the circumstances;
- (e) In connection with a reconciliation prepared by PricewaterhouseCoopers ("PWC") on behalf of Roseway Capital S.a.r.l. ("Roseway") with respect to participating interest payments owing by the Fund to Roseway under the Participation Agreement dated May 28, 2010 between the Fund and Roseway, PWC discovered numerous errors by the Manager in relation to the accounts maintained by the Manager on behalf of the Fund and the calculation in payment of those participating interest payments to Roseway. These errors on the part of the Manager have caused the Fund to incur significant payments to Roseway and significant professional fees and expenses. Accordingly, the Manager has materially breached its obligations under (i) Section 3.5 of the Management Agreement to exercise the degree of care, diligence and skill that a reasonably prudent person would exercise in the circumstances, and (ii) Section 3.9(a) of the Management Agreement to keep proper books of account and records for the Fund; and
- (f) As set forth in the letters of the Fund's counsel, McCarthy Tétrault LLP dated June 18, 2013 and September 19, 2013, the Fund has improperly used the authority granted to the Manager under Section 3.1 of the Management Agreement to act on behalf of the Fund by causing the Fund to pay legal and accounting expenses that the Manager is required to pay pursuant to Section 6.1 of the Management Agreement. As a result, the Manager has materially breached its obligations under Sections 3.3, 3.5 and 6.1 of the Management Agreement.

None of the material breaches of the Management Agreement described in paragraphs (a), (c), (d) and (e) above is capable of being remedied, and the material breaches of the Management Agreement described in paragraph (f) above have not been cured by the Manager within 60 days of notice thereof by the Fund to the Manager. Accordingly, the Fund hereby gives notice to the Manager that the Management Agreement is hereby terminated pursuant to Section

8.2(c) thereof, effective immediately.

The Fund hereby reserves the right to pursue all legal remedies with respect to any breach of the Management Agreement by the Manager prior to the termination thereof.

Pursuant to Section 8.5 of the Management Agreement, the Fund hereby demands that the Manager promptly deliver to the Fund's counsel, McCarthy Tétrault LLP at Suite 5300, Toronto Dominion Bank Tower, 66 Wellington Street West, Toronto, Ontario M5R 1E6 (Attention: Jonathan Grant) all records, including, without limitation, electronic records or data in a form accessible to the Fund of or relating to the affairs of the Fund in the custody, possession or control of the Manager or any of its delegates or affiliates (including, without limitation, (i) a current list of the shareholders of the Fund; (ii) copies of all requests seeking redemption of Class A shares of the Fund that are outstanding; (iii) all other information relating to the holders of Class A shares of the Fund on a per series and per shareholder basis; (iv) all contracts to which the Fund is a party or is otherwise bound (to the extent not previously delivered to McCarthy Tétrault LLP); (v) all accounting books and records for the year ended August 31, 2013 and the interim period ending September 30, 2013, including, without limitation, the general ledger, trial balances, all sub ledgers, all excel work sheets and other work product used to support accounting balances and/or note financial statement note disclosure and all working papers prepared for KPMG LLP to complete the Fund's fiscal 2013 financial statement audit; (vi) all records relating to any investment held by the Fund in any portfolio company or otherwise, including, without limitation, contact information for all investee companies of the Fund and their respective securityholders; (vii) the identity, contact name, telephone number and email address of all third party suppliers who provide services to the Fund, GWC or any of their respective affiliates to assist the Manager with its obligations under the Management Agreement, including, without limitation, auditors, valuers, shareholder recordkeeping service providers, technology licensors, and commissions payable service providers; (viii) all tax records; (ix) all bank account and related records; and (x) all brokerage or similar account and related records).

Yours truly,

**GrowthWorks Canadian Fund Ltd.**



C. Ian Ross  
Chairman

**Exhibit "A"**



British Columbia Securities Commission

By email

April 16, 2013

File #119978

David Levi  
David Balsdon  
Growth Works Capital Ltd.  
2600 – 1055 West Georgia Street  
Vancouver, BC V6E 3R5

Dear Messrs Levi and Balsdon:

**Growth Works Capital Ltd. (GWC) - Compliance Examination**

We provide you the results of our most recent compliance field examination. The purpose of our examination was to assess your overall business conduct, system of compliance, and internal controls against the regulatory requirements of BC's securities legislation.

This exam report describes weaknesses we identified in GWC's system of compliance procedures and internal controls. In this letter, we use *GWC* to mean Growth Works Capital Ltd. and Growth Works WV Management Ltd, as Growth Works Capital Ltd. conducts registerable activities for Growth Works WV Management Ltd.

We identified nine significant deficiencies, which are set out in this letter. We cite the relevant rules and requirements in the *Securities Act* [RSBC 1996] Chapter 418 (Act), the *Securities Rules* B.C. Reg. 194/97 (Rules), and National Instrument 31-103 *Registration Requirements, Exemptions and Ongoing Registrant Obligations* (NI 31-103) in Appendix A.

We have significant concerns about GWC's conduct as a portfolio manager and an investment fund manager. We are considering further regulatory action.

In the interim, we propose that GWC and Working Opportunity Fund (EVCC) Ltd. (WOF) provide us with undertakings pursuant to section 57.6 of the *Act*. Copies of the undertakings are attached to this letter. We request that signed copies of these undertakings be returned to us by April 26, 2013.

We also require, in the interim, that GWC respond in writing by May 15, 2013 with its plans (including timelines) to ensure that the deficiencies cited in this letter are not repeated and to ensure, that GWC has a substantive culture of compliance in which serious issues are flagged and dealt with appropriately.



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- Page 17 of the 2010 prospectus provides that directed funds for the Balanced Venture Series share class may be “high yield investments”. However, the specific examples listed in the 2010 prospectus, such as bonds and securities or real estate investment trusts and power and pipeline income funds, are not equivalencies to the WOF loan.
- Page 17 of the 2010 prospectus provides that directed funds for the Growth Venture Series share class may be funds or pools of publically traded Canadian shares or equity securities. However, the specific examples listed in the 2010 prospectus, such as index funds that invest in component securities of broad market indexes like the S&P/ TSX Composite Index, are not equivalencies to the WOF loan.

A reasonably prudent person would ensure that any directed funds investment fit within the investment objectives specified in the 2010 prospectus, including providing significant liquidity and further investment diversification. That would demonstrate the exercise of a degree of care, diligence and skill in ensuring the investment was appropriate, met WOF’s needs and addressed the risks WOF required directed funds to offset.

- Discounted rate

The interest rate on the WOF loan was at a substantial discount to market rate and accordingly GWC’s recommendation to make the WOF loan was not in the best interests of WOF.

A reasonably prudent person, before recommending the WOF loan would have conducted substantial research to assess the appropriate rate of interest. That would demonstrate the exercise of a degree of care in ensuring the interest rate was reasonable, diligence in gathering information to support the interest rate, and skill in setting the interest rate. Instead, GWC’s research about general interest rates offered by lenders was not relevant considering the distressed circumstances of the borrower. The initial interest rate on the WOF loan was set at 12% in March 2011, which was not an appropriate rate:

- It was much lower than the 28.5%<sup>1</sup> interest rate that Canadian Fund was paying to a third party lender, Roseway Capital L.P. (Roseway) on a loan made on May 28, 2010 (Roseway loan).<sup>2</sup>
- Canadian Fund was unable to obtain financing at 12% from other parties. At the same time as GWC was attempting to secure the WOF loan, it was seeking

<sup>1</sup> Note - based on an annual \$5.7 million minimum participation interest payment over the \$20 million loan  
<sup>2</sup> Note - Roseway had priority over a \$36 million portfolio of securities of the Canadian Fund and WOF had priority on the remaining portfolio assets of Canadian Fund. Compliance staff are of the view the overall terms of the two loans do not justify the lower rate on the WOF loan.



### 1.1.2 Unsuitable sale of investments

In breach of section 13.3 of NI 31-103, GWC did not take reasonable steps to ensure that before it made a purchase or sale of a security for WOF's managed account, the purchase or sale was suitable for WOF.

On May 18, 2011, GWC as portfolio manager for WOF, invested \$9.5 million in the managed account it operated for WOF. The WOF loan is an investment, Canadian Fund issued a note to WOF. The investment is a directed funds investment of WOF's Growth and Balanced Venture Series share classes.

In order for WOF to make this investment, GWC sold suitable directed funds investments of WOF's Growth and Balanced Venture Series share classes for cash. According to WOF's December 31, 2010 annual financial statements, the Growth and Balanced Venture Series were fully invested, each with less than 1% cash on hand. During 2011, GWC sold 98% and 91% of the Growth and Balanced Venture Series' directed funds investments respectively according to WOF's December 31, 2011 annual financial statements. The disposed investments included bonds, Canadian listed equities, trust units, and bank securities. These investments met the directed funds investment objectives of the Growth and Balanced Venture Series to provide significant liquidity and further investment diversification, as stated in the 2010 prospectus.

The investment in the WOF loan was unsuitable as a directed funds investment for WOF's Growth and Balanced Venture Series share classes. It did not meet the investment objectives to provide significant liquidity and further investment diversification, as described in point 1.1.1 above.

GWC's decision to sell investments in order to raise cash to invest in the WOF loan was unsuitable because:

- The \$9.5 million note is not publicly traded and has less liquidity compared to the triple-A rated bonds and listed equities<sup>5</sup> that the Growth and Balanced Venture Series previously held.
- As at December 31, 2011, the note made up 94% and 62% of directed funds investments of the Growth and Balanced Venture Series and accordingly the portfolios were less diversified.
- The directed funds investments of the Growth and Balanced Venture Series no longer met their investment objectives as set out in the 2010 prospectus.

GWC violated section 3, chapter 3 of its PPM. The PPM requires GWC to "know and abide by the mandate set forth in the specific portfolio's prospectus". In violating the provisions of its PPM, GWC also breached section 11.1 of NI 31-103. Section 11.1 of NI 31-103, required GWC to apply policies and procedures that establish a system of

<sup>5</sup> Note – this information comes from the financial statements.



## 1.2 WOF's inter-series balance—Significant deficiencies

WOF has two series of share classes, the venture series (Venture series) and the commercialization series (Comm series). Under National Instrument 81-106 *Investment Fund Continuous Disclosure*, the Venture series and the Comm series are treated as separate investment funds because each has a separate portfolio of assets. Accordingly, GWC as an investment fund manager and portfolio manager of WOF owed separate obligations to each of the Venture series and Comm series.

GWC as the investment fund manager of WOF facilitated inter-series lending from the Comm series to the Venture series. As at June 30, 2012, the Comm Series had an inter-series receivable balance of \$18.9 million from the Venture series. This inter-series receivable has been steadily increasing since June 30, 2011 both in terms amount and as a percentage of the Comm series NAV. On June 30, 2011, it represented 27.5% of the NAV, by December 31, 2011, it represented 31% of NAV and by June 30, 2012, it had risen to 60% of NAV. The effect of the inter-series receivable is that the Comm series is lending cash equivalent to 60% of its NAV to the Venture series.

Based on the Comm's series' 2012 interim financial statements, during the six months ending June 30, 2012:

- GWC disposed all of Comm series' non-venture investments such as bonds, deposits and income notes.
- GWC transferred 100% of the \$5,869,761 proceeds from disposing portfolio assets to the Venture series.
- Comm series raised \$7,143,817 from investors by issuing new shares, GWC transferred 82% of these proceeds, or \$5,924,047 to the Ventures series.
- GWC used no proceeds from the sale of new Comm series shares to purchase portfolio investments.

As noted below in point 1.2.3, the sale of Comm Series investments in order to raise cash for inter-series transfers to Venture Series resulted in the Comm series having no directed funds investment as at June 30, 2012 and, therefore, it was no longer meeting its investment objectives as set out in the July 8, 2011 simplified prospectus of WOF (2011 prospectus).

The points below set out what was wrong with the inter-series transfers.

### 1.2.1 Standard of care to WOF

In breach of section 125 of the Act, GWC did not exercise the powers and discharge the duties of its office in the best interests of the Comm series, nor did GWC exercise the degree of care, diligence and skill that a reasonably prudent person would exercise in the circumstances.





A reasonably prudent person would invest proceeds raised from the sale of shares in the Comm series. That would demonstrate the exercise of a degree of care, diligence and skill in managing the Comm series. Again, allowing the Comm series to use the 2011 prospectus to raise money from the public and then not following the investment objectives set out in the 2011 prospectus, demonstrates a lack of care, diligence and skill in managing the Comm series.

- **Quantum of inter-series receivable**

The material growing balance, percentage it represented of the Comm series NAV and the long outstanding period of the inter-series receivable increased the Comm series' risk profile. Comm series gained additional exposure to venture investments as the collectability of the inter-series receivable from the Venture series largely depended on the success of the Venture series' investments. Having such a large portion of its NAV lent to the Venture series and this additional exposure to venture investments was not in the best interest of the Comm series.

A reasonably prudent person would closely monitor receivables and ensure they did not comprise a significant portion of fund's NAV. That would demonstrate the exercise of a degree of care in ensuring the fund met its overall target asset mix and mandate. It would also demonstrate the exercise of diligence and skill in monitoring the Comm series' risk profile. Over the period from June 30, 2011 to June 30, 2012, the inter-series receivable increased from \$6.2 million to \$18.89 million, representing an increase in the percentage of the Comm series NAV from 27.5% to 60% of the NAV. Allowing this to occur, demonstrates a lack of care, diligence, and skill in managing the Comm series.

GWC violated section 2, chapter 3 of its PPM. The PPM requires GWC to act "in the best interest of an investment fund managed by GrowthWorks". In violating the provisions of its PPM, GWC also breached section 11.1 of NI 31-103. Section 11.1 of NI 31-103, required GWC to apply policies and procedures that establish a system of controls and supervision sufficient to manage the risks associated with its business in accordance with prudent business practices.

**Regulation**

Section 125 of the Act  
Section 11.1 of NI 31-103

**1.2.2 Conflicts of interest**

In breach of section 13.4 of NI 31-103, GWC did not take reasonable steps to identify existing material conflicts of interest, and material conflicts of interest that in its reasonable opinion would expect to arise, between itself, and each individual acting on its behalf, and the Comm series. Further, it failed to appropriately respond to these existing or potential conflicts of interest.



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### 1.2.3 Unsuitable sale of investments

In breach of section 13.3 of NI 31-103, GWC did not take reasonable steps to ensure that before it makes a purchase or sale of a security for WOF's managed account, the purchase or sale is suitable for WOF.

GWC as the portfolio manager for WOF did not take reasonable steps to assess suitability when it sold off all the Comm series directed funds investments and transferred the cash to the Venture series. Prior to this divestment, the directed funds investments of the Comm series consisted of bonds and income notes<sup>7</sup>. Those investments were suitable because they met the investment objectives to provide significant liquidity and further investment diversification, as described on page 14 of the 2011 prospectus. Following the sale of these directed funds investments, the Comm series no longer held any directed funds investments that provided significant liquidity and further investment diversification.

GWC's decision to sell Comm Series investments in order to raise cash for inter-series transfers to Venture Series was unsuitable because:

- The Comm series had no directed funds investment as at June 30, 2012 and, therefore, no longer met its investment objectives as set out in the 2011 prospectus.
- The Comm series no longer had any directed funds investments to diversify the risks of venture investments. Without any directed funds investments, the risk profile of the Comm series increased due to the lack of diversification.

GWC violated section 3, chapter 3 of its PPM. The PPM requires GWC to "know and abide by the mandate set forth in the specific portfolio's prospectus". In violating the provisions of its PPM, GWC also breached section 11.1 of NI 31-103. Section 11.1 of NI 31-103, required GWC to apply policies and procedures that establish a system of controls and supervision sufficient to manage the risks associated with its business in accordance with prudent business practices.

#### *Regulation*

Section 13.3 of NI-31-103

Section 11.1 of NI 31-103

## 2.0 The Growthworks Canadian Fund (Canadian Fund)

### 2.1 The handling of Canadian Fund's distressed financial situation and related party and external financing—Significant deficiencies

Since 2010, the Canadian Fund has been in a distressed financial situation. The Canadian Fund:

<sup>7</sup> Note - assessed based on the financial statements.



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an unrealistic assessment. GWC had no records demonstrating that it had considered a wind down scenario prior to the BCSC staff request.

A reasonably prudent person would have considered the possibility and impact of a wind down scenario on an ongoing basis after the fund ran into liquidity issues and exit difficulties in 2010. That would demonstrate the exercise of a degree of care in considering the ongoing viability of the fund. It would also demonstrate the exercise of diligence and skill in gathering and testing internal and external factors that may affect the fund's viability, particularly when a fund is in financial distress

- Failure to consider wind down over leveraging  
GWC did not assess the impact of leveraging the Canadian Fund versus winding down the fund, when recommending it borrow.

During fieldwork, BCSC staff asked GWC to provide records demonstrating it considered wind down scenarios each time it recommended borrowing. GWC provided the October 2012 wind down analysis described above. GWC provided no other records to demonstrate that it had considered a wind down scenario at any other time, including when it recommended the borrowing.

A reasonably prudent person would consider the possibility and impact of a wind down scenario before recommending a financially distressed fund borrow and incur more liabilities. That would demonstrate the exercise of a degree of care in ensuring all appropriate alternatives were considered. It would also demonstrate the exercise of diligence in gathering information to assess each alternative. Finally, it would demonstrate the exercise of skill in choosing the most appropriate outcome, given the financial distress of the fund.

GWC violated section 2, chapter 3 of its PPM. The PPM requires GWC to act "in the best interest of an investment fund managed by GrowthWorks". In violating the provisions of its PPM, GWC also breached section 11.1 of NI 31-103. Section 11.1 of NI 31-103, required GWC to apply policies and procedures that establish a system of controls and supervision sufficient to manage the risks associated with its business in accordance with prudent business practices.

#### ***Regulation***

Section 125 of the Act

Section 11.1 of NI 31-103



### 3.0 Compliance and supervision

#### 3.1 Compliance system—Significant deficiency

In breach of Section 11.1 of NI 31-103, GWC failed to establish, maintain, and apply policies and procedures that establish a system of controls and supervision sufficient to provide reasonable assurance that the firm and each individual acting on its behalf complies with securities legislation and manage the risks associated with its business in accordance with prudent business practices.

The points below set out why GWC's compliance system failed.

GWC established and maintained a PPM that sets out:

- fiduciary duties owed to clients (Section II Staff Conduct, Chapter 1 Guidelines for Business Conduct, point 1.2 Ethical Standards on page 25 of the PPM);
- suitability obligations with respect to the operation of a client's managed account (Section IV Sales Compliance, Chapter 1 Trade Suitability, Obligation and Application on page 92 of the PPM; and Section III Trading and Portfolio Management, Chapter 3 Portfolio Management, point 3.2 Investment Objectives, Strategies and Restrictions-Venture Capital Division on page 80 of the PPM);
- conflicts of interest obligations (Section II Staff Conduct, Chapter 1 Guidelines for business conducts, point 1.7 Conflicts of Interest on page 26 of the PPM; Section II Staff Conduct, Chapter 3 Conflicts of Interest on page 35 of the PPM; and Section III Trading and Portfolio Management, Chapter 3 Portfolio Management on page 77 of the PPM); and
- fair dealing obligations (Section II Staff Conduct, Chapter 1 Guidelines for Business Conduct, point 1.2 Ethical Standards on page 24 of the PPM).

GWC failed to apply these policies and procedures to ensure a system of controls and supervision sufficient to provide reasonable assurance that the firm and each individual acting on its behalf complies with securities legislation. GWC breached its:

- statutory fiduciary duty under section 125 of the Act by:
  - recommending the WOF loan as described in point 1.1.1 above
  - facilitating the inter-series transfers as described in point 1.2.1 above
  - failing to consider all scenarios and actions for dealing with Canadian Fund's distressed financial condition, as described in point 2.1.1 above
- suitability obligations under section 13.3 of NI 31-103 by:
  - selling suitable investments in order to invest in the WOF loan which was unsuitable, as described in point 1.1.2 above
  - selling suitable investments to facilitate the inter-series transfers, as described in point 1.2.3 above.



## Appendix A

Section 125 of the Act states that every investment fund manager must exercise the powers and discharge the duties in the best interests of the investment fund, and exercise the degree of care, diligence and skill that a reasonably prudent person would exercise in the circumstances.

Section 14 of the Rules states that a registrant must deal fairly, honestly and in good faith with the clients of the registrant.

Section 5.1 *Responsibilities of the ultimate designated person* of NI 31-103 requires the ultimate designated person to:

- a. supervise the activities of the firm that are directed towards ensuring compliance with securities legislation by the firm and each individual acting on the firm's behalf
- b. promote compliance by the firm, and individuals acting on its behalf, with securities legislation

Section 5.2 of NI 31-103 *Responsibilities of the chief compliance officer* requires the chief compliance officer to:

- a. establish and maintain policies and procedures for assessing compliance by the firm and individuals acting on its behalf, with securities legislation
- b. monitor and assess compliance by the firm, and individuals acting on its behalf, with securities legislation

Section 11.1 *Compliance system* of NI 31-103 requires registered firms to establish, maintain, and apply policies and procedures that establish a system of controls and supervision sufficient to:

- a. provide reasonable assurance that the firm and each individual acting on its behalf complies with the securities legislation
- b. manage the risks associated with its business in accordance with prudent business practices.

Section 13.3 *Suitability* of NI 31-103 requires a registrant to take reasonable steps to ensure that, before it makes a recommendation to or accepts an instruction from a client to buy or sell a security, or makes a purchase or sale of a security for a client's managed account, the purchase or sale is suitable for the client.

Section 13.4 *Identifying and responding to conflicts of interest* of NI 31-103 requires a registrant to take reasonable steps to identify existing material conflicts of interest, and material conflicts of interest that the registered firm in its reasonable opinion would expect to arise, between the firm, including each individual acting on the firm's behalf, and a client. A registrant must respond to an existing or potential conflict of interest.

**Exhibit "B"**



British Columbia Securities Commission

By email

April 30, 2013

File #119978

David Levi  
David Balsdon  
Growth Works Capital Ltd.  
2600 – 1055 West Georgia Street  
Vancouver, BC V6E 3R5

Dear Messrs Levi and Balsdon:

**Growth Works Capital Ltd. (GWC) - Compliance Examination**

Further to our letter of April 16, 2013, we provide you the additional results of our most recent compliance field examination. The purpose of our examination was to assess your overall business conduct, system of compliance, and internal controls against the regulatory requirements of BC's securities legislation.

This exam report describes weaknesses we identified in GWC's system of compliance procedures and internal controls. In this letter, we use *GWC* to mean Growth Works Capital Ltd. and Growth Works WV Management Ltd, as Growth Works Capital Ltd. conducts registerable activities for Growth Works WV Management Ltd.

Significant deficiencies were identified during our review, which are outlined in this report. We cite the relevant rules and requirements in the *Securities Act* [RSBC 1996] Chapter 418 (Act), the *Securities Rules B.C. Reg. 194/97* (Rules), and National Instrument 31-103 *Registration Requirements, Exemptions and Ongoing Registrant Obligations* (NI 31-103) in Appendix A.

Our concerns about GWC's conduct as a portfolio manager and an investment fund manager are serious, and we are considering further regulatory action.

We require GWC to respond in writing by May 31, 2013 describing the steps you will take to resolve each item.

Under section 141.2(5) of the Act, the Executive Director may require a registrant to pay the costs of a compliance review. Examiners spent a total of 1,137 hours on GWC's review. The deficiencies we found are serious, and the review was complex. We are charging 20% of the exam time, 227.4 hours.



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## 4.0 Marketing

### 4.1 Performance disclosures

We reviewed a sample of information sheets for the Matrix Funds, including the:

- Matrix Money Market Fund
- Matrix International Balanced Fund
- Matrix Monthly Pay Fund

The disclosures at the bottom of the information sheets briefly discuss that management fees may be associated with mutual fund investments. However, the disclosure fails to clarify if the performance figure presented is gross or net of management fees. The materials could mislead the funds to assume the figures are either gross or net and the assumption might be wrong.

Section 14 of the Rules requires you to deal fairly, honestly and in good faith with your clients. Your clients are the funds. GWC's marketing information must not be misleading either to the funds or to the dealers and financial services providers the funds send the marketing materials to.

Section 15.2(1)(a) *Sales Communications – General Requirements* of National Instrument 81-102 *Mutual Funds* (NI 81-102) states that no sales communication shall be untrue or misleading. You should ensure that all marketing materials provide appropriate disclosure when quoting performance returns. In addition, you should ensure that your marketing materials disclose whether performance returns are net or gross of fees and/or other expenses.

#### ***Regulation***

Section 14 of the Rules

Section 15.2(1)(a) of NI 81-102

### 4.2 Unsubstantiated claims

We reviewed a template letter prepared for the funds and targeted to WOF investors. The title of the letter is, "Save up to \$3,000 2012-2013."

The third paragraph of the template letter claims, "Save up to \$3,000 on your taxes and get proven management performance from Western Canada's most experienced venture capital team."

The letter does not provide information to support the claims of "proven management performance" and "Western Canada's most experienced venture capital team."



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You should ensure that all marketing materials provide appropriate disclosure when using benchmarks as a comparison

***Regulation***

Section 14 of the Rules  
Section 15.3(1)(c) of NI 81-102

**4.4 Performance benchmarks**

We reviewed a four-page, January 2012 WOF Fund Insights – Venture Series brochure. Page three of this brochure presents performance data for the various series of units for the WOF. The performance data is in a table and presents two sets of figures to include and exclude the benefits of tax credits to the performance of the WOF series of funds.

The performance data including tax credits references the NASDAQ Composite Index as a benchmark. The brochure fails to disclose the relevance of the NASDAQ Composite Index as a benchmark for the performance of the various WOF series, including tax credits.

The performance data, excluding tax credits, references the Globe Peer Index as a benchmark. The brochure fails to specify which of the over 50 Globe Peer Indices is the actual benchmark for the performance of the various WOF series, excluding tax credits. Your staff advised us that the index is the Globe Retail Venture Capital Peer Index. Your brochure fails to disclose the relevance of this benchmark for the performance of the WOF series, excluding tax credits.

Section 14 of the Rules requires you to deal fairly, honestly and in good faith with your clients, the funds. You must prepare accurate marketing documentation that you provide to your funds. Your marketing information must not be misleading as it is distributed by the funds to a host of dealers and financial services providers.

Section 15.3(1)(c) of NI 81-102 states that sales communication shall not compare the performance of a mutual fund or asset allocation service with the performance or change of any benchmark or investment unless it explains clearly any factors necessary to make the comparison fair and not misleading.

You should ensure that all marketing materials provide appropriate disclosure when using benchmarks and charts as a comparison

***Regulation***

Section 14 of the Rules  
Section 15.3(1)(c) of NI 81-102



Growth Works Capital Ltd.

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***Regulation***

Section 14 of the Rules

Section 15.3(1)(a) of NI 81-102

Section 15.3(1)(c) of NI 81-102

**Exhibit "C"**

**Introductions.**

**Mr. Levi and Mr. Balsdon, I asked staff to book a meeting with you because, after reviewing your records and interviewing your staff, we have identified a number of significant compliance deficiencies. The most serious is that Growth Works failed to meet its fiduciary obligations to Canadian Fund and WOF.**

**I have two objectives today. They are to:**

- 1. explain to you at a high level why we have concluded that GWC breached its fiduciary duties to Canadian Fund and to WOF**
- 2. propose a course of action to address our immediate concerns**

**I don't want to spend time with you today debating whether our findings are or are not valid. I do want you to understand the basic rationale for our findings. And I do want you to understand what will alleviate our immediate concerns.**

**GWC did not, until the Commission asked you to do it, even consider whether winding down Canadian Fund might be a better option than continuing to borrow at very high rates of interest. We think a reasonably prudent person would not only have considered a wind down option, but would have discussed it with Canadian Fund's IRC and its board of directors. It would have been in the best interests of Canadian Fund for the IRC and board to have had options to choose from.**

**This failure to consider options not only breached GWC's fiduciary duty to Canadian Fund, it also breached GWC's own policies and procedures.**

**The recommendations that GWC made to Canadian Fund to borrow \$33.5 million between May 2010 and May 2012 also did not meet the requirement that you deal fairly with the fund as it became more and more clearly distressed.**

**Finally, instead of it being in the best interests of Canadian Fund, the recommendations to borrow were in GWC's best interests. The leveraging enabled GWC to collect accrued management fees and to continue to collect fees for managing**

of shares to even more venture volatility (because the loan was made to another, distressed venture fund).

This recommendation was made on terms considerably more favourable to Canadian Fund than an arm's length transaction would have been. We know this because other loans Canadian Fund was able to secure were made at rates considerably higher than the rate WOF offered. It may have been in Canadian Fund's interest to obtain this loan at a significantly more favourable rate than would have been available commercially, but it was not in WOF's best interest. Instead, it would have been in WOF's best interests to recommend investments that fit the "directed funds" purposes, as described in the prospectus.

*Inter-series transfers*

GWC's recommendation to make an inter-series transfer from the Commercialization series to the Venture series was also a breach of GWC's duty to the Comm series. It was not in the best interests of the Commercialization series to:

- ◆ dispose of all its non-venture assets

- ◆ **at its own cost (not to be passed on to any of the funds) retain an independent expert acceptable to me to prepare a written report about Canadian Fund's financial viability and the best course of action for Canadian Fund going forward**
  
- ◆ **provide that report to me and to the Canadian Fund Board**
  
- ◆ **refrain from recommending any transactions between Canadian Fund and other funds GWC manages**
  
- ◆ **provide additional financial reporting, including**
  - **monthly financial statements for Growth Works WV Management Ltd. and Growth Works Atlantic Ltd.**
  - **unaudited quarterly financial statements for Canadian Fund**
  - **monthly ledger, NAV, investments, and transactional information for Canadian Fund**

**We ask that you return the signed undertakings to us by the end of business on Friday, April 26. The undertakings will be attached to the detailed letter I send you immediately after this meeting.**



**It is important that you understand, as well, that although the undertakings would alleviate our immediate concerns, the Commission is not constrained in taking any other steps it thinks necessary in the public interest, including those discussed above.**

**Do you have questions about any of the information I've just provided to you?**

**Tab C**

This is Exhibit c referred to in the affidavit of C. Ian Ross sworn before me, this 30 day of September 2013.

**PARTICIPATION AGREEMENT**

THIS PARTICIPATION AGREEMENT is dated as of the 28<sup>th</sup> day of May, 2010.

**BETWEEN:**

Kelly Pite  
A COMMISSIONER FOR TAKING AFFIDAVITS

**GROWTHWORKS CANADIAN FUND LTD.**, a corporation incorporated under the laws of Canada with its principal address at Exchange Tower, 130 King Street West, Suite 2200, Toronto, Ontario, M5X 1E3 ("GW Cdn")

**AND:**

**ROSEWAY CAPITAL L.P.** a limited partnership established under the laws Scotland with is principal address at 50 Lothian Road, Festival Square, Edinburgh, EH3 9WJ, Scotland and its address for service of process in the Province of Ontario at Rosetta Capital (Canada) Limited, MaRS Centre, Heritage Building , 101 College Street, Suite 140, Toronto, Ontario M5G 1L7, Attention: Michael Midmer ("Roseway")

**WHEREAS:**

- A. GW Cdn is a labour-sponsored venture capital corporation that assists in the development of eligible business entities by providing financial and managerial advice to such entities and by investing in eligible investments and reserves;
- B. Roseway wishes to make a \$20,000,000 investment in GW Cdn in exchange for a Participating Interest (as defined below) in divestment proceeds derived from 15 investments within GW Cdn's venture investment portfolio, particulars of which investments are set out in Schedule "A" to this Agreement (as defined below, the Defined Portfolio);
- C. In connection with its investment, Roseway has agreed to commit up to \$3,000,000 to fund follow-on investments in companies within the Defined Portfolio, representing approximately 20% of the parties' estimate of the total pre-divestment follow-on funding required by these companies;
- D. The investment by Roseway will provide additional capital for GW Cdn to make follow-on investments in eligible business entities, thereby significantly enhancing GW Cdn's ability to pursue its business objectives and realize positive returns on its venture investments; and
- E. The parties wish to enter into this Agreement to set out the terms and conditions governing Roseway's investment in GW Cdn.

**NOW THEREFORE THIS AGREEMENT WITNESSES** that in consideration of, and in reliance on, the premises, the representations, warranties, covenants and agreements set forth in this Agreement, the parties hereby agree as follows:

**ARTICLE 1 - INTERPRETATION**

**1.1 Interpretation** – In this Agreement, unless otherwise provided:

- (a) "Agreement" means this participation agreement, together with any amendments to or replacements of this participation agreement;

- (b) **“Base Rate”** has the meaning ascribed to such term in Section 6.3;
- (c) **“Break Fee”** means a fee of \$150,000 payable by GW Cdn to Roseway pursuant to Section 7.8;
- (d) **“Business Day”** means any day, other than a Saturday or a Sunday, on which the chartered banks in Toronto, Ontario, Canada, are open for business;
- (e) **“Closing”** means the closing of this investment;
- (f) **“Closing Date”** means a date determined by GW Cdn and Roseway which is within 21 days after the date of this Agreement, or such other date as GW Cdn and Roseway may agree upon;
- (g) **“Current Prospectus”** means the current prospectus of GW Cdn dated November 10, 2009, as amended, including material incorporated by reference therein;
- (h) **“Custodian Acknowledgment Agreement”** means the custodian acknowledgement agreement attached hereto as Schedule “G”;
- (i) **“Defined Portfolio”** means the Defined Portfolio Holdings in the investments listed in the Defined Portfolio Summary valued in accordance with GW Cdn’s Valuation Principles as updated from time to time in accordance with this Agreement and for certainty such investments do not include Divestment Proceeds Roseway has received under Article 3 or any Direct Investments or Other Investments of Roseway under Article 4;
- (j) **“Defined Portfolio Company”** means a company in which an investment within the Defined Portfolio is held;
- (k) **“Defined Portfolio Holding”** means the percentage of GW Cdn’s investment in a particular Defined Portfolio Company that forms part of the Defined Portfolio, as set out in the Defined Portfolio Summary under the heading “Defined Portfolio Holding”;
- (l) **“Defined Portfolio Securities”** has the meaning ascribed to such term in Section 5.1(s);
- (m) **“Defined Portfolio Summary”** means the table entitled “Defined Portfolio Summary” in Schedule “A”, as updated from time to time in accordance with Sections 3.1 and 4.1;
- (n) **“Direct Investment”** has the meaning ascribed to such term in Section 4.1;
- (o) **“Divestment Proceeds”**, in respect of a particular Defined Portfolio Company, means any dividends, interest or other distributions received from such Defined Portfolio Company and the total cash and securities received by GW Cdn from any full or partial divestment of such Defined Portfolio Company, including proceeds distributed to GW Cdn on account of its investment following a sale of assets, license, option or other transaction by such Defined Portfolio Company;
- (p) **“Excluded Taxes”** means taxes, levies, imposts, deductions, charges or withholdings, including interest, penalties or additions thereto, and all related liabilities, imposed on or measured by net income or net profits of Roseway, any capital taxes or franchise taxes

imposed on Roseway pursuant to the Laws of Luxembourg, any Taxes arising solely as a result of Roseway's residency in or other connection to a jurisdiction other than Luxembourg, including any Taxes arising solely because Roseway is not at the relevant time a resident of Luxembourg and entitled to the benefits of the Canada-Luxembourg Income Tax Convention, 1999, as may be amended or replaced;

- (q) **"Financial Statements"** means GW Cdn's audited financial statements for the year ended August 31, 2009 and the unaudited management prepared financial statements for the interim period ended February 28, 2010, which are attached as Schedule "C" to this Agreement;
- (r) **"Follow-on Investment Summary"** means the table entitled "Follow-on Investments in Defined Portfolio" in Schedule "A", as updated from time to time in accordance with Section 4.1;
- (s) **"Follow-on Financing"** has the meaning ascribed to such term in Section 4.1;
- (t) **"Follow-on Financing Notice"** has the meaning ascribed to such term in Section 4.1;
- (u) **"Follow-on Investment Amount"** has the meaning ascribed to such term in Section 4.1;
- (v) **"Follow-on Securities"** has the meaning ascribed to such term in Section 4.1;
- (w) **"GAAP"** means those accounting principles which are recognized as being generally accepted in Canada from time to time as set forth in the Handbook published by The Canadian Institute of Chartered Accountants (as revised from time to time);
- (x) **"Indemnification Payment"** has the meaning ascribed to such term in Section 6.3;
- (y) **"Indemnified Taxes"** means Taxes other than Excluded Taxes;
- (z) **"Indirect Investment"** has the meaning ascribed in Section 4.1;
- (aa) **"Investment Proceeds"** means the total sum of \$20,000,000 payable by Roseway to GW Cdn in consideration of the Participating Interest;
- (bb) **"LSVCC Legislation"** means the Tax Act (Canada) and the *Community Small Business Investment Funds Act* (Ontario), as amended, including the regulations thereunder, and any other federal or provincial legislation and regulations relating to labour sponsored venture capital corporations or similar investment vehicles that has at any time applied to GW Cdn;
- (cc) **"Manager"** means GrowthWorks WV Management Ltd., manager of GW Cdn, or any successor manager of GW Cdn;
- (dd) **"Non-assignable Divestment Proceeds"** means Non-cash Divestment Proceeds received by GW Cdn that GW Cdn cannot at the time of receipt, due to legal or contractual restrictions, assign to Roseway;
- (ee) **"Non-cash Divestment Proceeds"** means Divestment Proceeds received by GW Cdn that are not cash or cash equivalent;

- (ff) “**Material Adverse Effect**” means any effect that is, or would reasonably be expected to be, materially adverse to the financial condition of GW Cdn;
- (gg) “**Other Direct Investment**” has the meaning ascribed to such term in Section 4.2;
- (hh) “**Participating Interest**” means the interest acquired by Roseway hereunder in Divestment Proceeds derived from the Defined Portfolio Holdings of the Defined Portfolio and all related rights and payment entitlements hereunder;
- (ii) “**Participating Interest Payments**” means amounts payable by GW Cdn to Roseway under Section 3.1;
- (jj) “**Public Documents**” means all of GW Cdn’s documents and information which has been filed by or on behalf of GW Cdn on SEDAR in compliance with or intended compliance with applicable laws, including prospectuses and amendments thereto, financial statements, management reports of fund performance, press releases, material change reports;
- (kk) “**Security Agreement**” means the security agreement attached hereto as Schedule “D”;
- (ll) “**Services Agreement**” means the services agreement attached hereto as Schedule “F”;
- (mm) “**Tax Act (Canada)**” means the *Income Tax Act* (Canada), R.S.C. 1985, c. 1 (5th Supp), as amended, including the regulations promulgated thereunder;
- (nn) “**Taxes**” means all taxes, levies, imposts, deductions, charges or withholdings and all related liabilities;
- (oo) “**Transaction Documents**” means:
  - (i) this Agreement;
  - (ii) the Security Agreement;
  - (iii) the Services Agreement; and
  - (iv) the Custodian Acknowledgment Agreement;
- (pp) “**Transaction Fee**” means a fee of \$250,000 payable by GW Cdn to Rosetta Capital Limited on Closing;
- (qq) “**Valuation Principles**” means GW Cdn’s valuation principles and policies applied to determine the values of GW Cdn’s assets, in effect from time to time as disclosed in GW Cdn’s Public Documents;
- (rr) [redacted – confidential information];
- (ss) “[redacted – confidential information] **Credit Facility**” means the revolving line of credit agreement dated March 23, 2010 between [redacted – confidential information] and GW Cdn pursuant to which [redacted – confidential information] has made available to GW Cdn a revolving line of credit in the amount of \$15,000,000 that may be drawn down until June 30, 2010 and is repayable by November 30, 2010;

- (tt) “[redacted – confidential information] **Pledge Agreement**” means the pledge agreement dated March 23, 2010 between [redacted – confidential information] and GW Cdn;
- (uu) “[redacted – confidential information] **Security Agreement**” means the general security agreement dated March 23, 2010 between GW Cdn, as debtor and [redacted – confidential information], as secured party;
- (vv) Any words defined elsewhere in the Agreement shall have the particular meaning ascribed thereto;
- (ww) Words (including defined terms) using or importing the singular number include the plural and vice versa and words importing one gender only shall include all genders and words importing persons in this Agreement shall include individuals, partnerships, corporations and any other entities, legal or otherwise;
- (xx) The headings used in this Agreement, and the plain meaning of defined terms, are for ease of reference only and shall not affect the meaning or the interpretation of this Agreement;
- (yy) All accounting terms not defined in this Agreement shall have the meanings generally ascribed to them under GAAP; and
- (zz) Unless otherwise specified, the symbol “\$” refers to lawful money of Canada.

