

COURT FILE NUMBER 2301-16982  
COURT COURT OF KING'S BENCH OF ALBERTA  
JUDICIAL CENTRE CALGARY

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

AND IN THE MATTER OF A PLAN OF  
COMPROMISE OR ARRANGEMENT OF  
CANDESTO ENTERPRISES CORP., D3  
INFRASTRUCTURE SERVICES INC. and  
SAFE ROADS ALBERTA LTD.

Clerk's Stamp



APPLICANTS CANDESTO ENTERPRISES CORP., D3 INFRASTRUCTURE  
SERVICES INC. and SAFE ROADS ALBERTA LTD.

**DOCUMENT**

**AFFIDAVIT**

ADDRESS FOR  
SERVICE AND  
CONTACT  
INFORMATION  
OF PARTY  
FILING THIS  
DOCUMENT

Cassels Brock & Blackwell LLP  
Suite 3810, Bankers Hall West  
888 3<sup>rd</sup> Street SW  
Calgary, Alberta, T2P 5C5  
Telephone: (403) 351-2920  
Facsimile: (403) 648-1151  
Email: [joliver@cassels.com](mailto:joliver@cassels.com) / [nthompson@cassels.com](mailto:nthompson@cassels.com)  
File No.: 58965-1

Attention: Jeffrey Oliver / Natalie Thompson

AFFIDAVIT OF: ANGELINE GAGNON

SWORN ON: December 20, 2023

I, ANGELINE GAGNON, of the City of CALGARY, in the Province of Alberta, SWEAR AND SAY THAT:

1. I am employed as a Legal Assistant with the firm of Cassels Brock & Blackwell LLP ("**Cassels**") and, as such, have personal knowledge of the matters hereinafter deposed to, except where stated to be based on information and belief, in which case I believe the same to be true.
2. Attached hereto and Marked as **Exhibit "A"** is a copy of an Indemnity Agreement dated as of April 5, 2019 between Trisura Guarantee Insurance Company, Candesto Enterprises Corp., Powell (Richmond Hill) Contracting Limited, 1964740 Alberta Inc., 411850 Alberta Ltd. and Candesto North Inc.

3. I swear this affidavit in support of the relief sought by the Applicants and for no improper purpose.

SWORN BEFORE ME at the City of Calgary, in the )  
Province of Alberta, this 20<sup>th</sup> day of December, 2023 )

\_\_\_\_\_  
Commissioner for Oaths/Notary Public in and for )  
Alberta )

*Jeffrey L. Oliver*  
Barrister-Solicitor

*Angeline Gagnon*  
\_\_\_\_\_  
ANGELINE GAGNON



Bay Adelaide Centre  
333 Bay Street, Suite 1610, Box 22  
Toronto, ON M5H 2R2  
Phone: (416) 214-2555  
Fax: (416) 214-9597

INDEMNITY AGREEMENT  
IN FAVOUR OF

TRISURA GUARANTEE INSURANCE COMPANY

made under the laws of the Province of Alberta as of April 5, 2019

BY: Candesto Enterprises Corp.  
Powell (Richmond Hill) Contracting Limited  
1964740 Alberta Inc.  
411850 Alberta Ltd.  
Candesto North Inc.

THIS IS EXHIBIT "A"  
Referred to in the Affidavit of

Angeline Gagnon

Sworn before me this 20

Day of December A.D., 2023

A Commissioner for Oaths in and for Alberta

Jeffrey L. Oliver  
Barrister & Solicitor

(the person(s) listed above being collectively the "Indemnitors" and each an "Indemnitor")

