

08-02-2004

U.S. DEPARTMENT OF COMMERCE
United States Patent and Trademark Office

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102805047

To the Director of the U. S. Patent and Trademark Office: Please record the attached documents or the new address(es) below.

1. Name of conveying party(ies)/Execution Date(s):

ROYAL BANK OF CANADA

- ☐ Individual(s) ☐ Association
☐ General Partnership ☐ Limited Partnership
☐ Corporation-State
☒ Other BANK

Citizenship (see guidelines) Canadian

Execution Date(s) June 23, 2004

Additional names of conveying parties attached? ☐ Yes ☒ No

3. Nature of conveyance:

- ☐ Assignment ☐ Merger
☒ Security Agreement ☐ Change of Name
☐ Other

2. Name and address of receiving party(ies)

Additional names, addresses, or citizenship attached? ☐ Yes

☒ No

Name: EAUX VIVES HARRICANA INC.

Internal

Address: 11

Street Address: CHEMIN DES SABLIERES

City: ST-MATHIEU D'HARRICANA

State: QUEBEC

Country: CANADA Zip: J0Y 1M0

- ☐ Association Citizenship
☐ General Partnership Citizenship
☐ Limited Partnership Citizenship
☒ Corporation Citizenship Canadian
☐ Other Citizenship

If assignee is not domiciled in the United States, a domestic representative designation is attached: ☐ Yes ☐ No
(Designations must be a separate document from assignment)

4. Application number(s) or registration number(s) and identification or description of the Trademark.

A. Trademark Application No.(s)

B. Trademark Registration No.(s)

See attached sheet

Additional sheet(s) attached? ☒ Yes ☐ No

C. Identification or Description of Trademark(s) (and Filing Date if Application or Registration Number is unknown):

See attached sheet

5. Name & address of party to whom correspondence concerning document should be mailed:

Name: Annie Gauthier/Ogilvy Renault

Internal Address: Suite 1100, 1981

McGill College Avenue

Street Address:

City: Montréal

State: Quebec Zip: H3A 3G1

Phone Number: (514) 847-4955

Fax Number: (514) 280-5474

Email Address: agauthier@ogilvyrenault.com

6. Total number of applications and registrations involved:

7

7. Total fee (37 CFR 2.6(b)(6) & 3.41) \$ 190.

- ☐ Authorized to be charged by credit card
☐ Authorized to be charged to deposit account
☒ Enclosed

8. Payment Information:

a. Credit Card Last 4 Numbers
Expiration Date

b. Deposit Account Number

Authorized User Name

9. Signature:

Signature

20/07/04
Date

Annie Gauthier

Name of Person Signing

Total number of pages including cover sheet, attachments, and documents 19

Documents to be recorded (including cover sheet) should be faxed to (703) 306-5995, or mailed to:
Mail Stop Assignment Recordation Services, Director of the USPTO, P.O. Box 1450, Alexandria, VA 22313-1450

TRADEMARK

REEL: 003018 FRAME: 0028

ANNEX TO THE PTO 1594 FORM

**TRADE-MARKS OWNED BY EAUX VIVES HARRICANA INC.
IN UNITED STATES OF AMERICA**

TRADEMARK	APPLICATION FILING NO.	REGISTRATION NO.	STATUS
LA MAISON D'ESKER	<u>76/348,868</u>	2,831,248	Registered
ESKER	75/831,404	2,686,952	Registered
SO PURE. SO SIMPLE. SO NATURAL	76/348,867	N/A	Pending
WATER LIKE NO OTHER	76/348,869	N/A	Pending
THE SOURCE OF GREAT TASTE	78/330,074	N/A	Pending
ESKER	76/294,239	N/A	Pending
THE HOME OF ESKER	78/184,509	N/A	Pending

DEED OF MOVABLE HYPOTHEC

Preamble: In this Deed, the Royal Bank of Canada is referred to as the "*Bank*" and the party granting the hypothecary rights is referred to as the "*Grantor*". Unless otherwise indicated by the context, "*Obligations*" means the obligations described in Section 1.1 of this Deed, "*Hypothecated Property*" means the properties indicated in Sections 1.2 and 1.3 of this Deed and "*Securities*" means bills of exchange, notes, shares, warrants, bonds, debentures and other securities considered or acknowledged as securities.

See Schedule "A" attached hereto for further provisions forming part of this Preamble.