**1.2 Schedules** - The following schedules attached to this Agreement shall form part of this Agreement:

- Schedule “A” - Defined Portfolio
- Schedule “B” - Board Representation
- Schedule “C” - Financial Statements
- Schedule “D” - Security Agreement
- Schedule “E” - Exceptions to Representations and Warranties
- Schedule “F” - Services Agreement
- Schedule “G” - Custodian Acknowledgement Agreement

## **ARTICLE 2 - PURCHASE OF PARTICIPATING INTEREST**

**2.1. Closing of Purchase** – Upon the terms and subject to the conditions set forth in this Agreement, on the Closing Date Roseway will purchase from GW Cdn and GW Cdn will sell to Roseway the Participating Interest. For greater certainty, the parties acknowledge and agree that the purchase and sale does not constitute a sale, assignment or disposition to Roseway of legal or beneficial title to any Defined Portfolio Securities.

**2.2 Payment of Investment Proceeds** – At the Closing, Roseway will deliver to GW Cdn by certified cheque, bank draft, lawyer’s trust cheque or wire transfer the Investment Proceeds as payment in full for the Participating Interest.

**2.3 Payment of Transaction Fee** – At the Closing, GW Cdn will deliver to Roseway a certified cheque, bank draft, lawyer’s trust cheque or wire transfer \$250,000 representing the

Transaction Fee.

### ARTICLE 3 - PARTICIPATING INTEREST PAYMENTS

**3.1 Participating Interest Payments** – Subject to Section 3.2, from the date of this Agreement and provided Closing occurs, as soon as practicable following each full or partial divestment from the Defined Portfolio, GW Cdn shall pay or assign and deliver, as applicable, to Roseway 20% of the Divestment Proceeds received by GW Cdn as a result of the divestment (the “**Participating Interest Payments**”). For greater certainty, Roseway shall be entitled to receive from GW Cdn 20% of all Divestment Proceeds received on account of the Defined Portfolio Holding of each investment in the Defined Portfolio. Immediately upon receipt of such Divestment Proceeds until such payment or assignment to Roseway, the portion of the Divestment Proceeds to which Roseway is entitled shall be held in trust by GW Cdn solely for the benefit of Roseway. Following each divestment from the Defined Portfolio, the Defined Portfolio Summary will be deemed to have been updated to account for the divested Defined Portfolio Securities without further action or amendment to this Agreement.

**3.2 Non-assignable Divestment Proceeds** – Non-assignable Divestment Proceeds are deemed to form part of the Defined Portfolio until such time as an assignment of Roseway’s entitlement to such Non-assignable Divestment Proceeds to Roseway may be completed; provided that GW Cdn shall cause such Non-assignable Divestment Proceeds to be certificated separately and to be held by GW Cdn’s then-current custodian in a separate account. GW Cdn agrees to use all commercially reasonable efforts to effect such assignments as soon as practicable following each Divestment that gives rise to Non-assignable Divestment Proceeds.

**3.3 Scheduled Payments and Transfers** – GW Cdn agrees to make the following cash payments to Roseway:

- (a) within five Business Days following the first anniversary of the Closing Date, the positive difference, if any, between (i) the total amount of Participating Interest Payments paid to Roseway since the Closing Date, and (ii) \$5,700,000;
- (b) within five Business Days following the second anniversary of the Closing Date, the positive difference, if any, between (i) the sum of the payment made under Section 3.3(a) and the total amount of Participating Interest Payments made to Roseway since the Closing Date, and (ii) \$11,400,000;
- (c) on the third anniversary of the Closing Date, the sum of \$20,000,000;
- (d) within five Business Days following the third anniversary of the Closing Date, the positive difference, if any, between (i) the sum of the payments made under Sections 3.3(a) and (b) and the total amount of Participating Interest Payments made to Roseway since the Closing Date, and (ii) \$17,100,000; and
- (e) on the twentieth anniversary of the Closing Date, if this Agreement is not terminated in accordance with its terms before then, \$10.00 to Roseway,

For purposes of this Section 3.3, Non-cash Divestment Proceeds are deemed to have a value equal to the fair value assigned for purposes of the divestment that gave rise to such Non-cash Divestment Proceeds. Payments made under this Section 3.3 are not refundable.



**3.4 Form of Payment** – All payments made under this Article 3 shall be made to Roseway by wire transfer in accordance with wire instructions provided by Roseway to GW Cdn in writing from time to time.

**3.5 Offset** – Payments made under Sections 3.3(a), (b) and (d) shall be made on account of future Participating Interest Payments attributable to the Defined Portfolio as at the date of this Agreement. Accordingly:

- (a) Participating Interest Payments that result from or are attributable to the Defined Portfolio as at the date of this Agreement shall be offset by the payments made under Sections 3.3(a), (b) and (d) on a dollar-for-dollar basis.
- (b) Participating Interest Payments that result from or are attributable to Follow-On Investments shall not be offset by the payments made under Sections 3.3(a), (b) and (d).

#### **ARTICLE 4 - FOLLOW-ON INVESTMENTS**

**4.1 Follow-on Investments in Defined Portfolio Companies** – Subject to the terms and conditions of this Agreement, if after the date of this Agreement GW Cdn is invited or proposes to complete a financing in a Defined Portfolio Company (a “**Follow-on Financing**”), then GW Cdn will provide Roseway with written notice of the proposed financing (the “**Follow-on Financing Notice**”). The Follow-on Financing Notice shall (a) specify the amount GW Cdn is entitled to invest, (b) specify the proposed dollar amount of the Follow-on Financing which may be made by (A) GW Cdn (which is 80% of the total) and (B) Roseway (which is 20% of the total), in each case adjusted to reflect the Defined Portfolio Holding of the Defined Portfolio Company (together, the “**Follow-on Investment Amounts**”), (c) specify the nature and terms of the securities which may be purchased by GW Cdn and Roseway (the “**Follow-on Securities**”), (d) specify whether GW Cdn intends to invest in the Follow-on Financing, and any other material terms and conditions of the proposed financing known to GW Cdn, and (e) include material information known to GW Cdn that would be considered necessary by a reasonable investor to make an investment decision or provide access to such information. GW Cdn shall provide the Follow-on Financing Notice to Roseway as soon as reasonably practicable (but no later than two Business Days) after GW Cdn becomes aware of the opportunity for, and terms of, a proposed Follow-on Financing.

Roseway shall have the right to participate in any Follow-on Financing by either (i) paying the amount of Roseway’s Follow-on Investment Amount specified in the Follow-on Financing Notice directly to GW Cdn (an “**Indirect Investment**”), or (ii) making a direct investment in the Follow-on Securities of the Defined Portfolio Company provided all third party consents are obtained (a “**Direct Investment**”).

Before the earlier of (i) fifteen Business Days from the date of receiving a Follow-on Financing Notice, and (ii) five Business Days prior to the date of the expected closing of a Follow-on Financing (as specified in the Follow-on Financing Notice), Roseway will notify GW Cdn in writing that it has elected to:

- (i) make an Indirect Investment and advance the amount of such investment to GW Cdn no later than three Business Days prior to the expected closing date (as advised by GW Cdn) of the Follow-on Financing;
- (ii) make a Direct Investment; or

(iii) not participate in the Follow-on Financing.

In the event that Roseway elects to make a Direct Investment pursuant to subsection 4.1(ii) above and regardless of whether GW Cdn invests in the Follow-on Financing, GW Cdn will use its commercially reasonable efforts to assist Roseway in obtaining any required third party consents and any such securities acquired will be owned directly by Roseway for its own account and any Follow-On Securities acquired by GW Cdn or Roseway in such Follow-on Financing shall not form part of the Defined Portfolio.

In the event that Roseway elects to make an Indirect Investment pursuant to subsection 4.1(i) above and each of Roseway and GW Cdn invests its Follow-on Investment Amount, such Indirect Investment will be owned directly by GW Cdn for its own account and any Follow-On Securities acquired by GW Cdn in such Follow-on Financing shall form part of the Defined Portfolio.

In the event that Roseway elects to make a Direct Investment in a Follow-on Financing in which GW Cdn does not invest, and Roseway is not able to obtain third-party consents required to complete the Follow-on Financing by way of a Direct Investment, then Roseway is entitled to make an Indirect Investment, provided that GW Cdn is able to obtain third-party consents for its investment. Such Indirect Investment will be owned directly by GW Cdn for its own account and all Follow-On Securities acquired by GW Cdn in such Follow-on Financing shall form part of the "Roseway Portfolio" as set out in Schedule "A" hereto and Roseway shall be entitled to 100% of the Divestment Proceeds, related rights and payment entitlements thereunder.

If Roseway elects not to make a Direct or Indirect Investment in a Follow-on Financing, Follow-on Securities acquired by GW Cdn in respect of that Follow-on Financing shall not form part of the Defined Portfolio or the Roseway Portfolio. Notwithstanding the above, in the event that Roseway has invested, either through Direct or Indirect Investments, \$3,000,000 in Follow-on Financings, then thereafter any further securities purchased by GW Cdn in a Defined Portfolio Company through a Follow-on Financing shall form part of the Defined Portfolio if: (i) the Defined Portfolio Company securities are purchased by GW Cdn under the Follow-on Financing at a 20% or more discount to the "Fair Value at Closing" of the most directly comparable securities of the same Defined Portfolio Company listed in the Defined Portfolio Summary at Closing, and (ii) if the Defined Portfolio Company has a Roseway representative on its board of directors, then only 50% of the securities purchased by GW Cdn through such a Follow-on Financing in such Defined Portfolio Company shall form part of the Defined Portfolio, as adjusted to reflect Roseway's Defined Portfolio Holding in such Defined Portfolio Company.

On closing of a Follow-on Financing, the Follow-on Investments Summary and, if applicable, the Defined Portfolio Summary will be deemed to have been updated to account for the Follow-on Securities purchased by GW Cdn and, if applicable, Roseway under any such Follow-on Financing without further action or amendment to this Agreement.

**4.2 Other Direct Investments** – Notwithstanding any provision of this Agreement, Roseway may, in its sole discretion, make an investment in any Defined Portfolio Company, including an investment by way of a purchase of Follow-on Securities in excess of Roseway's Follow-on Investment Amount (an "**Other Direct Investment**"). Roseway shall notify GW Cdn of any Other Direct Investment as soon as reasonably practicable after a determination is made to make such investment. Other Direct Investments will not form part of the Defined Portfolio. The Follow-on Investments Summary will be deemed to have been updated to record the securities

purchased by Roseway in any Other Direct Investment without further action or amendment to this Agreement.

**4.3 Agreement to Finance Non-binding** – The parties acknowledge that Sections 4.1 and 4.2 do not commit either party to make Follow-on Investments in any Defined Portfolio Company or commit a Defined Portfolio Company to accept an investment from a party or require either party to obtain the consent of the other party for any investment or divestment in a Defined Portfolio Company or otherwise. Roseway further acknowledges that its ability to complete a Direct Investment or Other Direct Investment is subject to conditions not within the control of GW Cdn, including the consent of the Defined Portfolio Company, third party consents and market conditions.

## **ARTICLE 5 - REPRESENTATIONS AND WARRANTIES**

**5.1 Representations and Warranties of GW Cdn** – Except as otherwise disclosed in Schedule E, GW Cdn represents and warrants to Roseway as of the date hereof, as follows:

- (a) **Incorporation, Existence and Corporate Power** – GW Cdn is duly organized and validly existing under the laws of Canada and has the capacity, power and authority to own or lease its property and assets and carry on its business as now conducted by it;
- (b) **Conducting Business** – GW Cdn is duly qualified to carry on business in each jurisdiction in which the nature of its business or the property or assets owned or leased by it makes such qualification necessary, except where the failure to be so qualified will not have a Material Adverse Effect on GW Cdn;
- (c) **Power and Capacity** – GW Cdn has all requisite corporate power and authority to enter into the Transaction Documents and to perform its obligations thereunder and the Transaction Documents have been duly authorized, executed and delivered by GW Cdn;
- (d) **Compliance** – GW Cdn has complied with and is in compliance with all laws or regulations applicable to the operation of its business, including all applicable laws, except where failure to do so would not have a Material Adverse Effect on GW Cdn;
- (e) **No Breach** – the execution and delivery of the Transaction Documents, the performance of the terms thereof and the consummation of the transactions contemplated therein do not and will not:
  - (i) result in the breach of or violate any term or provision of the articles, by-laws or other governing documents of GW Cdn;
  - (ii) result in a breach of or default under any agreement, contract, license, permit or authorization that is material to the business of GW Cdn;
  - (iii) give to any person any interest or right, including the right of purchase, termination, cancellation or acceleration under any agreement, contract, instrument, license, permit or authorization which is material to GW Cdn or which forms part of the Defined Portfolio; or
  - (iv) violate any provision of law or administrative regulation or any judicial or administrative order, award, judgment or decree applicable to GW Cdn or its business,

except to the extent such result or occurrence as set forth in this Subsection 5.1(e) does not have a Material Adverse Effect on GW Cdn;

- (f) **Full Disclosure** – GW Cdn has provided all information requested by Roseway in respect of the Defined Portfolio and all information provided was, to GW Cdn’s knowledge, accurate in all material respects and the value of each Defined Portfolio Company as set out in the Defined Portfolio Summary is based on all material information known to GW Cdn with respect to the Defined Portfolio Company that is relevant for purposes of the Valuation Guidelines;
- (g) **Transaction Documents** – the Transaction Documents, when executed and delivered by GW Cdn, will constitute legal, valid and binding obligations of GW Cdn enforceable against it in accordance with their terms, subject to applicable bankruptcy, insolvency and similar laws affecting creditors’ rights generally;
- (h) **Financial Position** – GW Cdn’s Financial Statements have been prepared in accordance with GAAP applied on a basis consistent with that of prior periods (except as stated therein) and present fairly the financial position of GW Cdn as of the dates provided therein and the results of its operations and the changes in financial position for the periods then ended and reflect all assets, liabilities and obligations (absolute, accrued, contingent or otherwise) of GW Cdn as at the dates thereof;
- (i) **No Undisclosed Liabilities** – except liabilities disclosed on Schedule E or disclosed in GW Cdn’s Financial Statements, and liabilities otherwise incurred in the ordinary and regular course of business, GW Cdn has no material liabilities;
- (j) **No Bankruptcy, Insolvency etc.** – GW Cdn is able to meet its liabilities as they become due and none of GW Cdn, and to the best of the knowledge of GW Cdn, any creditor of GW Cdn or any other person, has instituted any proceeding or taken any corporate action or executed any agreement in connection with the commencement of any proceeding:
  - (i) seeking liquidation, dissolution, winding-up, reorganization, protection or relief of GW Cdn or any material part of its property or debt, or making a proposal with respect to GW Cdn under any law relating to bankruptcy, insolvency, reorganization or compromise of debts or other similar laws; or
  - (ii) seeking appointment of a receiver, trustee, agent, custodian or other similar official for GW Cdn or for any material part of its properties and assets other than in the ordinary course of business;
- (k) **No proceedings** – except as previously disclosed in GW Cdn’s Public Documents or Schedule E, there are no actions, suits, other legal, administrative or arbitration proceedings or government investigations commenced, or to the knowledge of GW Cdn contemplated, at law or in equity or before or by any court or other governmental authority and which involve or affect GW Cdn, or the business of GW Cdn which could have a Material Adverse Effect on GW Cdn;
- (l) **Share Capital** – the authorized capital of GW Cdn is accurately disclosed in GW Cdn’s Current Prospectus, all of the outstanding shares of GW Cdn are fully paid and non-assessable;

- (m) **Material Contracts** – no default exists and no event has occurred which with notice or lapse of time or both would constitute a default in the due performance and observance of any term, covenant or condition of any material contract, indenture, evidence of indebtedness or other agreement or instrument to which GW Cdn is a party or by which it or any of its assets is bound, which default would have a Material Adverse Effect on GW Cdn;
- (n) **Brokerage Fees** – GW Cdn has not entered into any agreement which would entitle any person to any valid claim against GW Cdn or Roseway for a broker's commission, agent's fee, finder's fee or any like payment in respect of Roseway's purchase of the Participating Interest;
- (o) **Public Documents** – other than as disclosed in GW Cdn's Public Documents, the information and statements set forth in GW Cdn's Public Documents were true, correct and complete in all material respects and did not contain any material misrepresentations, as of their respective dates, no material change has occurred in relation to GW Cdn which is not disclosed in such Public Documents, and GW Cdn has not filed any confidential material change reports which continue to be confidential;
- (p) **LSVCC Matters** – at all material times, GW Cdn has been duly registered, approved or prescribed under all LSVCC Legislation pursuant to which purchasers of Class A shares of GW Cdn have been granted tax credits and, except as disclosed in GW Cdn's Public Documents, GW Cdn has not received any notice of default or other communication from any government ministry, department or official to the effect that GW Cdn is or will be de-registered under or is otherwise in default of any LSVCC Legislation pursuant to which it is registered;
- (q) **Taxes** – GW Cdn has duly filed all Tax returns within the prescribed period with the appropriate taxing authority in accordance with applicable laws and each such return is true, correct and complete in all material respects; GW Cdn has paid, within the prescribed period, all Taxes and instalments of Taxes which are required to be paid to any taxing authority under applicable law, including, without limitation, any Taxes payable under applicable LSVCC Legislation; no deficiency for Taxes has been asserted against GW Cdn by any taxing authority; adequate provision in accordance with GAAP has been made in the books and records of GW Cdn for Taxes payable for all periods ending on or before the Closing Date but which are not yet due; GW Cdn has duly and timely withheld, deducted and collected all Taxes and other deductions required by applicable law to be withheld, deducted or collected by GW Cdn and GW Cdn has duly and timely remitted all such amounts to the proper taxing authority; there are no proceedings, investigations or audits pending or threatened against GW Cdn in respect of any Taxes; there are no matters under discussion, audit or appeal with any taxing authority relating to Taxes of GW Cdn; there are no outstanding agreements or waivers extending the statutory period of limitations applicable to any Tax return or to the payment or collection of Taxes for any period; and there are no material proposed or issued assessments or reassessments for Taxes of GW Cdn or its business pursuant to which there are or may be amounts owing;
- (r) **No Audits etc.** – there are no audits, assessments, reassessments, suits, proceedings, investigations or claims pending against GW Cdn in respect of Taxes paid or payable,

and there are no matters under discussion involving GW Cdn with, or the subject of any agreement with, any government authority relating to claims for additional Taxes;

- (s) **Defined Portfolio Companies** – the Defined Portfolio Summary is a true and complete list of all of the securities owned by GW Cdn and comprising the Defined Portfolio (the “**Defined Portfolio Securities**”) and with respect to each Defined Portfolio Company:
- (i) the value of the Defined Portfolio Company as set out in the Defined Portfolio Summary has been determined in accordance with GW Cdn’s current Valuation Principles; and
  - (ii) GW Cdn is the registered and beneficial owner of all of the Defined Portfolio Securities with good and valid title thereto, free and clear of all liens, mortgages, charges, hypothecs, pledges, assignments, security interests or claims; and
- (t) **Credit Facility** – GW Cdn has not requested an advance of funds under the [redacted – confidential information] Credit Facility and there is no principal or other amounts outstanding under the [redacted – confidential information] Credit Facility.

**5.2 Representations and Warranties of Roseway** – Roseway represents and warrants to GW Cdn as of the date hereof, as follows:

- (a) **Incorporation, Existence and Corporate Power** – Roseway will be, by Closing, a *société à responsabilité limitée* duly organized and validly existing under the laws of Luxembourg;
- (b) **Power and Capacity** – Roseway has all requisite power and authority under applicable laws to enter into this Agreement and to perform its obligations hereunder and this Agreement has been duly authorized, executed and delivered by Roseway;
- (c) **Transaction Document** – this Agreement when executed and delivered by Roseway, will constitute legal, valid and binding obligations of Roseway enforceable against it in accordance with its terms, subject to applicable bankruptcy, insolvency and similar laws affecting creditors’ rights generally;
- (d) **No Breach** – the execution and delivery of this Agreement by Roseway, the performance of the terms hereof and the consummation of the transactions contemplated herein do not and will not:
  - (i) result in the breach of or violate any term or provision of the governing documents of Roseway;
  - (ii) result in a breach of or default under any agreement, contract, license, permit or authorization to which Roseway is a party;
  - (iii) give to any person any interest or right, including the right of purchase, termination, cancellation or acceleration under any agreement, contract, instrument, license, permit or authorization which is material to Roseway; or
  - (iv) violate any provision of law or administrative regulation or any judicial or administrative order, award, judgment or decree applicable to Roseway or its business;

- (e) **Brokerage Fees** – Roseway has not entered into any agreement which would entitle any person to any claim against GW Cdn for a broker’s commission, agent’s fee, finder’s fee or any like payment in respect of Roseway’s purchase of the Participation Interest;
- (f) **Securities Law Exemption** – Roseway is acquiring the Participating Interest as principal on its own account and not for or on behalf of any other person and on Closing Roseway will be an “accredited investor” as such term is defined in Section 1.1 of National Instrument 45-106 *Prospectus ad Registration Exemptions* and Roseway complies with the requirements of all applicable securities legislation in each jurisdiction in which Roseway is resident under applicable securities laws in connection with its purchase of the Participating Interest and will provide such evidence of compliance with all such matters as GW Cdn may request; and
- (g) **Investment Proceeds** - The Investment Proceeds do not represent proceeds of crime for the purposes of the *Proceeds of Crime (Money Laundering) Act* (Canada) (the “PCMLA”) and Roseway acknowledges that GW Cdn may in the future be required by law to disclose its name and other information relating to this Agreement and Roseway’s purchase of the Participating Interest hereunder, on a confidential basis, pursuant to the PCMLA or other applicable legislation. None of the Investment Proceeds (i) have been or will be derived from or related to any activity that is deemed criminal under the laws of Canada or any other jurisdiction, or (ii) are being tendered on behalf of a person or entity who has not been identified to Roseway, and Roseway shall promptly notify GW Cdn if it discovers that any of such representations ceases to be true and provide GW Cdn with appropriate information in connection therewith.

**5.3 Survival of Representations and Warranties** – The representations and warranties of the parties contained in this Agreement shall expire on the third anniversary of the Closing Date.

## **ARTICLE 6 - COVENANTS**

**6.1 Expenses** – Each party shall pay its own expenses incurred in connection with the Transaction Documents and Roseway’s acquisition of the Participating Interest.

**6.2 Confidentiality** – The parties agree to keep the existence and contents of this Agreement confidential and not disclose its existence or contents except as required under this Agreement or by securities and other laws. Roseway acknowledges that GW Cdn is a reporting issuer under Canadian securities laws and as such must disclose the proposed purchase and sale of the Participating Interest and terms thereof by news release, material change report, prospectus amendment and other publicly available continuous disclosure material. GW Cdn will provide Roseway with a reasonable opportunity to review and comment on all such disclosures related to this Agreement. GW Cdn agrees to seek input from Roseway on commercially sensitive information and to redact such information from any filed copies of the Transaction Documents to the extent permissible under applicable laws. Roseway also acknowledges that GW Cdn is subject to confidentiality obligations in connection with certain of its investments in Defined Portfolio Companies and from time to time may not be entitled to provide to Roseway information subject to such confidentiality provisions. As may be required from time to time, GW Cdn shall make commercially reasonable efforts to obtain consents from such third parties necessary to disclose such information to Roseway.

**6.3 Statutory Withholdings** – All payments to Roseway under the Transaction Documents shall be made free and clear of, and without deduction or withholding for, any Indemnified Taxes, except as required by applicable laws. If GW Cdn shall be required by applicable laws to deduct or withhold any Indemnified Taxes from or in respect of any sum payable hereunder to Roseway, then (i) the sum payable shall be increased as necessary so that after making all required deductions or withholdings (including, without limitation, deductions and withholdings applicable to additional sums payable under this Section 6.3) Roseway receives an amount equal to the sum it would have received had deductions or withholdings for Indemnified Taxes been made at a maximum rate of ten percent (10%) (the “**Base Rate**”); (ii) GW Cdn shall make all applicable deductions and withholdings; and (iii) GW Cdn shall pay the full amount deducted or withheld to the relevant taxing authority in accordance with applicable laws. For greater certainty, GW Cdn shall be required to pay additional amounts under this Section 6.3 if, and only to the extent that, the rate of deduction or withholding required for Indemnified Taxes exceeds the Base Rate.

GW Cdn shall indemnify and hold harmless Roseway for Indemnified Taxes imposed on or paid by Roseway if, and only to the extent that, such Indemnified Taxes are imposed or paid at a rate in excess of the Base Rate, together with any liability (including interest, penalties, and reasonable expenses) arising therefrom or with respect thereto whether or not such Indemnified Taxes were correctly or legally asserted. Payment under this indemnification (the “**Indemnification Payment**”) shall be made within thirty (30) days after the date Roseway makes written demand therefor. Notwithstanding the foregoing, GW Cdn shall not be obligated to make a payment to Roseway with respect to interest, penalties or expenses if the amounts arose as a result of failure by Roseway to timely pay Indemnified Taxes.

If Roseway receives notice from a taxing or other governmental authority that Indemnified Taxes may be imposed on or are payable by Roseway in respect of a payment by GW Cdn to Roseway pursuant to this Agreement (a “**Claim**”), Roseway shall promptly give written notice thereof (a “**Notice of Claim**”) to GW Cdn. Such notice shall specify with reasonable particularity (to the extent that the information is available):

- (a) the factual basis for the Claim as set forth therein; and
- (b) the amount of the Indemnified Taxes arising from the Claim for which Roseway is seeking indemnification,

If, as a result of the failure of Roseway, GW Cdn does not receive a Notice of Claim in respect of a particular Claim at least fifteen (15) Business Days prior to the expiry of the period during which such Claim may be originally contested, then GW Cdn shall be released from all obligations in respect of the particular Claim.

GW Cdn shall have the right to participate in or, by giving notice to Roseway, to elect to assume the defence of any particular Claim at GW Cdn’s own expense and by GW Cdn’s own counsel, and Roseway shall have the right to participate in the defence of the Claim assisted by counsel of its own choosing at its own expense. Roseway shall not settle or compromise any Claim without the prior written consent of GW Cdn, which consent shall not be unreasonably refused. GW Cdn and Roseway shall use all reasonable efforts to make available to the party which is undertaking and controlling the defence of any Claim:



- (a) those employees, officers, and directors whose assistance, testimony or presence is necessary to assist such party in evaluating and in defending any Claim, and
  - (b) all documents, records and other materials in the possession of such party reasonably required by such party for its use in defending any Claim, other than documents protected by privilege or the production of which could in the reasonable opinion of the party producing such document cause such party to be in violation of any law or judicial order,
- and shall otherwise reasonably co-operate with the party defending such Claim.

If, following the imposition of any Indemnified Taxes in consequence of which GW Cdn pays an additional amount to or indemnifies Roseway, Roseway receives or is granted a refund of any Indemnified Taxes which is attributable to such additional amount or indemnity paid by GW Cdn (a “refund”), Roseway shall, subject to GW Cdn’s obligation to repay promptly on demand by Roseway the amount to Roseway if the relevant refund is subsequently disallowed or cancelled, reimburse GW Cdn promptly after receipt of such refund by Roseway with the amount of the relevant refund together with any interest on the refund received by Roseway.

**6.4 Defined Portfolio Board Representation** – So long as GW Cdn has board nomination rights for the Defined Portfolio Companies listed in Schedule “B”, GW Cdn will, subject to the parties obtaining any consents and approvals that may be required by law or pursuant to the terms of a Defined Portfolio Company’s shareholder agreement or otherwise, nominate one individual selected by Roseway to the board of directors of such Defined Portfolio Company. GW Cdn will initially make such nominations and secure the resignations of its current nominees as soon as reasonably practicable after the Closing Date. For so long as a Roseway Representative is a director of a Defined Portfolio Company, the Roseway representative will provide GW Cdn with copies of all board materials, it’s own internal quarterly update on such Defined Portfolio Company and any additional information that GW Cdn reasonably requests.

**6.5 GW Cdn Reporting Requirements** – GW Cdn shall provide to Roseway the following:

- (a) Defined Portfolio Summary – within 15 days of the end of each calendar quarter, a Defined Portfolio Summary current as of the quarter-end;
- (b) Follow-on Investments Summary – within 15 days of the end of each calendar quarter, a Follow-on Investment Summary current as of the quarter-end; and
- (c) Access – subject to Section 6.2, full and reasonable access to all books and records of Defined Portfolio Companies (or copies thereof) that are held by GW Cdn or the Manager.

GW Cdn shall, once per calendar quarter at the request of Roseway, arrange for a meeting or teleconference with representatives of Roseway and the Manager to review GW Cdn’s financial and liquidity position.

**6.6 No Encumbrance** - GW Cdn shall not create or permit to exist any security interest in, charge, encumbrance or lien over, the Defined Portfolio Securities except as may be permitted by the Security Agreement.

**6.7 GW Cdn mergers, reorganizations etc.** – Except as may be permitted by the Security Agreement or as consented to by Roseway, GW Cdn shall not, without the prior written consent of Roseway, such consent not to be unreasonably withheld, sell, lease, exchange or otherwise

dispose of all or substantially all of the assets of GW Cdn or any of the Defined Portfolio Securities out of the ordinary course of business.

**6.8 Divestments** – GW Cdn will use commercially reasonable efforts to pursue divestment opportunities, and maximize Divestment Proceeds, from the Defined Portfolio.

**6.9 Compliance with Securities Laws** – GW Cdn shall file all documents and take all proceedings to be taken to permit Roseway's acquisition of the Participating Interest in compliance with all applicable securities laws.

**6.10 Operations in Compliance with LSVCC Laws** – GW Cdn will use commercially reasonable efforts to remain duly registered, approved or prescribed under all LSVCC Legislation pursuant to which it is currently registered, approved or prescribed and purchasers of Class A shares of GW Cdn have been granted tax credits, except to the extent that ceasing to be so registered, approved or prescribed will not have a Material Adverse Effect on GW Cdn, and will immediately inform Roseway if it receives any notice of default or other communication from any government ministry, department or official to the effect that GW Cdn is or will be de-registered under or is otherwise in default of any LSVCC Legislation pursuant to which it is registered. Roseway acknowledges that the labour-sponsored investment fund tax credit program in the Province of Ontario is being phased-out as disclosed in GW Cdn's Current Prospectus.

**6.11 Taxes** - GW Cdn shall file all Tax returns within the prescribed period with the appropriate taxing authority in accordance with applicable laws and will pay, within the prescribed period, all Taxes and instalments of Taxes which are required to be paid to any taxing authority under applicable law, including, without limitation, any Taxes payable under applicable LSVCC Legislation.

**6.12 Credit Facility** – GW Cdn shall not, without the written consent of Roseway, request an advance of funds from [redacted – confidential information] under the [redacted – confidential information] Credit Facility.

**6.13 Survival of Covenants** – The covenants of GW Cdn contained in Sections 6.6, 6.7, 6.11 and 6.12 shall expire on the termination of the Security Agreement in accordance with its terms.

## **ARTICLE 7 - CLOSING AND CONDITIONS OF CLOSING**

**7.1 Time and Place of Closing** – Subject to the terms and conditions herein, the Closing shall take place at 3:00 p.m. (GMT), or at such other time as agreed upon by Roseway and GW Cdn, on the Closing Date by exchange of electronic copies and confirmations or at a location agreed by Roseway and GW Cdn, such Closing location to be outside of Canada.

**7.2 Roseway's Conditions Precedent to Closing** – The conditions precedent to Roseway's obligations to purchase the Participating Interest under Section 2.1 and contemplated herein are as follows:

- (a) GW Cdn shall have received all consents and approvals required under applicable law or agreements to permit the sale of the Participating Interest; and
- (b) the representations and warranties of GW Cdn contained in Section 5.1 and in the other Transaction Documents shall be true, accurate and correct on and as of the Closing Date

with the same effect as though such representations and warranties had been made on and as of the Closing Date.

**7.3 GW Cdn's Conditions Precedent to Closing** – The conditions precedent to GW's obligations to sell the Participating Interest under Section 2.1 and contemplated herein are as follows:

- (a) GW Cdn shall have received board and Independent Review Committee approval of the sale of the Participating Interest and related transactions; and
- (b) the representations and warranties of Roseway contained in Section 5.2 shall be true, accurate and correct on and as of the Closing Date with the same effect as though such representations and warranties had been made on and as of the Closing Date.

**7.4 GW Cdn's Failure to Satisfy Conditions Precedent** – The conditions precedent set forth in Section 7.2 are for the sole benefit of Roseway. If one or more of such conditions precedent in Section 7.2 are not satisfied on or before the Closing Date and Roseway does not waive in writing strict compliance therewith, then Roseway shall not be obligated to purchase the Participating Interest hereunder and Roseway and GW Cdn shall be released from their further respective obligations hereunder.

**7.5 Roseway's Failure to Satisfy Conditions Precedent** – The conditions precedent set forth in Section 7.3 are for the sole benefit of GW Cdn. If one or more of such conditions precedent in Section 7.3 are not satisfied on or before the Closing Date and GW Cdn does not waive in writing strict compliance therewith, then GW Cdn shall not be obligated to sell the Participating Interest hereunder and Roseway and GW Cdn shall be released from their further respective obligations hereunder.

**7.6 Closing Obligations of GW Cdn** – At the Closing, GW Cdn shall deliver or cause to be delivered to Roseway the following documents in form satisfactory to Roseway, acting reasonably:

- (a) a certified copy of the resolutions of the directors of GW Cdn approving the Transaction Documents and all transactions contemplated hereunder;
- (b) the Security Agreement, Custodian Acknowledgement Agreement and Services Agreement duly executed by GW Cdn;
- (c) a certified cheque, solicitor's trust cheque or bank draft made payable to Roseway or wire transfer deposited to an account designated by Roseway, representing the Transaction Fee; and
- (d) all other documents as Roseway may reasonably request.

**7.7 Closing Obligations of Roseway** – At the Closing, Roseway shall deliver or cause to be delivered to GW Cdn the following documents in form satisfactory to GW Cdn, acting reasonably:

- (a) a certified cheque, solicitor's trust cheque, bank draft made payable to GW Cdn or wire transfer deposited to an account designated by GW Cdn, representing the Investment Proceeds; and
- (b) all other documents as GW Cdn may reasonably request.

7.8 **Break Fee** – In the event the transaction fails to close by the Closing Date, and provided the failure to close is not the result of Roseway’s breach of a term or condition of this Agreement or a failure to perform its obligations hereunder, then GW Cdn shall pay to Roseway the Break Fee.