WHEREAS

- (A) one or more of the Indemnitors, in his, its or their own name(s) or as joint venturer(s) with others, may desire, or be required, to procure the execution and delivery by Trisura Guarantee Insurance Company (the "Surety") of Bonds as hereinafter defined or one or more of the Indemnitors may request the Surety to refrain from cancelling or attempting to cancel such Bonds as the Surety may already have executed or procured the execution of;
- (B) each of the Indemnitors understands that the Surety expressly requires the delivery of this Agreement as part of the consideration for the execution by the Surety of such Bonds which may already have been furnished by the Surety in reliance upon a representation on that this Agreement would be executed, or which may hereafter be furnished, or for the refraining from cancelling or attempting to cancel said Bonds; and
- (C) each of the Indemnitors hereby represents to the Surety that such Indemnitor has a substantial, material and beneficial interest in the obtaining of Bonds (whether or not such Indemnitor is a principal under any Bond(s) as hereinafter defined) or in the Surety's refraining from cancelling or attempting to cancel Bonds.

NOW THEREFORE, in consideration of the sum of Two Dollars (\$2.00) and other good and valuable consideration paid or furnished by the Surety to each of the Indemnitors (the receipt and sufficiency of which are hereby acknowledged) and of the Surety having executed in the past, presently executing or procuring the execution of Bonds for which application is now pending, or which may be hereafter applied for, or executing in the future one or more Bonds, or of any alteration, renewal, continuation or extension thereof, or of the Surety's refraining from cancelling or attempting to cancel the same, the Indemnitors jointly, severally and for each other do hereby covenant and agree with the Surety as follows:

1. DEFINITIONS

In the present Agreement:

- (a) "Bond" means a contract of suretyship, guarantee or indemnity, an agreement or consent to provide such a contract and the continuation, extension, alteration, amendment, increase, decrease, renewal or substitution of such a contract, agreement or consent, in respect of the Indemnitor(s) (or any or all of them, if more than one, or any affiliate(s) and/or partner(s) of any of them, or any other principal for which the same is requested by an Indemnitor), whether issued by the Surety, any successor of the Surety, or any Beneficiary as defined by section 8 below, and whether issued before, on or after the date of this Agreement;
- (b) "Bonded Contract" means a Contract in respect of which any Bond(s) is or may at any time hereafter be issued;
- (c) "Bonding Facility" means any past, present or future agreement or arrangement between the Surety and the Indemnitors or any of them providing for the issuance of any Bond(s);
- (d) "Contract" includes all documents comprising the contract documents including but not limited to general and special conditions, specifications and drawings, and every change, addition, substitution, successor or new contract;
- (e) "Contract Equipment and Material" includes all Equipment and Material which are now or may hereafter be in, about or upon the site of work contemplated by any Bonded Contract or Unbonded Contract, including supplies and materials now or hereafter purchased for or chargeable to any such contract which may be in progress of construction, or in storage elsewhere, or in transportation to any such site;
- (f) "Equipment and Material" includes machinery, equipment, plant, tools, supplies, inventory and materials;
- (g) "Event of Default" is defined in clause 15(d);
- (h) "execute" and "execution" include procure and procurement for execution;
- (i) "hereof", "herein", "hereto" and similar expressions mean and refer to this Agreement and not to any particular section, subsection, clause or subclause;
- (j) "Other Contract Assets" means all assets other than Equipment and Materials which are, or may hereafter be, used or useful for the performance or completion by any Indemnitor of any Contract (whether a Bonded Contract or an Unbonded Contract), whether or not such assets are specific to any such Contract, and including without limitation licences, intellectual property rights, computer hardware, software and data, and storage media;
- (k) "person" means and includes individuals, partnerships, joint ventures, trusts, corporations and associations;
- (l) "principal" means, in relation to any Bond or Bonded Contract, each and all of the principal(s) named therein or a party thereto;
- (m) "Unbonded Contract" means a Contract to which any Indemnitor is a party and in respect of which, as at the time in question, there is no Bond in force, whether or not any Bond(s) have previously been issued in respect thereof, and whether or not any bond has been issued in respect thereof by any other surety;
- (n) the singular form includes the plural and the plural includes the singular, and the word "Indemnitors" or any pronoun referring thereto, whether singular or plural, is to be construed as referring to the undersigned person(s), though they be or include one or more individuals, partnerships, associations or corporations;
- (o) the neuter pronoun shall be read as masculine or feminine, as circumstances require; and
- (p) the division of this Agreement into sections, subsections, clauses and subclauses, and the insertion of headings, are for convenience of reference only and shall not affect the interpretation or construction hereof.