1. HYPOTHEC

In order to guarantee performance of the *Obligations*, the *Grantor* hypothecates in favor of the *Bank* the properties described in Sections 1.2 and 1.3 hereinbelow for the following amounts:

- an amount in capital of SEVEN MILLION FIVE HUNDRED THOUSAND DOLLARS
 (\$7,500,000), plus an additional amount equivalent to 15% of such amount, for a total amount of
EIGHT MILLION SIX HUNDRED AND TWENTY-FIVE THOUSAND DOLLARS (\$8,625,000)

- plus interest on such total amount, calculated from the date hereof and compounded annually, at:

(i) the rate of _____ percent (_____ %) per annum

- or -

(ii) the *Bank's* prime interest rate plus THREE percent (3 %) per annum

(The prime interest rate is the annual rate of interest announced by the *Bank* from time to time as the rate of reference in effect for determining the interest rates on Canadian dollar commercial loans in Canada).

1.1 SECURED OBLIGATIONS

This hypothec granted in this Deed secures performance of the following obligations:

(a) *Grantor's Obligations*

(1) *Grantor's* present and future obligations toward the *Bank* arising out of a loan of

_____ DOLLARS (\$ _____)
 contracted on _____, and all other obligations arising out of any renewal, amendment or replacement of such loan;

(2) *Grantor's* present and future obligations toward the *Bank* arising out of a revolving line of credit up to the amount of

_____ DOLLARS (\$ _____)
 contracted on _____, and all other obligations arising out of any renewal, amendment or replacement of such revolving line of credit;

(3) *Grantor's* present and future obligations arising out of contracts identified hereinbelow :

(describe in detail each contract/undertaking (e.g. guarantee) creating obligations to be secured, by stating the elements that distinguish it)

A Commitment Letter made by the Bank, acting through its Division of Asset Based Finance, dated June 10, 2004 and accepted by the Grantor on June 10, 2004, providing for, *inter alia*, a revolving term credit facility in the maximum aggregate amount of \$5,000,000 during the course of the proceedings pursuant to the Companies' Creditors Arrangement Act (Canada) (the "DIP Facility");

and all other obligations arising out of any renewal, amendment or replacement of such contracts, including, without limitation, a loan agreement contemplated to be entered into forthwith.

(4) the following obligations of the *Grantor* pursuant to the terms of this Deed:

- the reimbursement of the insurance premiums referred to in Section 3.5;
 - the reimbursement of the costs referred to in Section 3.6 ;
 - the reimbursement of the costs with respect to the *Securities* referred to in Section 5.3(f);
 - the payment of costs for use of the premises and other property referred to in Section 6.3;
 - all other present and future obligations of the *Grantor* pursuant to this Deed; and
- all other obligations arising out of any renewal, amendment or replacement of such obligations.

(b) **Obligations of a Third Party:** *(do not complete if a guarantee of the Grantor is to be secured; if so, complete 1.1(a)(3) hereinabove);*

all present and future obligations contracted toward the Bank by:
(Name and address of the third party:)

pursuant to the terms of the following contracts:

(describe in detail each credit / contract / undertaking of the third party by stating the elements that distinguish it)

and all other obligations arising out of any renewal, amendment or replacement of such contracts.

1.2 DESCRIPTION OF THE HYPOTHECATED PROPERTY

(a) **Universalities:** The hypothec charges all present and future property included in the universalities described hereinbelow:

(Identify each universality of property to be hypothecated by completing the appropriate paragraph)

Accounts Receivable:

all accounts receivable and all debts, of any nature or origin, whether due or not and whether secured or not, as well as all claims by the *Grantor* pursuant to insurance policies, as well as all amounts derived from payment or collection of such accounts receivable, debts and claims.

Tools/equipment/vehicles:

All tools, manufacturing and office equipment and all vehicles and other equipment belonging to the Grantor,
whatever its functions, including equipment acquired in replacement thereof or otherwise by the Grantor
wheresoever situated.

(do not add anything
to (1); strike out and
initial if not applicable)

Livestock:

All livestock of the Grantor, their crop and all livestock acquired in replacement thereof or otherwise by the Grantor
wheresoever situated.

Patents/trade-marks:

All letters patent and trademarks of the Grantor as well as all letters patent and trademarks acquired in
replacement thereof or otherwise by the Grantor.

Securities:

All Securities making up the Grantor's portfolio including Securities acquired in replacement thereof or otherwise.

Other universalities of movable property:

All movable property present and future, corporeal and incorporeal of the Grantor, including all movable property
acquired in replacement thereof or otherwise.

- (b) **Individual Property:** The hypothec charges all individual property described hereinbelow:
(Describe each property in detail by stating the elements that distinguish it from other property of the same type)

(1) the following claims / accounts receivable / contracts / bank deposits:

(2) the following tools and equipment parts:

Serial Number	Model	Description

(3) the following motor vehicles:

Category	Serial Number	Year	Description

(4) the following patents and trade-marks:

(5) the following *Securities* held by the *Bank* or a third party:

Number of shares or value of bonds, instruments or notes	Description of the Securities and names of debtors appearing on the instruments or notes

(6) other movable property, namely:

(c) **Prior Claims:** (Note to the Grantor: see representation in 3.1(c) hereinbelow)

(Describe in detail prior claims and hypothecs on the Hypothecated Property and the rights ranking prior to or making precarious the hypothecs granted hereby including any security registered in any jurisdiction other than Québec; indicate the affected property, the creditor's name, the amount in question, and, if applicable, the registration number in the register of personal and movable real rights.)