## ARTICLE 8 - TERMINATION

8.1 This Agreement shall terminate on the earlier of:

- (a) the date on which GW Cdn has divested from all of the investments forming part of the Defined Portfolio and for purposes of this Section 8.1, GW Cdn shall be deemed to have divested from any Defined Portfolio Company that is dissolved or has ceased operations and in respect of which no value is attributed to the related Defined Portfolio Securities under the Valuation Principles and as agreed with Roseway, acting reasonably; and
- (b) the twentieth anniversary of the Closing Date.

8.2 **Survival** – Any provisions relating to accrued but unpaid obligations, and any provisions necessary for the interpretation or enforcement of the foregoing shall survive and continue in full force and effect in accordance with their terms notwithstanding any termination of this Agreement.

## ARTICLE 9 - GENERAL PROVISIONS

9.1 **Time of the Essence** – Time shall be of the essence of this Agreement.

9.2 **Further Acts** – Each party shall at the request of the other party, execute and deliver any further documents and do all acts and things as that party may reasonably require in order to carry out the true intent and meaning of this Agreement.

9.3 **No Partnership** – Nothing in this Agreement or in the relationship of the parties hereto shall be construed as in any sense creating a partnership or joint venture among the parties or as giving to any party any of the rights or subjecting any party to any of the creditors of the other parties.

9.4 **Parties of Interest** – This Agreement shall enure to the benefit of and be binding upon the parties and their respective personal representatives, administrators, heirs, successors and permitted assigns.

9.5 **Governing Law** – This Agreement shall be construed and governed exclusively by the laws in force in Ontario and the laws of Canada applicable therein and, except as provided in Section 9.6, the courts of Ontario (and Supreme Court of Canada, if necessary) shall have exclusive jurisdiction to hear and determine all disputes arising hereunder. Except as provided in Section 9.6, each of the parties hereto irrevocably attorns to the jurisdiction of said courts and consents to the commencement of proceedings in such courts. This Section shall not be construed to affect the rights of a party to enforce a judgment or award outside said province, including the right to record and enforce a judgment or award in any other jurisdiction.

9.6 **Arbitration** – In the event of a dispute hereunder which does not involve a party seeking a court injunction, that dispute shall be resolved by arbitration subject to the provisions of the

*Arbitration Act*, S.O. 1991 c.17, as amended from time to time. The arbitrated resolution of the dispute shall be final and binding on all parties. The place of arbitration will be Toronto, Ontario.

**9.7 Severability** – The invalidity or unenforceability of any provision in this Agreement shall not affect the validity or enforceability of any other provision or part of this Agreement, and the parties hereby undertake to renegotiate in good faith any such invalid or unenforceable provision, with a view to concluding valid and enforceable arrangements as nearly as possible the same as those contained in this Agreement.

**9.8 Entire Agreement** – The provisions contained in this Agreement and the Transaction Documents constitute the entire agreement between the parties with respect to the subject matter thereof and supersede all prior communications, proposals, representations and agreements, whether oral or written, with respect to the subject matter of this Agreement.

**9.9 Notices** – All notices and other communications given or made pursuant hereto shall be in writing and shall be deemed to have been duly given or made as of the date delivered or sent if delivered personally or sent by fax or e-mail transmission, or as of the following Business Day if sent by prepaid overnight courier, to the parties at the following addresses (or at such other addresses as shall be specified by either party by written notice to the other given in accordance with these provisions):

if to GW Cdn:

GrowthWorks Canadian Fund Ltd.  
 c/o GrowthWorks WV Management Ltd.  
 Exchange Tower, 130 King Street West, Suite 2200  
 Toronto, Ontario, M5X 1E3  
 Attention: Tim Lee, Senior Vice-President, Investments  
 Fax: (416) 929-0901  
 E-Mail: tim.lee@growthworks.ca

with a copy to:

Irwin, White & Jennings  
 1055 West Georgia Street, Suite 2620  
 Vancouver, British Columbia, V6E 3R5

Attention: John McLeod  
 Fax: (604) 689-2806  
 E-Mail: john@iwjlaw.com

if to Roseway:

Roseway Capital LP  
 c/o Roseway Capital GP Limited  
 50 Lothian Road, Festival Square  
 Edinburgh, EH3 9WJ, Scotland

Attention: Michael Forer  
 Fax: 41 21 921 0461  
 E-Mail: mf@rosettacapital.com

with a copy to:

Rosetta Capital Limited  
 New Broad Street House, 35 New Broad Street  
 London, EC2M1NH, United Kingdom

Attention: Michael Forer  
 Fax: 44 (0) 207 194 8080  
 E-Mail: mf@rosettacapital.com

**9.10 Waiver** – Failure by any party hereto to insist in any instance upon the strict performance of any one of the covenants contained herein shall not be construed as a waiver or relinquishment of such covenant. No waiver by any party hereto of any such covenant shall be deemed to have been made unless expressed in writing and signed by the waiving party.

**9.11 Assignment** – Roseway may on ten days' written notice to GW Cdn assign all of its rights and obligations under this Agreement at will provided (i) that such assignee entity assumes all of the obligations of Roseway hereunder, and (ii) the notice provided to GW Cdn specifies the name, address, fax number and contact for the assignee and a representation confirming the tax residency of the assignee and if the assignee is a resident of a jurisdiction other than Luxembourg, an opinion of counsel in a form satisfactory to GW Cdn that the deductions or withholdings taxes applicable to the assignee in such jurisdiction is not more than those applicable to Roseway given its jurisdiction of residence. Following such assignment and delegation, Roseway shall have no further rights or obligations hereunder except that it shall be jointly and severally liable for any breach occurring prior to such assignment, and the assignee shall have no rights with respect to any payments made to Roseway before the assignment takes effect or any Direct Investments or Other Investments made by Roseway before the assignment takes effect.

**9.12 Amendments** – No term or provision hereof may be amended except by an instrument in writing signed by all of the parties to this Agreement.

**9.13 Counterparts** – This Agreement may be executed in several counterparts (including by fax), each of which when so executed shall be deemed to be an original and shall have the same force and effect as an original and such counterparts together shall constitute one and the same instrument.

IN WITNESS WHEREOF the parties have signed, sealed and delivered this agreement as of the date first written above.

**GROWTHWORKS CANADIAN FUND LTD.**

*"David Levi"*

Per: \_\_\_\_\_  
David Levi, President & CEO

**ROSEWAY CAPITAL L.P.,**

**by its General Partner**

**ROSEWAY CAPITAL GP LIMITED**

*"Michael Forer"*

Per: \_\_\_\_\_  
Michael Forer, Director

**SCHEDULE "A"**

**Defined Portfolio Summary**

(as at May 26, 2010)

Defined Portfolio Company	Investments Held	Fair Value at May 26, 2010	Defined Portfolio Holding (%) <sup>(1)</sup>	Defined Portfolio Fair Value <sup>(2)</sup>	Estimated Follow-on Requirement
[Contents of table redacted – confidential third party information]					

(1) This is the portion of GW Cdn's investment that is included in the Defined Portfolio for purposes of Roseway's Participating Interest. Divestment Proceeds do not include any proceeds referable to that portion of an investment that is not included in the Defined Portfolio.

(2) The fair value of the Defined Portfolio shall be determined in accordance with GW Cdn's Valuation Principals.





**SCHEDULE "B"****Board Representation**

[redacted – confidential third party information]

**SCHEDULE "C"**

**Financial Statements**

(Attached)

[Available on [www.sedar.com](http://www.sedar.com)]

**SCHEDULE "D"**

**Security Agreement**

(Attached)

**SECURITY AGREEMENT**

**TO: ROSEWAY CAPITAL LP**  
 a limited partnership established under the laws  
 of Scotland with its principal address at 50 Lothian Road,  
 Festival Square, Edinburgh, EH3 9WJ,  
 Scotland and its address for service of process in  
 the Province of Ontario c/o Rosetta Capital (Canada)  
 Limited, MaRS Centre, Heritage Building, 101 College  
 Street, Suite 140, Toronto, Ontario M5G 1L7

(hereinafter "Roseway")

**GRANTED BY: GROWTHWORKS CANADIAN FUND LTD.**  
 a corporation incorporated under the laws of Canada,  
 having its registered office at:  
 Exchange Tower, 130 King Street West  
 Suite 2200, PO Box 422  
 Toronto, Ontario M5X 1E3

(hereinafter "GW Cdn")

**SECTION 1 – GRANT OF SECURITY INTEREST**

**1.1 Security Interest**

As general and continuing security for the payment and performance of the Obligations (as hereinafter defined) owing by GW Cdn to Roseway, GW Cdn, **IN CONSIDERATION OF THE OBLIGATIONS** and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, hereby grants, bargains, assigns and transfers to Roseway a continuing security interest in, and a security interest is taken in, all of the property, assets and undertakings of GW Cdn, whether now owned or hereafter-acquired by or on behalf of GW Cdn, wherever located, including, without limitation, all of GW Cdn's present and after acquired personal property but excluding the Excluded Assets (the "Collateral") and including without limitation:

(a) **Accounts Receivable**

All debts, book debts, accounts, claims, demands, moneys and choses in action whatsoever including, without limitation, claims against the Crown and claims under insurance policies, which are now owned by or are due, owing or accruing due to GW Cdn or which may hereafter be owned by or become due, owing or accruing due to GW Cdn together with all contracts, investment property, bills, notes, lien notes, judgments, chattel mortgages, mortgages and all other rights, benefits and documents now or hereafter taken, vested in or held by GW Cdn in respect of or as security for the same and the full benefit and advantage thereof, and all rights of action or claims which GW Cdn now has or may at any time hereafter have against any Person in respect thereof (all of the foregoing being

herein collectively called the “Accounts Receivable”);

(b) Chattel Paper, Instruments, Securities, etc.

All chattel paper, instruments, warehouse receipts, bills of lading and other documents of title, whether negotiable or non negotiable, share, stock, security entitlements, warrants, bonds, debentures, debenture stock or other securities or investment property and financial assets now or hereafter owned by GW Cdn;

(c) Intangibles

All intangibles now or hereafter owned by GW Cdn including, without limitation, all goodwill connected with or symbolized by any of such general intangibles; all contract rights, documents, applications, licenses, materials and other matters related to such general intangibles; all tangible property embodying or incorporating any such general intangibles; and all chattel paper and instruments relating to such general intangibles. The Collateral shall include (i) all patents, and all unpatented or unpatentable inventions; (ii) all trademarks, service marks, and trade names (including without limitation the trademarks listed on Schedule 1.1(e) hereto); (iii) all copyrights and literary rights; (iv) all computer software programs; (v) all trade secrets, proprietary information, customer lists, manufacturing, engineering and production plans, drawings, specifications, processes and systems (collectively, the “Intellectual Property” and, together with all of the foregoing, collectively, the “Intangibles”);

(d) Proceeds of Excluded Assets

All divestment proceeds of the Excluded Assets (except to the extent such proceeds are themselves Excluded Assets) including without limitation, the right to receive any dividends payable thereunder, any dividends paid thereunder, or the proceeds of any Venture Portfolio Securities, in any form, in each case to the extent of any interest retained by GW Cdn;

(e) Books and Accounts, etc.

With respect to the personal property described in Paragraphs (a) to (d) inclusive and the Excluded Assets, all books, accounts, invoices, deeds, documents, writings, letters, papers, security certificates and other records in any form evidencing or relating thereto and all contracts, securities, instruments and other rights and benefits in respect thereof, except to the extent such assets are themselves Excluded Assets;

(f) Other Property

The uncalled capital, money, rights, bills of exchange, negotiable and non negotiable instruments, judgments and securities not otherwise described in Paragraphs (a) to (e) inclusive;

## (g) Replacements, etc.

With respect to the personal property described in Paragraphs (a) to (f) inclusive, all substitutions and replacements thereof, increases, additions and accessions thereto and any interest of GW Cdn therein; and

## (h) Proceeds

With respect to the personal property described in Paragraphs (a) to (g) inclusive, personal property in any form or fixtures derived directly or indirectly from any dealing with such property or that indemnifies or compensates for such property destroyed or damaged and proceeds of proceeds whether of the same type, class or kind as the original proceeds.

## 1.2 Definitions and Interpretation

In this Security Agreement, terms used herein and defined in the PPSA shall have the same meanings as in the PPSA unless the context otherwise requires, capitalized terms used and not otherwise defined herein shall have the meaning ascribed to them in the Participation Agreement (as hereinafter defined) and:

“**Class A Shares**” means the Class A Shares of GW Cdn offered under the Prospectus;

“**Critical NAV Amount**” means \$110,000,000;

“**Custodian**” means RBC Dexia Investor Services (as successor to the Royal Trust Company);

“**Custodian Acknowledgement Agreement**” means the custodian acknowledgement agreement dated the date hereof among GW Cdn, Roseway, the Manager of GW Cdn and the Custodian;

“**encumbrance**” includes, without limitation, a security interest, lien, hypothec, claim, charge, deemed trust or encumbrance of any kind whatsoever;

“**Excluded Assets**” means the equity and debt investments held by GW Cdn and classified for purposes of the statement of investment portfolio forming part of GW Cdn’s financial statements as venture investments, and proceeds thereof but only to the extent that the granting of any security interest or the assignment thereof in such investments or proceeds by GW Cdn is prohibited by contract, portfolio company articles or securities laws (“**Venture Portfolio Securities**”), but “**Excluded Assets**” shall not include (and accordingly Collateral shall include) any divestment proceeds, including without limitation, the right to receive any dividends payable thereunder, any dividends paid thereunder or the proceeds of any Venture Portfolio Securities, in any form (except to the extent such dividends or proceeds are themselves Excluded Assets);

“**NAV**” has the meaning ascribed thereto in the Prospectus;

“**Obligations**” means all present and future obligations of GW Cdn to Roseway under the Participation Agreement and under this Agreement, including without limitation all

payment and remittance obligations in respect of the Participating Interest;

“**Participating Interest**” has the meaning ascribed thereto in the Participation Agreement;

“**Participation Agreement**” shall mean the participation agreement dated as of on or about the date hereof between Roseway and GW Cdn, as the same may be amended, supplemented, revised, replaced or restated from time to time;

“**Permitted Encumbrances**” means the encumbrances listed in Schedule “A”.

“**Prospectus**” means the Prospectus of GW Cdn dated November 10, 2009 in respect of the offering of Class A Shares of GW Cdn, as amended by GW Cdn in good faith and in accordance with applicable securities laws from time to time;

“**security interest**” shall include, without limitation, a fixed mortgage, hypothecation, pledge, charge and assignment; and

“**STA**” shall refer to the *Securities Transfer Act* (Ontario) or, to the extent applicable, similar legislation of any other jurisdiction, as amended from time to time.

“[redacted – confidential information] **Security**” means the security created under the [redacted – confidential information] Security Agreement in respect of all of GW Cdn’s present and after-acquired personal property, and under the [redacted – confidential information] Pledge Agreement, in each case in favour of [redacted – confidential information].

1.3 The grant of the security interest herein provided for shall include, without limitation, a fixed mortgage, hypothecation, pledge, charge and assignment of the Collateral in favour of Roseway;

1.4 Leases

(a) The last day of the term of any lease or sub-lease, oral or written, or any agreement therefor, now held or hereafter acquired by GW Cdn, shall be excepted from the security interest hereby granted and shall not form part of the Collateral, but GW Cdn shall stand possessed of such one day remaining, upon trust to assign and dispose of the same as Roseway or any assignee of such lease, or sub-lease or agreement shall direct. If any such lease, sub-lease or agreement therefor contains a provision which provides in effect that such lease, sub-lease or agreement may not be assigned, sub-leased, charged or encumbered without the leave, license, consent or approval of the lessor, the application of the security interest created hereby to any such lease, sub-lease or agreement shall be conditional upon such leave, license, consent or approval having been obtained.

(b) Pursuant to this Security Agreement:

(i) To the extent that the creation of the security interest created hereby would constitute a breach of or default under, or permit the acceleration or termination of any agreement, right, licence or permit of GW Cdn which



constitutes Collateral (each, a “**Restricted Asset**”), the security interest created hereunder shall not attach to the Restricted Asset, but GW Cdn shall, subject to paragraph (ii) below, hold its interest in the Restricted Asset in trust for Roseway, provided that, until the security interest created hereby has become enforceable, GW Cdn shall be entitled to all proceeds arising under or in connection with the Restricted Asset.

- (ii) To the extent that the creation of the trust in paragraph (i) above would constitute a breach or permit the acceleration or termination of any Restricted Asset, the security interest created hereunder shall not attach to the Restricted Asset, but the security interest created hereby will constitute a trust created in favour of Roseway pursuant to which GW Cdn shall hold as trustee its interest in all proceeds arising under or in connection with the Restricted Asset in trust for Roseway, provided that until the security interest created hereby has become enforceable, GW Cdn shall be entitled to receive all such proceeds.

#### 1.5 GW Cdn Remains Liable

Notwithstanding anything herein to the contrary:

- (a) GW Cdn shall remain liable under the contracts and agreements included in the Collateral to the extent set forth therein to perform all its duties and obligations thereunder to the same extent as if this Security Agreement had not been executed;
- (b) the exercise by Roseway of any of the rights or remedies hereunder shall not release GW Cdn from any of its duties or obligations under the contracts and agreements included in the Collateral; and
- (c) Roseway shall not have any obligation or liability under the contracts and agreements included in the Collateral by reason of this Security Agreement, nor shall Roseway be obligated to perform any of the obligations or duties of GW Cdn thereunder or to take any action to collect or enforce any claim for payment assigned hereunder.

#### 1.6 Attachment

GW Cdn acknowledges that the security interests that arise under this Security Agreement attach upon the execution of this Security Agreement and that value has been given and attachment has not been postponed. A security interest in any after acquired property included in the Collateral attaches to that property on acquisition of any rights therein by GW Cdn.

### **SECTION 2 – REPRESENTATIONS AND WARRANTIES**

GW Cdn represents and warrants to and in favour of Roseway on the Closing Date:

#### 2.1 Enforceability

This Security Agreement constitutes a valid and legally binding obligation of GW Cdn

enforceable against GW Cdn in accordance with its terms, subject to:

- (a) applicable bankruptcy, insolvency, reorganization, limitations, moratorium and other laws generally affecting creditors' rights; and
- (b) equitable remedies such as injunction and specific performance which remedies are available in the discretion of a court of competent jurisdiction.

## 2.2 Locations of Collateral

The tangible Collateral, except where it is in transit to and from the locations herein described, is located at the location specified above as GW Cdn's principal office or place of business (and its chief place of business and chief executive office) or at such other addresses as provided for in the Participation Agreement. The location at which all records of GW Cdn pertaining to Accounts Receivable (and all chattel paper which evidences Accounts Receivable) and contract rights are kept at the location specified above or in custody with the Custodian unless the contrary is provided for in the Participation Agreement.

## 2.3 Survival

All representations and warranties of GW Cdn made herein or in any certificate or other document delivered by or on behalf of GW Cdn to Roseway are material, shall be deemed to have been relied upon by Roseway notwithstanding any investigation heretofore or hereafter made by or on behalf of Roseway, shall survive the execution and delivery of this Security Agreement and shall continue in full force and effect for a period ending upon the irrevocable payment by GW Cdn of all amounts payable under Section 3.3(a), (b), (c) and (d) of the Participation Agreement.

## **SECTION 3 – COVENANTS OF THE CORPORATION**

GW Cdn covenants and agrees with Roseway that so long as there shall remain any Obligations of or affecting any party to this Security Agreement:

### 3.1 Payment

GW Cdn will pay duly and punctually all sums of money due by it to Roseway under this Security Agreement and the Participation Agreement at the times and places and in the manner provided for herein and therein.

### 3.2 Notice Regarding Change of Address, etc.

GW Cdn shall notify Roseway in writing:

- (a) At least 30 Business Days prior to any change of name of GW Cdn;
- (b) At least 30 Business Days prior to any transfer of GW Cdn's interest in any part of the Collateral not expressly permitted hereunder or under the Participation Agreement;

- (c) Promptly of any significant loss of or damage to Collateral;
- (d) At least 30 Business Days prior to any change in the location(s) of the Collateral and any records relating thereto; and
- (e) Forthwith upon becoming aware of the existence of any condition or event which could cause or which, with the passage of time or notice, or both, constitute a Default, give Roseway written notice thereof specifying the nature and duration thereof and the action being taken or proposed to be taken with respect thereto.

### 3.3 Other Financing Statements or Control.

Except as otherwise permitted hereunder, GW Cdn shall not (a) file, or suffer to be on file, or authorize or permit to be filed or to be on file, in any jurisdiction, any financing statement or like instrument with respect to any of the Collateral in which Roseway is not named as the sole secured party, or (b) cause or permit any Person other than Roseway to have “**control**” (as defined in the STA) of any financial asset or investment property constituting part of the Collateral or Excluded Assets, other than “**control**” in favour of any depositary bank or securities intermediary which acts solely as custodian for GW Cdn in respect of such assets or has subordinated its lien to the lien of Roseway pursuant to documentation in form and substance satisfactory to Roseway. Immediately upon having knowledge that a financing statement or like instrument is or is reasonably likely to be on file in any jurisdiction, with respect to any Collateral, GW Cdn shall (i) immediately give written notice to Roseway of such filing or proposed filing; and (ii) take such steps as may be requested by Roseway, with respect to such filing. Notwithstanding the foregoing, Roseway acknowledges and agrees that the security interests created hereunder are and shall remain subordinate in priority to the [redacted – confidential information] Security, provided however that GW Cdn undertakes to use all commercially reasonable efforts to terminate the [redacted – confidential information] Security and discharge all registrations in respect thereof as soon as reasonably practicable after June 30, 2010. GW Cdn and Roseway agree that the terms of the Custodian Acknowledgement Agreement do not in any way alter the terms of this Agreement or expand the scope of the security interests or the rights of Roseway provided for hereunder.

### 3.4 Special Provisions Relating to Pledged Securities.

- (a) GW Cdn will cause any and all Collateral that is a security in the form of shares, (collectively, the “**Pledged Securities**”), to constitute at all times 100% of the total number of shares of the relevant issuer that are owned by GW Cdn.
- (b) So long as no Default (as hereinafter defined) shall have occurred and be continuing, GW Cdn shall have the right to exercise all voting, consensual and other powers of ownership pertaining to the Pledged Securities for all purposes not inconsistent with the terms of this Security Agreement, the Participation Agreement or any other instrument or agreement referred to herein or therein, provided that GW Cdn agrees that it will not vote the Pledged Securities in any manner that is inconsistent with the terms of this Security Agreement, the Participation Agreement or any such other instrument or agreement.
- (c) Except as provided in the Participation Agreement, unless and until a Default

shall have occurred and be continuing, GW Cdn shall be entitled to receive and retain any dividends, distributions or proceeds on the Pledged Securities (whether paid or distributed in cash, securities or other property).

- (d) If a Default shall have occurred and be continuing, whether or not Roseway exercises any available right to declare any Obligations due and payable or seeks or pursues any other relief or remedy available to it under applicable law or under this Security Agreement, the Participation Agreement or any other agreement relating to such Obligation, upon notice to GW Cdn, all dividends and other distributions on the Pledged Securities shall be paid directly to Roseway and retained by it as part of the Collateral, subject to the terms of this Security Agreement, and, if Roseway shall so request in writing, GW Cdn agrees to execute and deliver to Roseway any instruments or other documents necessary or desirable to ensure that such dividends and other distributions on the Pledged Securities shall be paid directly to Roseway, provided that if such Default is cured, any such dividend or distribution theretofore paid to Roseway shall, promptly (except to the extent theretofore applied to the Obligations), be returned by Roseway to GW Cdn.
- (e) GW Cdn shall not terminate, cancel, allow to lapse or expire, or amend the Custodian Agreement made as of December 1, 2004 between GW Cdn and RBC Dexia Investor Services (as successor to the Royal Trust Company) without the prior written consent of Roseway, which consent shall not be unreasonably withheld.
- (f) Roseway will not deliver any Entitlement Order, direction, instructions or notice to the Custodian under the Custodian Acknowledgement Agreement or otherwise with respect to any property of GW Cdn held by the Custodian unless a Default has occurred and is continuing and Roseway agrees that any action taken under the Custodian Acknowledgement Agreement will be taken in a manner consistent with the terms of this Agreement, the Participation Agreement and Roseway's rights and entitlements thereunder. If a Default occurs but is remedied by GW Cdn to the satisfaction of, or waived by, Roseway, Roseway will withdraw all Entitlement Orders, directions, instructions and notices delivered to the Custodian following such Default.

### 3.5 Negative Covenants

GW Cdn covenants and agrees that it shall not, without the prior written consent of Roseway:

- (a) **Encumber Property.** Create, grant, assume or suffer to exist any security interest, lien, charge, mortgage, hypothec or encumbrance upon any of its assets except for Permitted Encumbrances and as permitted in Section 3.6;
- (b) **Indebtedness.** Incur or guarantee any indebtedness other than (i) the Obligations, and (ii) indebtedness other than guarantees incurred in the ordinary course of business, such indebtedness not to exceed \$15 million in the aggregate and (iii) guarantees granted in the ordinary course of business, such guarantees not to

exceed \$10 million in the aggregate; or

- (c) **Amalgamations, etc.** Enter into any transaction (including by way of reorganization, consolidation, amalgamation, liquidation or otherwise) whereby all or any portion of its property and assets would become the property of any other person.

### 3.6 Permitted Encumbrance Assets

GW Cdn may grant and maintain encumbrances over assets outside of the Defined Portfolio in priority to the security interests created hereunder but only to the extent securing indebtedness permitted under Section 3.5(b) and so long as the NAV of GW Cdn, excluding the aggregate value attributable to such encumbered assets over and above the amount of any such indebtedness (to the extent not already excluded in determining NAV, to avoid double-counting) and without excluding any value attributed to the [redacted – confidential information] Security, exceeds the Critical NAV Amount. Roseway agrees to execute and deliver such subordination, priority and other agreements and instruments as may be reasonably requested to facilitate the granting of such encumbrances. For purposes of this Agreement, any such assets so encumbered by GW Cdn, other than by way of the [redacted – confidential information] Security, shall be referred to as “**Permitted Encumbrance Assets**”. GW Cdn agrees to provide Roseway with full particulars of any encumbrance granted under this Section 3.6.

### 3.7 Permitted Transactions

Roseway will not withhold its consent under Section 3.5(c) to a transaction or series of transactions completing a merger, reorganization or business combination of GW Cdn with one or more other entities managed by affiliates of GW Cdn’s manager if Roseway is satisfied, acting reasonably and expeditiously, that such transaction would not have a material adverse effect of GW Cdn’s (or its successor under such a transaction or series of transactions) ability to perform its obligations under the Participation Agreement and this Agreement or on the amounts that are and would otherwise become payable to Roseway. GW Cdn will expeditiously provide Roseway with all information and documentation necessary for Roseway to make such determination.

## **SECTION 4 – COLLECTION OF PROCEEDS**

### 4.1 Payments to Roseway

Upon the occurrence and during the continuance of a Default (as defined below), GW Cdn shall:

- (a) Collect and enforce payment of all Accounts Receivable (except as provided for in Section 4.2 or the Participation Agreement) and shall dispose of and receive payment for all Inventory which is ordinarily disposed of in GW Cdn’s business;
- (b) Receive and hold in trust for Roseway, all payments on or instruments received in respect of the Collateral, all rights by way of suretyship or guarantee which GW Cdn now has or may hereafter acquire to enforce payment of Collateral and all rights in the nature of a security interest whereby GW Cdn may satisfy any Collateral out of property, and all non cash proceeds of any such collection, disposition or realization of any of the Collateral shall be subject to the security

interest hereby created;

- (c) Endorse to Roseway and forthwith deliver to it all such payments and instruments in the form received by GW Cdn; and
- (d) Forthwith deliver to Roseway all property in GW Cdn's possession or hereafter coming into its possession through enforcement of any such rights.

#### 4.2 Account Debtor

Upon the occurrence and during the continuance of a Default (as defined below), Roseway may at any time notify or require GW Cdn to notify an account debtor or debtor under any Accounts Receivable, investment property, chattel paper or Intangible, in each case that constitutes Collateral, of the assignment of such Accounts Receivable, investment property, chattel paper or Intangible to Roseway and require such person to make payment to Roseway in respect of any of the Accounts Receivable, investment property, chattel paper or Intangible, and Roseway may hold all amounts acquired or received from any such account debtors or obligors (and if any such amounts are received by GW Cdn, they shall be held in trust by GW Cdn for the benefit of Roseway and as promptly as possible remitted or delivered to Roseway for application as provided herein), together with income on such amounts, as part of the Collateral and as security for the Obligations.

### SECTION 5 – DEFAULT

#### 5.1 Default

Without in any way limiting the nature of the Obligations or any of them, the Obligations secured hereby shall, in relation to the Participation Agreement in accordance with this Security Agreement, become immediately due and payable and the security interests hereby constituted shall become enforceable in each and every of the following events (herein called a “Default”):

- (a) if GW Cdn fails to make any payment of any of the Obligations when due in accordance with the Participation Agreement and, such failure shall continue for a period of seven Business Days after a notice in writing has been given by Roseway to GW Cdn;
- (b) the NAV of GW Cdn, excluding any value attributed to Permitted Encumbrance Assets over and above the amount of indebtedness secured thereby and not already excluded in determining NAV, is at any time less than the Critical NAV Amount;
- (c) at any time prior to the payment in full of the amount payable by GW Cdn to Roseway under Section 3.3(c) of the Participation Agreement, the NAV of GW Cdn calculated solely with reference to investments held by GW Cdn and not classified for purposes of the statement of investment portfolio forming part of GW Cdn's financial statements venture investments but excluding any value attributed to any such assets that are Permitted Encumbrance Assets over and above the amount of indebtedness secured thereby and not already excluded in determining NAV, is less than \$10 million;

- (d) if an order is made or an effective resolution passed for the winding up, liquidation or dissolution of GW Cdn;
- (e) if GW Cdn admits in writing its inability to pay its debts generally as they become due or makes a general assignment for the benefit of its creditors or otherwise acknowledges its insolvency or is declared bankrupt or makes an authorized assignment or a proposal to its creditors under any bankruptcy or insolvency legislation or if an administrator, trustee, receiver or any other officer with similar powers is appointed in respect of GW Cdn or of the property of GW Cdn or any substantial part thereof under any bankruptcy or insolvency legislation; provided, however, that GW Cdn suspending redemptions of Class A Shares shall not, in and of itself, constitute a Default;
- (f) if a proceeding is instituted for the liquidation of GW Cdn or a petition in bankruptcy is presented against GW Cdn under applicable bankruptcy or insolvency legislation and if, in either case, such proceeding or petition shall not have been dismissed or withdrawn by the earlier to occur of the day that is (i) 45 days from the initiation thereof or, if GW Cdn is making good faith efforts to contest such proceedings, 90 days;
- (g) if GW Cdn grants any security interest, lien, charge, mortgage, hypothec or encumbrance over any of the Collateral or Excluded Assets (other than to Roseway or as otherwise permitted under this Agreement), or if an encumbrancer takes possession of a substantial part of the Collateral or Excluded Assets forming part of the Defined Portfolio or if any process or execution is levied or enforced upon or against a substantial part of the Collateral or Excluded Assets forming part of the Defined Portfolio and remains unsatisfied for such period as would permit any such property to be sold thereunder;
- (h) GW Cdn fails to pay when due (whether at scheduled maturity, by acceleration or otherwise) any principal, interest or other amount payable in respect of any obligation (other than the Obligations) having an aggregate principal amount in excess of the Dollar Equivalent of \$2,000,000 or (ii) any breach or default of GW Cdn occurs under any document, instrument or agreement to which it is a party or by which it or any of its properties is bound, relating to any debt (other than the Obligations) in excess of \$2,000,000, if the maturity of or any payment with respect to such debt may be accelerated or demanded due to such breach and in either case the failure, breach or default cannot be remedied by GW Cdn or, if a remedy is possible, is not remedied within the period specified in the agreement or instrument governing such obligation;
- (i) GW Cdn is enjoined, restrained or in any way prevented by any governmental authority from completing divestments from the Defined Portfolio or making payments to Roseway under the Participation Agreement, suffers the loss, revocation or termination of any material license, permit, lease or agreement necessary to complete such divestments or make such payments or otherwise adopts a policy whereby it ceases to undertake divestment activities for a material period of time;

- (j) if any representation or warranty of GW Cdn hereunder or under the Participation Agreement was not true and correct in all material respects when made resulting in a material adverse effect on GW Cdn's ability to complete divestments from the Defined Portfolio generally or make payments to Roseway;
- (k) if GW Cdn defaults in any respect in observing or performing in all material respects any other covenant or condition of this Security Agreement or the Participation Agreement on its part to be observed or performed to the extent such default has a material adverse effect on GW Cdn's ability to perform its obligations under the Participation Agreement or this Agreement, and such continues for a period of 30 days after a notice in writing has been given by Roseway to GW Cdn; or
- (l) GW Cdn requests any advance or drawdown or otherwise permits any indebtedness to arise under or secured by the [redacted – confidential information] Security.

## 5.2 Nature of Obligations

GW Cdn agrees that upon the occurrence and during the continuance of a Default under Section 5.1 hereof, the security interests hereby constituted shall become enforceable and Roseway shall be entitled to exercise and enforce any or all of the remedies herein provided or which may otherwise be available to Roseway by statute at law or in equity and all amounts secured hereby shall immediately be paid to Roseway by GW Cdn.

## 5.3 Acceleration

Upon the occurrence and continuance of a Default, Roseway shall have the right to declare all Obligations under Sections 3.3(a), (b), (c) and (d) of the Participation Agreement to be immediately due and payable by GW Cdn, notwithstanding the dates on which such amounts are required to be paid pursuant to the Participation Agreement. The amounts otherwise payable to Roseway under Sections 3.1 and 3.3(e) of the Participation Agreement shall remain payable in the manner and at the times specified therein (and secured under the Agreement) provided that at any time after the occurrence of a Default and while such Default is continuing Roseway may, at its sole and exclusive option, elect by notice in writing to GW Cdn to be paid in lieu of such payments, as liquidated damages, an amount equal to 20% of the value of the remaining Defined Portfolio at the time of such election (and following the payments required under Section 3.3(a) through (d)).

## 5.4 Interest

In the event of a Default hereunder, all Obligations due and payable by GW Cdn and remaining unpaid shall accrue interest at the rate of 20% per annum, calculated and accrued daily and compounding monthly, until such amounts are paid in full.

## **SECTION 6 – REMEDIES ON DEFAULT**

If the security interests hereby constituted become enforceable, Roseway shall have, in addition to any other rights, remedies and powers which it may have at law, in equity or under the PPSA, the Civil Code of Quebec (the “CCQ”) or the Uniform Commercial Code (the “Code”) (whether



or not the CCQ or the Code applies to the affected Collateral) and such additional rights and remedies to which a secured party is entitled under the laws in effect in any jurisdiction where any rights and remedies hereunder may be asserted, including the right, to the fullest extent permitted by law, to exercise all voting, consensual and other powers of ownership pertaining to the Collateral as if Roseway were the sole and absolute owner thereof (and GW Cdn agrees to take all such action as may be appropriate to give effect to such right), the following rights, remedies and powers:

#### 6.1 Power of Entry

GW Cdn shall forthwith upon demand assemble and deliver to Roseway possession of all of the Collateral at such place or places as may be specified by Roseway. Roseway may take such steps as it considers necessary or desirable to obtain possession of all or any part of the Collateral and, to that end, GW Cdn agrees that Roseway, its servants or agents or Receiver (as hereinafter defined) may, at any time, during the day or night, enter upon lands and premises where the Collateral may be found for the purpose of taking possession of and/or removing the Collateral or any part thereof. In the event of Roseway taking possession of the Collateral, or any part thereof, Roseway shall have the right to maintain the same upon the premises on which the Collateral may then be situate. If and to the extent that compliance with this Section 6.1 would cause a breach of applicable securities laws requiring that GW Cdn's assets remain in the possession of a custodian, GW Cdn may, in lieu of assembling and delivering such Collateral to Roseway, authorize representatives of Roseway to give instructions to such custodian upon the occurrence and during the continuance of a Default to the extent not already provided under the Custodian Acknowledgement Agreement.

#### 6.2 Power of Sale

Roseway may sell, lease or otherwise dispose of all or any part of the Collateral and any Receiver may sell, lease or otherwise dispose of all or any part of the Excluded Assets, as a whole or in separate parcels, by public auction, private tender or by private contract, with or without notice, except as otherwise required by applicable law, with or without advertising and without any other formality, all of which are hereby waived by GW Cdn. Such sale, lease or disposition shall be on such terms and conditions as to credit and otherwise and as to upset or reserve bid or price as Roseway, in its sole discretion, may seem advantageous. If such sale, transfer or disposition is made on credit or part cash and part credit, Roseway need only credit against the Obligations the actual cash received at the time of the sale. Any payments made pursuant to any credit granted at the time of the sale shall be credited against the Obligations as they are received. Roseway may buy in or rescind or vary any contract for sale of all or any of the Collateral and may resell without being answerable for any loss occasioned thereby. Any such sale, lease or disposition may take place whether or not Roseway has taken possession of the Collateral. Roseway may, before any such sale, lease or disposition, perform any commercially reasonable repair, processing or preparation for disposition and the amount so paid or expended shall be deemed advanced to GW Cdn by Roseway, shall become part of the Obligations, shall bear interest at the highest rate per annum charged by Roseway on the Obligations or any part thereof and shall be secured by this Security Agreement.

#### 6.3 Validity of Sale

No person dealing with Roseway or its servants shall be concerned to inquire whether the

security hereby constituted has become enforceable, whether the powers which Roseway is purporting to exercise have become exercisable, whether any money remains due on the security of the Collateral, as to the necessity or expedience of the stipulations and conditions subject to which any sale, lease or disposition shall be made, otherwise as to the propriety or regularity of any sale or any other dealing by Roseway or the Receiver, as applicable, with the Collateral and Excluded Assets, as applicable, or to see to the application of any money paid to Roseway. In the absence of fraud on the part of such persons, such dealings shall be deemed, so far as regards the safety and protection of such person, to be within the powers hereby conferred and to be valid and effective accordingly.