## 2. INDEMNITY

Each of the Indemnitors shall indemnify and keep indemnified the Surety, against any and all losses, charges, expenses, costs, claims, demands and liabilities (hereinafter called "Indemnity Losses") of whatsoever kind or nature (including, but not limited to, the fees and disbursements of adjusters, consultants and counsel and the establishment or increase of a reserve to cover any possible Indemnity Loss) which the Surety may sustain or incur:

- (a) by reason of having executed or procured the execution of any Bond(s) (or an allegation that the Surety should have done so); or
- (b) by reason of the failure of the Indemnitors to perform or comply with this Agreement or any Bonding Facility; or
- (c) in enforcing any of the covenants and conditions hereof.

## 3. PERFORMANCE AND FEES

- (a) The Indemnitors covenant to perform all the conditions of each Bond, Bonded Contract and Unbonded Contract, and any and all alterations, modifications, renewals, continuations and extensions thereof.
- (b) Without limiting the generality of the foregoing, the Indemnitors shall pay to the Surety:
  - (i) all fees related to Bonds;
  - (ii) any annual fee, setup fee or prequalification fee related to any Bonding Facility; and
  - (iii) any other expenses incurred by the Surety in relation to the establishment and maintenance of a Bonding Facility for the Indemnitors or any of them.

## 4. APPLICATION OF THIS AGREEMENT

- (a) This Agreement shall apply to all Bonds executed by or on behalf of the Surety, and any Bonding Facility relating thereto, on behalf of:
  - (i) any Indemnitor(s);
  - (ii) any present or future affiliate(s) or partner(s) of any Indemnitor; or
  - (iii) any other principal at the request of an Indemnitor;
 in each case in its own name or as joint venturer with others, from time to time, whether prior to or subsequent to the execution and delivery hereof, and over an indefinite period of years, until this Agreement shall be terminated in accordance with the terms hereof, and the Indemnitors agree that notice of the execution of such Bonds need not be communicated to them. For greater certainty, and without limiting the generality of any other provision hereof, this Agreement shall also apply to any other matter arising out of or connected with any such Bond (including any Bond applied for but not issued) or any Bonded Contract or Unbonded Contract relating to any such party.
- (b) This Agreement shall bind:
  - (i) any present or future affiliate or partner of any of the Indemnitors, and
  - (ii) any participant in any joint venture or other form of common enterprise of which the Indemnitor was a member (or was to become a member) at the time a Bond was furnished;
 and the Indemnitors shall, upon the request of the Surety, cause any such affiliate, partner or participant to execute and deliver to the Surety an adhesion, in such form and terms as may be required by the Surety, agreeing to be bound by this Agreement.

## 5. AUTHORITY TO EXECUTE BONDS

Requests to the Surety to execute any Bond(s) may be made by any of the Indemnitors or (where an Indemnitor is not an individual) any officer, employee or partner of any of the Indemnitors, or by any agent or broker reasonably believed by the Surety to be representing any of the Indemnitors. Such requests, whether made in writing (mailed, delivered or telecopied), by telegraph, by personal interview or by telephone, shall be regarded as sufficient and ample authority for the Surety to execute any such Bond(s).