(d) **Grantor's Instructions with respect to Securities (Universalities of Specific Securities)**

- credit income to Grantor's account number _____
(Note : see 5.3(c) hereinbelow)
- method of payment of fees: ("X" applicable paragraph)
(Note : see 5.3(f) hereinbelow)
- ☐ debit the amount in question from account number _____ at the time chosen by the Bank
- ☐ invoice the Grantor at the time chosen by the Bank
- ☐ deduct the amounts in question from the income derived from the Securities or other amounts received or collected with respect thereto by the Bank
- communications with holders/shareholders: ("X" applicable paragraph)
(Note : see 5.3(d) hereinbelow)
- ☐ no communication with holders/shareholders
- ☐ annual reports, requests for proxies and any dissident shareholders communications
- ☐ all information of whatever kind directed to holders/shareholders

1.3 SCOPE OF HYPOTHEC

This hypothec also charges the following present and future property, to the extent it is not already included in the description in Section 1.2 hereinabove, but without limiting the charges arising by the mere operation of law:

- (a) the product of any sale, rental or other disposition of the property indicated in Section 1.2 hereinabove, as well as any claim resulting from such operations;
- (b) any right pertaining to the property indicated in Section 1.2 as well as the fruits and revenues it might produce, including all insurance or expropriation indemnities payable with respect to such property;
- (c) all titles, documents, registers, invoices and accounts evidencing the property indicated in Section 1.2 or with respect thereto, on whatever medium and no matter how they may be accessible, whether in writing, graphically, in sound, visually, computerized or otherwise;
- (d) in the case of a universality of claims, those resulting from insurance contracts on the *Grantors* other property;
- (e) in the case of *Securities*, without limiting the generality of Subsection (b) hereinabove, the renewals of, substitutions therefore and additions thereto and the *Securities* and other property received or issued at the time of any transformation of the hypothecated *Securities*;
- (f) the property (including money) that replaces that which is already charged by the hypothec constituted by this Deed, to the extent the former is not otherwise hypothecated pursuant to this Deed or by operation of law.

2. POSSESSION OF THE PROPERTY

Save for the *Hypothecated Property* held by the *Bank* or a third party accepted by the *Bank* and the *Grantor*, the hypothec granted by this Deed is a hypothec without delivery, the *Grantor* keeping the *Hypothecated Property* in its possession subject to the obligations contracted pursuant to Sections 3 and 4 of this Deed.

3. REPRESENTATIONS, WARRANTIES AND OBLIGATIONS OF THE GRANTOR

3.1 TITLE TO THE PROPERTY

The *Grantor* makes the following representations and warrants:

- (a) it is the sole owner of the *Hypothecated Property*;
- (b) it is in possession of the *Hypothecated Property* which belongs to it and, if applicable, of any negotiable title documents pertaining thereto;
- (c) that, save for what is disclosed in Section 1.2(c) hereinabove, the *Hypothecated Property* is not charged with any prior claim or hypothec, nor any other right whatsoever, whether published or not, that might void the rights intended to be granted by this Deed or rank prior to such rights, in particular by reason of default in payment of a rental or a fiscal obligation, an instalment sale or a sale with buy-back option, or a right of retention, or by reason of failure to comply with a statute or regulation with respect to the protection of the environment;
- (d) if the hypothec granted by this Deed is on a universality of property, such property is part of one or several enterprises that it operates;
- (e) if the *Grantor* is a natural person, the *Hypothecated Property* of which it keeps possession is part of one or several enterprises that it operates;
- (f) if the hypothec granted by this Deed is on *Securities*, that the transfer of such *Securities* is not subject to any restriction;
- (g) the *Hypothecated Property* is not incorporated into, attached to or joined with an immovable.

3.2 ALIENATION

Unless the *Bank* gives its prior written consent, the *Grantor* agrees:

- (a) neither to alienate nor to rent any individual property described in Section 1.2(b) hereinabove; and

- (b) neither to alienate nor to rent, outside the course of business of its enterprise, any property included in a universality described in Section 1.2(a) hereinabove.

In the event of such alienation or rental, even without the *Bank's* authorization, the *Grantor* (without, however, being excused from the default resulting therefrom) shall immediately inform the *Bank* of the details of such alienation or rental and shall in particular provide the *Bank* with a description of the alienated or rented property, any property acquired in replacement, the name and address of the acquirer or the tenant, as well as details concerning the proceeds of such alienation or rental.