#### 6.4 Receiver-Manager

Roseway may, in addition to any other rights it may have, appoint by instrument in writing a receiver or receiver and manager (both of which are herein called a "Receiver") of all or any part of the Collateral and Excluded Assets or may institute proceedings in any court of competent jurisdiction for the appointment of such a Receiver. Any such Receiver is hereby given and shall have the same powers and rights and exclusions and limitations of liability as Roseway has under this Security Agreement, at law or in equity. In exercising any such powers, any such Receiver shall, to the extent permitted by law and except as expressly provided otherwise hereunder, act as and for all purposes shall be deemed to be the agent of GW Cdn and Roseway shall not be responsible for any act or default of any such Receiver. Roseway may appoint one or more Receivers hereunder and may remove any such Receiver or Receivers and appoint another or others in his or their stead from time to time. Any Receiver so appointed may be an officer or employee of Roseway. A court need not appoint, ratify the appointment by Roseway of or otherwise supervise in any manner the actions of any Receiver.

#### 6.5 Carrying on Business

Roseway may carry on, or concur in the carrying on of, all or any part of the business or undertaking of GW Cdn, may, to the exclusion of all others, including GW Cdn, enter upon, occupy and use all or any of the premises, buildings, plant and undertaking of or occupied or used by GW Cdn and may use all or any of the assets of GW Cdn for such time as Roseway sees fit, free of charge, to carry on the business of GW Cdn.

#### 6.6 Dealing with Collateral

- (a) Roseway may seize, collect, realize, dispose of, enforce, release to third parties or otherwise deal with all or any part of the Collateral and any Receiver may seize, collect, realize, dispose of, enforce, release to third parties or otherwise deal with all or any part of the Excluded Assets in such manner, upon such terms and conditions and at such time or times as may seem to it advisable, all of which without notice to GW Cdn except as otherwise required by any applicable law. Roseway may, but shall not be obligated to, in its name or in the name of GW Cdn or otherwise, demand, sue for, collect and receive any Collateral and Excluded Assets and with or without notice to GW Cdn, give such receipts, discharges and extensions of time and make such compromises or settlements deemed desirable with respect to any of the Collateral and Excluded Assets. Roseway may charge on its own behalf and pay to others, sums for costs and expenses incurred including, without limitation, reasonable legal fees and

expenses on a solicitor and his own client scale and Receivers' and accounting fees, in or in connection with seizing, collecting, realizing, disposing, enforcing or otherwise dealing with the Collateral and Excluded Assets and in connection with the protection and enforcement of the rights of Roseway hereunder including, without limitation, in connection with advice with respect to any of the foregoing. The amount of such sums shall be deemed advanced to GW Cdn by Roseway, shall become part of the Obligations, shall bear interest at 20% per annum calculated and accrued daily and compounding monthly and shall be secured by this Security Agreement.

- (b) Without limitation to the foregoing, Roseway may require GW Cdn to cause any Collateral that is investment property to be transferred of record into the name of Roseway or its nominee (and Roseway agrees that if any such investment property is transferred into its name or the name of its nominee, Roseway will thereafter promptly give to GW Cdn copies of any notices and communications received by it with respect to investment property). Roseway may exercise any and all rights, privileges, entitlements and options pertaining to any Collateral that is investment property as if Roseway were the absolute owner of such investment property.
- (c) To the extent that applicable law imposes duties on Roseway to exercise remedies in a commercially reasonable manner, and without prejudice to the ability of Roseway to dispose of the Collateral and Excluded Assets in any such manner, GW Cdn acknowledges and agrees that it is not commercially unreasonable for Roseway (i) to incur expenses reasonably deemed significant by Roseway to prepare the Collateral and Excluded Assets for disposition, (ii) provided it has exercised reasonable diligence, to fail to obtain third party consents for access to the Collateral and Excluded Assets to be disposed of, (iii) to fail to exercise collection remedies against account debtors obligated on the Collateral or to remove Liens against the Collateral, (iv) to exercise collection remedies against GW Cdn directly or through the use of collection agencies, (v) to dispose of Collateral and Excluded Assets by way of public auction, public tender or private contract, with or without advertising and without any other formality, (vi) to contact other Persons, whether or not in the same business of GW Cdn, for expressions of interest in acquiring all or any portion of the Collateral or Excluded Assets, (vii) to hire one or more professional auctioneers to assist in the disposition of the Collateral and Excluded Assets, whether or not the Collateral is of a specialized nature or an upset or reserve bid or price is established, and (viii) to dispose of Collateral and Excluded Assets in whole or in part.
- (d) Roseway is authorized, in connection with any offer or sale of any Pledged Securities or any Collateral and Excluded Asset that is a security entitlement ("**Security Entitlements**"), to comply with any limitation or restriction as it may be advised by counsel is necessary to comply with applicable law, including compliance with procedures that may restrict the number of prospective bidders and purchasers, requiring that prospective bidders and purchasers have certain qualifications, and restricting prospective bidders and purchasers to Persons who will represent and agree that they are purchasing for their own account or investment and not with a view to the distribution or resale of such Pledged

Securities or Security Entitlements. GW Cdn further agrees that compliance with any such limitation or restriction will not result in a sale being considered or deemed not to have been made in a commercially reasonable manner, and Roseway will not be liable or accountable to GW Cdn for any discount allowed by reason of the fact that such Pledged Securities or Security Entitlements are sold in compliance with any such limitation or restriction. If Roseway chooses to exercise its right to sell any or all Pledged Securities or Security Entitlements, upon written request, GW Cdn will use commercially reasonable efforts to cause each applicable issuer to furnish to Roseway all such information as Roseway may request in order to determine the number of shares and other instruments included in the Collateral and Excluded Assets which may be sold by Roseway in exempt transactions under any laws governing securities, and the rules and regulations of any applicable securities regulation thereunder, as the same are from time to time in effect.

- (e) GW Cdn agrees that to the extent Roseway is required by applicable law to give reasonable prior notice of any sale or other disposition of any Collateral, fifteen (15) days' notice shall be deemed to constitute reasonable prior notice unless the mandatory provisions of such applicable law specifically require a longer notice period which cannot be waived or reduced.

#### 6.7 Right to Use

- (a) Upon the occurrence of a Default that is continuing, GW Cdn hereby grants to Roseway an irrevocable, non exclusive license (exercisable without payment of royalty or other compensation to GW Cdn) (each a "Granted Licence") to use, assign, license, or sublicense all of GW Cdn's present and future property, whether real or personal, including, without limitation, labels, Intellectual Property and advertising matter, or any other property of any nature or of a similar nature, and all reasonable access to all media in which any of the licensed items may be recorded or stored and to all computer programs used for the compilation or printout thereof, as it pertains to the Collateral, in completing production of, advertising for sale, and selling of any Collateral and GW Cdn's rights under all licenses and all franchise agreements shall inure to Roseway.
- (b) To the extent that GW Cdn is expressly prohibited by any agreement to which it is a party from granting a Granted Licence GW Cdn shall hold its interest in the right to use, assign, license or sublicense the property in respect of which the grant of a Granted License is expressly prohibited, in trust for Roseway.

#### 6.8 Retention of Collateral

Upon notice to GW Cdn and subject to any obligation to dispose of any of the Collateral, as provided in the PPSA, Roseway may elect to retain all or any part of the Collateral in satisfaction of the Obligations or any of them. In the event of any dispute between GW Cdn and Roseway as to the value to be attributed to any Collateral retained by Roseway under this Section 6.8, such dispute shall be resolved in accordance with the provisions of Section 9.6 of the Participation Agreement.

### 6.9 Pay Encumbrances

Roseway may pay any encumbrance that may exist or be threatened against the Collateral or Excluded Assets (other than Permitted Encumbrance Assets). In addition, Roseway may borrow money required for the maintenance, preservation or protection of the Collateral and Excluded Assets or for the carrying on of the business or undertaking of GW Cdn and may grant further security interests in the Collateral in priority to the security interest created hereby as security for the money so borrowed. In every such case the amounts so paid or borrowed together with costs, charges and expenses incurred in connection therewith shall be deemed to have been advanced to GW Cdn by Roseway, shall become part of the Obligations, shall bear interest at 20% per annum calculated and accrued daily and compounding monthly and shall be secured by this Security Agreement.

### 6.10 Application of Payments Against Obligations

Any and all payments made in respect of the Obligations from time to time and moneys realized on the Collateral may be applied to such part or parts of the Obligations as Roseway may see fit. Roseway shall, at all times and from time to time, have the right to change any appropriation as it may see fit.

### 6.11 Set-Off

The Obligations will be paid by GW Cdn without regard to any equities between GW Cdn and Roseway or any right of set-off or cross-claim. Any indebtedness owing by Roseway to GW Cdn may be set off and applied by Roseway against the Obligations at any time or from time to time either before or after maturity, without demand upon or notice to anyone.

### 6.12 Deficiency

If the proceeds of the realization of the Collateral are insufficient to repay Roseway all monies due to it, GW Cdn shall forthwith pay or cause to be paid to Roseway such deficiency.

### 6.13 Roseway Not Liable

Roseway shall not be liable or accountable for any failure to seize, collect, realize, dispose of, enforce or otherwise deal with the Collateral or Excluded Assets, shall not be bound to institute proceedings for any such purposes or for the purpose of preserving any rights of Roseway, GW Cdn or any other Person in respect of the Collateral and Excluded Assets and shall not be liable or responsible for any loss, cost or damage whatsoever which may arise in respect of any such failure, including, without limitation, any loss, cost or damage resulting from the acts or omissions of Roseway or any of its officers, servants, partners, employees, agents, solicitors, attorneys, Receivers or otherwise, except in the case of wilful misconduct or gross negligence. Neither Roseway nor any of its partners, officers, employees, servants, agents, or Receivers shall be liable by reason of any entry into possession of the Collateral or Excluded Assets or any part thereof, to account as a mortgagee in possession, for anything except actual receipts, for any loss on realization, for any act or omission for which a mortgagee in possession might be liable, for any acts or omissions in the carrying on or occupation of the business or undertaking of GW Cdn as provided in Section 6.5 or for any loss, cost, damage or expense whatsoever which may arise in respect of any such actions or omissions, except in the case of wilful misconduct or gross

negligence.

#### 6.14 Extensions of Time

Roseway may grant renewals, extensions of time and other indulgences, take and give up securities, accept compositions, grant releases and discharges, perfect or fail to perfect any securities, release any part of the Collateral to third parties and otherwise deal or fail to deal with GW Cdn, subsidiaries of GW Cdn, guarantors, sureties and others and with the Collateral and other securities as Roseway may see fit, all without prejudice to the liability of GW Cdn to Roseway or Roseway's rights and powers under this Security Agreement.

#### 6.15 Rights in Addition

The rights and powers conferred by this Section 6 are in supplement of and in addition to and not in substitution for any other rights or powers Roseway may have from time to time under this Security Agreement or under applicable law. Roseway may proceed by way of any action, suit, remedy or other proceeding at law or in equity and no such remedy for the enforcement of the rights of Roseway shall be exclusive of or dependent on any other such remedy. Any one or more of such remedies may from time to time be exercised separately or in combination. GW Cdn recognizes that if it fails to perform or observe its obligations hereunder, no remedy at law will provide adequate relief to Roseway, and GW Cdn agrees that Roseway shall be entitled to seek temporary and permanent injunctive relief in any such case without the necessity of proving irreparable harm.

#### 6.16 Fees

From and after the occurrence and during the continuance of a Default unless waived by Roseway, in addition to all of the Obligations owing to Roseway, GW Cdn shall pay to Roseway a collateral monitoring fee of (i) \$35,000 per month prior to the payment in full of the amounts payable by GW Cdn to Roseway under Section 3.3(a), (b) and (c) of the Participation Agreement, and (ii) \$10,000 per month thereafter until the value of Defined Portfolio is less than \$10,000,000 or payment is made after an election under Section 5.3 above with respect to remaining payments contemplated in Section 3.1 of the Participation Agreement, payable in advance on the first Business Day of each month (or in case of the first payment, payable on the first Business Day following such Default, pro rata for the remaining portion of such calendar month). For greater certainty, such fees shall constitute Obligations secured under this Security Agreement.

#### 6.17 Dealings and Actions with respect to Excluded Assets

Roseway acknowledges and agrees that the Excluded Assets do not form part of the Collateral and, despite any other provision of this Agreement, Roseway agrees that any and all dealings and actions taken by Roseway or a Receiver in respect of Excluded Assets under this Section 6 or otherwise shall be taken in the name and on behalf of GW Cdn.

### **SECTION 7 – DEALING WITH COLLATERAL BY GW CDN**

#### 7.1 Sale of Assets

Provided that no Default has occurred and is continuing, GW Cdn shall be entitled to deal with

the Collateral and Excluded Assets in the ordinary course of business and as provided in the Participation Agreement, provided that, no such action shall be taken which would impair the validity, effectiveness, perfection or priority of the security interest created by this Security Agreement in any Collateral not being disposed of or which would result in a Default. Roseway shall execute and delivery to GW Cdn all such releases and other documents as may be reasonably requested by GW Cdn in order to facilitate dispositions of Collateral and Excluded Assets in the ordinary course of business.

## **SECTION 8 – GENERAL**

### **8.1 Security in Addition**

The security hereby constituted is not in substitution for any other security for the Obligations or for any other agreement between the parties creating a security interest in all or part of the Collateral, whether heretofore or hereafter made, and such security and such agreements shall be deemed to be continued and not affected hereby unless expressly provided to the contrary in writing and signed by Roseway and GW Cdn. The taking of any action or proceedings or refraining from so doing, or any other dealing with any other security for the Obligations or any part thereof, shall not release or affect the security interest created by this Security Agreement and the taking of the security interest hereby created or any proceedings hereunder for the realization of the security interest hereby created shall not release or affect any other security held by Roseway for the repayment of or performance of the Obligations.

### **8.2 Waiver**

Any waiver of a breach by GW Cdn of any of the terms or provisions of this Security Agreement or of a Default under Section 5.1 hereof must be in writing to be effective against and bind Roseway. No such waiver by Roseway shall extend to or be taken in any manner to affect any subsequent breach or Default or the rights of Roseway arising therefrom.

### **8.3 Further Assurances**

GW Cdn shall at all times do, execute, acknowledge and deliver or cause to be done, executed, acknowledged or delivered all and singular every such further acts, deeds, conveyances, instruments, transfers, assignments, security agreements and assurances as Roseway may reasonably require in order to give effect to the provisions and purposes of this Security Agreement including, without limitation, in respect of Roseway's enforcement of the security and its realization on the Collateral and dealings and actions contemplated hereunder in respect of the Excluded Assets, and for the better granting, transferring, assigning, charging, setting over, assuring, confirming and/or perfecting the security interest of Roseway in the Collateral pursuant to this Security Agreement. Effective upon the occurrence and during the continuance of a Default, GW Cdn hereby constitutes and appoints any officer of Roseway at its above address, or any Receiver appointed by the court or Roseway as provided herein, the true and lawful attorney of GW Cdn irrevocably with full power of substitution to do, make and execute all such assignments, documents, acts, matters or things with the right to use the name of GW Cdn whenever and wherever it may be deemed necessary or expedient in connection with the exercise of its rights and remedies set forth in this Security Agreement. Without limiting the generality of the foregoing, so long as Roseway shall be entitled under Section 6 to make collections in respect of the Collateral, Roseway shall have the right and power to receive,

endorse and collect all cheques payable to the order of GW Cdn representing any dividend, payment or other distribution in respect of the Collateral and Excluded Assets (except to the extent constituting Excluded Assets) or any part thereof and to give full discharge for the same. GW Cdn hereby authorizes Roseway to file such proofs of claim and other documents as may be necessary or advisable in order to prove its claim in any bankruptcy, proposed winding-up or other proceeding relating to GW Cdn.

Without limiting the generality of the foregoing, GW Cdn:

- (a) shall execute, deliver, file, record, authorize or obtain all such financing statements, continuation statements, notices, instruments, documents, agreements, consents, or other papers or amendments thereto, and such other instruments or notices, as may be necessary, or as Roseway may reasonably request in order to create, preserve, perfect, maintain the perfection of, or validate the security interest granted or purported to be granted hereby, or to enable Roseway to exercise and enforce its rights hereunder with respect to such security interest and, without limiting the foregoing, shall:
  - (i) upon the occurrence of a Default that is continuing, deliver and pledge to Roseway any and all chattel paper representing Collateral duly endorsed and accompanied by duly executed instruments of transfer or assignment, all in form and substance satisfactory to Roseway;
  - (ii) deliver to Roseway any and all such documents, agreements and other materials as may be required from time to time to provide Roseway with control over all Collateral that is a futures contract in the manner provided under subsection 1(2) of the PPSA;
  - (iii) promptly from time to time upon request by Roseway enter into such control agreements, each in form and substance that complies with applicable laws and is reasonably acceptable to Roseway, as may be required to perfect the security interest created hereby in any and all investment property constituting Collateral, and will promptly furnish to Roseway true and complete copies thereof;
  - (iv) promptly from time to time upon the request of Roseway, execute and deliver such short-form security agreements as Roseway may reasonably deem necessary to protect the interests of Roseway in respect of that portion of the Collateral consisting of intellectual property;
  - (v) promptly upon request of Roseway, with respect to any uncertificated securities issued by an issuer that is organized outside of Canada and constituting Collateral, cause to be delivered to Roseway a securities pledge agreement covering such securities; and
  - (vi) keep full and accurate books and records relating to the Collateral and Excluded Assets, and stamp or otherwise mark such books and records in such manner as Roseway may reasonably require in order to reflect the



security interests granted by this Security Agreement.

- (b) hereby authorizes Roseway to file one or more financing or continuation statements, and amendments thereto, relative to all or any part of the Collateral without the signature of GW Cdn, where permitted by law; and
- (c) shall furnish to Roseway from time to time statements and schedules further identifying and describing the Collateral and such other reports in connection with the Collateral as Roseway may request, all in reasonable detail.

#### 8.4 No Merger

Neither the taking of any judgment nor the exercise of any power of seizure or sale shall operate to extinguish the liability of GW Cdn to make payment of or satisfy the Obligations. The acceptance of any payment or alternate security shall not constitute or create any novation and the taking of a judgment or judgments under any of the covenants herein contained shall not operate as a merger of such covenants.

#### 8.5 Notices

All notices, demands, and other communications made in respect of this Security Agreement shall be made to the following addresses, each of which may be changed upon seven (7) days written notice to all others given by registered mail, return receipt requested:

- (a) If to Roseway:

Roseway Capital LP  
50 Lothian Road  
Festival Square  
Edinburgh, EH3 9WJ  
Scotland

Attention: Growthworks Investment  
Fax: +44 (0)131 473 6006

With a copy to:

Rosetta Capital Limited  
New Broad Street House  
35 New Broad Street, London  
EC2M 1NH  
United Kingdom

Attention: Michael Forer  
Fax: +41 21 921 0461

- (b) If to GW Cdn:

Exchange Tower, 130 King Street West  
 Suite 2200, PO Box 422  
 Toronto, Ontario M5X 1E3  
 Attention: C. Ian Ross, Chairman  
 Fax: (416) 929-0901

with a copy to:

GrowthWorks WV Management Ltd.  
 Exchange Tower, 130 King Street West  
 Suite 2200, PO Box 422  
 Toronto, Ontario M5X 1E3  
 Attention: Tim Lee, Senior Vice-President, Investments  
 Fax: (416) 929-0901

#### 8.6 Notice Given

- (a) Except as otherwise specifically provided herein, notices shall be deemed made and correspondence received, as follows (all times being local to the place of delivery or receipt):
- (i) By recognized overnight express delivery: the Business Day following the day when sent.
  - (ii) By Hand: If delivered on a Business Day after 9:00 a.m. and no later than three (3) hours prior to the close of customary business hours of the recipient, when delivered. Otherwise, at the opening of the then next Business Day.
  - (iii) By Facsimile transmission (which must include a header on which the party sending such transmission is indicated): If sent on a Business Day after 9:00 a.m. and no later than three (3) hours prior to the close of customary business hours of the recipient, one (1) hour after being sent. Otherwise, at the opening of the then next Business Day.
- (b) Rejection or refusal to accept delivery and inability to deliver because of a changed address or facsimile number for which no due notice was given shall each be deemed receipt of the notice sent.

#### 8.7 Continuing Security Interest and Discharge

This Security Agreement shall create a continuing security interest in the Collateral and shall remain in full force and effect until payment and performance in full of the Obligations, notwithstanding any dealing between Roseway and GW Cdn in respect of the Obligations or any release, exchange, non-perfection, amendment, waiver, consent or departure from or in respect of any or all of the terms or provision of any security held for the Obligations.

Upon the repayment in full of the Obligations, Roseway shall at the request and at the expense of GW Cdn release and discharge the security interest created hereby and execute and deliver to GW Cdn such deeds and other instruments as GW Cdn may request and promptly deliver to the

Custodian a written notice of termination of the Custodian Acknowledgement Agreement and withdraw all pending Entitlement Orders, directions, instructions and notices previously delivered to the Custodian.

Notwithstanding the foregoing, unless a Default has occurred that is continuing, this Agreement shall terminate on the day following the payment by GW Cdn of all amounts payable under Section 3.3(a), (b), (c) and (d) of the Participation Agreement, provided, for greater certainty, that the termination of this Agreement under those circumstances shall not result in the termination of the Participation Agreement or otherwise affect the amounts remaining to be paid thereunder. Following such termination, Roseway shall at the request and at the expense of GW Cdn release and discharge the security interest created hereby and execute and deliver to GW Cdn such deeds and other instruments as GW Cdn may reasonably request and promptly deliver to the Custodian a written notice of termination of the Custodian Acknowledgement Agreement and withdraw all pending Entitlement Orders, directions, instructions and notices previously delivered to the Custodian.

#### 8.8 Governing Law

This Security Agreement shall be governed by and construed in accordance with the laws of the Province of Ontario and the laws of Canada applicable therein, except as required by mandatory provisions of law and except to the extent that the validity or perfection of the security interests hereunder, or remedies hereunder, in respect of any particular Collateral are governed by the laws of a jurisdiction other than the Province of Ontario. Roseway's address for service in the Province of Ontario is set out on the cover page of this Security Agreement.

ANY LEGAL ACTION OR PROCEEDING WITH RESPECT TO THIS SECURITY AGREEMENT MAY BE BROUGHT IN THE COURTS OF THE PROVINCE OF ONTARIO OR OF THE FEDERAL COURTS OF CANADA THEREIN, AND BY EXECUTION AND DELIVERY OF THIS SECURITY AGREEMENT, GW CDN CONSENTS, FOR ITSELF AND IN RESPECT OF ITS PROPERTY, TO THE NON-EXCLUSIVE JURISDICTION OF THOSE COURTS. THE CORPORATION IRREVOCABLY WAIVES ANY OBJECTION, INCLUDING ANY OBJECTION TO THE LAYING OF VENUE OR BASED ON THE GROUNDS OF FORUM NON CONVENIENS, WHICH IT MAY NOW OR HEREAFTER HAVE TO THE BRINGING OF ANY ACTION OR PROCEEDING IN SUCH JURISDICTION OR ANY OTHER JURISDICTION SELECTED BY THE AGENT IN RESPECT OF THIS SECURITY AGREEMENT. GW CDN WAIVES PERSONAL SERVICE OF ANY SUMMONS, COMPLAINT OR OTHER PROCESS, WHICH MAY BE MADE BY ANY OTHER MEANS PERMITTED BY THE LAW OF ONTARIO.

The parties hereto hereby waive trial by jury in any action, proceeding, claim or counterclaim, whether in contract or tort, at law or in equity with respect to, in connection with, or arising out of this Security Agreement, other financing agreements, the obligations of GW Cdn, the Collateral, Excluded Assets or any instrument, document or guarantee delivered pursuant hereto or to any of the foregoing, or the validity, protection, interpretation, administration, collection or enforcement hereof or thereof, or any other claim or dispute hereunder or thereunder. Each party agrees that it will not assert against the other any claim for consequential, incidental, special, or punitive damages in connection with this Security Agreement or the transactions contemplated hereby.

#### 8.9 Security Interest Effective Immediately

The parties intend the security interest created hereby to attach and take effect forthwith upon execution of this Security Agreement by GW Cdn and GW Cdn acknowledges that value has been given and that GW Cdn has rights in the Collateral, other than the future acquired Collateral.

#### 8.10 No Collateral Warranties

There is no representation, warranty or collateral agreement affecting this Security Agreement or the Collateral, other than as expressed herein in writing.

#### 8.11 Provisions Reasonable

GW Cdn expressly acknowledges and agrees that the provisions of this Security Agreement and, in particular, those respecting remedies and powers of Roseway against GW Cdn, its business and the Collateral and Excluded Assets upon default, are commercially reasonable and not manifestly unreasonable.

#### 8.12 Number and Gender

In this Security Agreement, words importing the singular number include the plural and vice-versa and words importing gender include all genders.

#### 8.13 Invalidity

In the event that any term or provision of this Security Agreement shall, to any extent, be invalid or unenforceable, the remaining terms and provisions of this Security Agreement shall be unaffected thereby and shall be valid and enforceable to the fullest extent permitted by law.

#### 8.14 Judgement Currency

If for the purpose of obtaining judgment in any court it is necessary to convert an amount due hereunder in the currency in which it is due (the "**Original Currency**") into another currency (the "**Second Currency**"), the rate of exchange applied shall be that at which, in accordance with normal banking procedures, Roseway could purchase in the New York foreign exchange market, the Original Currency with the Second Currency on the date two (2) Business Days preceding that on which judgment is given. GW Cdn agrees that its obligation in respect of any Original Currency due from it hereunder shall, notwithstanding any judgment or payment in such other currency, be discharged only to the extent that, on the Business Day following the date Roseway receives payment of any sum so adjudged to be due hereunder in the Second Currency, Roseway may, in accordance with normal banking procedures, purchase, in the New York foreign exchange market, the Original Currency with the amount of the Second Currency so paid; and if the amount of the Original Currency so purchased or could have been so purchased is less than the amount originally due in the Original Currency, GW Cdn agrees as a separate obligation and notwithstanding any such payment or judgment to indemnify Roseway against such loss. The term "**rate of exchange**" in this Section 8.14 means the spot rate at which Roseway, in accordance with normal practices, is able on the relevant date to purchase the Original Currency with the Second Currency, and includes any reasonable premium and costs of

exchange payable in connection with such purchase.

#### 8.15 Sections and Headings

The division of this Security Agreement into sections and the insertion of headings are for convenience of reference only and shall not affect the construction or interpretation hereof.

#### 8.16 Receipt of Copy

GW Cdn acknowledges receipt of an executed copy of this Security Agreement.

#### 8.17 Assignment

The obligations of GW Cdn under this Security Agreement are not assignable to any other Person without the prior written consent of Roseway. Roseway may, at any time, assign or transfer all or any of its rights and benefits hereunder in connection with any assignment of its rights permitted under the Participation Agreement.

#### 8.18 Binding Effect

All rights of Roseway hereunder shall enure to the benefit of its successors and assigns and all obligations of GW Cdn hereunder shall bind GW Cdn and its successors and permitted assigns.

The parties hereto acknowledge that they have requested and are satisfied that the foregoing, as well as all notices, actions and legal proceedings be drawn up in the English language.

Les parties à cette convention reconnaissent qu'elles ont exigé que ce qui précède ainsi que tous avis, actions et procédures légales soient rédigés et exécutés en anglais et s'en déclarent satisfaites.

#### 8.19 Costs and Expenses

In addition to any other reimbursement rights provided hereunder, GW Cdn shall pay to Roseway, within 30 days of receiving a demand by Roseway accompanied by invoices, all reasonable costs and expenses of Roseway and its agents incurred from time to time following the date hereof in connection with any actual or proposed amendment, of or supplement to this Agreement requested by GW Cdn or any waiver thereunder, or any subordination, priority, releases and other agreements and instruments requested under Section 3.6 or 7.1. including, without limitation, all of the reasonable fees and disbursements of counsel to Roseway incurred in connection therewith. In every such case the amounts so incurred shall be deemed to have been advanced to GW Cdn by Roseway as at the expiry of such 30-day period and thereupon shall become part of the Obligations, shall bear interest at 20% per annum calculated and accrued daily and compounding monthly and shall be secured by this Security Agreement.

IN WITNESS WHEREOF GW Cdn has duly executed this Security Agreement as of this \_\_\_\_\_ day of \_\_\_\_\_, 2010.

**GROWTHWORKS CANADIAN FUND LTD.**

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

Name:

Title:

**SCHEDULE "A"**  
**Permitted Encumbrances**

1. Encumbrances for taxes, assessments or government charges or levies not at the time due and delinquent, or that are due but the validity of which is being contested at the time by GW Cdn in good faith by proper legal proceedings.
2. Liens and privileges arising out of judgments or awards with respect to which GW Cdn is in good faith prosecuting an appeal or proceedings for review and with respect to which GW Cdn has secured a stay of execution pending the appeal or proceedings for review
3. The encumbrance resulting from the deposit of cash or securities in connection with any of the encumbrances referred to in paragraphs 1 and 2 above, or in connection with contracts, tenders, leases, or expropriation proceedings, or to secure worker's compensation, surety or appeal bonds or costs of litigation when required by law and public and statutory obligations.
4. Security given to a public utility or any municipality or governmental or other public authority when required by such utility or other authority in connection with the operations of GW Cdn in the ordinary course of its business.
5. Any lien or interest in the assets of GW Cdn created under section 3.3 of the Custodian Agreement dated December 1, 2004 between GW Cdn, its Manager and RBC Dexia Investor Services (successor to The Royal Trust Company).
6. The [redacted – confidential information] Security.

## SCHEDULE "E"

Exceptions to Representations and WarrantiesGrowthWorks Canadian Fund Ltd.Section 5.1(j)

[redacted – confidential information].

Section 5.1(s)(ii)

1. Any lien or interest in the assets of GW Cdn created under section 3.3 of the Custodian Agreement dated December 1, 2004 between GW Cdn, its Manager and RBC Dexia Investor Services (successor to The Royal Trust Company).
2. [redacted – confidential information].
3. [redacted – confidential information].



**SCHEDULE "F"**

**Services Agreement**

(Attached)

# GROWTHWORKS

May 28, 2010

Roseway Capital L.P.  
50 Lothian Road, Festival Square  
Edinburgh, EH3 9WJ, Scotland

**Attention: Michael Forer, Director of Roseway Capital GP Limited, general partner of  
Roseway Capital LP**

GrowthWorks Canadian Fund Ltd.  
Exchange Tower  
130 King Street West, Suite 2200  
P.O. Box 422, Toronto, Ontario M5X 1E3  
Fax no: (416) 929-0901

**Attention: C. Ian Ross, Chairman of the Board**

Re: Defined Portfolio Services Agreement

We write further to the Offer Letter dated May 6, 2010 and amended May 13, 2010 whereby Roseway Capital L.P. (“**Roseway**”) offered to invest \$20 million in GrowthWorks Canadian Fund Ltd. (the “**Fund**”) in exchange for a participating interest (the “**Participating Interest**”) in divestment proceeds from a selection of venture investments held by the Fund (the “**Defined Portfolio**”). The terms of the investment will be documented in an agreement between Roseway and the Fund (the “**Participation Agreement**”). We understand Roseway wishes to engage GrowthWorks WV Management Ltd., the manager of the Fund, (“**GrowthWorks**”) hereunder to provide services with respect to its investment in the Defined Portfolio.

## **Services**

On the terms and subject to the conditions set out in this letter, GrowthWorks agrees to provide the services summarized in Schedule “A” (the “**Services**”) to Roseway in connection with the administration of its investment in the Defined Portfolio. It is agreed that GrowthWorks will establish one near-full-time equivalent executive position through which to provide the Services (the “**FTE**”). The FTE position will initially be filled by Joseph Regan, a Vice President with GrowthWorks, and he will remain as the FTE for so long as he is employed by GrowthWorks or an affiliate of GrowthWorks. The FTE will devote not less than 25 hours per week to providing the Services. All Services shall be provided by the FTE at premises owned or leased by GrowthWorks and Roseway shall not provide premises for use by FTE. For greater certainty, the FTE shall remain at all times an employee or consultant of GrowthWorks and shall not be an employee of Roseway or its affiliates.

## **Services Fee**

In consideration for the Services, Roseway will pay GrowthWorks a monthly fee in the amount of Cdn \$8,333.00 plus applicable taxes (pro rated for periods of less than one month) (the “**Services Fee**”). Roseway will pay the monthly Services Fee within ten business days of receiving an invoice from GrowthWorks. Roseway agrees to reimburse GrowthWorks for its out-of-pocket costs reasonably incurred in connection with the provision of the Services (not including any compensation payable by

GrowthWorks to the FTE), such reimbursement to be made within ten business days of GrowthWorks delivering copies of invoices for such costs.

### **Conflicts of Interest**

Roseway acknowledges receipt of a copy of the Amended and Restated Management Agreement between the Fund and GrowthWorks dated July 15, 2006 (the “**Management Agreement**”) under which GrowthWorks provides management and administration services to the Fund, including portfolio management services with respect to the Defined Portfolio. Roseway acknowledges that GrowthWorks must act honestly, in good faith and in the best interests of the Fund under the terms of that agreement and agrees that this Agreement does not diminish that duty of care. In the event that in providing the Services GrowthWorks is in a position of material conflict as between the interests of Roseway and the interests of the Fund, the parties agree that GrowthWorks must disclose the conflict to Roseway and to the Board of the Fund and the parties and the Fund agree to act in good faith and use commercially reasonable efforts to resolve the conflict in a fair and equitable manner that gives effect GrowthWorks’ duties under the Management Agreement and to the intentions of the parties as reflected in this Agreement and in the Participation Agreement, with any such resolution being subject to review by the Independent Review Committee of the Fund.

Roseway acknowledges and agrees that GrowthWorks and the Fund may be bound by confidentiality covenants with respect to information they receive about companies within the Defined Portfolio (“**Defined Portfolio Companies**”). GrowthWorks will use its commercially reasonable efforts to obtain the necessary consents that would allow it to provide confidential information about such companies to Roseway; provided, however, that Roseway agrees not to disclose such confidential information unless compelled to do so by law or court order.

### **Term of Engagement**

This Agreement will come into effect upon closing of the purchase and sale of the Participating Interest under the Participation Agreement and terminate on the earliest of: (i) Roseway terminating this Agreement at any time by written notice to GrowthWorks, (ii) the termination of the Participation Agreement in accordance with its terms; and (iii) the third anniversary of Closing. GrowthWorks may terminate this Agreement on written notice to Roseway if Roseway fails to observe a material term of this Agreement and does not remedy such failure within ten business days of receiving written notice of such failure from GrowthWorks. Upon termination of this Agreement as set out above, neither party shall have any rights or obligations under this Agreement, except for accrued rights in respect of any prior breach of this Agreement and for Service Fees payable in respect of any period prior to such termination.

### **Other Terms**

Any notice delivered by Roseway or GrowthWorks under this Agreement shall be in writing and shall be sufficiently provided if delivered by hand to the relevant party at the address set forth above, or sent by fax to the fax number set out above, in each case during normal business hours on a business day in the Province of Ontario and in the case of GrowthWorks directed to the attention of “Tim Lee, Senior Vice President, Investments”. Each Notice sent in accordance with this section shall be deemed to have been received on the day of delivery and on the day of sending by fax transmission, or on the first such business day thereafter if delivered or sent otherwise than during normal business hours on a business day.

Neither GrowthWorks nor any of its directors, officers, employees, servants or agents shall be liable to Roseway or the Fund for any acts or omissions in providing the Services or for any losses, costs, damages or expenses whatsoever which may arise in respect of any such actions or omissions, except in the case of wilful misconduct, gross negligence or fraud.

This Agreement and the rights and obligations of the parties hereto shall be governed by and construed accordance with the laws of the Province of Ontario and the laws of Canada applicable therein. Each party irrevocably submits to the non-exclusive jurisdiction of the Courts of Ontario with respect to any matter arising hereunder.

Roseway and any assignee of Roseway may on ten days' written notice to GrowthWorks and the Fund assign all of its rights and obligations under this Agreement at will provided (i) that such assignee entity is also concurrently the assignee of the Participation Agreement and other documents contemplated therein and is delegated and undertakes all obligations of Roseway hereunder and thereunder, and (ii) the notice provided to GrowthWorks and the Fund specifies the name, address, fax number and contact for the assignee and a representation confirming the tax residency of the assignee. Following such assignment and delegation, the assignor Roseway shall have no further rights or obligations hereunder other than for accrued rights and breaches occurring prior to such assignment and to pay Services Fees that remain payable in respect of any period prior to such assignment.

Each of the parties hereto shall, from time to time, execute and deliver all such further documents and instruments and do all acts and things as the other party may reasonably require to effectively carry-out the full intent and meaning of this Agreement.

No modification of or amendment to this Agreement shall be valid or binding unless set forth in writing and duly executed by all of the parties hereto and no waiver of any breach of any term or provision of this Agreement shall be effective or binding unless made in writing and signed by the party purporting to give the same and, unless otherwise provided, shall be limited to the specific breach waived.

*[Remainder of page intentionally blank]*

Please acknowledge your acceptance of these terms and conditions by signing in the space provided below and returning the signed copy to GrowthWorks at the address set out above. This Agreement may be executed and delivered by fax in one or more counterparts which together will constitute one and the same original document.