## 6. ABSOLUTE RIGHT TO DECLINE TO ISSUE BONDS

- (a) The Surety, at its option and in its sole discretion, may decline to execute, or provide any Bond(s) applied for without incurring any liability whatever to the Indemnitors or any of them or affecting the liability of the Indemnitors or any of them hereunder to the Surety.
- (b) Each of the Indemnitors acknowledges that:
  - (i) the Surety is under no obligation to issue any Bond(s);
  - (ii) such Indemnitor is not relying and will not rely on any agreement, assurance, understanding, warranty, representation, condition precedent, collateral agreement or other commitment of any kind whatsoever (including without limitation any letter setting out terms and conditions for a Bonding Facility) purporting to be made or entered into by or on behalf of the Surety obliging the Surety to issue any Bond(s);
  - (iii) issuance of any Bond(s) shall not estop the Surety from declining to issue any other Bond(s) or constitute a waiver of the Surety's absolute right to decline to issue any Bond(s); and
  - (iv) if the Surety issues a bid bond, agreement to bond (or "surety's consent") or similar undertaking and the applicant is successful in bidding the project, the Surety may nevertheless decline to issue the performance bond, the payment bond, or any other bond required by the awarding entity, without incurring any liability to the Indemnitors, who hereby agree that such a bid bond, agreement or undertaking is a Bond to which this Agreement applies.

## 7. PARTIAL INVALIDITY OF EXECUTION

- (a) If any of the persons named herein as an Indemnitor fails to execute this Agreement or if the execution hereof by any of the Indemnitors shall be defective or invalid for any reason, such failure, defect or invalidity shall not in any manner diminish or otherwise affect the obligation or liability hereunder of any other of the Indemnitors.
- (b) Failure of the principal to sign any Bond shall not relieve the Indemnitors of liability under this Agreement.

## 8. PROTECTION OF OTHER SURETIES

If the Surety issues any Bond with a co-surety, reinsures any portion of a Bond with any other company, or procures the issuance of any Bond by any other company (whether or not the Surety issues, or retains any portion of, such Bond), the Indemnitors agree with any and all such co-sureties, reinsurers or issuing companies (hereinafter collectively referred to as the "Beneficiaries") that the benefits hereof shall extend to and protect each of the Beneficiaries. The Surety hereby declares that it is the trustee of all of the rights of the Beneficiaries under the foregoing covenant.



#### 9. DEFENCE- RESERVE – DEPOSIT

- (a) If the Indemnitors desire that a claim or demand against the Surety shall be resisted and litigated, the Indemnitors shall:
- (i) give notice to the Surety to this effect; and
  - (ii) if requested, at any time, by the Surety, deposit with the Surety cash (or collateral satisfactory to the Surety) in an amount sufficient to cover the expenses and fees of defence; and
  - (iii) if requested, at any time, by the Surety, deposit with the Surety cash (or collateral satisfactory to the Surety) in an amount sufficient to cover the claim or demand and interest thereon to the probable date of disposition.
- (b) If for any reason the Surety deems it necessary to establish or to increase a reserve (the amount of which shall be in the sole discretion of the Surety, as from time to time revised) to cover any possible Indemnity Loss (including, for greater certainty, the costs of

investigating and defending any claim or demand and interest on the amount thereof at the rate or rates claimed on or applicable to such claim or demand, to the probable date of its resolution), the Indemnitors shall deposit with the Surety immediately upon demand (and make such further deposits as may be required of) cash or collateral satisfactory to the Surety in an amount equal to such reserve

or such increase. The Indemnitors acknowledge that the failure of the Indemnitors to deposit with the Surety, immediately upon demand, the sum demanded by the Surety shall cause irreparable harm to the Surety for which the Surety has no adequate remedy at law, and that the Surety shall be entitled to injunctive relief (including specific performance of the obligation to make such deposit with the Surety), and hereby waive any claims or defences to the contrary

- (c) The Surety may:
- (i) hold any deposit made under this section 9 in such form as the Surety may in its absolute discretion decide, and shall have no obligation to invest, or provide any income or return on, any such deposit; and
  - (ii) in its sole discretion, use all or any part of such deposit, and of any income earned thereon, in payment, settlement or compromise of any Indemnity Loss.
- (d) The Indemnitors shall be entitled to the return of any unused portion of the deposit, and the income (if any) earned on the balance of the deposit outstanding from time to time (to the extent such income has not been used in payment or compromise of an Indemnity Loss), upon termination of the liability of the Surety on the Bonds and the performance by the Indemnitors of all obligations to the Surety under the terms hereof. The Surety's calculation of the income, if any, attributable to any such deposit shall be final and binding on the Indemnitors.