3.3 TRANSFORMATION

The *Grantor* may not, without the *Banks* prior written consent, transform the property, except where such transformation is the result of the normal activities of its enterprise, either by incorporating it into an immovable, or joining or mixing an individual property in Section 1.2(b) hereinabove with other movable property in order to create a new property.

In the event of any such transformation, even if it occurs without the *Bank's* authorization, the *Grantor* (without, however, being excused from the default resulting therefrom) shall immediately inform the *Bank* in detail and in particular shall provide it with a description of the property involved in such transformation, the name and address of the owner of the property that may result from such transformation and the address of the location of the property.

3.4 PRESERVATION

The *Grantor* shall keep the *Hypothecated Property* well maintained, considering its nature and destination, and should the *Grantor* neglect to do so, the *Bank* may incur the necessary expenses for this purpose, without being obliged to do so. The *Grantor* shall allow the *Bank* to inspect the *Hypothecated Property* at any time and shall grant the *Bank* the access required for such inspection. The *Grantor* shall keep books and accounting records in accordance with diligent accounting practice with respect to the *Hypothecated Property* and it shall allow the *Bank* to examine them and make copies thereof. Except in an emergency, the *Bank* shall not unduly interfere with the *Grantors* activities in carrying out such inspection and examination.

Furthermore, the *Grantor* undertakes to do all that is necessary so that the *Hypothecated Property* is not charged with a prior claim or another hypothec, legal or conventional, nor with any other real right whatsoever, without the *Banks* prior consent. Should it be so charged without such consent, the *Grantor* (without, however, being excused from the default resulting therefrom) shall immediately inform the *Bank* and shall obtain the radiation of the rights in question upon the *Bank's* request and within the time it shall stipulate.

3.5 INSURANCE

The *Grantor* shall adequately insure the *Hypothecated Property*, to its full replacement value, without depreciation, against damage caused by fire and any other risk or peril;

- that is customarily covered in the *Grantor's* industry, or
- if it is not part of an enterprise, that a prudent and reasonable person would cover, or
- that the *Bank* may specify, acting reasonably.

The policy shall not include a reserve by the insurer of the right to repair or rebuild the insured property, shall specify that the insurer renounces to the possibility of the payment of a proportional indemnity in the case where the amount of insurance is less than the value of the insured property, shall be subscribed with a reputable insurer and shall include provisions dictated by usage in the *Grantor's* industry or which a reasonable and prudent person would require, if the property does not form part of an enterprise. The policy shall name the *Bank* as beneficiary and shall contain a hypothecary clause as approved by the Insurance Bureau of Canada and satisfactory to the *Bank* or equivalent clauses satisfactory to the *Bank* under the terms of which deceitful representations, bad faith or wrongful acts by the owner or a third party cannot be invoked against the *Bank*. See Schedule "B" attached hereto for a further sentence forming part of this second paragraph of Section 3.5 (the "Second Paragraph").

The *Bank* may apply any indemnity to the payment of the *Obligations* or it may remit them to the *Grantor*, in whole or in part, to be used for the repair or replacement of the destroyed or damaged property and the *Grantor* shall execute any deed that the *Bank* might require in order to confirm the hypothec on the replacement property.

The insurance shall be maintained in force until full extinction of the *Obligations* and the *Bank* shall be provided with copies of the policy, its renewals or replacements, unless the *Bank* expressly renounces thereto.

The *Grantor* shall notify the *Bank* as soon as possible should any loss occur affecting the *Hypothecated Property*.

the *Grantors* consent or intervention, without thereby being liable nor accountable to the *Grantor*. Unless the *Grantor* so requests in writing, the *Bank* shall not be obliged to inform the *Grantor* of any irregularity whatsoever with respect to the payment of amounts due on the claims. Apart from its obligations to remit to the *Grantor* the amounts collected that exceed the amount of the *Obligations* in capital, interest and fees, the *Bank* shall not be accountable to the *Grantor* on the collections that were made nor on transactions and arrangements made.

4.3 DEPOSITS WITH THE BANK

With respect to claims consisting of deposits made with the *Bank*, (i) the *Grantor* shall have no right to demand their reimbursement while they continue to secure the *Obligations*, (ii) the *Bank* may use the amounts in question for its own purposes, only being obliged to remit to the *Grantor* the same amounts in the same currency upon the extinction of the hypothec and (iii) the *Bank* may, at any time and without prior notice to the *Grantor*, accelerate the term of any deposit bringing it immediately to maturity and make all appropriate accounting entries in order to evidence the use of any deposit in reducing or extinguishing the *Obligations*, by way of compensation.

4.4 DEPOSITS WITH ROYAL BANK MORTGAGE CORPORATION

With respect to claims consisting of deposits made with Royal Bank Mortgage Corporation, if any, the *Bank*, in its capacity as agent and in the name of Royal Bank Mortgage Corporation, hereby acquiesces in the hypothec created on such deposits by this Deed.