**GROWTHWORKS WV MANAGEMENT LTD.**

By: \_\_\_\_\_  
 Name: David Levi  
 Title: President and CEO

Agreed and accepted this \_\_\_ day of May, 2010.

**ROSEWAY CAPITAL L.P.**

**By its general partner:**

**ROSEWAY CAPITAL GP LIMITED**

By: \_\_\_\_\_  
 Name: Michael Forer  
 Title:

Agreed and accepted this \_\_\_ day of May, 2010.

**GROWTHWORKS CANADIAN FUND LTD.**

By: \_\_\_\_\_  
 Name: C. Ian Ross  
 Title: Chairman of the Board

Schedule "A"

Services

Investment management and investment administration with respect to the Defined Portfolio, specifically:

- Monitoring performance of investments within the Defined Portfolio, including by reviewing and reporting to Roseway periodically on the financial condition, results of operations, business plans and prospects of the Defined Portfolio Companies (as defined in the Participation Agreement).
- Identifying, evaluating and reporting to Roseway about follow-on investment opportunities within the Defined Portfolio and pursuing financing syndicate partners to the extent necessary to ensure the Defined Portfolio Companies have adequate pre-divestment financing in light of such companies' prospects.
- Assisting in securing required consents and approvals with respect to any Direct Investments (as defined in the Participation Agreement) proposed to be made by Roseway in any Defined Portfolio Company.
- Pursuing, evaluating and reporting to Roseway about divestment opportunities from the Defined Portfolio, including the timing, method and terms of divestment opportunities.
- Monitoring and reporting to Roseway with respect to expected and actual Divestment Proceeds (as defined in the Participation Agreement) generated from the Defined Portfolio and using commercially reasonable efforts to ensure payments in respect of such Divestment Proceeds are made to Roseway in accordance with the Participation Agreement.

**SCHEDULE "G"**

**Custodian Acknowledgement Agreement**

(Attached)

**Custodian Acknowledgement Agreement**

THIS AGREEMENT made as of the 28<sup>th</sup> day of May, 2010.

AMONG:

ROSEWAY CAPITAL LP (the "Investor")

- and -

RBC DEXIA INVESTOR SERVICES TRUST ("RBC Dexia")

- and -

GROWTHWORKS CANADIAN FUND LTD. (the "Fund")

- and -

**GROWTHWORKS WV MANAGEMENT LTD.**  
in its capacity as Manager of the Fund ( the "Manager")

WHEREAS the Fund is a labour-sponsored investment fund corporation, incorporated under the laws of Canada.

WHEREAS the Fund and the Manager have appointed RBC Dexia as custodian in respect of the accounts (the "Accounts") established from time to time to hold the Property of Fund pursuant to a custodian agreement made as of December 1, 2004 between the Fund, the Manager and RBC Dexia (as such agreement may be amended, modified, supplemented or replaced from time to time (hereinafter collectively referred to as the "Custodian Agreement")). Capitalized terms used herein and not otherwise defined have the meanings ascribed to them in the Custodian Agreement.

WHEREAS Fund is party to a participation agreement (the "Participation Agreement") and a security agreement (the "Security Agreement") each dated as of • with the Investor (as such agreement may be amended, modified, supplemented or replaced from time to time (hereinafter collectively referred to as the "Investment Documents")). Under the Investment Documents, the Investor has acquired participation interests in certain property and been granted a security interest in certain property, including certain of the Property, of the Fund and any proceeds thereof (the "Investor Collateral").

WHEREAS it is a condition of the Investment Documents that the Fund deliver a copy of this Agreement executed by the Custodian.

WHEREAS Fund and the Manager have executed and delivered a Custodian Direction to the Custodian in the form attached hereto as Schedule "A" (the "Custodian Direction").



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

**1. Acknowledgements and Representations of the Custodian**

The Custodian hereby acknowledges and agrees with the Investor as follows:

1.1 The Custodian acknowledges the security interest held by the Investor in the Investor Collateral pursuant to the Investment Documents. The Custodian makes no representation or warranty with respect to the validity of the Investor's participation interest or security interest in the Investor Collateral.

1.2 The Custodian hereby represents and warrants to the Investor that it has not entered into any agreement, other than this Agreement, in which it has agreed to comply with any entitlement order (as defined in the *Securities Transfer Act, 2006* (Ontario) (the "STA")) (an "Entitlement Order") or other notice, instruction or direction in respect of the Accounts, Property or any portion thereof, that is originated by any person other than the Investor, without the further consent of the Fund. The Custodian represents and warrants to the Investor that the Custodian has not granted or purported to grant a security interest in the Accounts, Property or any portion thereof to any person nor has it received any Custodian Direction from the Fund to do so.

1.3 Provided the Custodian has not received an Entitlement Order or other written notice, instruction or direction from the Investor pursuant to Section 1.4 or Section 3.1 below, the Custodian may freely transfer to the Fund, or as the Fund or the Manager may direct, such amounts as the Fund may from time to time request. The Custodian may also, on direction from the Fund or the Manager, transfer or otherwise deal with the Investor Collateral to permit the Fund to transfer or deal therewith to the extent permitted by Section 3.1 below.

1.4 The Custodian agrees that it will comply with any Entitlement Order or other written notice, instruction or direction originated by the Investor in respect of the Accounts, Property or any portion thereof, and for such purpose, the Custodian shall comply with the terms of the foregoing Custodian Direction while such remains in force. The Custodian confirms that any Entitlement Order or other notice, instruction or direction given to it by the Investor under the Custodian Direction shall be validly given if given in accordance with Section 2.1 of the Custodian Agreement, applied as if the Investor were the Manager and the Fund. The Custodian further acknowledges that it is a "securities intermediary", as defined in the STA, in respect of the Fund and the Property and any security entitlements (as defined in the STA) carried in the Accounts with respect to the Property.

1.5 Following receipt by the Custodian of the written notice from the Investor referred to in the Custodian Direction, it shall, while the Custodian Direction remains in force, not assert or claim any security interest or other right to or in respect of the Property in priority to or *pari passu* with the Investor, other than as security for the Custodian's rights in connection with amounts owing to the Custodian in respect of any unpaid fees, charges, expenses or any overdraft borrowings or other amounts payable to the Custodian pursuant to or in connection

with the Custodian Agreement, or for any rights of indemnity which the Custodian may have pursuant to the Custodian Agreement or this Agreement, which rights the Investor hereby agrees shall take precedence over any of the Investor's security interest or right to the Property. Except to the extent otherwise provided in the previous sentence, notwithstanding subsection 30.1(5) of the *Personal Property Security Act* (Ontario) (the "PPSA") or any term of the Custodian Agreement to the contrary, the Custodian hereby subordinates in favour of the Investor the Custodian's security interest in the Property of the Fund, whether granted under this Agreement or the Custodian Agreement, to the Investor's security interest in the Property.

1.6 The Custodian and the Fund acknowledge and agree that if and to the extent that any Certificated Securities (as defined in the STA and referred to as such herein) representing Property are delivered to the Custodian and form part of the Investor Collateral, solely for the purpose of Sections 22(3) and 22.1 of the PPSA and without limiting the custodial relationship between the Fund and the Custodian for purposes of applicable securities laws, the Custodian shall be deemed to take possession of such Certificated Securities on behalf of the Investor and shall not be regarded for such purpose as an agent of the Fund, notwithstanding any terms of the Custodian Agreement to the contrary.

## **2. Acknowledgements, Representations and Consents of the Fund and the Manager**

2.1 The Fund and the Manager represent and warrant to the Investor and the Custodian that they have the full power and authority to grant a security interest in the Accounts and the Property.

2.2 The Fund and the Manager represent and warrant to the Investor that, other than this Agreement, it has not entered into or consented to any agreement whereby the Custodian has agreed to comply with any Entitlement Order or other instruction in respect of the Accounts, Property or any portion thereof from any person other than the Investor.

2.3 In addition to, and not in derogation from, any indemnity provided to the Custodian under the Custodian Agreement, the Fund and the Manager shall indemnify and hold harmless the Custodian, and its affiliates and their respective officers, directors, employees and agents from and against any and all loss, liability, cost, claim and expense, including reasonable legal fees and disbursements incurred by any of them in connection with the performance of this Agreement, complying with the Custodian Direction or with any Entitlement Orders originated by the Investor or any other written instructions or directions that may be received from the Investor or any other matter arising out of this Agreement, except to the extent that any such loss, liability, cost, claim or expense results from the Custodian's breach of the standard of care contained in the Custodian Agreement.

2.4 The Fund and the Manager expressly authorize the Custodian to comply with the terms of this Agreement and the Custodian Direction. For further clarity, the Custodian may rely upon any notice given in accordance with this Agreement which is believed by the Custodian to be genuine and sufficient and the Custodian shall not be liable or responsible for any action or omission pursuant to such notice provided the Custodian is acting in accordance with the provisions hereof.

2.5 Nothing in this Agreement shall alter or otherwise relieve the Fund or the Investor from any of its obligations under the Investment Documents.

2.6 The Fund and the Manager agree that the Custodian Direction can only be revoked by written notice of revocation given by the Investor to the Custodian.

2.7 The Fund and the Manager hereby represent and warrant to the Investor and the Custodian that, other than this Agreement, it has not consented to the Custodian complying with Entitlement Orders or other instructions or directions in respect of the Accounts, Property or any portion thereof.

2.8 The Fund and the Manager hereby consent to the Custodian agreeing to comply with Entitlement Orders or other written notice, instructions or directions originated by the Investor in accordance with Sections 1.4 and 3.1 hereof and the Custodian Direction.

### **3. Acknowledgements of the Investor**

3.1 Subject to the terms and conditions of this Agreement, the Custodian is hereby authorized by the Investor and on direction from the Manager on behalf of the Fund, to permit the Fund to substitute the Investor Collateral with cash and/or securities, to trade, convert or otherwise deal with the Investor Collateral, to transfer the Investor Collateral registered in the name of the Fund into the name of the Custodian or its affiliates or its nominee, or to authorize the transfer of any such Investor Collateral to a clearing agency or its nominee for the purpose of entering the same into a book-based system and to otherwise deal with the Investor Collateral in accordance with the terms of the Custodian Agreement; provided, however, that the Investor may following a default under the Security Agreement provide the Custodian with any Entitlement Order or written notice that no further dealings with the Investor Collateral shall be permitted without the prior written consent of the Investor and following receipt by the Custodian of such Entitlement Order or written notice, until such time as the Entitlement Order or written notice is withdrawn, the Custodian shall not permit any further dealings with the Investor Collateral without the prior written consent of the Investor.

3.2 The Investor shall indemnify and hold harmless the Custodian, and its affiliates and their respective officers, directors, employees and agents from and against any and all loss, liability, cost, claim and expense, including reasonable legal fees and disbursements incurred by any of them in connection with complying with the Custodian Direction or with any Entitlement Orders originated by the Investor or any other written instructions or directions that may be given by the Investor to the Custodian under the Custodian Direction or the performance of the obligations of the Custodian under the Custodian Direction, except to the extent that any such loss, liability, cost, claim or expense results from the Custodian's, or its affiliates' or their respective officers, directors, employees or agents' breach of the standard of care contained in the Custodian Agreement.

3.3 The Custodian shall have no duties or responsibilities to the Investor, except as expressly provided in this Agreement and except to the extent imposed on securities intermediaries under the STA, and shall not have any liability or responsibility arising under any other agreement to which the Custodian is not a party. Without limiting the generality of the foregoing, the

Custodian shall not be responsible for monitoring the value of the Investor Collateral or of any investment into which any part of the Collateral has been converted or which has been substituted therefor or for ensuring the market value thereof is maintained at or conforming to any value. Until the Custodian receives the written notice from the Investor referred to in the Custodian Direction, the Custodian shall be entitled to act on the directions of the Fund and the Manager in accordance with the terms of the Custodian Agreement.

3.4 The rights and entitlements of the Investor under this Agreement shall not be assigned without the prior written consent of the Custodian, such consent not to be unreasonably withheld or delayed.

3.5 Contemporaneously with the delivery of any Entitlement Order or other written notice, instruction or direction, the Investor agrees to deliver to the Custodian a list of those persons authorized to act on behalf of the Investor together with specimen signatures of all such persons. The Custodian shall be entitled to rely upon the identity of such persons as persons entitled to act on behalf of the Investor for the purposes of this Agreement and any Entitlement Order or other written notice, instruction or direction until a subsequent list respecting same is delivered by the Investor to the Custodian.

#### 4. Counterparts and Facsimile

This Agreement may be executed in any number of counterparts, all of which will be deemed to be an original and such counterparts taken together will constitute one agreement and any of the parties hereto may execute this Agreement by signing any such counterpart. Any party may deliver an executed copy of this Agreement by facsimile and that party shall promptly deliver to the other parties an originally executed copy of this Agreement.

#### 5. Further Assurances

The parties hereto agree to execute and deliver such further and other documents and perform and cause to be performed such further and other acts and things as may be necessary or desirable in order to give full effect to this Agreement.

#### 6. Choice of Law

Notwithstanding any provision to the contrary in the Custodian Agreement or any other agreement relating to the Property or the Accounts, the parties hereto acknowledge and agree that this Agreement shall be governed by and construed in accordance with the laws of the Province of Ontario and the federal laws of Canada applicable therein, and that for the purposes and within the meaning of the STA and the PPSA, the Province of Ontario is the "securities intermediary's jurisdiction" for the Custodian in its capacity as securities intermediary in respect of the Fund, the Accounts and the Property.

7. **Successors and Assigns**

This Agreement will enure to the benefit of, and be binding on, the Custodian, the Investor, the Fund and the Manager and their respective successors and permitted assigns, as applicable. For so long as this Agreement remains in effect, this Agreement may not be assigned by the Fund without the prior written consent of the Investor and the Custodian, which consent shall not be unreasonably withheld. The Fund and the Manager shall not appoint or consent to a replacement Custodian or a sub-custodian of the Property consisting of the Investor Collateral unless such replacement Custodian or sub-custodian agrees in writing to be bound by the terms hereof. For greater certainty hereunder, any direction to transfer the Property in the Accounts from the Custodian to any other securities intermediary shall be subject to the application of Section 3.3 of the Custodian Agreement, as applicable, in order to ensure the payment in full of any and all amounts due and owing to the Custodian from the Property prior to any such transfer.

8. **Termination**

This Agreement may be terminated at any time upon written notice from the Investor to the Custodian and shall terminate automatically upon the termination of the Security Agreement, prompt notice of which shall be provided by the Investor to the Custodian.

9. **Survival**

Sections 2.3, 3.2 and the first and final sentences of Section 7 of this Agreement shall survive the termination or revocation of this Agreement for a period of one year.

**[THIS SPACE INTENTIONALLY LEFT BLANK]**

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

Roseway Capital LP  
c/o Roseway Capital GP Limited  
50 Lothian Road, Festival Square  
Edinburgh, EH3 9WJ, Scotland

**ROSEWAY CAPITAL LP by its  
General Partner ROSEWAY CAPITAL  
GP LIMITED**

Attention: Michael Forer  
  
Facsimile No.: 41 21 921 0461

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

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

RBC Dexia Investor Services Trust  
155 Wellington Street West, 5<sup>th</sup> Floor  
P.O. Box 7500, Station "A"  
Toronto, Ontario

**RBC DEXIA INVESTOR SERVICES  
TRUST**

Attention: Head Client Service and Pension  
& Financial Institutions  
  
Facsimile No.: (416) 955-2600

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

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

GrowthWorks Canadian Fund Ltd.  
c/o GrowthWorks WV Management Ltd.  
Exchange Tower, 130 King Street West  
Suite 2200  
Toronto, Ontario, M5X 1E3

**GROWTHWORKS CANADIAN FUND  
LTD.**

Attention: Tim Lee, Senior Vice-President,  
Investments  
  
Facsimile No.: (416) 929-0901

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

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

GrowthWorks Canadian Fund Ltd.  
c/o GrowthWorks WV Management Ltd.  
Exchange Tower, 130 King Street West  
Suite 2200  
Toronto, Ontario, M5X 1E3

Attention: Tim Lee, Senior Vice-President,  
Investments

Facsimile No.: (416) 929-0901

**GROWTHWORKS WV  
MANAGEMENT LTD.**, in its capacity as  
Manager of the Fund

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

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

**SCHEDULE "A"**

**DIRECTION TO CUSTODIAN**

- TO:** RBC DEXIA INVESTOR SERVICES TRUST (the "Custodian")
- RE:** Custodian Agreement made as of December 1, 2004 between the "Fund", the "Manager" on behalf of the Fund (as defined therein and referred to as such herein), and the Custodian, in its capacity as custodian of the Fund (as such agreement may be amended, modified, supplemented, or replaced from time to time (hereinafter, collectively referred to as the "Custodian Agreement")).
- AND RE:** Participation Agreement made as of May 28, 2010 between the Fund, and Roseway Capital LP (together with its successors and assigns, the "Investor") (as such agreement may be amended, modified, supplemented or replaced from time to time, (hereinafter collectively referred to as the "Participation Agreement")).
- AND RE:** Custodian Acknowledgement Agreement dated as of May 28, 2010 among the Investor, the Custodian, the Fund, and by the Manager (as such agreement may be amended, modified, supplemented or replaced from time to time (hereinafter collectively referred to as the "Custodian Acknowledgement")).

The undersigned hereby irrevocably authorizes and directs the Custodian, upon receipt by the Custodian of written notice from the Investor in respect of the Accounts, Property or any portion thereof as set out in the Custodian Acknowledgement, to act only upon the Entitlement Orders or other written instructions, advice, directions, elections, agreements, opinions, waivers, approvals and demands of the Investor and of any receiver or agent which the Investor advises the Custodian has been appointed by the Investor, which Entitlement Orders and other written instructions, advice, directions, elections, agreements, opinions, waivers, approvals and demands shall constitute Directions (as such term is defined in the Custodian Agreement) and this shall be your good and sufficient authority for so doing.

This direction shall be revoked and become null and void and shall no longer remain in force upon written notice from the Investor and in any event upon termination of the Security Agreement, notice of which shall be provided to the Custodian.

**[INTENTIONALLY LEFT BLANK]**



Dated as of this \_\_\_\_\_ day of \_\_\_\_\_, 2010.

**GROWTHWORKS CANADIAN FUND LTD.**

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

Name:

Title:

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

Name:

Title:

**GROWTHWORKS WV MANAGEMENT LTD.**

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

Name:

Title:

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

Name:

Title:

**AMENDMENT TO PARTICIPATION AGREEMENT**

THIS AGREEMENT is made as of May 28, 2013

BETWEEN:

**GROWTHWORKS CANADIAN FUND LTD.**, a corporation incorporated under the laws of Canada with its principal address at Exchange Tower, 130 King Street West, Suite 2200, Toronto, Ontario, M5X 1E3 (the "GW Cdn")

- and -

**ROSEWAY CAPITAL S.A.R.L.**, 412F, route d'Esch, L-1030 Luxembourg (the "Roseway").

WHEREAS GW Cdn and Roseway Capital L.P. entered into a participation agreement dated as of May 28, 2010 (the "**Participation Agreement**");

AND WHEREAS Roseway Capital L.P. subsequently assigned all of its rights and obligations under the Participation Agreement to Roseway pursuant to section 9.11 of the Participation Agreement;

AND WHEREAS the parties have agreed to amend the Participation Agreement in the manner set out in this Agreement;

NOW THEREFORE, in consideration of the covenants and agreements herein contained and other good and valuable consideration (the receipt and sufficiency of which is hereby acknowledged by each of the parties), the parties agree as follows:

1. **Capitalized Terms**

Capitalized terms used, but not otherwise defined, herein have the meanings ascribed to such terms in the Participation Agreement.

2. **Amendment**

The Participation Agreement is amended by:

- (a) deleting section 3.3(c) in its entirety and replacing it with the following:

“(c) on June 14, 2013, the sum of \$20,192,969.86 (which includes interest at the rate of 18% on the amount payable under section 3.3(c) and section 3.3(d) of this Agreement, respectively, on May 28, 2013 and June 4, 2013, respectively;” and

- (b) deleting section 3.3(d) in its entirety and replacing it with the following:

“(d) within five Business Days following June 14, 2013, the positive difference, if any, between (i) the sum of the payments made under Sections 3.3(a) and (b) and the total amount of Participating Interest Payments made to Roseway since the Closing Date, and (ii) \$17,100,000; and”.

3. **Payment to Roseway**

Upon the execution of this Agreement, GW Cdn agrees to make a cash payment to Roseway in the aggregate amount of \$237,505 in respect of Participating Interest Payments in respect of Indirect Investments made by Roseway in [redacted – confidential third party information]; provided that such payment will not affect any right of GW Cdn to dispute the amount of any Participating Interest Payment claimed by Roseway.

4. **Covenants of GW Cdn**

GW Cdn hereby agrees and covenants:

- (a) that it will adhere to, and will instruct the Manager to adhere to, each of the protocols set out in Schedule “A” to this Agreement and will instruct CCC Investment Banking to (i) be actively engaged in the review and oversight of the protocols and the Manager’s adherence to same, and (ii) review and report to the Board of GW Cdn on a weekly basis with respect to all expenditures of GW Cdn; and
- (b) that it will use commercially reasonable efforts to effect transfers into Roseway’s name of any securities held by GW Cdn arising from indirect follow-on investments made by Roseway in respect of [redacted – confidential third party information], and subject to compliance with the applicable lock-up agreements, in respect of [redacted – confidential third party information]. Pending completion of such transfers, those securities will continue to be held by GW Cdn as contemplated in the Participation Agreement.

5. **Confirmation of Participation Agreement**

Each of the parties hereby confirms and ratifies the terms and conditions contained in the Participation Agreement as amended hereby, and acknowledges and agrees that from and after the date of this Agreement, the Participation Agreement will be read and construed in conjunction with this Agreement, and the Participation Agreement as amended hereby continues in full force and effect without change except as amended hereby.

6. **Benefit of the Agreement**

This Agreement will enure to the benefit of and be binding upon the respective successors and assigns of the parties hereto permitted by Section 9.11 of the Participation Agreement. Roseway hereby represents and warrants to GW Cdn that Roseway Capital L.P. has assigned all of its rights and obligations under the Participation Agreement to Roseway pursuant to section 9.11 of the Participation Agreement.

7. **Governing Law**

This Agreement will be governed by and construed in accordance with the laws of the Province of Ontario and the laws of Canada applicable therein.

8. **Attornment**

For the purposes of all legal proceedings this Agreement will be deemed to have been performed in the Province of Ontario and the courts of the Province of Ontario will have jurisdiction to entertain any action arising under this Agreement. The parties each attorn to the jurisdiction of the courts of the Province of Ontario.

9. **Execution in Counterparts**

This Agreement may be executed in any number of counterparts, each of which will be deemed to be an original and all of which taken together will constitute one and the same instrument.

10. **Electronic Delivery**

Delivery of an executed signature page to this Agreement by any party by electronic transmission will be as effective as delivery of a manually executed copy of this Agreement by such party.

*[Remainder of page intentionally left blank]*

IN WITNESS WHEREOF the parties have executed this Agreement.

**GROWTHWORKS CANADIAN FUND  
LTD.**

By: "C. Ian Ross"

Name: C. Ian Ross

Title: Chairman

**ROSEWAY CAPITAL S.A.R.L.**

By: "M. Lenoir"

Name: M. Lenoir

Title: B Manager

**ROSEWAY CAPITAL S.A.R.L.**

By: "Michael Forer"

Name: Michael Forer

Title: A Manager

**SCHEDULE "A"**

**List of Protocols in place between the board of directors ("Board") of GrowthWorks Canadian Fund Ltd. (the "Fund") and the manager ("Manager") of the Fund.**

[Contents of list redacted - confidential information]

**SECOND AMENDMENT TO PARTICIPATION AGREEMENT**

THIS AGREEMENT is made as of June 14, 2013

BETWEEN:

**GROWTHWORKS CANADIAN FUND LTD.**, a corporation incorporated under the laws of Canada with its principal address at Exchange Tower, 130 King Street West, Suite 2200, Toronto, Ontario, M5X 1E3 (“**GW Cdn**”)

- and -

**ROSEWAY CAPITAL S.A.R.L.**, a corporation incorporated under the laws of Luxembourg with its principal address at 412F, route d'Esch, L-1030 Luxembourg (“**Roseway**”).

WHEREAS GW Cdn and Roseway Capital L.P. entered into a participation agreement dated as of May 28, 2010 (the “**2010 Participation Agreement**”);

AND WHEREAS Roseway Capital L.P. subsequently assigned all of its rights and obligations under the 2010 Participation Agreement to Roseway pursuant to section 9.11 of the 2010 Participation Agreement;

AND WHEREAS the parties entered into an amending agreement (the “**First Amending Agreement**”) dated as of May 28, 2013 (the First Amending Agreement together with the 2010 Participation Agreement, the “**Participation Agreement**”);

AND WHEREAS the parties have agreed to further amend the Participation Agreement in the manner set out in this Agreement;

NOW THEREFORE, in consideration of the covenants and agreements herein contained and other good and valuable consideration (the receipt and sufficiency of which is hereby acknowledged by each of the parties), the parties agree as follows:

1. **Capitalized Terms**

Capitalized terms used, but not otherwise defined, herein have the meanings ascribed to such terms in the Participation Agreement.

2. **Amendment to the Participation Agreement**

The Participation Agreement is amended by:

- (a) deleting section 3.3(c) in its entirety and replacing it with the following:

“(c) on June 28, 2013, the sum of \$20,370,405.48 (which includes interest at the rate of 18% on the amount payable under

section 3.3(c) and section 3.3(d) of this Agreement, respectively, on May 28, 2013 and June 4, 2013, respectively;” and

- (b) deleting section 3.3(d) in its entirety and replacing it with the following:

“(d) within five Business Days following June 28, 2013, the positive difference, if any, between (i) the sum of the payments made under Sections 3.3(a) and (b) and the total amount of Participating Interest Payments made to Roseway since the Closing Date, and (ii) \$17,100,000; and”.

3. **Amendment to the First Amending Agreement**

The First Amending Agreement is hereby amended by deleting the reference to [redacted – confidential third party information] in Section 4(b) of the First Amending Agreement, and replacing it with [redacted – confidential third party information].

4. **Confirmation of Participation Agreement**

Each of the parties hereby confirms and ratifies the terms and conditions contained in the Participation Agreement as amended hereby, and acknowledges and agrees that from and after the date of this Agreement, the Participation Agreement will be read and construed in conjunction with this Agreement, and the Participation Agreement as amended hereby continues in full force and effect without change except as amended hereby.

5. **Benefit of the Agreement**

This Agreement will enure to the benefit of and be binding upon the respective successors and assigns of the parties hereto permitted by Section 9.11 of the Participation Agreement. Roseway hereby represents and warrants to GW Cdn that Roseway Capital L.P. has assigned all of its rights and obligations under the Participation Agreement to Roseway pursuant to section 9.11 of the Participation Agreement.

6. **Governing Law**

This Agreement will be governed by and construed in accordance with the laws of the Province of Ontario and the laws of Canada applicable therein.

7. **Attornment**

For the purposes of all legal proceedings this Agreement will be deemed to have been performed in the Province of Ontario and the courts of the Province of Ontario will have jurisdiction to entertain any action arising under this Agreement. The parties each attorn to the jurisdiction of the courts of the Province of Ontario.



8. **Execution in Counterparts**

This Agreement may be executed in any number of counterparts, each of which will be deemed to be an original and all of which taken together will constitute one and the same instrument.

9. **Electronic Delivery**

Delivery of an executed signature page to this Agreement by any party by electronic transmission will be as effective as delivery of a manually executed copy of this Agreement by such party.

*[Remainder of page intentionally left blank]*

IN WITNESS WHEREOF the parties have executed this Agreement.

**GROWTHWORKS CANADIAN FUND  
LTD.**

By: "C. Ian Ross"

Name: C. Ian Ross

Title: Chairman

**ROSEWAY CAPITAL S.A.R.L.**

By: "Michael Forer"

Name: Michael Forer

Title: A Manager

By: "Michel Lenoir"

Name: Michel Lenoir

Title: B Manager

**THIRD AMENDMENT TO PARTICIPATION AGREEMENT**

THIS AGREEMENT is made as of June 27, 2013

BETWEEN:

**GROWTHWORKS CANADIAN FUND LTD.**, a corporation incorporated under the laws of Canada with its principal address at Exchange Tower, 130 King Street West, Suite 2200, Toronto, Ontario, M5X 1E3 (“**GW Cdn**”)

- and -

**ROSEWAY CAPITAL S.A.R.L.**, a corporation incorporated under the laws of Luxembourg with its principal address at 412F, route d'Esch, L-1030 Luxembourg (“**Roseway**”).

WHEREAS GW Cdn and Roseway Capital L.P. entered into a participation agreement dated as of May 28, 2010 (the “**2010 Participation Agreement**”);

AND WHEREAS Roseway Capital L.P. subsequently assigned all of its rights and obligations under the 2010 Participation Agreement to Roseway pursuant to section 9.11 of the 2010 Participation Agreement;

AND WHEREAS the parties entered into an amending agreement (the “**First Amending Agreement**”) dated as of May 28, 2013;

AND WHEREAS the parties entered into a second amending agreement (the “**Second Amending Agreement**”) dated June 14, 2013 (the Second Amending Agreement together with the First Amending Agreement and the 2010 Participation Agreement, the “**Participation Agreement**”);

AND WHEREAS the parties have agreed to further amend the Participation Agreement in the manner set out in this Agreement;

NOW THEREFORE, in consideration of the covenants and agreements herein contained and other good and valuable consideration (the receipt and sufficiency of which is hereby acknowledged by each of the parties), the parties agree as follows:

1. **Capitalized Terms**

Capitalized terms used, but not otherwise defined, herein have the meanings ascribed to such terms in the Participation Agreement.

2. **Amendment to the Participation Agreement**

The Participation Agreement is amended by:

- (a) deleting section 3.3(c) in its entirety and replacing it with the following:

“(c) on July 15, 2013, the sum of \$20,588,673.98 (which includes interest at the rate of 18% on the amount payable under section 3.3(c) and section 3.3(d) of this Agreement, respectively, on May 28, 2013 and June 4, 2013, respectively;” and

(b) deleting section 3.3(d) in its entirety and replacing it with the following:

“(d) within five Business Days following July 15, 2013, the positive difference, if any, between (i) the sum of the payments made under Sections 3.3(a) and (b) and the total amount of Participating Interest Payments made to Roseway since the Closing Date, and (ii) \$17,100,000; and”.

3. **Confirmation of Participation Agreement**

Each of the parties hereby confirms and ratifies the terms and conditions contained in the Participation Agreement as amended hereby, and acknowledges and agrees that from and after the date of this Agreement, the Participation Agreement will be read and construed in conjunction with this Agreement, and the Participation Agreement as amended hereby continues in full force and effect without change except as amended hereby.

4. **Benefit of the Agreement**

This Agreement will enure to the benefit of and be binding upon the respective successors and assigns of the parties hereto permitted by Section 9.11 of the Participation Agreement. Roseway hereby represents and warrants to GW Cdn that Roseway Capital L.P. has assigned all of its rights and obligations under the Participation Agreement to Roseway pursuant to section 9.11 of the Participation Agreement.

5. **Governing Law**

This Agreement will be governed by and construed in accordance with the laws of the Province of Ontario and the laws of Canada applicable therein.

6. **Attornment**

For the purposes of all legal proceedings this Agreement will be deemed to have been performed in the Province of Ontario and the courts of the Province of Ontario will have jurisdiction to entertain any action arising under this Agreement. The parties each attorn to the jurisdiction of the courts of the Province of Ontario.

7. **Execution in Counterparts**

This Agreement may be executed in any number of counterparts, each of which will be deemed to be an original and all of which taken together will constitute one and the same instrument.

8. **Electronic Delivery**

Delivery of an executed signature page to this Agreement by any party by electronic transmission will be as effective as delivery of a manually executed copy of this Agreement by such party.

*[Remainder of page intentionally left blank]*

IN WITNESS WHEREOF the parties have executed this Agreement.

**GROWTHWORKS CANADIAN FUND  
LTD.**

By: "C. Ian Ross"

Name: C. Ian Ross

Title: Chairman

**ROSEWAY CAPITAL S.A.R.L.**

By: "Michael Forer"

Name: Michael Forer

Title: A Manager

By: "Michel Lenoir"

Name: Michel Lenoir

Title: B Manager

**FOURTH AMENDMENT TO PARTICIPATION AGREEMENT**

THIS AGREEMENT is made as of July 15, 2013

BETWEEN:

**GROWTHWORKS CANADIAN FUND LTD.**, a corporation incorporated under the laws of Canada with its principal address at Exchange Tower, 130 King Street West, Suite 2200, Toronto, Ontario, M5X 1E3 ("**GW Cdn**")

- and -

**ROSEWAY CAPITAL S.A.R.L.**, a corporation incorporated under the laws of Luxembourg with its principal address at 412F, route d'Esch, L-1030 Luxembourg ("**Roseway**").

WHEREAS GW Cdn and Roseway Capital L.P. entered into a participation agreement dated as of May 28, 2010 (the "**2010 Participation Agreement**");

AND WHEREAS Roseway Capital L.P. subsequently assigned all of its rights and obligations under the 2010 Participation Agreement to Roseway pursuant to section 9.11 of the 2010 Participation Agreement;

AND WHEREAS the parties entered into an amending agreement (the "**First Amending Agreement**") dated as of May 28, 2013;

AND WHEREAS the parties entered into a second amending agreement (the "**Second Amending Agreement**") dated June 14, 2013;

AND WHEREAS the parties entered into a third amending agreement (the "**Third Amending Agreement**") dated June 27, 2013 (the Third Amending Agreement together with the First Amending Agreement, the Second Amending Agreement and the 2010 Participation Agreement, the "**Participation Agreement**");

AND WHEREAS the parties have agreed to further amend the Participation Agreement in the manner set out in this Agreement;

NOW THEREFORE, in consideration of the covenants and agreements herein contained and other good and valuable consideration (the receipt and sufficiency of which is hereby acknowledged by each of the parties), the parties agree as follows:

1. **Capitalized Terms**

Capitalized terms used, but not otherwise defined, herein have the meanings ascribed to such terms in the Participation Agreement.

2. **Amendment to the Participation Agreement**

The Participation Agreement is amended by:

- (a) deleting section 3.3(c) in its entirety and replacing it with the following:

“(c) on August 16, 2013, the sum of \$20,994,241.10 (which includes interest at the rate of 18% on the amount payable under section 3.3(c) and section 3.3(d) of this Agreement, respectively, on May 28, 2013 and June 4, 2013, respectively;” and

- (b) deleting section 3.3(d) in its entirety and replacing it with the following:

“(d) within five Business Days following August 16, 2013, the positive difference, if any, between (i) the sum of the payments made under Sections 3.3(a) and (b) and the total amount of Participating Interest Payments made to Roseway since the Closing Date, and (ii) \$17,100,000; and”.

3. **Confirmation of Participation Agreement**

Each of the parties hereby confirms and ratifies the terms and conditions contained in the Participation Agreement as amended hereby, and acknowledges and agrees that from and after the date of this Agreement, the Participation Agreement will be read and construed in conjunction with this Agreement, and the Participation Agreement as amended hereby continues in full force and effect without change except as amended hereby.

4. **Benefit of the Agreement**

This Agreement will enure to the benefit of and be binding upon the respective successors and assigns of the parties hereto permitted by Section 9.11 of the Participation Agreement. Roseway hereby represents and warrants to GW Cdn that Roseway Capital L.P. has assigned all of its rights and obligations under the Participation Agreement to Roseway pursuant to section 9.11 of the Participation Agreement.

5. **Governing Law**

This Agreement will be governed by and construed in accordance with the laws of the Province of Ontario and the laws of Canada applicable therein.

6. **Attornment**

For the purposes of all legal proceedings this Agreement will be deemed to have been performed in the Province of Ontario and the courts of the Province of Ontario will have jurisdiction to entertain any action arising under this Agreement. The parties each attorn to the jurisdiction of the courts of the Province of Ontario.



7. **Execution in Counterparts**

This Agreement may be executed in any number of counterparts, each of which will be deemed to be an original and all of which taken together will constitute one and the same instrument.

8. **Electronic Delivery**

Delivery of an executed signature page to this Agreement by any party by electronic transmission will be as effective as delivery of a manually executed copy of this Agreement by such party.

*[Remainder of page intentionally left blank]*

IN WITNESS WHEREOF the parties have executed this Agreement.

**GROWTHWORKS CANADIAN FUND  
LTD.**

By: "C. Ian Ross"

Name: C. Ian Ross

Title: Chairman

**ROSEWAY CAPITAL S.A.R.L.**

By: "Michael Forer"

Name: Michael Forer

Title: A Manager

By: "Flavio Marzona"

Name: Flavio Marzona

Title: B Manager

**FIFTH AMENDMENT TO PARTICIPATION AGREEMENT**

THIS AGREEMENT is made as of August 16, 2013

BETWEEN:

**GROWTHWORKS CANADIAN FUND LTD.**, a corporation incorporated under the laws of Canada with its principal address at Exchange Tower, 130 King Street West, Suite 2200, Toronto, Ontario, M5X 1E3 (“**GW Cdn**”)

- and -

**ROSEWAY CAPITAL S.A.R.L.**, a corporation incorporated under the laws of Luxembourg with its principal address at 412F, route d'Esch, L-1030 Luxembourg (“**Roseway**”).