#### 10. SETTLEMENT OF CLAIMS

- (a) The Surety shall have the sole right to pay, settle or compromise, without any prior obligation to notify the Indemnitors, any charge, expense, cost, claim, demand, suit, judgment or liability under any Bond(s), and any such payment, settlement or compromise shall be binding upon the Indemnitors and included as an Indemnity Loss.
- (b) In the event of any such payment, settlement or compromise by the Surety, an itemized statement thereof sworn to by any officer of the Surety, or the voucher(s), cancelled cheque(s) or other evidence of such payment, settlement or compromise, shall be prima facie evidence of the fact and amount of the liability of the Indemnitors under this Agreement in respect of such payment, settlement or compromise.
- (c) In the event of any payment by the Surety, the Indemnitors agree that in any accounting between the Surety and the Indemnitors, the Surety shall be entitled to charge for any and all disbursements made by it in and about the matters contemplated by this Agreement.

#### 11. ADVANCES BY SURETY

The Surety, at its sole election and discretion, is authorized and empowered, but not obligated, to advance or loan to a principal any money which the Surety may see fit to advance to such principal, and to guarantee re-payment of such loans made by others, and all moneys so advanced or loaned, as well as all costs, counsel fees and expenses incurred by the Surety in connection with such advances or loans, unless repaid with legal interest by the principal, shall be included as Indemnity Losses.

#### 12. ACKNOWLEDGEMENT OF CONTINUING LIABILITY

- (a) Each of the Indemnitors acknowledges that this Agreement shall remain in full force and effect, even if such Indemnitor never had or no longer has any interest in the principal, as long as this Agreement has not been terminated by such Indemnitor in accordance herewith; without limiting the generality of the foregoing, the rights of the Surety under this Agreement and any other agreement with any of the Indemnitors shall be cumulative, and this Agreement shall not be construed as having merged with or been cancelled, limited or superseded by any other agreement, whether or not in the same form as this Agreement, unless such other agreement is in writing, expressly states that this Agreement is terminated thereby, and is signed by an officer of the Surety.
- (b) The Indemnitors shall continue to remain bound under this Agreement, notwithstanding the occurrence at any time or from time to time, with or without notice to or knowledge of the Indemnitors, and whether by prior agreement or otherwise, of any or all of the following events, which are in addition to any other rights of the Surety, and which shall not in any way release, limit or abridge any right or remedy which the Surety may have under this Agreement, and this Agreement shall remain in full force and effect after such event:
- (i) the acceptance by the Surety of payment for any Bond(s);
  - (ii) the acceptance or release by the Surety of other agreements of indemnity, collateral security or guarantees, from any or all of the Indemnitors or from others;
  - (iii) the Surety's assent to any act of the principal;
  - (iv) a suit or a settlement deriving from this Agreement;
  - (v) any waiver, extension, or indulgence granted by the Surety to any of the Indemnitors or to others; or
  - (vi) any failure or refusal by the Surety to pursue any remedy or take proceedings against any person or property.

#### 13. INFORMATION TO BE PROVIDED TO SURETY

- (a) Each of the Indemnitors shall:
- (i) forward immediately to the Surety every letter, document, advice, statement of claim or writ received by him from or on behalf of any person who asserts or threatens; and
  - (ii) whenever requested by the Surety, aid in securing information and evidence and the attendance of any witness for, and co-operate fully with the Surety in the defence of;
- any claim or demand arising out of or in connection with any Bond(s).
- (b) The Indemnitors shall furnish to the Surety fully, accurately and promptly all such information as it may request from time to time concerning:

- (i) the financial condition of the Indemnitors;
- (ii) the status of any Bonded Contract(s), Unbonded Contract(s) or other obligations of the Indemnitors and the condition of the performance thereof;
- (iii) the payment of obligations incurred in connection with any Bonded Contract(s), Unbonded Contract(s) or other obligations, and
- (iv) all such other information as the Surety may from time to time reasonably request.
- (c) The Surety and any representative, agent or advisor authorized in writing by the Surety may at reasonable times and places and from time to time, examine and copy the books, records and accounts of the Indemnitors.
- (d) Any of the Indemnitors who are individuals shall notify the Surety of any change in their respective marital circumstances which might affect their ownership of any assets or confer on their respective spouses any right, actual or potential, to claim an interest in any of their respective assets.
- (e) Each of the Indemnitors shall notify the Surety immediately of any change in his or its name.
- (f) If any of the Indemnitors merges, amalgamates, consolidates, reorganizes, forms a partnership or joins with, or sells, transfers or leases all or substantially all of its undertaking, property and assets to, any other person, firm, corporation, trust, partnership or venture

(hereinafter called a "Successor") and, where an Indemnitor is a partnership, if there is any change in the constitution of the partnership, including (but not limited to) the death, retirement, or addition of a member or members, or subsequent incorporation (the partnership so reconstituted or incorporated being included in the term "Successor"), then:

- (i) such Indemnitor shall immediately notify each of the other Indemnitors and the Surety; and
- (ii) whether or not such notice is given, this Agreement shall extend and apply to any Bonds theretofore issued (to the extent that such Bonds relate to the Successor) and any Bonds thereafter issued in respect of the Successor as principal

#### 14. CONSENT TO CHANGES

The Surety is authorized and empowered, without notice to or knowledge of the Indemnitors, notice being hereby expressly waived:

- (a) to correct any mistakes herein or in any Bond(s);
- (b) to assent or refuse to assent to any change whatsoever in any Bond(s), any Bonded Contract(s) and any Bonding Facility, including but not limited to any change in the time for the completion of any Bonded Contract(s) and for payments or advances thereunder and/or in the general conditions, plans or specifications which accompany said Bonded Contract(s) and any increase or decrease in the limit of any Bonding Facility; and
- (c) to assent to or to take any assignment or assignments, to execute or consent to the execution of any continuations, extensions, renewals, enlargements, modifications, change or alterations of any Bond(s) or Bonding Facility or Bonding Facilities, and to execute any substitute or substitutes therefor, with the same or different conditions, provisions and obligees and with the same or larger or smaller penalties;

and the Indemnitors shall remain bound under the terms hereof even though any such correction, assent or refusal by the Surety does or may substantially increase the liability of the Indemnitors.