4.5 INFORMATION

The *Bank* may always verify the existence and state of the claims, at its discretion. The *Grantor* shall provide the necessary assistance and information for this purpose and shall take such measures as the *Bank* may reasonably request in this respect: in particular, it shall allow the *Bank* and its agents to enter the premises occupied by the *Grantor* and to consult its accounting books and registers as well as any document relating to the claims, and to make copies thereof.

The *Grantor* specifically authorizes the *Bank* to communicate with any third party in order to obtain or transmit any personal information and any information relative to the claims and to the *Grantor* for the purpose of verifying and collecting the claims.

5. PROVISIONS CONCERNING THE HYPOTHEC ON SECURITIES

The following provisions apply in the event that one or several of the *Grantors Securities* are hypothecated in favour of the *Bank*.

5.1 INTERPRETATION

Unless the context requires otherwise, the term "*Securities*" includes the renewals, substitutions and additions to which the *Securities* are subject as well as the *Securities* and other property received or issued pursuant to any transformation of such *Securities*, as well as all income derived and any right resulting therefrom.

No provisions of this Section 5 limits the rights and remedies of the *Bank* under Section 4 hereinabove with respect to any claim which may also constitute a *Security*.

5.2 SECURITIES HYPOTHECATED WITH DELIVERY

The following provisions apply to the *Securities* hypothecated pursuant to this Deed and held by the *Bank* or by a mutually agreed upon third party holding them on behalf of the *Bank* the whole to the extent only that such provisions do not conflict with, violate or are prohibited by, any constating documents, by-laws, regulations or resolutions of any entity to which such *Securities* relate.

(a) Remittance

The *Grantor* binds itself to remit to the *Bank* or to a third party mutually agreed upon, concurrently with the execution of this Deed by the *Grantor*, all *Securities* described in Section 1.2(b)(5) as individual *Hypothecated Property*, duly endorsed in blank for the purpose of transfer, together with any power of attorney, document and confirmation that the *Bank* may reasonably require for such purpose.

Furthermore, the *Grantor* binds itself to remit to the *Bank* or to such third party, as soon as the *Grantor* becomes entitled thereto, the renewals, substitutions and additions to which they are subject, and the *Securities* and other property received or issued at the time of the purchase, redemption, conversion, cancellation or other transformation of the *Securities*, including any income derived therefrom and any right resulting therefrom. If applicable, they shall be duly endorsed in blank for the purpose of transfer and accompanied by any power of attorney, document and confirmation that the *Bank* may reasonably require for such purpose.

The *Bank* or, if applicable, the third party appointed by the *Bank* or any agent or correspondent representing them, shall hold the *Securities* with the same care as if they were its own and as if it held them in the very place they are located.

- (2) obliged to protect the *Grantor* against loss relating to one of the *Securities*; or
- (3) obliged to vote with respect to a *Security* or a subscription, a conversion or another right that relates to it, or a merger, consolidation, reorganization, order of sequestration, a bankruptcy, insolvency proceedings, a compromise or an arrangement, or a deposit of a *Security* or otherwise, and shall not be obliged to participate in such matters nor to take appropriate measures, except if the *Grantor* had given it instructions in writing to do so and with the payment of such indemnity or remuneration as the *Bank* may require.

(b) Powers of the Bank

Without prejudice to its rights pursuant to this Deed, the *Bank* may, at any time:

- (1) request payment of the *Securities* and receive all interest, dividends, remittances or other payments pertaining to the *Securities*;
- (2) when money must be paid with respect to the *Securities* in more than one currency, to collect it in the currency that the *Bank* may decide upon at its discretion;
- (3) complete and return on behalf of the *Grantor* all certificates of ownership with respect to the *Securities* that may be required by law;
- (4) at its discretion, comply with or cause the depositary to comply with the provisions of any statute, regulation or court order or order by an administrative body or a body vested with regulatory power, in force presently or in the future, which imposes on the holder of a *Security* an obligation to take or to abstain from taking measures with respect to a *Security* or to payments, remittances or amounts payable with respect to any one of the *Securities*; and
- (5) have the *Securities* registered in the *Bank's* name or that of its agents so as to permit the registration of the *Bank* or its agents as sole owners of such *Securities*, without prejudice to the *Grantor's* right to receive all communications to holders as provided in Section 5.3(d) hereinbelow and its right (prior to default under the terms of this Deed) to receive from time to time one or several proxies allowing it to exercise the voting rights attached to such *Securities*.

(c) Income from the Securities

Instead of exercising its right to hold them subject to the hypothec granted by this Deed, the *Bank* may, at its discretion, credit to the *Grantor's* account identified in Section 1.2(d) hereinabove the interest, dividends and other income derived from the *Securities*.