WHEREAS GW Cdn and Roseway Capital L.P. entered into a participation agreement dated as of May 28, 2010 (the “**2010 Participation Agreement**”);

AND WHEREAS Roseway Capital L.P. subsequently assigned all of its rights and obligations under the 2010 Participation Agreement to Roseway pursuant to section 9.11 of the 2010 Participation Agreement;

AND WHEREAS the parties entered into an amending agreement (the “**First Amending Agreement**”) dated as of May 28, 2013;

AND WHEREAS the parties entered into a second amending agreement (the “**Second Amending Agreement**”) dated June 14, 2013;

AND WHEREAS the parties entered into a third amending agreement (the “**Third Amending Agreement**”) dated June 27, 2013;

AND WHEREAS the parties entered into a fourth amending agreement (the “**Fourth Amending Agreement**”) dated July 15, 2013 (the Fourth Amending Agreement together with the First Amending Agreement, the Second Amending Agreement, the Third Amending Agreement and the 2010 Participation Agreement, the “**Participation Agreement**”);

AND WHEREAS the parties have agreed to further amend the Participation Agreement in the manner set out in this Agreement;

NOW THEREFORE, in consideration of the covenants and agreements herein contained and other good and valuable consideration (the receipt and sufficiency of which is hereby acknowledged by each of the parties), the parties agree as follows:

1. **Capitalized Terms**

Capitalized terms used, but not otherwise defined, herein have the meanings ascribed to such terms in the Participation Agreement.

2. **Amendment to the Participation Agreement**

The Participation Agreement is amended by:

- (a) deleting section 3.3(c) in its entirety and replacing it with the following:

“(c) on September 3, 2013, the sum of \$21, 222,372.60 (which includes interest at the rate of 18% on the amount payable under section 3.3(c) and section 3.3(d) of this Agreement, respectively, on May 28, 2013 and June 4, 2013, respectively;” and

- (b) deleting section 3.3(d) in its entirety and replacing it with the following:

“(d) within five Business Days following September 3, 2013, the positive difference, if any, between (i) the sum of the payments made under Sections 3.3(a) and (b) and the total amount of Participating Interest Payments made to Roseway since the Closing Date, and (ii) \$17,100,000; and”.

3. **Confirmation of Participation Agreement**

Each of the parties hereby confirms and ratifies the terms and conditions contained in the Participation Agreement as amended hereby, and acknowledges and agrees that from and after the date of this Agreement, the Participation Agreement will be read and construed in conjunction with this Agreement, and the Participation Agreement as amended hereby continues in full force and effect without change except as amended hereby.

4. **Benefit of the Agreement**

This Agreement will enure to the benefit of and be binding upon the respective successors and assigns of the parties hereto permitted by Section 9.11 of the Participation Agreement. Roseway hereby represents and warrants to GW Cdn that Roseway Capital L.P. has assigned all of its rights and obligations under the Participation Agreement to Roseway pursuant to section 9.11 of the Participation Agreement.

5. **Governing Law**

This Agreement will be governed by and construed in accordance with the laws of the Province of Ontario and the laws of Canada applicable therein.

6. **Attornment**

For the purposes of all legal proceedings this Agreement will be deemed to have been performed in the Province of Ontario and the courts of the Province of Ontario will have jurisdiction to entertain any action arising under this Agreement. The parties each attorn to the jurisdiction of the courts of the Province of Ontario.

7. **Execution in Counterparts**

This Agreement may be executed in any number of counterparts, each of which will be deemed to be an original and all of which taken together will constitute one and the same instrument.

8. **Electronic Delivery**

Delivery of an executed signature page to this Agreement by any party by electronic transmission will be as effective as delivery of a manually executed copy of this Agreement by such party.

*[Remainder of page intentionally left blank]*

IN WITNESS WHEREOF the parties have executed this Agreement.

**GROWTHWORKS CANADIAN FUND  
LTD.**

By: "C. Ian Ross"

Name: C. Ian Ross

Title: Chairman

**ROSEWAY CAPITAL S.A.R.L.**

By: "Michael Forer"

Name: Michael Forer

Title: A Manager

By: "Flavio Marzona"

Name: Flavio Marzona

Title: B Manager

**SIXTH AMENDMENT TO PARTICIPATION AGREEMENT**

THIS AGREEMENT is made as of August 30, 2013

BETWEEN:

**GROWTHWORKS CANADIAN FUND LTD.**, a corporation incorporated under the laws of Canada with its principal address at Exchange Tower, 130 King Street West, Suite 2200, Toronto, Ontario, M5X 1E3 (“**GW Cdn**”)

- and -

**ROSEWAY CAPITAL S.A.R.L.**, a corporation incorporated under the laws of Luxembourg with its principal address at 412F, route d'Esch, L-1030 Luxembourg (“**Roseway**”).

WHEREAS GW Cdn and Roseway Capital L.P. entered into a participation agreement dated as of May 28, 2010 (the “**2010 Participation Agreement**”);

AND WHEREAS Roseway Capital L.P. subsequently assigned all of its rights and obligations under the 2010 Participation Agreement to Roseway pursuant to section 9.11 of the 2010 Participation Agreement;

AND WHEREAS the parties entered into an amending agreement (the “**First Amending Agreement**”) dated as of May 28, 2013;

AND WHEREAS the parties entered into a second amending agreement (the “**Second Amending Agreement**”) dated June 14, 2013;

AND WHEREAS the parties entered into a third amending agreement (the “**Third Amending Agreement**”) dated June 27, 2013;

AND WHEREAS the parties entered into a fourth amending agreement (the “**Fourth Amending Agreement**”) dated July 15, 2013;

AND WHEREAS the parties entered into a fifth amending agreement (the “**Fifth Amending Agreement**”) dated August 16, 2013 (the Fifth Amending Agreement together with the First Amending Agreement, the Second Amending Agreement, the Third Amending Agreement, the Fourth Amending Agreement and the 2010 Participation Agreement, the “**Participation Agreement**”);

AND WHEREAS the parties have agreed to further amend the Participation Agreement in the manner set out in this Agreement;

NOW THEREFORE, in consideration of the covenants and agreements herein contained and other good and valuable consideration (the receipt and sufficiency of which is hereby acknowledged by each of the parties), the parties agree as follows:

1. **Capitalized Terms**

Capitalized terms used, but not otherwise defined, herein have the meanings ascribed to such terms in the Participation Agreement.

2. **Amendment to the Participation Agreement**

The Participation Agreement is amended by:

- (a) deleting section 3.3(c) in its entirety and replacing it with the following:

“(c) on September 30, 2013, the sum of \$ 21,564,569.86 (which includes interest at the rate of 18% on the amount payable under section 3.3(c) and section 3.3(d) of this Agreement, respectively, on May 28, 2013 and June 4, 2013, respectively);” and

- (b) deleting section 3.3(d) in its entirety and replacing it with the following:

“(d) within five Business Days following September 30, 2013, the positive difference, if any, between (i) the sum of the payments made under Sections 3.3(a) and (b) and the total amount of Participating Interest Payments made to Roseway since the Closing Date, and (ii) \$17,100,000; and”.

3. **Confirmation of Participation Agreement**

Each of the parties hereby confirms and ratifies the terms and conditions contained in the Participation Agreement as amended hereby, and acknowledges and agrees that from and after the date of this Agreement, the Participation Agreement will be read and construed in conjunction with this Agreement, and the Participation Agreement as amended hereby continues in full force and effect without change except as amended hereby.

4. **Benefit of the Agreement**

This Agreement will enure to the benefit of and be binding upon the respective successors and assigns of the parties hereto permitted by Section 9.11 of the Participation Agreement. Roseway hereby represents and warrants to GW Cdn that Roseway Capital L.P. has assigned all of its rights and obligations under the Participation Agreement to Roseway pursuant to section 9.11 of the Participation Agreement.

5. **Governing Law**

This Agreement will be governed by and construed in accordance with the laws of the Province of Ontario and the laws of Canada applicable therein.



6. **Attornment**

For the purposes of all legal proceedings this Agreement will be deemed to have been performed in the Province of Ontario and the courts of the Province of Ontario will have jurisdiction to entertain any action arising under this Agreement. The parties each attorn to the jurisdiction of the courts of the Province of Ontario.

7. **Execution in Counterparts**

This Agreement may be executed in any number of counterparts, each of which will be deemed to be an original and all of which taken together will constitute one and the same instrument.

8. **Electronic Delivery**

Delivery of an executed signature page to this Agreement by any party by electronic transmission will be as effective as delivery of a manually executed copy of this Agreement by such party.

*[Remainder of page intentionally left blank]*

IN WITNESS WHEREOF the parties have executed this Agreement.

**GROWTHWORKS CANADIAN FUND  
LTD.**

By: "C. Ian Ross"

Name: C. Ian Ross

Title: Chairman

**ROSEWAY CAPITAL S.A.R.L.**

By: "Torsten Goesch"

Name: Torsten Goesch

Title: A Manager

By: "Michel Lenoir"

Name: Michel Lenoir

Title: B Manager

**Tab D**

This is Exhibit D referred to in the  
affidavit of C. Ian Ross  
sworn before me, this 30  
day of September 2013

SECURITY AGREEMENT

TO: **ROSEWAY CAPITAL LP**  
a limited partnership established under the laws  
of Scotland with its principal address at 50 Lothian Road,  
Festival Square, Edinburgh, EH3 9WJ,  
Scotland and its address for service of process in  
the Province of Ontario c/o Rosetta Capital (Canada)  
Limited, MaRS Centre, Heritage Building, 101 College  
Street, Suite 140, Toronto, Ontario M5G 1L7

*Kelly Pat*  
A COMMISSIONER FOR TAKING AFFIDAVITS

(hereinafter "Roseway")

GRANTED BY: **GROWTHWORKS CANADIAN FUND LTD.**  
a corporation incorporated under the laws of Canada,  
having its registered office at:  
Exchange Tower, 130 King Street West  
Suite 2200, PO Box 422  
Toronto, Ontario M5X 1E3

(hereinafter "GW Cdn")

**SECTION 1 - GRANT OF SECURITY INTEREST**

1.1 Security Interest

As general and continuing security for the payment and performance of the Obligations (as hereinafter defined) owing by GW Cdn to Roseway, GW Cdn, **IN CONSIDERATION OF THE OBLIGATIONS** and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, hereby grants, bargains, assigns and transfers to Roseway a continuing security interest in, and a security interest is taken in, all of the property, assets and undertakings of GW Cdn, whether now owned or hereafter-acquired by or on behalf of GW Cdn, wherever located, including, without limitation, all of GW Cdn's present and after acquired personal property but excluding the Excluded Assets (the "Collateral") and including without limitation:

(a) **Accounts Receivable**

All debts, book debts, accounts, claims, demands, moneys and choses in action whatsoever including, without limitation, claims against the Crown and claims under insurance policies, which are now owned by or are due, owing or accruing due to GW Cdn or which may hereafter be owned by or become due, owing or accruing due to GW Cdn together with all contracts, investment property, bills, notes, lien notes, judgments, chattel mortgages, mortgages and all other rights, benefits and documents now or hereafter taken, vested in or held by GW Cdn in respect of or as security for the same and the full benefit and advantage thereof, and all rights of action or claims which GW Cdn now has or may at any time hereafter have against any Person in respect thereof (all of the foregoing being herein collectively called the "Accounts Receivable");

(b) Chattel Paper, Instruments, Securities, etc.

All chattel paper, instruments, warehouse receipts, bills of lading and other documents of title, whether negotiable or non negotiable, share, stock, security entitlements, warrants, bonds, debentures, debenture stock or other securities or investment property and financial assets now or hereafter owned by GW Cdn;

(c) Intangibles

All intangibles now or hereafter owned by GW Cdn including, without limitation, all goodwill connected with or symbolized by any of such general intangibles; all contract rights, documents, applications, licenses, materials and other matters related to such general intangibles; all tangible property embodying or incorporating any such general intangibles; and all chattel paper and instruments relating to such general intangibles. The Collateral shall include (i) all patents, and all unpatented or unpatentable inventions; (ii) all trademarks, service marks, and trade names (including without limitation the trademarks listed on Schedule 1.1(e) hereto); (iii) all copyrights and literary rights; (iv) all computer software programs; (v) all trade secrets; proprietary information, customer lists, manufacturing, engineering and production plans, drawings, specifications, processes and systems (collectively, the "Intellectual Property" and, together with all of the foregoing, collectively, the "Intangibles");

(d) Proceeds of Excluded Assets

All divestment proceeds of the Excluded Assets (except to the extent such proceeds are themselves Excluded Assets) including without limitation, the right to receive any dividends payable thereunder, any dividends paid thereunder, or the proceeds of any Venture Portfolio Securities, in any form, in each case to the extent of any interest retained by GW Cdn;

(e) Books and Accounts, etc.

With respect to the personal property described in Paragraphs (a) to (d) inclusive and the Excluded Assets, all books, accounts, invoices, deeds, documents, writings, letters, papers, security certificates and other records in any form evidencing or relating thereto and all contracts, securities, instruments and other rights and benefits in respect thereof, except to the extent such assets are themselves Excluded Assets;

(f) Other Property

The uncalled capital, money, rights, bills of exchange, negotiable and non negotiable instruments, judgments and securities not otherwise described in Paragraphs (a) to (e) inclusive;

## (g) Replacements, etc.

With respect to the personal property described in Paragraphs (a) to (f) inclusive, all substitutions and replacements thereof, increases, additions and accessions thereto and any interest of GW Cdn therein; and

## (h) Proceeds

With respect to the personal property described in Paragraphs (a) to (g) inclusive, personal property in any form or fixtures derived directly or indirectly from any dealing with such property or that indemnifies or compensates for such property destroyed or damaged and proceeds of proceeds whether of the same type, class or kind as the original proceeds.

1.2 Definitions and Interpretation

In this Security Agreement, terms used herein and defined in the PPSA shall have the same meanings as in the PPSA unless the context otherwise requires, capitalized terms used and not otherwise defined herein shall have the meaning ascribed to them in the Participation Agreement (as hereinafter defined) and:

“**Class A Shares**” means the Class A Shares of GW Cdn offered under the Prospectus;

“**Critical NAV Amount**” means \$110,000,000;

“**Custodian**” means RBC Dexia Investor Services (as successor to the Royal Trust Company);

“**Custodian Acknowledgement Agreement**” means the custodian acknowledgement agreement dated the date hereof among GW Cdn, Roseway, the Manager of GW Cdn and the Custodian;

“**encumbrance**” includes, without limitation, a security interest, lien, hypothec, claim, charge, deemed trust or encumbrance of any kind whatsoever;

“**Excluded Assets**” means the equity and debt investments held by GW Cdn and classified for purposes of the statement of investment portfolio forming part of GW Cdn’s financial statements as venture investments, and proceeds thereof but only to the extent that the granting of any security interest or the assignment thereof in such investments or proceeds by GW Cdn is prohibited by contract, portfolio company articles or securities laws (“**Venture Portfolio Securities**”), but “**Excluded Assets**” shall not include (and accordingly Collateral shall include) any divestment proceeds, including without limitation, the right to receive any dividends payable thereunder, any dividends paid thereunder or the proceeds of any Venture Portfolio Securities, in any form (except to the extent such dividends or proceeds are themselves Excluded Assets);

“**NAV**” has the meaning ascribed thereto in the Prospectus;

“**Obligations**” means all present and future obligations of GW Cdn to Roseway under the Participation Agreement and under this Agreement, including without limitation all payment and remittance obligations in respect of the Participating Interest;

“**Participating Interest**” has the meaning ascribed thereto in the Participation Agreement;

“**Participation Agreement**” shall mean the participation agreement dated as of on or about the date hereof between Roseway and GW Cdn, as the same may be amended, supplemented, revised, replaced or restated from time to time;

“**Permitted Encumbrances**” means the encumbrances listed in Schedule “A”.

“**Prospectus**” means the Prospectus of GW Cdn dated November 10, 2009 in respect of the offering of Class A Shares of GW Cdn, as amended by GW Cdn in good faith and in accordance with applicable securities laws from time to time;

“**security interest**” shall include, without limitation, a fixed mortgage, hypothecation, pledge, charge and assignment; and

“**STA**” shall refer to the *Securities Transfer Act* (Ontario) or, to the extent applicable, similar legislation of any other jurisdiction, as amended from time to time.

“**WOF Security**” means the security created under the WOF Security Agreement in respect of all of GW Cdn’s present and after-acquired personal property, and under the WOF Pledge Agreement, in each case in favour of Working Opportunity Fund (EYCC) Ltd. and as evidenced in whole or in part by the Form 1C Financing Statement registered with the Ontario Personal Property Registry under registration number 20100315 1040 1590 9501, expiring on March 15, 2015.

1.3 The grant of the security interest herein provided for shall include, without limitation, a fixed mortgage, hypothecation, pledge, charge and assignment of the Collateral in favour of Roseway;

1.4 Leases

(a) The last day of the term of any lease or sub-lease, oral or written, or any agreement therefor, now held or hereafter acquired by GW Cdn, shall be excepted from the security interest hereby granted and shall not form part of the Collateral, but GW Cdn shall stand possessed of such one day remaining, upon trust to assign and dispose of the same as Roseway or any assignee of such lease, or sub-lease or agreement shall direct. If any such lease, sub-lease or agreement therefor contains a provision which provides in effect that such lease, sub-lease or agreement may not be assigned, sub-leased, charged or encumbered without the leave, license, consent or approval of the lessor, the application of the security interest created hereby to any such lease, sub-lease or agreement shall be conditional upon such leave, license, consent or approval having been obtained.

(b) Pursuant to this Security Agreement:

- (i) To the extent that the creation of the security interest created hereby would constitute a breach of or default under, or permit the acceleration or termination of any agreement, right, licence or permit of GW Cdn which constitutes Collateral (each, a "Restricted Asset"), the security interest created hereunder shall not attach to the Restricted Asset, but GW Cdn shall, subject to paragraph (ii) below, hold its interest in the Restricted Asset in trust for Roseway, provided that, until the security interest created hereby has become enforceable, GW Cdn shall be entitled to all proceeds arising under or in connection with the Restricted Asset.
- (ii) To the extent that the creation of the trust in paragraph (i) above would constitute a breach or permit the acceleration or termination of any Restricted Asset, the security interest created hereunder shall not attach to the Restricted Asset, but the security interest created hereby will constitute a trust created in favour of Roseway pursuant to which GW Cdn shall hold as trustee its interest in all proceeds arising under or in connection with the Restricted Asset in trust for Roseway, provided that until the security interest created hereby has become enforceable, GW Cdn shall be entitled to receive all such proceeds.

#### 1.5 GW Cdn Remains Liable

Notwithstanding anything herein to the contrary:

- (a) GW Cdn shall remain liable under the contracts and agreements included in the Collateral to the extent set forth therein to perform all its duties and obligations thereunder to the same extent as if this Security Agreement had not been executed;
- (b) the exercise by Roseway of any of the rights or remedies hereunder shall not release GW Cdn from any of its duties or obligations under the contracts and agreements included in the Collateral; and
- (c) Roseway shall not have any obligation or liability under the contracts and agreements included in the Collateral by reason of this Security Agreement, nor shall Roseway be obligated to perform any of the obligations or duties of GW Cdn thereunder or to take any action to collect or enforce any claim for payment assigned hereunder.

#### 1.6 Attachment

GW Cdn acknowledges that the security interests that arise under this Security Agreement attach upon the execution of this Security Agreement and that value has been given and attachment has not been postponed. A security interest in any after acquired property included in the Collateral attaches to that property on acquisition of any rights therein by GW Cdn.

### SECTION 2 – REPRESENTATIONS AND WARRANTIES

GW Cdn represents and warrants to and in favour of Roseway on the Closing Date:



## 2.1 Enforceability

This Security Agreement constitutes a valid and legally binding obligation of GW Cdn enforceable against GW Cdn in accordance with its terms, subject to:

- (a) applicable bankruptcy, insolvency, reorganization, limitations, moratorium and other laws generally affecting creditors' rights; and
- (b) equitable remedies such as injunction and specific performance which remedies are available in the discretion of a court of competent jurisdiction.

## 2.2 Locations of Collateral

The tangible Collateral, except where it is in transit to and from the locations herein described, is located at the location specified above as GW Cdn's principal office or place of business (and its chief place of business and chief executive office) or at such other addresses as provided for in the Participation Agreement. The location at which all records of GW Cdn pertaining to Accounts Receivable (and all chattel paper which evidences Accounts Receivable) and contract rights are kept at the location specified above or in custody with the Custodian unless the contrary is provided for in the Participation Agreement.

## 2.3 Survival

All representations and warranties of GW Cdn made herein or in any certificate or other document delivered by or on behalf of GW Cdn to Roseway are material, shall be deemed to have been relied upon by Roseway notwithstanding any investigation heretofore or hereafter made by or on behalf of Roseway, shall survive the execution and delivery of this Security Agreement and shall continue in full force and effect for a period ending upon the irrevocable payment by GW Cdn of all amounts payable under Section 3.3(a), (b), (c) and (d) of the Participation Agreement.

## SECTION 3 – COVENANTS OF THE CORPORATION

GW Cdn covenants and agrees with Roseway that so long as there shall remain any Obligations of or affecting any party to this Security Agreement:

### 3.1 Payment

GW Cdn will pay duly and punctually all sums of money due by it to Roseway under this Security Agreement and the Participation Agreement at the times and places and in the manner provided for herein and therein.

### 3.2 Notice Regarding Change of Address, etc.

GW Cdn shall notify Roseway in writing:

- (a) At least 30 Business Days prior to any change of name of GW Cdn;

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- (b) At least 30 Business Days prior to any transfer of GW Cdn's interest in any part of the Collateral not expressly permitted hereunder or under the Participation Agreement;
- (c) Promptly of any significant loss of or damage to Collateral;
- (d) At least 30 Business Days prior to any change in the location(s) of the Collateral and any records relating thereto; and
- (e) Forthwith upon becoming aware of the existence of any condition or event which could cause or which, with the passage of time or notice, or both, constitute a Default, give Roseway written notice thereof specifying the nature and duration thereof and the action being taken or proposed to be taken with respect thereto.

### 3.3 Other Financing Statements or Control.

Except as otherwise permitted hereunder, GW Cdn shall not (a) file, or suffer to be on file, or authorize or permit to be filed or to be on file, in any jurisdiction, any financing statement or like instrument with respect to any of the Collateral in which Roseway is not named as the sole secured party, or (b) cause or permit any Person other than Roseway to have "control" (as defined in the STA) of any financial asset or investment property constituting part of the Collateral or Excluded Assets, other than "control" in favour of any depository bank or securities intermediary which acts solely as custodian for GW Cdn in respect of such assets or has subordinated its lien to the lien of Roseway pursuant to documentation in form and substance satisfactory to Roseway. Immediately upon having knowledge that a financing statement or like instrument is or is reasonably likely to be on file in any jurisdiction, with respect to any Collateral, GW Cdn shall (i) immediately give written notice to Roseway of such filing or proposed filing; and (ii) take such steps as may be requested by Roseway, with respect to such filing. Notwithstanding the foregoing, Roseway acknowledges and agrees that the security interests created hereunder are and shall remain subordinate in priority to the WOF Security, provided however that GW Cdn undertakes to use all commercially reasonable efforts to terminate the WOF Security and discharge all registrations in respect thereof as soon as reasonably practicable after June 30, 2010. GW Cdn and Roseway agree that the terms of the Custodian Acknowledgement Agreement do not in any way alter the terms of this Agreement or expand the scope of the security interests or the rights of Roseway provided for hereunder.

### 3.4 Special Provisions Relating to Pledged Securities.

- (a) GW Cdn will cause any and all Collateral that is a security in the form of shares, (collectively, the "Pledged Securities"), to constitute at all times 100% of the total number of shares of the relevant issuer that are owned by GW Cdn.
- (b) So long as no Default (as hereinafter defined) shall have occurred and be continuing, GW Cdn shall have the right to exercise all voting, consensual and other powers of ownership pertaining to the Pledged Securities for all purposes not inconsistent with the terms of this Security Agreement, the Participation Agreement or any other instrument or agreement referred to herein or therein, provided that GW Cdn agrees that it will not vote the Pledged Securities in any manner that is inconsistent with the terms of this Security Agreement, the Participation Agreement or any such other instrument or agreement.

- (c) Except as provided in the Participation Agreement, unless and until a Default shall have occurred and be continuing, GW Cdn shall be entitled to receive and retain any dividends, distributions or proceeds on the Pledged Securities (whether paid or distributed in cash, securities or other property).
- (d) If a Default shall have occurred and be continuing, whether or not Roseway exercises any available right to declare any Obligations due and payable or seeks or pursues any other relief or remedy available to it under applicable law or under this Security Agreement, the Participation Agreement or any other agreement relating to such Obligation, upon notice to GW Cdn, all dividends and other distributions on the Pledged Securities shall be paid directly to Roseway and retained by it as part of the Collateral, subject to the terms of this Security Agreement, and, if Roseway shall so request in writing, GW Cdn agrees to execute and deliver to Roseway any instruments or other documents necessary or desirable to ensure that such dividends and other distributions on the Pledged Securities shall be paid directly to Roseway, provided that if such Default is cured, any such dividend or distribution theretofore paid to Roseway shall, promptly (except to the extent theretofore applied to the Obligations), be returned by Roseway to GW Cdn.
- (e) GW Cdn shall not terminate, cancel, allow to lapse or expire, or amend the Custodian Agreement made as of December 1, 2004 between GW Cdn and RBC Dexia Investor Services (as successor to the Royal Trust Company) without the prior written consent of Roseway, which consent shall not be unreasonably withheld.
- (f) Roseway will not deliver any Entitlement Order, direction, instructions or notice to the Custodian under the Custodian Acknowledgement Agreement or otherwise with respect to any property of GW Cdn held by the Custodian unless a Default has occurred and is continuing and Roseway agrees that any action taken under the Custodian Acknowledgement Agreement will be taken in a manner consistent with the terms of this Agreement, the Participation Agreement and Roseway's rights and entitlements thereunder. If a Default occurs but is remedied by GW Cdn to the satisfaction of, or waived by, Roseway, Roseway will withdraw all Entitlement Orders, directions, instructions and notices delivered to the Custodian following such Default.

### 3.5 Negative Covenants

GW Cdn covenants and agrees that it shall not, without the prior written consent of Roseway:

- (a) **Encumber Property.** Create, grant, assume or suffer to exist any security interest, lien, charge, mortgage, hypothec or encumbrance upon any of its assets except for Permitted Encumbrances and as permitted in Section 3.6;
- (b) **Indebtedness.** Incur or guarantee any indebtedness other than (i) the Obligations, and (ii) indebtedness other than guarantees incurred in the ordinary course of business, such indebtedness not to exceed \$15 million in the aggregate and (iii)

guarantees granted in the ordinary course of business, such guarantees not to exceed \$10 million in the aggregate; or

- (c) **Amalgamations, etc.** Enter into any transaction (including by way of reorganization, consolidation, amalgamation, liquidation or otherwise) whereby all or any portion of its property and assets would become the property of any other person.

### 3.6 Permitted Encumbrance Assets

GW Cdn may grant and maintain encumbrances over assets outside of the Defined Portfolio in priority to the security interests created hereunder but only to the extent securing indebtedness permitted under Section 3.5(b) and so long as the NAV of GW Cdn, excluding the aggregate value attributable to such encumbered assets over and above the amount of any such indebtedness (to the extent not already excluded in determining NAV, to avoid double-counting) and without excluding any value attributed to the WOF Security, exceeds the Critical NAV Amount. Roseway agrees to execute and deliver such subordination, priority and other agreements and instruments as may be reasonably requested to facilitate the granting of such encumbrances. For purposes of this Agreement, any such assets so encumbered by GW Cdn, other than by way of the WOF Security, shall be referred to as "Permitted Encumbrance Assets". GW Cdn agrees to provide Roseway with full particulars of any encumbrance granted under this Section 3.6.

### 3.7 Permitted Transactions

Roseway will not withhold its consent under Section 3.5(c) to a transaction or series of transactions completing a merger, reorganization or business combination of GW Cdn with one or more other entities managed by affiliates of GW Cdn's manager if Roseway is satisfied, acting reasonably and expeditiously, that such transaction would not have a material adverse effect on GW Cdn's (or its successor under such a transaction or series of transactions) ability to perform its obligations under the Participation Agreement and this Agreement or on the amounts that are and would otherwise become payable to Roseway. GW Cdn will expeditiously provide Roseway with all information and documentation necessary for Roseway to make such determination.

## SECTION 4 - COLLECTION OF PROCEEDS

### 4.1 Payments to Roseway

Upon the occurrence and during the continuance of a Default (as defined below), GW Cdn shall:

- (a) Collect and enforce payment of all Accounts Receivable (except as provided for in Section 4.2 or the Participation Agreement) and shall dispose of and receive payment for all Inventory which is ordinarily disposed of in GW Cdn's business;
- (b) Receive and hold in trust for Roseway, all payments on or instruments received in respect of the Collateral, all rights by way of suretyship or guarantee which GW Cdn now has or may hereafter acquire to enforce payment of Collateral and all rights in the nature of a security interest whereby GW Cdn may satisfy any Collateral out of property, and all non cash proceeds of any such collection,

disposition or realization of any of the Collateral shall be subject to the security interest hereby created;

- (c) Endorse to Roseway and forthwith deliver to it all such payments and instruments in the form received by GW Cdn; and
- (d) Forthwith deliver to Roseway all property in GW Cdn's possession or hereafter coming into its possession through enforcement of any such rights.

#### 4.2 Account Debtor

Upon the occurrence and during the continuance of a Default (as defined below), Roseway may at any time notify or require GW Cdn to notify an account debtor or debtor under any Accounts Receivable, investment property, chattel paper or Intangible, in each case that constitutes Collateral, of the assignment of such Accounts Receivable, investment property, chattel paper or Intangible to Roseway and require such person to make payment to Roseway in respect of any of the Accounts Receivable, investment property, chattel paper or Intangible, and Roseway may hold all amounts acquired or received from any such account debtors or obligors (and if any such amounts are received by GW Cdn, they shall be held in trust by GW Cdn for the benefit of Roseway and as promptly as possible remitted or delivered to Roseway for application as provided herein), together with income on such amounts, as part of the Collateral and as security for the Obligations.

### SECTION 5 – DEFAULT

#### 5.1 Default

Without in any way limiting the nature of the Obligations or any of them, the Obligations secured hereby shall, in relation to the Participation Agreement in accordance with this Security Agreement, become immediately due and payable and the security interests hereby constituted shall become enforceable in each and every of the following events (herein called a "Default"):

- (a) if GW Cdn fails to make any payment of any of the Obligations when due in accordance with the Participation Agreement and, such failure shall continue for a period of seven Business Days after a notice in writing has been given by Roseway to GW Cdn;
- (b) the NAV of GW Cdn, excluding any value attributed to Permitted Encumbrance Assets over and above the amount of indebtedness secured thereby and not already excluded in determining NAV, is at any time less than the Critical NAV Amount;
- (c) at any time prior to the payment in full of the amount payable by GW Cdn to Roseway under Section 3.3(c) of the Participation Agreement, the NAV of GW Cdn calculated solely with reference to investments held by GW Cdn and not classified for purposes of the statement of investment portfolio forming part of GW Cdn's financial statements venture investments but excluding any value attributed to any such assets that are Permitted Encumbrance Assets over and

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above the amount of indebtedness secured thereby and not already excluded in determining NAV, is less than \$10 million;

- (d) if an order is made or an effective resolution passed for the winding up, liquidation or dissolution of GW Cdn;
- (e) if GW Cdn admits in writing its inability to pay its debts generally as they become due or makes a general assignment for the benefit of its creditors or otherwise acknowledges its insolvency or is declared bankrupt or makes an authorized assignment or a proposal to its creditors under any bankruptcy or insolvency legislation or if an administrator, trustee, receiver or any other officer with similar powers is appointed in respect of GW Cdn or of the property of GW Cdn or any substantial part thereof under any bankruptcy or insolvency legislation; provided, however, that GW Cdn suspending redemptions of Class A Shares shall not, in and of itself, constitute a Default;
- (f) if a proceeding is instituted for the liquidation of GW Cdn or a petition in bankruptcy is presented against GW Cdn under applicable bankruptcy or insolvency legislation and if, in either case, such proceeding or petition shall not have been dismissed or withdrawn by the earlier to occur of the day that is (i) 45 days from the initiation thereof or, if GW Cdn is making good faith efforts to contest such proceedings, 90 days;
- (g) if GW Cdn grants any security interest, lien, charge, mortgage, hypothec or encumbrance over any of the Collateral or Excluded Assets (other than to Roseway or as otherwise permitted under this Agreement), or if an encumbrancer takes possession of a substantial part of the Collateral or Excluded Assets forming part of the Defined Portfolio or if any process or execution is levied or enforced upon or against a substantial part of the Collateral or Excluded Assets forming part of the Defined Portfolio and remains unsatisfied for such period as would permit any such property to be sold thereunder;
- (h) GW Cdn fails to pay when due (whether at scheduled maturity, by acceleration or otherwise) any principal, interest or other amount payable in respect of any obligation (other than the Obligations) having an aggregate principal amount in excess of the Dollar Equivalent of \$2,000,000 or (ii) any breach or default of GW Cdn occurs under any document, instrument or agreement to which it is a party or by which it or any of its properties is bound, relating to any debt (other than the Obligations) in excess of \$2,000,000, if the maturity of or any payment with respect to such debt may be accelerated or demanded due to such breach and in either case the failure, breach or default cannot be remedied by GW Cdn or, if a remedy is possible, is not remedied within the period specified in the agreement or instrument governing such obligation;
- (i) GW Cdn is enjoined, restrained or in any way prevented by any governmental authority from completing divestments from the Defined Portfolio or making payments to Roseway under the Participation Agreement, suffers the loss, revocation or termination of any material license, permit, lease or agreement necessary to complete such divestments or make such payments or otherwise

adopts a policy whereby it ceases to undertake divestment activities for a material period of time;

- (j) if any representation or warranty of GW Cdn hereunder or under the Participation Agreement was not true and correct in all material respects when made resulting in a material adverse effect on GW Cdn's ability to complete divestments from the Defined Portfolio generally or make payments to Roseway;
- (k) if GW Cdn defaults in any respect in observing or performing in all material respects any other covenant or condition of this Security Agreement or the Participation Agreement on its part to be observed or performed to the extent such default has a material adverse effect on GW Cdn's ability to perform its obligations under the Participation Agreement or this Agreement, and such continues for a period of 30 days after a notice in writing has been given by Roseway to GW Cdn; or
- (l) GW Cdn requests any advance or drawdown or otherwise permits any indebtedness to arise under or secured by the WOF Security.

#### 5.2 Nature of Obligations

GW Cdn agrees that upon the occurrence and during the continuance of a Default under Section 5.1 hereof, the security interests hereby constituted shall become enforceable and Roseway shall be entitled to exercise and enforce any or all of the remedies herein provided or which may otherwise be available to Roseway by statute at law or in equity and all amounts secured hereby shall immediately be paid to Roseway by GW Cdn.

#### 5.3 Acceleration

Upon the occurrence and continuance of a Default, Roseway shall have the right to declare all Obligations under Sections 3.3(a), (b), (c) and (d) of the Participation Agreement to be immediately due and payable by GW Cdn, notwithstanding the dates on which such amounts are required to be paid pursuant to the Participation Agreement. The amounts otherwise payable to Roseway under Sections 3.1 and 3.3(e) of the Participation Agreement shall remain payable in the manner and at the times specified therein (and secured under the Agreement) provided that at any time after the occurrence of a Default and while such Default is continuing Roseway may, at its sole and exclusive option, elect by notice in writing to GW Cdn to be paid in lieu of such payments, as liquidated damages, an amount equal to 20% of the value of the remaining Defined Portfolio at the time of such election (and following the payments required under Section 3.3(a) through (d)).

#### 5.4 Interest

In the event of a Default hereunder, all Obligations due and payable by GW Cdn and remaining unpaid shall accrue interest at the rate of 20% per annum, calculated and accrued daily and compounding monthly, until such amounts are paid in full.

## SECTION 6 – REMEDIES ON DEFAULT

If the security interests hereby constituted become enforceable, Roseway shall have, in addition to any other rights, remedies and powers which it may have at law, in equity or under the PPSA, the Civil Code of Quebec (the "CCQ") or the Uniform Commercial Code (the "Code") (whether or not the CCQ or the Code applies to the affected Collateral) and such additional rights and remedies to which a secured party is entitled under the laws in effect in any jurisdiction where any rights and remedies hereunder may be asserted, including the right, to the fullest extent permitted by law, to exercise all voting, consensual and other powers of ownership pertaining to the Collateral as if Roseway were the sole and absolute owner thereof (and GW Cdn agrees to take all such action as may be appropriate to give effect to such right), the following rights, remedies and powers:

### 6.1 Power of Entry

GW Cdn shall forthwith upon demand assemble and deliver to Roseway possession of all of the Collateral at such place or places as may be specified by Roseway. Roseway may take such steps as it considers necessary or desirable to obtain possession of all or any part of the Collateral and, to that end, GW Cdn agrees that Roseway, its servants or agents or Receiver (as hereinafter defined) may, at any time, during the day or night, enter upon lands and premises where the Collateral may be found for the purpose of taking possession of and/or removing the Collateral or any part thereof. In the event of Roseway taking possession of the Collateral, or any part thereof, Roseway shall have the right to maintain the same upon the premises on which the Collateral may then be situate. If and to the extent that compliance with this Section 6.1 would cause a breach of applicable securities laws requiring that GW Cdn's assets remain in the possession of a custodian, GW Cdn may, in lieu of assembling and delivering such Collateral to Roseway, authorize representatives of Roseway to give instructions to such custodian upon the occurrence and during the continuance of a Default to the extent not already provided under the Custodian Acknowledgement Agreement.