#### 15. CONTRACT ASSETS

- (a) The Indemnitors shall obtain, maintain and make available all Equipment and Material and Other Contract Assets necessary for the performance of all Bonded Contract(s) and Unbonded Contracts.
- (b) Each of the Indemnitors hereby assigns and transfers to the Surety, as collateral, to secure the obligations herein of the Indemnitors and all other indebtedness or liabilities of the Indemnitors to the Surety, whether heretofore or hereafter incurred, all the right, title and interest of the Indemnitors in and to:
  - (i) every:
    - (A) Contract, whether a Bonded Contract or an Unbonded Contract, and whether or not any Event of Default has occurred with regard to any of the Indemnitors in respect of such Contract, including all retained percentages, holdbacks, progress payments, deferred payments, earned moneys, compensation for extra work, proceeds of damage claims, insurance policies and claims thereunder, and all other funds and properties whatever (whether or not similar to the foregoing) that may be due or become due under any Contract(s) or that may be due, become due, awarded or allowed in connection with or under circumstances growing out of any Contract(s) or work done thereunder;
    - (B) subcontract let or that may be let in connection therewith;
    - (C) claim which the Indemnitors may have or acquire against any person furnishing or agreeing to furnish any labour, Equipment and Material or Other Contract Assets in connection with any such Contract or any such subcontract; and
    - (D) bond securing any such subcontract or claim;
  - (ii) all Contract Equipment and Material,
  - (iii) all Equipment and Material; and
  - (iv) all Other Contract Assets.
- (c) Such assignment shall be effective as of the date of execution and delivery of:
  - (i) this Agreement, as to each Bonded Contract covered by any Bond(s) heretofore issued (but nothing herein shall limit the Surety's right to claim under any prior assignment) and as to any Unbonded Contract in force at such date;
  - (ii) each Bond hereafter issued, as to each Bonded Contract covered by such Bond; or
  - (iii) each Unbonded Contract entered into after the date hereof, as to such Unbonded Contract.
- (d) The Surety shall take proceedings to enforce such assignment only in the event (an "Event of Default") of:
  - (i) any breach or alleged breach of any of the covenants and agreements herein contained, or of any term or condition of any Bonding Facility; or
  - (ii) any abandonment, forfeiture or breach of, or failure, refusal or inability to perform, any Bonded Contract or any liability under a Bond; or
  - (iii) any failure, refusal or inability of a principal to pay bills or other indebtedness incurred in, or in connection with, the performance of any Bonded Contract or Unbonded Contract; or
  - (iv) any assignment by any of the Indemnitors for the benefit of creditors, or the appointment, or any application for the appointment, of a receiver or trustee for any of the Indemnitors, whether insolvent or not, or
  - (v) any proceeding or the exercise of any right which deprives any of the Indemnitors of the use of any of the Contract Equipment and Material or any Other Contract Assets; or
  - (vi) any change or threat of change in the character, identity, control, management, beneficial ownership or existence of a principal, or



- (vii) any other occurrence, condition or circumstance (whether or not similar to any of the foregoing) which in the sole opinion of the Surety may expose the Surety to loss, cost or expense.
- (e) Each of the Indemnitors hereby authorizes and empowers the Surety, if an Event of Default has occurred and is continuing, to
  - (i) in its sole discretion, take possession of the work under any Bonded contract and to complete such contract, or cause the same to be completed, or to consent to the completion thereof, and to take any other action which the Surety may deem appropriate to obtain the discharge of the Surety's obligations as surety including, but not limited to, a monetary settlement with the obligee, and all losses, charges, expenses and costs incurred by the Surety in so doing shall be included as Indemnity Losses;
  - (ii) execute in the name of any Indemnitor any instruments deemed necessary or desirable by the Surety to provide absolute title to the Surety of any funds, property and rights as are hereby assigned, transferred or conveyed, and the Surety and such person(s) as the Surety may designate for this purpose are hereby authorized to take immediate possession of such funds, property and rights;
  - (iii) instruct any obligee(s) under any Bonds, and/or any owners under any Unbonded Contracts, to withhold further payment to any Indemnitor or other person who is a party to the relevant Contract(s);
  - (iv) collect any cheque, draft, warrant or other instrument made or issued in payment of any monies due on any Bonded Contract(s); and
  - (v) endorse in the name of an Indemnitor as payee and to cash any such instruments and to retain or disburse the proceeds thereof.

#### 16. TRUST FUNDS

- (a) Each Indemnitor agrees and hereby expressly declares that all funds due or to become due under any Bonded Contract, are, whether in the possession of the Indemnitor or another, trust funds for the benefit of and payment to all persons to whom the Indemnitor incurs, in the performance of such Bonded Contract, obligations for which the Surety would be liable under such Bond. If the Surety assumes or discharges any such obligation, it shall be entitled to assert the claim of such person to the trust funds.
- (b) Each Indemnitor shall, upon demand by the Surety and in implementation of any trust hereby created, open an account or accounts with a bank or similar depository designated by the Indemnitor and approved by the Surety, which account or accounts shall be designated as a trust account or accounts for the deposit of such trust funds, and shall deposit therein all monies received pursuant to said Bonded Contract or contracts. Withdrawals from such accounts shall be by cheque or similar instrument signed by the Indemnitor and countersigned by a representative of the Surety.
- (c) Said trust or trusts shall terminate on the payment by the Indemnitor of all the contractual obligations for the payment of which the trust or trusts are hereby created or upon the expiration of twenty years from the date hereof, whichever shall first occur.