(d) Communications to Holders

The *Bank* may send to the *Grantor* by regular mail, to the most recent address of which the *Bank* has notice, all communications to holders listed in Section 1.2(d) hereinabove. The *Grantor* shall reimburse the *Bank* for any expenses incurred for such transmissions.

(e) Power to Compromise

With respect to the *Securities*, the *Bank* may grant extensions, take or give security, accept compromises, negotiate arrangements, grant discharges, and generally deal with the *Grantor* and third parties in any manner it deems appropriate without diminishing its rights pursuant to this Deed nor changing the *Grantor's* responsibilities.

(f) Fees

The *Grantor* undertakes to pay the *Bank*, at the rate then in effect at the *Bank*, the fees for administering the *Securities* and the associated transactions, as well as all other costs paid or incurred with respect thereto by the *Bank* or by its agents, correspondents or mandataries. It authorizes the *Bank* to reimburse itself for such fees and costs in the manner set forth in Section 1.2(d) hereinabove.

6. DEFAULT

6.1 EVENTS OF DEFAULT

The *Grantor* shall be in default upon the occurrence of any of the following events:

- (a) failure by the *Grantor* to pay when due or to comply with any of the *Obligations*;

- (b) failure by any third party to pay when due or to comply with any of the *Obligations* toward the *Bank* pursuant to the terms of any contract referred to in paragraph 1.1(b) of this Deed;
- (c) failure by the *Grantor* to comply with the obligations imposed on it by law with respect to the *Hypothecated Property*;
- (d) failure by the *Grantor* to pay any amount due or to comply with any of its obligations with respect to any other deed granting rights on one or several of the *Hypothecated Properties* or pertaining to them;
- (e) in the event the *Grantor* operates an enterprise, should the *Grantor* cease to operate it or substantially change its nature;
- (f) should the *Grantor* or any third party identified in Section 1.1(b) hereinabove become or acknowledge being insolvent, become bankrupt, or generally take measures to arrive at a compromise, an arrangement or an agreement with its creditors or to arrive at the liquidation of its assets or its bankruptcy;
- (g) should proceedings be instituted against the *Grantor* or any such third party in order to liquidate its assets or declare it bankrupt, which are not diligently contested by the *Grantor* or the third party and are not dismissed or cancelled within 21 days from the day on which they are instituted;
- (h) should a prior notice be given by a creditor holding a prior claim or by a hypothecary creditor of its intention to exercise its prior claim or hypothecary right or any other security, or should such right or security be exercised or should a secured creditor take possession of or appoint a receiver with respect to any part of the *Hypothecated Property*;
- (i) should a seizure be brought against any *Hypothecated Property* and should it not be quashed within 10 days thereafter;
- (j) should the value of *Securities* hypothecated pursuant to this Deed decrease to a level which the *Bank* deems critical considering the security they represent, or which would justify, in the opinion of the *Bank*, an immediate liquidation;
- (k) should any representations, warranties or affirmations made by the *Grantor* in or in relation to this Deed or any other document relating to the *Obligations* be inaccurate;
- (l) should a person (including the State) other than the *Grantor* demand or claim from the *Bank* payment in full or in part of amounts that the *Bank* may remit to the *Grantor* pursuant to any document with respect to the *Obligations*.

6.2 EFFECTS

Without limiting its right, at any time and at its discretion, to demand payment of amounts payable on demand and without prejudice to all rights and recourses to which it is entitled pursuant to agreements with the *Grantor* or pursuant to law (in particular with respect to hypothecated claims):

- (a) the *Bank* may, upon the occurrence of any of the events enumerated in Subsections (a) to (k) of Section 8.1 hereinabove, cease to advance funds or to maintain credit available to the *Grantor* pursuant to the documents relative to the *Obligations* and demand immediate and full payment of the amounts owing on account of the *Obligations*, which shall then become due and payable, and exercise, at its discretion, without restriction, and without any other prior notice than that provided for by law, all rights and recourses to which it is entitled by law including, in particular, those of the following hypothecary rights which are then available:
 - taking of possession for the purpose of administration;
 - taking in payment;
 - sale by the *Bank*;
 - sale by judicial authority;
- (b) the occurrence of the event mentioned in Subsection (l) of Section 8.1 hereinabove, automatically terminates any obligation by the *Bank* to advance funds to the *Grantor* or to make credit available to it pursuant to the documents relative to the *Obligations*, without the need for a notice or request, to which the *Grantor*, expressly renounces, and authorizes the *Bank* to exercise any rights referred to in Subsection (a) of this Section 6.2.