### 6.2 Power of Sale

Roseway may sell, lease or otherwise dispose of all or any part of the Collateral and any Receiver may sell, lease or otherwise dispose of all or any part of the Excluded Assets, as a whole or in separate parcels, by public auction, private tender or by private contract, with or without notice, except as otherwise required by applicable law, with or without advertising and without any other formality, all of which are hereby waived by GW Cdn. Such sale, lease or disposition shall be on such terms and conditions as to credit and otherwise and as to upset or reserve bid or price as Roseway, in its sole discretion, may seem advantageous. If such sale, transfer or disposition is made on credit or part cash and part credit, Roseway need only credit against the Obligations the actual cash received at the time of the sale. Any payments made pursuant to any credit granted at the time of the sale shall be credited against the Obligations as they are received. Roseway may buy in or rescind or vary any contract for sale of all or any of the Collateral and may resell without being answerable for any loss occasioned thereby. Any such sale, lease or disposition may take place whether or not Roseway has taken possession of the Collateral. Roseway may, before any such sale, lease or disposition, perform any commercially reasonable repair, processing or preparation for disposition and the amount so paid or expended shall be deemed advanced to GW Cdn by Roseway, shall become part of the



Obligations, shall bear interest at the highest rate per annum charged by Roseway on the Obligations or any part thereof and shall be secured by this Security Agreement.

### 6.3 Validity of Sale

No person dealing with Roseway or its servants shall be concerned to inquire whether the security hereby constituted has become enforceable, whether the powers which Roseway is purporting to exercise have become exercisable, whether any money remains due on the security of the Collateral, as to the necessity or expedience of the stipulations and conditions subject to which any sale, lease or disposition shall be made, otherwise as to the propriety or regularity of any sale or any other dealing by Roseway or the Receiver, as applicable, with the Collateral and Excluded Assets, as applicable, or to see to the application of any money paid to Roseway. In the absence of fraud on the part of such persons, such dealings shall be deemed, so far as regards the safety and protection of such person, to be within the powers hereby conferred and to be valid and effective accordingly.

### 6.4 Receiver-Manager

Roseway may, in addition to any other rights it may have, appoint by instrument in writing a receiver or receiver and manager (both of which are herein called a "Receiver") of all or any part of the Collateral and Excluded Assets or may institute proceedings in any court of competent jurisdiction for the appointment of such a Receiver. Any such Receiver is hereby given and shall have the same powers and rights and exclusions and limitations of liability as Roseway has under this Security Agreement, at law or in equity. In exercising any such powers, any such Receiver shall, to the extent permitted by law and except as expressly provided otherwise hereunder, act as and for all purposes shall be deemed to be the agent of GW Cdn and Roseway shall not be responsible for any act or default of any such Receiver. Roseway may appoint one or more Receivers hereunder and may remove any such Receiver or Receivers and appoint another or others in his or their stead from time to time. Any Receiver so appointed may be an officer or employee of Roseway. A court need not appoint, ratify the appointment by Roseway of or otherwise supervise in any manner the actions of any Receiver.

### 6.5 Carrying on Business

Roseway may carry on, or concur in the carrying on of, all or any part of the business or undertaking of GW Cdn, may, to the exclusion of all others, including GW Cdn, enter upon, occupy and use all or any of the premises, buildings, plant and undertaking of or occupied or used by GW Cdn and may use all or any of the assets of GW Cdn for such time as Roseway sees fit, free of charge, to carry on the business of GW Cdn.

### 6.6 Dealing with Collateral

- (a) Roseway may seize, collect, realize, dispose of, enforce, release to third parties or otherwise deal with all or any part of the Collateral and any Receiver may seize, collect, realize, dispose of, enforce, release to third parties or otherwise deal with all or any part of the Excluded Assets in such manner, upon such terms and conditions and at such time or times as may seem to it advisable, all of which without notice to GW Cdn except as otherwise required by any applicable law. Roseway may, but shall not be obligated to, in its name or in the name of GW Cdn or otherwise, demand, sue for, collect and receive any Collateral and

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Excluded Assets and with or without notice to GW Cdn, give such receipts, discharges and extensions of time and make such compromises or settlements deemed desirable with respect to any of the Collateral and Excluded Assets. Roseway may charge on its own behalf and pay to others, sums for costs and expenses incurred, including, without limitation, reasonable legal fees and expenses on a solicitor and his own client scale and Receivers' and accounting fees, in or in connection with seizing, collecting, realizing, disposing, enforcing or otherwise dealing with the Collateral and Excluded Assets and in connection with the protection and enforcement of the rights of Roseway hereunder including, without limitation, in connection with advice with respect to any of the foregoing. The amount of such sums shall be deemed advanced to GW Cdn by Roseway, shall become part of the Obligations, shall bear interest at 20% per annum calculated and accrued daily and compounding monthly and shall be secured by this Security Agreement.

- (b) Without limitation to the foregoing, Roseway may require GW Cdn to cause any Collateral that is investment property to be transferred of record into the name of Roseway or its nominee (and Roseway agrees that if any such investment property is transferred into its name or the name of its nominee, Roseway will thereafter promptly give to GW Cdn copies of any notices and communications received by it with respect to investment property). Roseway may exercise any and all rights, privileges, entitlements and options pertaining to any Collateral that is investment property as if Roseway were the absolute owner of such investment property.
- (c) To the extent that applicable law imposes duties on Roseway to exercise remedies in a commercially reasonable manner, and without prejudice to the ability of Roseway to dispose of the Collateral and Excluded Assets in any such manner, GW Cdn acknowledges and agrees that it is not commercially unreasonable for Roseway (i) to incur expenses reasonably deemed significant by Roseway to prepare the Collateral and Excluded Assets for disposition, (ii) provided it has exercised reasonable diligence, to fail to obtain third party consents for access to the Collateral and Excluded Assets to be disposed of, (iii) to fail to exercise collection remedies against account debtors obligated on the Collateral or to remove Liens against the Collateral, (iv) to exercise collection remedies against GW Cdn directly or through the use of collection agencies, (v) to dispose of Collateral and Excluded Assets by way of public auction, public tender or private contract, with or without advertising and without any other formality, (vi) to contact other Persons, whether or not in the same business of GW Cdn, for expressions of interest in acquiring all or any portion of the Collateral or Excluded Assets, (vii) to hire one or more professional auctioneers to assist in the disposition of the Collateral and Excluded Assets, whether or not the Collateral is of a specialized nature or an upset or reserve bid or price is established, and (viii) to dispose of Collateral and Excluded Assets in whole or in part.
- (d) Roseway is authorized, in connection with any offer or sale of any Pledged Securities or any Collateral and Excluded Asset that is a security entitlement ("Security Entitlements"), to comply with any limitation or restriction as it may be advised by counsel is necessary to comply with applicable law, including

compliance with procedures that may restrict the number of prospective bidders and purchasers, requiring that prospective bidders and purchasers have certain qualifications, and restricting prospective bidders and purchasers to Persons who will represent and agree that they are purchasing for their own account or investment and not with a view to the distribution or resale of such Pledged Securities or Security Entitlements. GW Cdn further agrees that compliance with any such limitation or restriction will not result in a sale being considered or deemed not to have been made in a commercially reasonable manner, and Roseway will not be liable or accountable to GW Cdn for any discount allowed by reason of the fact that such Pledged Securities or Security Entitlements are sold in compliance with any such limitation or restriction. If Roseway chooses to exercise its right to sell any or all Pledged Securities or Security Entitlements, upon written request, GW Cdn will use commercially reasonable efforts to cause each applicable issuer to furnish to Roseway all such information as Roseway may request in order to determine the number of shares and other instruments included in the Collateral and Excluded Assets which may be sold by Roseway in exempt transactions under any laws governing securities, and the rules and regulations of any applicable securities regulation thereunder, as the same are from time to time in effect.

- (e) GW Cdn agrees that to the extent Roseway is required by applicable law to give reasonable prior notice of any sale or other disposition of any Collateral, fifteen (15) days' notice shall be deemed to constitute reasonable prior notice unless the mandatory provisions of such applicable law specifically require a longer notice period which cannot be waived or reduced.

#### 6.7 Right to Use

- (a) Upon the occurrence of a Default that is continuing, GW Cdn hereby grants to Roseway an irrevocable, non exclusive license (exercisable without payment of royalty or other compensation to GW Cdn) (each a "Granted Licence") to use, assign, license, or sublicense all of GW Cdn's present and future property, whether real or personal, including, without limitation, labels, Intellectual Property and advertising matter, or any other property of any nature or of a similar nature, and all reasonable access to all media in which any of the licensed items may be recorded or stored and to all computer programs used for the compilation or printout thereof, as it pertains to the Collateral, in completing production of, advertising for sale, and selling of any Collateral and GW Cdn's rights under all licenses and all franchise agreements shall inure to Roseway.
- (b) To the extent that GW Cdn is expressly prohibited by any agreement to which it is a party from granting a Granted Licence GW Cdn shall hold its interest in the right to use, assign, license or sublicense the property in respect of which the grant of a Granted License is expressly prohibited, in trust for Roseway.

#### 6.8 Retention of Collateral

Upon notice to GW Cdn and subject to any obligation to dispose of any of the Collateral, as provided in the PPSA, Roseway may elect to retain all or any part of the Collateral in satisfaction

of the Obligations or any of them. In the event of any dispute between GW Cdn and Roseway as to the value to be attributed to any Collateral retained by Roseway under this Section 6.8, such dispute shall be resolved in accordance with the provisions of Section 9.6 of the Participation Agreement.

#### 6.9 Pay Encumbrances

Roseway may pay any encumbrance that may exist or be threatened against the Collateral or Excluded Assets (other than Permitted Encumbrance Assets). In addition, Roseway may borrow money required for the maintenance, preservation or protection of the Collateral and Excluded Assets or for the carrying on of the business or undertaking of GW Cdn and may grant further security interests in the Collateral in priority to the security interest created hereby as security for the money so borrowed. In every such case the amounts so paid or borrowed together with costs, charges and expenses incurred in connection therewith shall be deemed to have been advanced to GW Cdn by Roseway, shall become part of the Obligations, shall bear interest at 20% per annum calculated and accrued daily and compounding monthly and shall be secured by this Security Agreement.

#### 6.10 Application of Payments Against Obligations

Any and all payments made in respect of the Obligations from time to time and moneys realized on the Collateral may be applied to such part or parts of the Obligations as Roseway may see fit. Roseway shall, at all times and from time to time, have the right to change any appropriation as it may see fit.

#### 6.11 Set-Off

The Obligations will be paid by GW Cdn without regard to any equities between GW Cdn and Roseway or any right of set-off or cross-claim. Any indebtedness owing by Roseway to GW Cdn may be set off and applied by Roseway against the Obligations at any time or from time to time either before or after maturity, without demand upon or notice to anyone.

#### 6.12 Deficiency

If the proceeds of the realization of the Collateral are insufficient to repay Roseway all monies due to it, GW Cdn shall forthwith pay or cause to be paid to Roseway such deficiency.

#### 6.13 Roseway Not Liable

Roseway shall not be liable or accountable for any failure to seize, collect, realize, dispose of, enforce or otherwise deal with the Collateral or Excluded Assets, shall not be bound to institute proceedings for any such purposes or for the purpose of preserving any rights of Roseway, GW Cdn or any other Person in respect of the Collateral and Excluded Assets and shall not be liable or responsible for any loss, cost or damage whatsoever which may arise in respect of any such failure, including, without limitation, any loss, cost or damage resulting from the acts or omissions of Roseway or any of its officers, servants, partners, employees, agents, solicitors, attorneys, Receivers or otherwise, except in the case of wilful misconduct or gross negligence. Neither Roseway nor any of its partners, officers, employees, servants, agents, or Receivers shall be liable by reason of any entry into possession of the Collateral or Excluded Assets or any part thereof, to account as a mortgagee in possession, for anything except actual receipts, for any loss

on realization, for any act or omission for which a mortgagee in possession might be liable, for any acts or omissions in the carrying on or occupation of the business or undertaking of GW Cdn as provided in Section 6.5 or for any loss, cost, damage or expense whatsoever which may arise in respect of any such actions or omissions, except in the case of wilful misconduct or gross negligence.

#### 6.14 Extensions of Time

Roseway may grant renewals, extensions of time and other indulgences, take and give up securities, accept compositions, grant releases and discharges, perfect or fail to perfect any securities, release any part of the Collateral to third parties and otherwise deal or fail to deal with GW Cdn, subsidiaries of GW Cdn, guarantors, sureties and others and with the Collateral and other securities as Roseway may see fit, all without prejudice to the liability of GW Cdn to Roseway or Roseway's rights and powers under this Security Agreement.

#### 6.15 Rights in Addition

The rights and powers conferred by this Section 6 are in supplement of and in addition to and not in substitution for any other rights or powers Roseway may have from time to time under this Security Agreement or under applicable law. Roseway may proceed by way of any action, suit, remedy or other proceeding at law or in equity and no such remedy for the enforcement of the rights of Roseway shall be exclusive of or dependent on any other such remedy. Any one or more of such remedies may from time to time be exercised separately or in combination. GW Cdn recognizes that if it fails to perform or observe its obligations hereunder, no remedy at law will provide adequate relief to Roseway, and GW Cdn agrees that Roseway shall be entitled to seek temporary and permanent injunctive relief in any such case without the necessity of proving irreparable harm.

#### 6.16 Fees

From and after the occurrence and during the continuance of a Default unless waived by Roseway, in addition to all of the Obligations owing to Roseway, GW Cdn shall pay to Roseway a collateral monitoring fee of (i) \$35,000 per month prior to the payment in full of the amounts payable by GW Cdn to Roseway under Section 3.3(a), (b) and (c) of the Participation Agreement, and (ii) \$10,000 per month thereafter until the value of Defined Portfolio is less than \$10,000,000 or payment is made after an election under Section 5.3 above with respect to remaining payments contemplated in Section 3.1 of the Participation Agreement, payable in advance on the first Business Day of each month (or in case of the first payment, payable on the first Business Day following such Default, pro rata for the remaining portion of such calendar month). For greater certainty, such fees shall constitute Obligations secured under this Security Agreement.

#### 6.17 Dealings and Actions with respect to Excluded Assets

Roseway acknowledges and agrees that the Excluded Assets do not form part of the Collateral and, despite any other provision of this Agreement, Roseway agrees that any and all dealings and actions taken by Roseway or a Receiver in respect of Excluded Assets under this Section 6 or otherwise shall be taken in the name and on behalf of GW Cdn.

**SECTION 7 – DEALING WITH COLLATERAL BY GW CDN****7.1 Sale of Assets**

Provided that no Default has occurred and is continuing, GW Cdn shall be entitled to deal with the Collateral and Excluded Assets in the ordinary course of business and as provided in the Participation Agreement, provided that, no such action shall be taken which would impair the validity, effectiveness, perfection or priority of the security interest created by this Security Agreement in any Collateral not being disposed of or which would result in a Default. Roseway shall execute and delivery to GW Cdn all such releases and other documents as may be reasonably requested by GW Cdn in order to facilitate dispositions of Collateral and Excluded Assets in the ordinary course of business.

**SECTION 8 – GENERAL****8.1 Security in Addition**

The security hereby constituted is not in substitution for any other security for the Obligations or for any other agreement between the parties creating a security interest in all or part of the Collateral, whether heretofore or hereafter made, and such security and such agreements shall be deemed to be continued and not affected hereby unless expressly provided to the contrary in writing and signed by Roseway and GW Cdn. The taking of any action or proceedings or refraining from so doing, or any other dealing with any other security for the Obligations or any part thereof, shall not release or affect the security interest created by this Security Agreement and the taking of the security interest hereby created or any proceedings hereunder for the realization of the security interest hereby created shall not release or affect any other security held by Roseway for the repayment of or performance of the Obligations.

**8.2 Waiver**

Any waiver of a breach by GW Cdn of any of the terms or provisions of this Security Agreement or of a Default under Section 5.1 hereof must be in writing to be effective against and bind Roseway. No such waiver by Roseway shall extend to or be taken in any manner to affect any subsequent breach or Default or the rights of Roseway arising therefrom.

**8.3 Further Assurances**

GW Cdn shall at all times do, execute, acknowledge and deliver or cause to be done, executed, acknowledged or delivered all and singular every such further acts, deeds, conveyances, instruments, transfers, assignments, security agreements and assurances as Roseway may reasonably require in order to give effect to the provisions and purposes of this Security Agreement including, without limitation, in respect of Roseway's enforcement of the security and its realization on the Collateral and dealings and actions contemplated hereunder in respect of the Excluded Assets, and for the better granting, transferring, assigning, charging, setting over, assuring, confirming and/or perfecting the security interest of Roseway in the Collateral pursuant to this Security Agreement. Effective upon the occurrence and during the continuance of a Default, GW Cdn hereby constitutes and appoints any officer of Roseway at its above address, or any Receiver appointed by the court or Roseway as provided herein, the true and lawful attorney of GW Cdn irrevocably with full power of substitution to do, make and execute

all such assignments, documents, acts, matters or things with the right to use the name of GW Cdn whenever and wherever it may be deemed necessary or expedient in connection with the exercise of its rights and remedies set forth in this Security Agreement. Without limiting the generality of the foregoing, so long as Roseway shall be entitled under Section 6 to make collections in respect of the Collateral, Roseway shall have the right and power to receive, endorse and collect all cheques payable to the order of GW Cdn representing any dividend, payment or other distribution in respect of the Collateral and Excluded Assets (except to the extent constituting Excluded Assets) or any part thereof and to give full discharge for the same. GW Cdn hereby authorizes Roseway to file such proofs of claim and other documents as may be necessary or advisable in order to prove its claim in any bankruptcy, proposed winding-up or other proceeding relating to GW Cdn.

Without limiting the generality of the foregoing, GW Cdn:

- (a) shall execute, deliver, file, record, authorize or obtain all such financing statements, continuation statements, notices, instruments, documents, agreements, consents, or other papers or amendments thereto, and such other instruments or notices, as may be necessary, or as Roseway may reasonably request in order to create, preserve, perfect, maintain the perfection of, or validate the security interest granted or purported to be granted hereby, or to enable Roseway to exercise and enforce its rights hereunder with respect to such security interest and, without limiting the foregoing, shall:
  - (i) upon the occurrence of a Default that is continuing, deliver and pledge to Roseway any and all chattel paper representing Collateral duly endorsed and accompanied by duly executed instruments of transfer or assignment, all in form and substance satisfactory to Roseway;
  - (ii) deliver to Roseway any and all such documents, agreements and other materials as may be required from time to time to provide Roseway with control over all Collateral that is a futures contract in the manner provided under subsection 1(2) of the PPSA;
  - (iii) promptly from time to time upon request by Roseway enter into such control agreements, each in form and substance that complies with applicable laws and is reasonably acceptable to Roseway, as may be required to perfect the security interest created hereby in any and all investment property constituting Collateral, and will promptly furnish to Roseway true and complete copies thereof;
  - (iv) promptly from time to time upon the request of Roseway, execute and deliver such short-form security agreements as Roseway may reasonably deem necessary to protect the interests of Roseway in respect of that portion of the Collateral consisting of intellectual property;
  - (v) promptly upon request of Roseway, with respect to any uncertificated securities issued by an issuer that is organized outside of Canada and constituting Collateral, cause to be delivered to Roseway a securities pledge agreement covering such securities; and

- (vi) keep full and accurate books and records relating to the Collateral and Excluded Assets, and stamp or otherwise mark such books and records in such manner as Roseway may reasonably require in order to reflect the security interests granted by this Security Agreement.
- (b) hereby authorizes Roseway to file one or more financing or continuation statements, and amendments thereto, relative to all or any part of the Collateral without the signature of GW Cdn, where permitted by law; and
- (c) shall furnish to Roseway from time to time statements and schedules further identifying and describing the Collateral and such other reports in connection with the Collateral as Roseway may request, all in reasonable detail.

#### 8.4 No Merger

Neither the taking of any judgment nor the exercise of any power of seizure or sale shall operate to extinguish the liability of GW Cdn to make payment of or satisfy the Obligations. The acceptance of any payment or alternate security shall not constitute or create any novation and the taking of a judgment or judgments under any of the covenants herein contained shall not operate as a merger of such covenants.

#### 8.5 Notices

All notices, demands, and other communications made in respect of this Security Agreement shall be made to the following addresses, each of which may be changed upon seven (7) days written notice to all others given by registered mail, return receipt requested:

- (a) If to Roseway:

Roseway Capital LP  
50 Lothian Road  
Festival Square  
Edinburgh, EH3 9WJ  
Scotland

Attention: Growthworks Investment  
Fax: +44 (0)131 473 6006

With a copy to:

Rosetta Capital Limited  
New Broad Street House  
35 New Broad Street, London  
EC2M 1NH  
United Kingdom

Attention: Michael Forer  
Fax: +41 21 921 0461



## (b) If to GW Cdn:

Exchange Tower, 130 King Street West  
 Suite 2200, PO Box 422  
 Toronto, Ontario M5X 1E3  
 Attention: C. Ian Ross, Chairman  
 Fax: (416) 929-0901

with a copy to:

GrowthWorks WV Management Ltd.  
 Exchange Tower, 130 King Street West  
 Suite 2200, PO Box 422  
 Toronto, Ontario M5X 1E3  
 Attention: Tim Lee, Senior Vice-President, Investments  
 Fax: (416) 929-0901

8.6 Notice Given

- (a) Except as otherwise specifically provided herein, notices shall be deemed made and correspondence received, as follows (all times being local to the place of delivery or receipt):
- (i) By recognized overnight express delivery: the Business Day following the day when sent.
  - (ii) By Hand: If delivered on a Business Day after 9:00 a.m. and no later than three (3) hours prior to the close of customary business hours of the recipient, when delivered. Otherwise, at the opening of the then next Business Day.
  - (iii) By Facsimile transmission (which must include a header on which the party sending such transmission is indicated): If sent on a Business Day after 9:00 a.m. and no later than three (3) hours prior to the close of customary business hours of the recipient, one (1) hour after being sent. Otherwise, at the opening of the then next Business Day.
- (b) Rejection or refusal to accept delivery and inability to deliver because of a changed address or facsimile number for which no due notice was given shall each be deemed receipt of the notice sent.

8.7 Continuing Security Interest and Discharge

This Security Agreement shall create a continuing security interest in the Collateral and shall remain in full force and effect until payment and performance in full of the Obligations, notwithstanding any dealing between Roseway and GW Cdn in respect of the Obligations or any release, exchange, non-perfection, amendment, waiver, consent or departure from or in respect of any or all of the terms or provision of any security held for the Obligations.

Upon the repayment in full of the Obligations, Roseway shall at the request and at the expense of GW Cdn release and discharge the security interest created hereby and execute and deliver to GW Cdn such deeds and other instruments as GW Cdn may request and promptly deliver to the Custodian a written notice of termination of the Custodian Acknowledgement Agreement and withdraw all pending Entitlement Orders, directions, instructions and notices previously delivered to the Custodian.

Notwithstanding the foregoing, unless a Default has occurred that is continuing, this Agreement shall terminate on the day following the payment by GW Cdn of all amounts payable under Section 3.3(a), (b), (c) and (d) of the Participation Agreement, provided, for greater certainty, that the termination of this Agreement under those circumstances shall not result in the termination of the Participation Agreement or otherwise affect the amounts remaining to be paid thereunder. Following such termination, Roseway shall at the request and at the expense of GW Cdn release and discharge the security interest created hereby and execute and deliver to GW Cdn such deeds and other instruments as GW Cdn may reasonably request and promptly deliver to the Custodian a written notice of termination of the Custodian Acknowledgement Agreement and withdraw all pending Entitlement Orders, directions, instructions and notices previously delivered to the Custodian.

#### 8.8 Governing Law

This Security Agreement shall be governed by and construed in accordance with the laws of the Province of Ontario and the laws of Canada applicable therein, except as required by mandatory provisions of law and except to the extent that the validity or perfection of the security interests hereunder, or remedies hereunder, in respect of any particular Collateral are governed by the laws of a jurisdiction other than the Province of Ontario. Roseway's address for service in the Province of Ontario is set out on the cover page of this Security Agreement.

ANY LEGAL ACTION OR PROCEEDING WITH RESPECT TO THIS SECURITY AGREEMENT MAY BE BROUGHT IN THE COURTS OF THE PROVINCE OF ONTARIO OR OF THE FEDERAL COURTS OF CANADA THEREIN, AND BY EXECUTION AND DELIVERY OF THIS SECURITY AGREEMENT, GW CDN CONSENTS, FOR ITSELF AND IN RESPECT OF ITS PROPERTY, TO THE NON-EXCLUSIVE JURISDICTION OF THOSE COURTS. THE CORPORATION IRREVOCABLY WAIVES ANY OBJECTION, INCLUDING ANY OBJECTION TO THE LAYING OF VENUE OR BASED ON THE GROUNDS OF FORUM NON CONVENIENS, WHICH IT MAY NOW OR HEREAFTER HAVE TO THE BRINGING OF ANY ACTION OR PROCEEDING IN SUCH JURISDICTION OR ANY OTHER JURISDICTION SELECTED BY THE AGENT IN RESPECT OF THIS SECURITY AGREEMENT. GW CDN WAIVES PERSONAL SERVICE OF ANY SUMMONS, COMPLAINT OR OTHER PROCESS, WHICH MAY BE MADE BY ANY OTHER MEANS PERMITTED BY THE LAW OF ONTARIO.

The parties hereto hereby waive trial by jury in any action, proceeding, claim or counterclaim, whether in contract or tort, at law or in equity with respect to, in connection with, or arising out of this Security Agreement, other financing agreements, the obligations of GW Cdn, the Collateral, Excluded Assets or any instrument, document or guarantee delivered pursuant hereto or to any of the foregoing, or the validity, protection, interpretation, administration, collection or enforcement hereof or thereof, or any other claim or dispute hereunder or thereunder. Each party agrees that it will not assert against the other any claim for consequential, incidental, special, or

punitive damages in connection with this Security Agreement or the transactions contemplated hereby.

#### 8.9 Security Interest Effective Immediately

The parties intend the security interest created hereby to attach and take effect forthwith upon execution of this Security Agreement by GW Cdn and GW Cdn acknowledges that value has been given and that GW Cdn has rights in the Collateral, other than the future acquired Collateral.

#### 8.10 No Collateral Warranties

There is no representation, warranty or collateral agreement affecting this Security Agreement or the Collateral, other than as expressed herein in writing.

#### 8.11 Provisions Reasonable

GW Cdn expressly acknowledges and agrees that the provisions of this Security Agreement and, in particular, those respecting remedies and powers of Roseway against GW Cdn, its business and the Collateral and Excluded Assets upon default, are commercially reasonable and not manifestly unreasonable.

#### 8.12 Number and Gender

In this Security Agreement, words importing the singular number include the plural and vice-versa and words importing gender include all genders.

#### 8.13 Invalidity

In the event that any term or provision of this Security Agreement shall, to any extent, be invalid or unenforceable, the remaining terms and provisions of this Security Agreement shall be unaffected thereby and shall be valid and enforceable to the fullest extent permitted by law.

#### 8.14 Judgement Currency

If for the purpose of obtaining judgment in any court it is necessary to convert an amount due hereunder in the currency in which it is due (the "**Original Currency**") into another currency (the "**Second Currency**"), the rate of exchange applied shall be that at which, in accordance with normal banking procedures, Roseway could purchase in the New York foreign exchange market, the Original Currency with the Second Currency on the date two (2) Business Days preceding that on which judgment is given. GW Cdn agrees that its obligation in respect of any Original Currency due from it hereunder shall, notwithstanding any judgment or payment in such other currency, be discharged only to the extent that, on the Business Day following the date Roseway receives payment of any sum so adjudged to be due hereunder in the Second Currency, Roseway may, in accordance with normal banking procedures, purchase, in the New York foreign exchange market, the Original Currency with the amount of the Second Currency so paid; and if the amount of the Original Currency so purchased or could have been so purchased is less than the amount originally due in the Original Currency, GW Cdn agrees as a separate obligation and notwithstanding any such payment or judgment to indemnify Roseway against such loss. The term "rate of exchange" in this Section 8.14 means the spot rate at which

Roseway, in accordance with normal practices, is able on the relevant date to purchase the Original Currency with the Second Currency, and includes any reasonable premium and costs of exchange payable in connection with such purchase.

#### 8.15 Sections and Headings

The division of this Security Agreement into sections and the insertion of headings are for convenience of reference only and shall not affect the construction or interpretation hereof.

#### 8.16 Receipt of Copy

GW Cdn acknowledges receipt of an executed copy of this Security Agreement.

#### 8.17 Assignment

The obligations of GW Cdn under this Security Agreement are not assignable to any other Person without the prior written consent of Roseway. Roseway may, at any time, assign or transfer all or any of its rights and benefits hereunder in connection with any assignment of its rights permitted under the Participation Agreement.

#### 8.18 Binding Effect

All rights of Roseway hereunder shall enure to the benefit of its successors and assigns and all obligations of GW Cdn hereunder shall bind GW Cdn and its successors and permitted assigns.

The parties hereto acknowledge that they have requested and are satisfied that the foregoing, as well as all notices, actions and legal proceedings be drawn up in the English language.

Les parties à cette convention reconnaissent qu'elles ont exigé que ce qui précède ainsi que tous avis, actions et procédures légales soient rédigés et exécutés en anglais et s'en déclarent satisfaites.

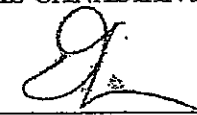
#### 8.19 Costs and Expenses

In addition to any other reimbursement rights provided hereunder, GW Cdn shall pay to Roseway, within 30 days of receiving a demand by Roseway accompanied by invoices, all reasonable costs and expenses of Roseway and its agents incurred from time to time following the date hereof in connection with any actual or proposed amendment of or supplement to this Agreement requested by GW Cdn or any waiver thereunder, or any subordination, priority, releases and other agreements and instruments requested under Section 3.6 or 7.1. including, without limitation, all of the reasonable fees and disbursements of counsel to Roseway incurred in connection therewith. In every such case the amounts so incurred shall be deemed to have been advanced to GW Cdn by Roseway as at the expiry of such 30-day period and thereupon shall become part of the Obligations, shall bear interest at 20% per annum calculated and accrued daily and compounding monthly and shall be secured by this Security Agreement.

IN WITNESS WHEREOF GW Cdn has duly executed this Security Agreement as of this  
28<sup>th</sup> day of May, 2010.

**GROWTHWORKS CANADIAN FUND  
LTD.**

Per:

  
\_\_\_\_\_

Name: David Levi

Title: President and CEO

**SCHEDULE "A"****Permitted Encumbrances**

1. Encumbrances for taxes, assessments or government charges or levies not at the time due and delinquent, or that are due but the validity of which is being contested at the time by GW Cdn in good faith by proper legal proceedings.
2. Liens and privileges arising out of judgments or awards with respect to which GW Cdn is in good faith prosecuting an appeal or proceedings for review and with respect to which GW Cdn has secured a stay of execution pending the appeal or proceedings for review
3. The encumbrance resulting from the deposit of cash or securities in connection with any of the encumbrances referred to in paragraphs 1 and 2 above, or in connection with contracts, tenders, leases, or expropriation proceedings, or to secure worker's compensation, surety or appeal bonds or costs of litigation when required by law and public and statutory obligations.
4. Security given to a public utility or any municipality or governmental or other public authority when required by such utility or other authority in connection with the operations of GW Cdn in the ordinary course of its business.
5. Any lien or interest in the assets of GW Cdn created under section 3.3 of the Custodian Agreement dated December 1, 2004 between GW Cdn, its Manager and RBC Dexia Investor Services (successor to The Royal Trust Company).
6. The WOF Security.









# GROWTHWORKS

BY EMAIL

January 31, 2011

Roseway Capital S.à.r.l.  
412F, route d'Esch  
L-2086 Luxembourg

Rosetta Capital LP  
New Broad Street House  
35 New Broad Street  
London, EC2M 1NH, U.K.

Attention: Michael Forer

Dear Sirs:

**Re: GrowthWorks Canadian Fund Ltd. Security Agreement in favour of Roseway Capital LP**

We write further to our recent discussions regarding the proposed amendment to the Security Agreement (the "Security Agreement") between Roseway Capital LP and GrowthWorks Canadian Fund Ltd. ("GW Cdn") dated May 28, 2010 and subsequently assigned to Roseway Capital S.à.r.l. ("Roseway").

The security interests created under the Security Agreement secure GW Cdn's payment obligations under the Participation Agreement dated May 28, 2010 between with GW Cdn and Roseway Capital LP (and subsequently assigned to Roseway). Section 5.1 of the Security Agreement sets out events that constitute a default by GW Cdn, including under Section 5.1(c) of the Security Agreement if the NAV of GW Cdn, excluding venture investments and any value attributed to Permitted Encumbrance Assets (as defined in the Security Agreement), is less than \$10 million.

We propose that that subsection 5.1(c) of the Security Agreement be deleted and replaced with the following:


- "(c) at any time prior to the payment in full of the amount payable by GW Cdn to Roseway under Section 3.3(c) of the Participation Agreement, the NAV of GW Cdn less the sum of the value of the 'venture investments', as described or required to be described in GW Cdn's most recent financial statements, (valued at their fair value) plus:
- (i) all amounts owing under Section 3.3(c) of the Participation Agreement at such time; and
  - (ii) all amounts of third party indebtedness guaranteed by GW Cdn but only to the extent that any borrower of the guaranteed indebtedness is not in default thereunder, as described or required to be described in Note 12 of GW Cdn's financial statements as supplemental information for Accounts Payable and Accrued Liabilities in GW Cdn's Statements of Net Assets; and
  - (iii) all amounts of contingent investment participation amount ("IPA"), as described or required to be described as Contingent IPA on GW Cdn's Statements of Net Assets, owing to the holder of Class C shares of GW Cdn for so long as the payment obligation of GW Cdn in respect thereof remains contingent and is not claimed or alleged to be payable by or on behalf of the holder of the Class C shares; and
  - (iv) all amounts of liabilities, as described or required to be described in GW Cdn's Statements of Net Assets, owing by GW Cdn that are in writing fully subordinated and postponed to the indebtedness of GW Cdn secured under the Security Agreement, and not claimed or alleged to be payable at that time, to the satisfaction of Roseway acting

reasonably, provided, however, that (I) Roseway is provided with reasonably satisfactory evidence that such amounts are fully subordinated and postponed and not claimed or alleged to be payable at that time and that (II) payments on account of such liabilities may be made by GW Cdn in accordance with the terms of such liabilities unless a Default has occurred and is continuing or any such payment would cause or result in a Default and that (III) any agreement effecting such subordination and postponement may be terminated or rescinded without the consent of Roseway at any time on 30 days' advance written notice to Roseway unless a Default has occurred and is continuing or such termination or rescission would cause or result in a Default,

is less than \$10 million;"

The Security Agreement in all other respects will remain unamended. To confirm your agreement with this amendment, please sign in the space provided below and return a signed copy of this letter to GrowthWorks Canadian Fund to the attention of Tim Lee. Upon receipt of this letter duly executed by you, the Security Agreement shall be deemed to be amended as of the date hereof, and shall henceforth be read together with the amendments provided for herein as one and the same instrument. This Letter Agreement shall be governed by the laws of the Province of Ontario.

**GROWTHWORKS CANADIAN FUND LTD.**


Per:   
David Levi, President

AGREED this 31<sup>st</sup> day of January, 2011

**ROSEWAY CAPITAL S.à.r.l**

Per:   
Michael Forer, Director

**ROSEWAY CAPITAL L.P. by its General Partner ROSEWAY CAPITAL GP LIMITED**

Per:   
Michael Forer, Director

## WAIVER AGREEMENT

**Waiver Agreement dated as of June 14, 2013 between Growthworks Canadian Fund Ltd. ("GW Cdn") and Roseway Capital S.a.r.l. ("Roseway").**

**WHEREAS** GW Cdn entered into a security agreement dated as of May 28, 2010 (as amended, revised, replaced, supplemented or restated from time to time, the "Security Agreement") with Roseway Capital L.P.;

**AND WHEREAS** Roseway Capital L.P. subsequently assigned all of its rights and obligations under the Security Agreement to Roseway pursuant to section 8.17 of the Security Agreement;

**AND WHEREAS** GW Cdn has advised Roseway that a Default has occurred in that the NAV of GW Cdn, excluding any value attributed to Permitted Encumbrance Assets over and above the amount of indebtedness secured thereby and not already excluded in determining NAV, is less than the Critical NAV Amount;

### NOW THEREFORE:

1. Capitalized terms used, but not otherwise defined, herein have the respective meanings ascribed thereto in the Security Agreement.
2. GW Cdn hereby represents and warrants to Roseway as follows:
  - (a) this waiver agreement has been duly authorized, executed and delivered by GW Cdn and together with the Security Agreement constitutes a legal, valid and binding obligation of GW Cdn;
  - (b) the representations and warranties of GW Cdn in the Security Agreement are true and correct on and as of the date hereof;
  - (c) the matters set forth in the first and third recital of this waiver agreement are true and correct;
  - (d) the NAV of GW Cdn as of June 7, 2013 was \$92,122,283;
  - (e) upon the effectiveness of this waiver agreement, GW Cdn will be in full compliance with the Security Agreement; and
  - (f) except as set forth in the recitals, no Default or Event of Default has occurred and is continuing.
4. Based upon and relying on the representations of GW Cdn herein, Roseway hereby waives:
  - (a) until June 29, 2013, compliance by GW Cdn with the requirement set forth in Section 5.1(b) of the Security Agreement that the NAV of GW Cdn, excluding any value attributed to Permitted Encumbrance Assets over and above the amount of indebtedness secured thereby and not already excluded in determining NAV, be less than the Critical NAV Amount;
  - (b) until June 29, 2013, compliance by GW Cdn with the requirement set forth in Section 3.6 of the Security Agreement with respect to the grant of encumbrances that the NAV of GW Cdn, excluding the value attributed to such encumbered assets over and above the amount of indebtedness secured thereby and not already excluded in determining NAV, be less than the Critical NAV Amount; and
  - (b) until June 29, 2013, any Default arising directly from non-compliance with Section 5.1(b) of the Security Agreement or Section 3.6 of the Security Agreement.