6.3 RIGHTS OF THE BANK

With respect to the exercise of the *Bank's* hypothecary rights, the *Grantor* undertakes to voluntarily surrender to the *Bank* the *Hypothecated Property* the *Bank* indicates, and to sign any document or do anything necessary for this purpose. As of the present time, the *Grantor* hereby irrevocably authorizes and mandates the *Bank* to sign the documents, take the actions, give the consents and make the decisions, in its name and on its behalf, for the purpose of preserving or exercising the *Bank's* hypothecary rights or for the preliminary measures to such exercise, the whole as if the *Grantor* was signing such documents, taking such actions, giving such consents or making such decisions, the *Bank* acting entirely in its discretion.

Furthermore, the *Bank* may, though is not obliged to, use the premises where the *Hypothecated Property* is located and other property of the *Grantor*, at the latter's expense, as it deems it necessary.

6.4 RENUNCIATION TO THE BENEFITS OF DISCUSSION AND DIVISION

Upon the occurrence of a default by a third party, if applicable, as mentioned in Subsection (b) of Section 6.1 hereinabove, the *Bank* shall immediately have the right to enforce its recourses against the *Grantor*, the latter renouncing to the benefits of discussion and division in this respect.

7. MISCELLANEOUS

7.1 NATURE OF THE OBLIGATIONS

Each of the *Obligations* of the *Grantor* is indivisible. Moreover, in the event any provision of this Deed or of the contracts referred to in Section 1.1 hereinabove shall be declared null, without effect or deemed not written, all other provisions of this Deed or of such contracts shall remain valid and in force as being severable from such provisions.

7.2 APPLICATION OF PAYMENTS

Any insurance indemnity, as well as any other amount or other property received by the *Bank* in the exercise of the rights granted to it by this Deed or by law or in any other manner with respect to any *Hypothecated Property*, may be retained by the *Bank* as *Hypothecated Property*, or be applied to the payment of the *Obligations*, whether or not they are due, or to other debts of the *Grantor*, whether or not they are secured. Any amount collected by the *Bank* shall be applied at the *Bank's* discretion, even on account of voluntary performance of the *Obligations*, and the *Bank* may, as it may deem preferable, modify the application of the payments, from time to time, in whole or in part.

In the event the *Hypothecated Property* or its proceeds are in a currency different from that of the *Obligations*, the *Bank* is hereby authorized to convert the amount or the claim in question to the currency of the *Obligations* at the *Bank's* rate of exchange for the currencies concerned on the date the payment is applied or on such other date as the *Bank* deems appropriate.

7.3 RIGHTS CUMULATIVE AND EXERCISE OF RECOURSES

The rights granted pursuant to this Deed are cumulative with, and not alternative to, any other right or security held by the *Bank*. The exercise by the *Bank* of one of its rights does not prevent it from exercising any other right granted to it pursuant to this Deed, another security or the law.

The *Bank* may, separately or successively, exercise the rights granted to it by this Deed with respect to any part of the *Hypothecated Property*, without being obliged to do so on the entire *Hypothecated Property*, without prejudice to its recourses with respect to the remaining *Hypothecated Property*, and it shall not be in any way obliged to exercise its rights against any other person liable for the *Obligations* nor to exercise any other security securing the *Obligations*.

The *Bank* may delegate the exercise of its rights or the performance of its *Obligations* resulting from this Deed to another person; in such case, the *Bank* may provide such other person with any information it may have in its possession on the *Grantor* or the *Hypothecated Property*.

7.4 JOINT AND SEVERAL LIABILITY

If there is more than one *Grantor*, each shall be jointly and severally liable for the obligations set out in this Deed and arising out of it. However, each joint and several debtor renounces to the right to be subrogated in the rights of the *Bank* and authorizes the *Bank* to grant releases and waivers to other joint and several debtors or with respect to the hypothecs arising out of this Deed, without thereby releasing such joint and several debtor from its obligations under this Deed.

7.5 NOTICE OF DEFAULT

The *Grantor* shall be in default of performing the *Obligations* by the mere passage of time, without the requirement of notice or of notice of default.

7.6 WAIVER

The *Grantor* may not claim that an act or omission by the *Bank* constitutes or implies a waiver of its right to invoke a default by the *Grantor* or to assert a right arising out of such default, unless the *Bank* has expressly so stated after the occurrence of the default.

7.7 APPOINTMENT OF AGENTS

The *Grantor* appoints by this Deed as its irrevocable agent, with full powers of substitution, each of the *Bank*, the manager, the acting manager, the account manager or the assistant manager in office at any branch or office of the *Bank* where the *Grantor* has an account, or where a copy of this Deed or any part of the *Hypothecated Property* is being kept, to give effect to all provisions of this Deed or the documents or other measures to which the *Grantor* has agreed or which might be required to give effect to this Deed or in the exercise of powers that this Deed confers on the *Bank*, in particular, to endorse or transfer, in whole or in part, the *Securities* in favour of the *Bank* or its agents, correspondents or mandataries, including any depository, so that the *Bank*, its agents, correspondents or mandataries may be registered as owners of the *Securities*, and in order to obtain from any taxation authority at any time, if deemed useful, any information necessary to allow the *Bank* to determine the amount of taxes owing and due to such taxation authority. The *Grantor* also grants each of these agents the right to use its name each time it may deem necessary or appropriate to do so for the purposes hereof.