5. Notwithstanding the foregoing, it is hereby acknowledged and agreed that in the event (i) the NAV of GW Cdn minus the indebtedness of \$4,000,000 (including accrued and unpaid interest thereon and any other amount due thereunder) evidenced by the amended and restated promissory note of GW Cdn dated January 31, 2013 issued to Matrix Asset Management Inc. (the "Matrix Debt") is determined to be or to have been less than \$84,000,000, or (ii) GW Cdn incurs or guarantees any indebtedness (other than indebtedness incurred in the ordinary course of business and other than the Matrix Debt), in either case at any time prior to June 29, 2013, an immediate Default and Event of Default shall be deemed to have occurred.

6. The Security Agreement remains in full force and effect, unamended. Except as expressly provided herein, this waiver agreement shall not constitute an amendment, waiver, consent or release with respect to any provision of the Security Agreement, a waiver of any Default thereunder, or a waiver or release of any of Roseway's rights or remedies, all of which are expressly reserved.


7. This waiver agreement shall be governed by and construed in accordance with the laws of the Province of Ontario and the laws of Canada applicable therein.

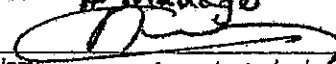
8. This waiver agreement may be executed and delivered in any number of separate counterparts, each of which, when executed and delivered, is an original, and all of which, taken together, constitute one and the same instrument. Delivery of an executed copy of this waiver agreement by facsimile transmission shall be as effective as a manually signed counterpart of this waiver agreement.

**[SIGNATURE PAGE FOLLOWS]**

IN WITNESS WHEREOF, Roseway and GW Cdn have caused this waiver agreement to be executed on the date first above written.

ROSEWAY CAPITAL S.A.R.L.

By:   
Name: Michael Ford  
Title: A Manager

By:   
Name: Lenoir Fichel  
Title: B Manager

GROWTHWORKS CANADIAN FUND LTD.

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


IN WITNESS WHEREOF, Roseway and GW Cdn have caused this waiver agreement to be executed on the date first above written.

ROSEWAY CAPITAL S.A.R.L.

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

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

GROWTHWORKS CANADIAN FUND LTD.

By:  \_\_\_\_\_  
Name: C. Ian Ross  
Title: Chairman

**WAIVER AGREEMENT**

Waiver Agreement dated as of June 27, 2013 between Growthworks Canadian Fund Ltd. (“GW Cdn”) and Roseway Capital S.a.r.l. (“Roseway”).

**WHEREAS** GW Cdn entered into a security agreement dated as of May 28, 2010 (as amended, revised, replaced, supplemented or restated from time to time, the “Security Agreement”) with Roseway Capital L.P.;

**AND WHEREAS** Roseway Capital L.P. subsequently assigned all of its rights and obligations under the Security Agreement to Roseway pursuant to section 8.17 of the Security Agreement;

**AND WHEREAS** GW Cdn has advised Roseway that a Default has occurred in that the NAV of GW Cdn, excluding any value attributed to Permitted Encumbrance Assets over and above the amount of indebtedness secured thereby and not already excluded in determining NAV, is less than the Critical NAV Amount;

**NOW THEREFORE:**

1. Capitalized terms used, but not otherwise defined, herein have the respective meanings ascribed thereto in the Security Agreement.
2. GW Cdn hereby represents and warrants to Roseway as follows:
  - (a) this waiver agreement has been duly authorized, executed and delivered by GW Cdn and together with the Security Agreement constitutes a legal, valid and binding obligation of GW Cdn;
  - (b) the representations and warranties of GW Cdn in the Security Agreement are true and correct on and as of the date hereof;
  - (c) the matters set forth in the first and third recital of this waiver agreement are true and correct;
  - (d) the NAV of GW Cdn as of June 21, 2013 was \$93,084,663;
  - (e) upon the effectiveness of this waiver agreement, GW Cdn will be in full compliance with the Security Agreement; and
  - (f) except as set forth in the recitals, no Default or Event of Default has occurred and is continuing.
4. Based upon and relying on the representations of GW Cdn herein, Roseway hereby waives:
  - (a) until July 16, 2013, compliance by GW Cdn with the requirement set forth in Section 5.1(b) of the Security Agreement that the NAV of GW Cdn, excluding any value attributed to Permitted Encumbrance Assets over and above the amount of indebtedness secured



thereby and not already excluded in determining NAV, be less than the Critical NAV Amount;

(b) until July 16, 2013, compliance by GW Cdn with the requirement set forth in Section 3.6 of the Security Agreement with respect to the grant of encumbrances that the NAV of GW Cdn, excluding the value attributed to such encumbered assets over and above the amount of indebtedness secured thereby and not already excluded in determining NAV, be less than the Critical NAV Amount; and

(b) until July 16, 2013, any Default arising directly from non-compliance with Section 5.1(b) of the Security Agreement or Section 3.6 of the Security Agreement.

5. Notwithstanding the foregoing, it is hereby acknowledged and agreed that in the event (i) the NAV of GW Cdn minus the indebtedness of \$4,000,000 (including accrued and unpaid interest thereon and any other amount due thereunder) evidenced by the amended and restated promissory note of GW Cdn dated January 31, 2013 issued to Matrix Asset Management Inc. (the “**Matrix Debt**”) is determined to be or to have been less than \$84,000,000, or (ii) GW Cdn incurs or guarantees any indebtedness (other than indebtedness incurred in the ordinary course of business and other than the Matrix Debt), in either case at any time prior to July 16, 2013, an immediate Default and Event of Default shall be deemed to have occurred.

6. The Security Agreement remains in full force and effect, unamended. Except as expressly provided herein, this waiver agreement shall not constitute an amendment, waiver, consent or release with respect to any provision of the Security Agreement, a waiver of any Default thereunder, or a waiver or release of any of Roseway’s rights or remedies, all of which are expressly reserved.

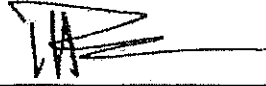
7. This waiver agreement shall be governed by and construed in accordance with the laws of the Province of Ontario and the laws of Canada applicable therein.

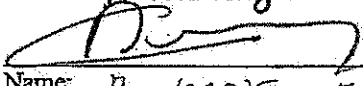
8. This waiver agreement may be executed and delivered in any number of separate counterparts, each of which, when executed and delivered, is an original, and all of which, taken together, constitute one and the same instrument. Delivery of an executed copy of this waiver agreement by facsimile transmission shall be as effective as a manually signed counterpart of this waiver agreement.

[SIGNATURE PAGE FOLLOWS]

IN WITNESS WHEREOF, Roseway and GW Cdn have caused this waiver agreement to be executed on the date first above written.

ROSEWAY CAPITAL S.A.R.L.

By:   
 Name: M. Fofor  
 Title: A manager

By:   
 Name: N. denoir  
 Title: B manager

GROWTHWORKS CANADIAN FUND LTD.

By: \_\_\_\_\_  
 Name: C. Ian Ross  
 Title: Chairman

[Waiver Agreement]

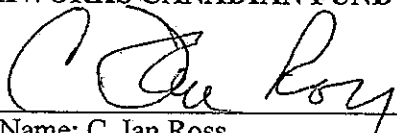
IN WITNESS WHEREOF, Roseway and GW Cdn have caused this waiver agreement to be executed on the date first above written.

**ROSEWAY CAPITAL S.A.R.L.**

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

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

**GROWTHWORKS CANADIAN FUND LTD.**

By:  \_\_\_\_\_  
Name: C. Ian Ross  
Title: Chairman

**WAIVER AGREEMENT**

Waiver Agreement dated as of July 15, 2013 between Growthworks Canadian Fund Ltd. ("GW Cdn") and Roseway Capital S.a.r.l. ("Roseway").

WHEREAS GW Cdn entered into a security agreement dated as of May 28, 2010 (as amended, revised, replaced, supplemented or restated from time to time, the "Security Agreement") with Roseway Capital L.P.;

AND WHEREAS Roseway Capital L.P. subsequently assigned all of its rights and obligations under the Security Agreement to Roseway pursuant to section 8.17 of the Security Agreement;

AND WHEREAS GW Cdn has advised Roseway that a Default has occurred in that the NAV of GW Cdn, excluding any value attributed to Permitted Encumbrance Assets over and above the amount of indebtedness secured thereby and not already excluded in determining NAV, is less than the Critical NAV Amount;

**NOW THEREFORE:**

1. Capitalized terms used, but not otherwise defined, herein have the respective meanings ascribed thereto in the Security Agreement.
2. GW Cdn hereby represents and warrants to Roseway as follows:
  - (a) this waiver agreement has been duly authorized, executed and delivered by GW Cdn and together with the Security Agreement constitutes a legal, valid and binding obligation of GW Cdn;
  - (b) the representations and warranties of GW Cdn in the Security Agreement are true and correct on and as of the date hereof;
  - (c) the matters set forth in the first and third recital of this waiver agreement are true and correct;
  - (d) the NAV of GW Cdn as of July 5, 2013 was 94,178,306;
  - (e) upon the effectiveness of this waiver agreement, GW Cdn will be in full compliance with the Security Agreement; and
  - (f) except as set forth in the recitals, no Default or Event of Default has occurred and is continuing.
4. Based upon and relying on the representations of GW Cdn herein, Roseway hereby waives:
  - (a) until August 17, 2013, compliance by GW Cdn with the requirement set forth in Section 5.1(b) of the Security Agreement that the NAV of GW Cdn, excluding any value attributed to Permitted Encumbrance Assets over and above the amount of indebtedness

secured thereby and not already excluded in determining NAV, be less than the Critical NAV Amount;

(b) until August 17, 2013, compliance by GW Cdn with the requirement set forth in Section 3.6 of the Security Agreement with respect to the grant of encumbrances that the NAV of GW Cdn, excluding the value attributed to such encumbered assets over and above the amount of indebtedness secured thereby and not already excluded in determining NAV, be less than the Critical NAV Amount; and

(b) until August 17, 2013, any Default arising directly from non-compliance with Section 5.1(b) of the Security Agreement or Section 3.6 of the Security Agreement.

5. Notwithstanding the foregoing, it is hereby acknowledged and agreed that in the event (i) the NAV of GW Cdn minus the indebtedness of \$4,000,000 (including accrued and unpaid interest thereon and any other amount due thereunder) evidenced by the amended and restated promissory note of GW Cdn dated January 31, 2013 issued to Matrix Asset Management Inc. (the "Matrix Debt") is determined to be or to have been less than \$84,000,000, or (ii) GW Cdn incurs or guarantees any indebtedness (other than indebtedness incurred in the ordinary course of business and other than the Matrix Debt), in either case at any time prior to August 17, 2013, an immediate Default and Event of Default shall be deemed to have occurred.

6. The Security Agreement remains in full force and effect, unamended. Except as expressly provided herein, this waiver agreement shall not constitute an amendment, waiver, consent or release with respect to any provision of the Security Agreement, a waiver of any Default thereunder, or a waiver or release of any of Roseway's rights or remedies, all of which are expressly reserved.

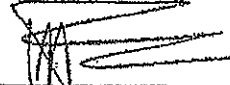
7. This waiver agreement shall be governed by and construed in accordance with the laws of the Province of Ontario and the laws of Canada applicable therein.

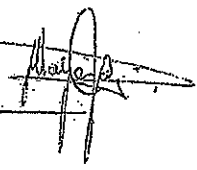
8. This waiver agreement may be executed and delivered in any number of separate counterparts, each of which, when executed and delivered, is an original, and all of which, taken together, constitute one and the same instrument. Delivery of an executed copy of this waiver agreement by facsimile transmission shall be as effective as a manually signed counterpart of this waiver agreement.

[SIGNATURE PAGE FOLLOWS]

IN WITNESS WHEREOF, Roseway and GW Cdn have caused this waiver agreement to be executed on the date first above written.

ROSEWAY CAPITAL S.A.R.L.

By:   
 Name: Mr. Foré  
 Title: A manager

By:   
 Name: Flavio Marzoni  
 Title: B Manager

GROWTHWORKS CANADIAN FUND LTD.

By: \_\_\_\_\_  
 Name: C. Ian Ross  
 Title: Chairman

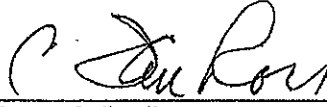
IN WITNESS WHEREOF, Roseway and GW Cdn have caused this waiver agreement to be executed on the date first above written.

**ROSEWAY CAPITAL S.A.R.L.**

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

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

**GROWTHWORKS CANADIAN FUND LTD.**

By:  \_\_\_\_\_  
Name: C. Ian Ross  
Title: Chairman

**WAIVER AGREEMENT**

Waiver Agreement dated as of August 16, 2013 between Growthworks Canadian Fund Ltd. ("GW Cdn") and Roseway Capital S.a.r.l. ("Roseway").

**WHEREAS** GW Cdn entered into a security agreement dated as of May 28, 2010 (as amended, revised, replaced, supplemented or restated from time to time, the "Security Agreement") with Roseway Capital L.P.;

**AND WHEREAS** Roseway Capital L.P. subsequently assigned all of its rights and obligations under the Security Agreement to Roseway pursuant to section 8.17 of the Security Agreement;

**AND WHEREAS** GW Cdn has advised Roseway that a Default has occurred in that the NAV of GW Cdn, excluding any value attributed to Permitted Encumbrance Assets over and above the amount of indebtedness secured thereby and not already excluded in determining NAV, is less than the Critical NAV Amount;

**NOW THEREFORE:**

1. Capitalized terms used, but not otherwise defined, herein have the respective meanings ascribed thereto in the Security Agreement.
2. GW Cdn hereby represents and warrants to Roseway as follows:
  - (a) this waiver agreement has been duly authorized, executed and delivered by GW Cdn and together with the Security Agreement constitutes a legal, valid and binding obligation of GW Cdn;
  - (b) the representations and warranties of GW Cdn in the Security Agreement are true and correct on and as of the date hereof;
  - (c) the matters set forth in the first and third recital of this waiver agreement are true and correct;
  - (d) the NAV of GW Cdn as of August 9, 2013 was \$94,687,863;
  - (e) upon the effectiveness of this waiver agreement, GW Cdn will be in full compliance with the Security Agreement; and
  - (f) except as set forth in the recitals, no Default or Event of Default has occurred and is continuing.
4. Based upon and relying on the representations of GW Cdn herein, Roseway hereby waives:
  - (a) until September 4, 2013, compliance by GW Cdn with the requirement set forth in Section 5.1(b) of the Security Agreement that the NAV of GW Cdn, excluding any value attributed to Permitted Encumbrance Assets over and above the amount of indebtedness



secured thereby and not already excluded in determining NAV, be less than the Critical NAV Amount;

(b) until September 4, 2013, compliance by GW Cdn with the requirement set forth in Section 3.6 of the Security Agreement with respect to the grant of encumbrances that the NAV of GW Cdn, excluding the value attributed to such encumbered assets over and above the amount of indebtedness secured thereby and not already excluded in determining NAV, be less than the Critical NAV Amount; and

(b) until September 4, any Default arising directly from non-compliance with Section 5.1(b) of the Security Agreement or Section 3.6 of the Security Agreement.

5. Notwithstanding the foregoing, it is hereby acknowledged and agreed that in the event (i) the NAV of GW Cdn is determined to be or to have been less than \$84,000,000, or (ii) GW Cdn incurs or guarantees any indebtedness (other than indebtedness incurred in the ordinary course of business), in either case at any time prior to September 4, 2013, an immediate Default and Event of Default shall be deemed to have occurred.

6. The Security Agreement remains in full force and effect, unamended. Except as expressly provided herein, this waiver agreement shall not constitute an amendment, waiver, consent or release with respect to any provision of the Security Agreement, a waiver of any Default thereunder, or a waiver or release of any of Roseway's rights or remedies, all of which are expressly reserved.

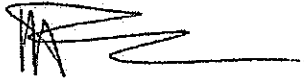
7. This waiver agreement shall be governed by and construed in accordance with the laws of the Province of Ontario and the laws of Canada applicable therein.

8. This waiver agreement may be executed and delivered in any number of separate counterparts, each of which, when executed and delivered, is an original, and all of which, taken together, constitute one and the same instrument. Delivery of an executed copy of this waiver agreement by facsimile transmission shall be as effective as a manually signed counterpart of this waiver agreement.

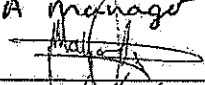
**[SIGNATURE PAGE FOLLOWS]**

IN WITNESS WHEREOF, Roseway and GW Cdn have caused this waiver agreement to be executed on the date first above written.

**ROSEWAY CAPITAL S.A.R.L.**

By: 

Name: *M. Forer*  
Title: *A manager*

By: 

Name: *B Flavio Marzoni*  
Title: *Manager*

**GROWTHWORKS CANADIAN FUND LTD.**

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

Name: C. Ian Ross  
Title: Chairman

[Waiver Agreement]

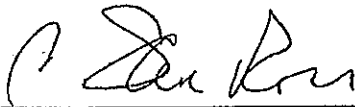
IN WITNESS WHEREOF, Roseway and GW Cdn have caused this waiver agreement to be executed on the date first above written.

**ROSEWAY CAPITAL S.A.R.L.**

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

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

**GROWTHWORKS CANADIAN FUND LTD.**

By:   
Name: C. Ian Ross  
Title: Chairman

[Waiver Agreement]

**WAIVER AGREEMENT**

Waiver Agreement dated as of August 30, 2013 between Growthworks Canadian Fund Ltd. (“GW Cdn”) and Roseway Capital S.a.r.l. (“Roseway”).

WHEREAS GW Cdn entered into a security agreement dated as of May 28, 2010 (as amended, revised, replaced, supplemented or restated from time to time, the “Security Agreement”) with Roseway Capital L.P.;

AND WHEREAS Roseway Capital L.P. subsequently assigned all of its rights and obligations under the Security Agreement to Roseway pursuant to section 8.17 of the Security Agreement;

AND WHEREAS GW Cdn has advised Roseway that a Default has occurred in that the NAV of GW Cdn, excluding any value attributed to Permitted Encumbrance Assets over and above the amount of indebtedness secured thereby and not already excluded in determining NAV, is less than the Critical NAV Amount;

**NOW THEREFORE:**

1. Capitalized terms used, but not otherwise defined, herein have the respective meanings ascribed thereto in the Security Agreement.
2. GW Cdn hereby represents and warrants to Roseway as follows:
  - (a) this waiver agreement has been duly authorized, executed and delivered by GW Cdn and together with the Security Agreement constitutes a legal, valid and binding obligation of GW Cdn;
  - (b) the representations and warranties of GW Cdn in the Security Agreement are true and correct on and as of the date hereof;
  - (c) the matters set forth in the first and third recital of this waiver agreement are true and correct;
  - (d) the NAV of GW Cdn as of August 23, 2013 was \$89,648,651;
  - (e) upon the effectiveness of this waiver agreement, GW Cdn will be in full compliance with the Security Agreement; and
  - (f) except as set forth in the recitals, no Default or Event of Default has occurred and is continuing.
4. Based upon and relying on the representations of GW Cdn herein, Roseway hereby waives:
  - (a) until October 1, 2013, compliance by GW Cdn with the requirement set forth in Section 5.1(b) of the Security Agreement that the NAV of GW Cdn, excluding any value attributed to Permitted Encumbrance Assets over and above the amount of indebtedness

secured thereby and not already excluded in determining NAV, be less than the Critical NAV Amount;

(b) until October 1, 2013, compliance by GW Cdn with the requirement set forth in Section 3.6 of the Security Agreement with respect to the grant of encumbrances that the NAV of GW Cdn, excluding the value attributed to such encumbered assets over and above the amount of indebtedness secured thereby and not already excluded in determining NAV, be less than the Critical NAV Amount; and

(c) until October 1, any Default arising directly from non-compliance with Section 5.1(b) of the Security Agreement or Section 3.6 of the Security Agreement.

5. Notwithstanding the foregoing, it is hereby acknowledged and agreed that in the event (i) the NAV of GW Cdn is determined to be or to have been less than \$84,000,000, or (ii) GW Cdn incurs or guarantees any indebtedness (other than indebtedness incurred in the ordinary course of business), in either case at any time prior to October 1, 2013, an immediate Default and Event of Default shall be deemed to have occurred.

6. The Security Agreement remains in full force and effect, unamended. Except as expressly provided herein, this waiver agreement shall not constitute an amendment, waiver, consent or release with respect to any provision of the Security Agreement, a waiver of any Default thereunder, or a waiver or release of any of Roseway's rights or remedies, all of which are expressly reserved.

7. This waiver agreement shall be governed by and construed in accordance with the laws of the Province of Ontario and the laws of Canada applicable therein.


8. This waiver agreement may be executed and delivered in any number of separate counterparts, each of which, when executed and delivered, is an original, and all of which, taken together, constitute one and the same instrument. Delivery of an executed copy of this waiver agreement by facsimile transmission shall be as effective as a manually signed counterpart of this waiver agreement.

**[SIGNATURE PAGE FOLLOWS]**

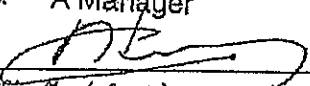
IN WITNESS WHEREOF, Roseway and GW Cdn have caused this waiver agreement to be executed on the date first above written.

ROSEWAY CAPITAL S.A.R.L.

By:

  
Name: Tomislav Raevich  
Title: A Manager

By:

  
Name: H. Leneir  
Title: B Manager

GROWTHWORKS CANADIAN FUND LTD.

By:

\_\_\_\_\_  
Name: C. Ian Ross  
Title: Chairman


IN WITNESS WHEREOF, Roseway and GW Cdn have caused this waiver agreement to be executed on the date first above written.

**ROSEWAY CAPITAL S.A.R.L.**

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

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

**GROWTHWORKS CANADIAN FUND LTD.**

By:  \_\_\_\_\_  
Name: C. Ian Ross  
Title: Chairman

**Tab E**



This is Exhibit E referred to in the  
 affidavit of C. Ian Ross  
 sworn before me, this 30  
 day of September 2013.

*Kelly Peters*  
 A COMMISSIONER FOR TAKING AFFIDAVITS



FOR IMMEDIATE RELEASE

## GrowthWorks Canadian Fund Amends Participation Agreement with Roseway Capital

Toronto, Ontario, May 28, 2013 – GrowthWorks Canadian Fund Ltd. (“Canadian Fund”) announced today that it has entered into an amendment to the Participation Agreement dated May 28, 2010 (the “Participation Agreement”) with Roseway Capital S.a.r.l. (“Roseway”) whereby a payment of \$20 million that was payable to Roseway on May 28, 2013 will now become payable on June 14, 2013 and a further \$5.7 million will become payable to Roseway by June 21, 2013. Those amounts will bear interest at the rate of 18% per annum from the date on which they were originally payable by Canadian Fund. Canadian Fund is currently engaged in active discussions with Roseway regarding a possible further, longer-term extension of those payment obligations, as well as amendments to certain other terms of the Participation Agreement and the security agreement (the “Security Agreement”) in favour of Roseway which grants a charge over certain portfolio and other assets of the Fund. Canadian Fund cannot assure investors that these discussions will result in any further extension of the dates by which Canadian Fund must make those payments or that Canadian Fund will have sufficient funds to pay those amounts when due.

If Canadian Fund were to default on its obligations under the Participation Agreement, the security held by Roseway over Canadian Fund’s assets may be enforced by Roseway, which could result in forced divestments of some or all of those assets at values well below carrying values and a significant decline in the values of Class A share of the Fund. A default by Canadian Fund of its obligations under the Participation Agreement could also result in Canadian Fund’s loan obligations to Matrix Asset Management Inc. (“Matrix”) of \$4 million plus accrued and unpaid interest becoming due and payable in full. In that event, the security granted by Canadian Fund over its assets for its payment obligations under that loan may be enforced, which could have the same material adverse effect on the Fund and the value of its Class A shares as those associated with the enforcement of security held by Roseway.

The Board of Directors of Canadian Fund continues to review, with the assistance of its independent financial and legal advisors, the strategic alternatives available to Canadian Fund.

**Forward Looking Statements:** This press release contains forward looking statements about Canadian Fund's ability to make payments under financing arrangements. These statements are based on beliefs and assumptions of management of Canadian Fund at the time the statements are made, including beliefs and assumptions about Canadian Fund's ability to generate sufficient cash to satisfy its payment obligations under its existing financing arrangements. These beliefs and assumptions are subject to known and unknown risks and uncertainties, including the willingness of Roseway to agree to extend the dates by which Canadian Fund must satisfy its payment obligations under the Participation Agreement and refrain from enforcing its security should such extension not be granted and Canadian Fund defaults on its obligations to Roseway; the willingness of Matrix to refrain from enforcing its security should Canadian Fund default on its loan obligations to Matrix; risks and uncertainties associated with the volatility of market conditions and, in turn, the climate for divestment activity, performance of portfolio companies, valuations of portfolio companies, financing needs of portfolio companies and the availability of capital to satisfy such financing needs and other risks and uncertainties disclosed in Canadian Fund's most recently filed prospectus and other regulatory filings posted on SEDAR at [www.sedar.com](http://www.sedar.com). These risks and uncertainties may cause actual results, events or developments to be materially different from those expressed or implied by such forward-looking statements. Unless required by law, neither Canadian Fund nor its manager assumes any obligation to update any forward-looking statements, whether as a result of new information, future events or results or other factors.

**Reference:**

**C. Ian Ross**

**Chairman**

**Tel: (416) 934-7700**

**Suite 2200, Exchange Tower**

**130 King Street West, Toronto, Ontario M5X 1E3**

**Tab F**

This is Exhibit.....<sup>F</sup>.....referred to in the  
affidavit of.....C. Ian Ross.....  
sworn before me, this.....<sup>30</sup>.....  
day of.....September.....20.....13.....



Kelly Pit  
A COMMISSIONER FOR TAKING AFFIDAVITS  
FOR IMMEDIATE RELEASE

### GrowthWorks Canadian Fund Amends Participation Agreement with Roseway Capital

Toronto, Ontario, June 14, 2013 – GrowthWorks Canadian Fund Ltd. (“Canadian Fund”) announced today that it has entered into a second amendment to the Participation Agreement dated May 28, 2010 (the “Participation Agreement”) with Roseway Capital S.a.r.l. (“Roseway”) whereby a payment of \$20 million that was payable to Roseway on June 14, 2013 will now become payable on June 28, 2013 and a further \$5.7 million will become payable to Roseway by July 5, 2013. Those amounts will bear interest at the rate of 18% per annum from the date on which they were originally payable by Canadian Fund. Canadian Fund continues to be engaged in active discussions with Roseway regarding a possible further, longer-term extension of those payment obligations, as well as amendments to certain other terms of the Participation Agreement and the security agreement (the “Security Agreement”) in favour of Roseway which grants a charge over certain portfolio and other assets of the Fund. In connection with this amendment, Roseway has also waived until June 29, 2013 a default under the Security Agreement tied to the Fund maintaining a minimum net asset value. Canadian Fund cannot assure investors that these discussions will result in any further extension of the dates by which Canadian Fund must make those payments or that Canadian Fund will have sufficient funds to pay those amounts when due.

If Canadian Fund were to default on its obligations under the Participation Agreement or an event of default were to occur under the Security Agreement, the security held by Roseway over Canadian Fund’s assets may be enforced by Roseway, which could result in forced divestments of some or all of those assets at values well below carrying values and a significant decline in the values of Class A shares of the Fund. A default by Canadian Fund of its obligations under the Participation Agreement could also result in Canadian Fund’s loan obligations to Matrix Asset Management Inc. (“Matrix”) of \$4 million plus accrued and unpaid interest becoming due and payable in full. In that event, the security granted by Canadian Fund over its assets for its payment obligations under that loan may be enforced, which could have the same material adverse effect on the Fund and the value of its Class A shares as those associated with the enforcement of security held by Roseway.

The Board of Directors of Canadian Fund continues to review, with the assistance of its independent financial and legal advisors, the strategic alternatives available to Canadian Fund.

**Forward Looking Statements:** This press release contains forward looking statements about Canadian Fund’s ability to make payments under financing arrangements. These statements are based on beliefs and assumptions of management of Canadian Fund at the time the statements are made, including beliefs and assumptions about Canadian Fund’s ability to generate sufficient cash to satisfy its payment obligations under its existing financing arrangements. These beliefs and assumptions are subject to known and unknown risks and uncertainties, including the willingness of Roseway to agree to extend

the dates by which Canadian Fund must satisfy its payment obligations under the Participation Agreement and refrain from enforcing its security should such extension not be granted and Canadian Fund defaults on its obligations to Roseway or an event of default were to occur under the Security Agreement; the willingness of Matrix to refrain from enforcing its security should Canadian Fund default on its loan obligations to Matrix; risks and uncertainties associated with the volatility of market conditions and, in turn, the climate for divestment activity, performance of portfolio companies, valuations of portfolio companies, financing needs of portfolio companies and the availability of capital to satisfy such financing needs and other risks and uncertainties disclosed in Canadian Fund's most recently filed prospectus and other regulatory filings posted on SEDAR at [www.sedar.com](http://www.sedar.com). These risks and uncertainties may cause actual results, events or developments to be materially different from those expressed or implied by such forward-looking statements. Unless required by law, neither Canadian Fund nor its manager assumes any obligation to update any forward-looking statements, whether as a result of new information, future events or results or other factors.

**Reference:**

**C. Ian Ross**

**Chairman**

**Tel: (416) 934-7700**

**Suite 2200, Exchange Tower**

**130 King Street West, Toronto, Ontario M5X 1E3**

**TAB G**



258

This is Exhibit G referred to in the  
affidavit of C. Ian Ross  
sworn before me, this 30  
day of September 2013.  
Kelly Pitman  
A COMMISSIONER FOR TAKING AFFIDAVITS  
FOR IMMEDIATE RELEASE

## GrowthWorks Canadian Fund Amends Participation Agreement with Roseway Capital

**Toronto, Ontario, June 27, 2013** – GrowthWorks Canadian Fund Ltd. (“**Canadian Fund**”) announced today that it has entered into a third amendment to the Participation Agreement dated May 28, 2010 (the “**Participation Agreement**”) with Roseway Capital S.a.r.l. (“**Roseway**”) whereby a payment of \$20 million that was payable to Roseway on June 28, 2013 will now become payable on July 15, 2013 and a further \$5.7 million will become payable to Roseway by July 22, 2013. Those amounts will bear interest at the rate of 18% per annum from the date on which they were originally payable by Canadian Fund. Canadian Fund continues to be engaged in active discussions with Roseway regarding a possible further, longer-term extension of those payment obligations, as well as amendments to certain other terms of the Participation Agreement and the security agreement (the “**Security Agreement**”) in favour of Roseway which grants a charge over certain portfolio and other assets of the Fund. In connection with this amendment, Roseway has also waived until July 16, 2013 a default under the Security Agreement tied to the Fund maintaining a minimum net asset value. Canadian Fund cannot assure investors that these discussions will result in any further extension of the dates by which Canadian Fund must make those payments or that Canadian Fund will have sufficient funds to pay those amounts when due.

If Canadian Fund were to default on its obligations under the Participation Agreement or an event of default were to occur under the Security Agreement, the security held by Roseway over Canadian Fund’s assets may be enforced by Roseway, which could result in forced divestments of some or all of those assets at values well below carrying values and a significant decline in the values of Class A shares of the Fund. A default by Canadian Fund of its obligations under the Participation Agreement could also result in Canadian Fund’s loan obligations to Matrix Asset Management Inc. (“**Matrix**”) of \$4 million plus accrued and unpaid interest becoming due and payable in full. In that event, the security granted by Canadian Fund over its assets for its payment obligations under that loan may be enforced, which could have the same material adverse effect on the Fund and the value of its Class A shares as those associated with the enforcement of security held by Roseway.

The Board of Directors of Canadian Fund continues to review, with the assistance of its independent financial and legal advisors, the strategic alternatives available to Canadian Fund.

**Forward Looking Statements:** This press release contains forward looking statements about Canadian Fund’s ability to make payments under financing arrangements. These statements are based on beliefs and assumptions of management of Canadian Fund at the time the statements are made, including beliefs and assumptions about Canadian Fund’s ability to generate sufficient cash to satisfy its payment obligations under its existing financing arrangements. These beliefs and assumptions are subject to known and unknown risks and uncertainties, including the willingness of Roseway to agree to extend

the dates by which Canadian Fund must satisfy its payment obligations under the Participation Agreement and refrain from enforcing its security should such extension not be granted and Canadian Fund defaults on its obligations to Roseway or an event of default were to occur under the Security Agreement; the willingness of Matrix to refrain from enforcing its security should Canadian Fund default on its loan obligations to Matrix; risks and uncertainties associated with the volatility of market conditions and, in turn, the climate for divestment activity, performance of portfolio companies, valuations of portfolio companies, financing needs of portfolio companies and the availability of capital to satisfy such financing needs and other risks and uncertainties disclosed in Canadian Fund's most recently filed prospectus and other regulatory filings posted on SEDAR at [www.sedar.com](http://www.sedar.com). These risks and uncertainties may cause actual results, events or developments to be materially different from those expressed or implied by such forward-looking statements. Unless required by law, neither Canadian Fund nor its manager assumes any obligation to update any forward-looking statements, whether as a result of new information, future events or results or other factors.

**Reference:**

**C. Ian Ross**

**Chairman**

**Tel: (416) 934-7777**

**Suite 2200, Exchange Tower**

**130 King Street West, Toronto, Ontario M5X 1E3**



**TAB H**



260

This is Exhibit..... H ..... referred to in the  
affidavit of..... C. Ian Ross.....  
sworn before me, this..... 30 .....  
day of..... September ..... 20..... 13.....  
*Kelly Pitt*  
COMMISSIONER FOR TAKING AFFIDAVITS  
FOR IMMEDIATE RELEASE

## GrowthWorks Canadian Fund Amends Participation Agreement with Roseway Capital

Toronto, Ontario, July 15, 2013 – GrowthWorks Canadian Fund Ltd. (“Canadian Fund”) announced today that it has entered into a fourth amendment to the Participation Agreement dated May 28, 2010 (the “Participation Agreement”) with Roseway Capital S.a.r.l. (“Roseway”) whereby a payment of \$20 million that was payable to Roseway on June 28, 2013 will now become payable on August 16, 2013 and a further \$5.7 million will become payable to Roseway by August 23, 2013. Those amounts will bear interest at the rate of 18% per annum from the date on which they were originally payable by Canadian Fund. Canadian Fund continues to be engaged in active discussions with Roseway regarding a possible further, longer-term extension of those payment obligations, as well as amendments to certain other terms of the Participation Agreement and the security agreement (the “Security Agreement”) in favour of Roseway which grants a charge over certain portfolio and other assets of the Fund. In connection with this amendment, Roseway has also waived until August 17, 2013 a default under the Security Agreement tied to the Fund maintaining a minimum net asset value. Canadian Fund cannot assure investors that these discussions will result in any further extension of the dates by which Canadian Fund must make those payments or that Canadian Fund will have sufficient funds to pay those amounts when due.

If Canadian Fund were to default on its obligations under the Participation Agreement or an event of default were to occur under the Security Agreement, the security held by Roseway over Canadian Fund’s assets may be enforced by Roseway, which could result in forced divestments of some or all of those assets at values well below carrying values and a significant decline in the values of Class A shares of the Fund. A default by Canadian Fund of its obligations under the Participation Agreement could also result in Canadian Fund’s loan obligations to Matrix Asset Management Inc. (“Matrix”) of \$4 million plus accrued and unpaid interest becoming due and payable in full. In that event, the security granted by Canadian Fund over its assets for its payment obligations under that loan may be enforced, which could have the same material adverse effect on the Fund and the value of its Class A shares as those associated with the enforcement of security held by Roseway.

The Board of Directors of Canadian Fund continues to review, with the assistance of its independent financial and legal advisors, the strategic alternatives available to Canadian Fund.

**Forward Looking Statements:** This press release contains forward looking statements about Canadian Fund's ability to make payments under financing arrangements. These statements are based on beliefs and assumptions of management of Canadian Fund at the time the statements are made, including beliefs and assumptions about Canadian Fund's ability to generate sufficient cash to satisfy its payment obligations under its existing financing arrangements. These beliefs and assumptions are subject to known and unknown risks and uncertainties, including the willingness of Roseway to agree to extend the dates by which Canadian Fund must satisfy its payment obligations under the Participation Agreement and refrain from enforcing its security should such extension not be granted and Canadian Fund defaults on its obligations to Roseway or an event of default were to occur under the Security Agreement; the willingness of Matrix to refrain from enforcing its security should Canadian Fund default on its loan obligations to Matrix; risks and uncertainties associated with the volatility of market conditions and, in turn, the climate for divestment activity, performance of portfolio companies, valuations of portfolio companies, financing needs of portfolio companies and the availability of capital to satisfy such financing needs and other risks and uncertainties disclosed in Canadian Fund's most recently filed prospectus and other regulatory filings posted on SEDAR at [www.sedar.com](http://www.sedar.com). These risks and uncertainties may cause actual results, events or developments to be materially different from those expressed or implied by such forward-looking statements. Unless required by law, neither Canadian Fund nor its manager assumes any obligation to update any forward-looking statements, whether as a result of new information, future events or results or other factors.

**Reference:**

C. Ian Ross

Chairman

Tel: (416) 934-7777

Suite 2200, Exchange Tower

130 King Street West, Toronto, Ontario M5X 1E3