7.8 ELECTION OF DOMICILE

Any service, notice or notice of default shall be made to the *Grantor* at its domicile. However, if the Bank is not successful in locating the *Grantor* at such address, such service, notice or notice of default may be done or made at the office of the Clerk of the Superior Court for the district in which the greater part of the *Hypothecated Property* is located and in which the *Grantor* elects domicile for the purposes hereof.

7.9 INTERPRETATION

Whenever the context so requires, the gender and number shall be interchangeable.

7.10 APPLICABLE LAW

This contract shall be governed and construed in accordance with the law in force in the Province of Québec.

7.11 DATE OF CONTRACT

This contract is deemed to have been executed on the date inscribed above the *Grantors* signature, even if the *Bank's* signature was not affixed concurrently.

7.12 LANGUAGE

The parties hereto have expressly requested that this contract and all documents relating thereto be drawn up in the English language. Les parties aux présentes ont expressément demandé que ce contrat et tous les documents qui s'y rapportent soient rédigés en langue anglaise.

SIGNATURES

Signed in Wallington, New Jersey , on June 29, 2004

grantor : EAUX VIVES HARRIGANA INC.

(name)

Also doing business under the trade name and style of

Creditor:

ROYAL BANK OF CANADA
ASSET BASED FINANCE
a Division of Royal Bank of Canada

per _____

date of birth
(natural person)

date of birth
(natural person)

11 Chemin des Sablières
St-Mathieu-d'Harricana
Québec, J0Y 1M0

address (principal place of business
main residence)

Mark Mangelsdorf
(signature)

Mark Mangelsdorf
(signature)

Vice President & General Manager

7.8 ELECTION OF DOMICILE

Any service, notice or notice of default shall be made to the Grantor at its domicile. However, if the Bank is not successful in locating the Grantor at such address, such service, notice or notice of default may be done or made at the office of the Clerk of the Superior Court for the district in which the greater part of the *Hypothecated Property* is located and in which the Grantor elects domicile for the purposes hereof.

7.9 INTERPRETATION

Whenever the context so requires, the gender and number shall be interchangeable.

7.10 APPLICABLE LAW

This contract shall be governed and construed in accordance with the law in force in the Province of Québec.

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7.12 LANGUAGE

The parties hereto have expressly requested that this contract and all documents relating thereto be drawn up in the English language. Les parties aux présentes ont expressément demandé que ce contrat et tous les documents qui s'y rapportent soient rédigés en langue anglaise.

SIGNATURES

Signed in _____, on _____.

grantor: EAUX VIVES HARRICANA INC.

(name)

Also doing business under the trade name and style of

Creditor:

ROYAL BANK OF CANADA
ASSET BASED FINANCE
a Division of Royal Bank of Canada

per 

11 Chemin des Sablières
St-Mathieu-d'Harricana
Québec, J0Y 1M0

address (principal place of business
main residence)

01/01/62

date of birth
(natural person)

(signature)

date of birth
(natural person)

(signature)

SCHEDULE "A" to the Deed of Movable Hypothec Dated June 23, 2004

Further Provisions Forming Part of the Preamble

The following provisions form an integral part of the Preamble:

"Subordination to Commitment Letter

All terms, conditions and provisions contained in the present Deed shall at all times be subject, in the event of conflict, to the terms, conditions and provisions contained in:

- (a) the DIP Facility (as hereinafter defined); and
- (b) the order rendered by Mr. Justice François Rolland, dated June 15, 2004, with respect to, inter alia, the DIP Facility (which order was granted in the context of the Grantor's CCAA proceedings, which were commenced pursuant to an initial order rendered on March 19, 2004, by Mr. Justice François Rolland).

(collectively the "Governing Documents").

In the event of any conflict between the provisions of the present Deed and those of any of the Governing Documents, then the terms contained in the Governing Documents shall for all purposes prevail over the terms herein contained."

Further Sentence Forming Part of the Second Paragraph of Section 3.5

The following sentence shall be added at the end of the Second Paragraph of Section 3.5 and shall form an integral part thereof:

"Notwithstanding the foregoing, and for greater certainty, with respect to the hypothecation of insurance, the *Bank* shall be designated as first loss payee and additional insured with respect thereto and no other rights are hereby granted regarding the hypothecation of insurance. This clause does not in any way affect or limit the hypothecation of insurance proceeds, which are hypothecated in favour of the *Bank* pursuant to Section 1.2 hereof".