#### 17. POWER OF ATTORNEY

Each of the Indemnitors hereby irrevocably nominates, constitutes, appoints and designates the Surety, or any person or persons designated by the Surety, as its attorney to exercise all of its rights assigned, transferred or set over to the Surety by this Agreement, and in its name to execute and deliver (and without limiting the generality of the foregoing, to complete any blanks and insert dates in) any and all additional or other assignments, instruments or documents deemed necessary or desirable by the Surety:

- (a) to vest in the Surety or its designees absolute title to any and all monies, property and rights hereby assigned; and
- (b) to provide the protections and rights to the Surety contemplated by all the provisions hereof.

Each of the Indemnitors hereby expressly declares that such power of attorney may be exercised during any subsequent legal incapacity on the part of such Indemnitor.

#### 18. DISCLOSURE AND REGISTRATION

The Indemnitors consent to:

- (a) the service hereof at any time upon any person, firm or corporation (but nothing herein shall be construed as permitting the Surety to take enforcement proceedings contrary to subparagraph above); and
- (b) the registration hereof (or of a notice or other instrument in respect hereof) under any scheme or system of registration for any purpose.

#### 19. ACTIONS TO ENFORCE THIS AGREEMENT

- (a) In the event of any claim or demand being made by the Surety against the Indemnitors, whether or not proceedings have been commenced against one or more of the Indemnitors, the Surety is hereby expressly authorized to:
  - (i) bring separate suits on this Agreement as causes of action accrue against any or all of the Indemnitors, and the bringing of a suit or the recovery of judgment upon any cause of action shall not prejudice nor bar the bringing of other suits upon other causes of action, whether theretofore or thereafter arising; and
  - (ii) settle or compromise any claim based upon this Agreement with any one or more of the Indemnitors individually without reference to the others, and such settlement or compromise shall not affect the liability of any of the rest of the Indemnitors, and each of the Indemnitors hereby expressly waives the right to be discharged and released by reason of the release of one or more of the other Indemnitors, and consents to any settlement or composition that may hereafter be made.
- (b) Any settlement or agreement concluded with an Indemnitor following a claim against him by the Surety under this Agreement shall not create a new agreement nor extinguish the Indemnitor's obligations under this Agreement, and this Agreement shall remain in full force and effect in case of default on the part of an Indemnitor to fulfil the terms of such settlement or agreement with the Surety.

#### 20. COSTS AND INTEREST

- (a) In the event the Surety commences proceedings to enforce the terms hereof, the Surety shall be entitled to recover (but without duplication) its solicitor and own client costs (on a full indemnity basis), judicial and extra-judicial costs and the fees and disbursements of its solicitors and counsel in connection with such proceedings.
- (b) Any and all amounts which the Surety is entitled to be paid under this Agreement shall bear interest at a rate of 10% per year, calculated monthly from the date on which demand for payment therefor is made (or deemed to have been made) to the date of payment; the Surety's claim for such interest shall not merge in any judgment against any of the Indemnitors, and any such judgment shall bear interest at such rate until payment.

**21. WAIVER OF NOTICE AND OTHER RIGHTS**

- (a) Each of the Indemnitors hereby waives notice of the execution of any Bond and of any act, fact or information concerning or affecting the rights or liabilities of the Surety or the rights or liabilities of the Indemnitors, including without limitation the release of any other Indemnitor, the adhesion hereto of any additional Indemnitor, and any change in the terms of any Bonding Facility.
- (b) The Indemnitors waive the benefit of division between themselves and of discussion of any principal.

**22. SUBORDINATION OF INDEMNITORS**

None of the Indemnitors shall enforce any rights of contribution or indemnity against any Indemnitor or its property and undertaking until such Indemnitor's obligations to the Surety under this Agreement have been satisfied in full.

**23. EXCLUSION OF LIABILITY**

None of the Indemnitors shall have any claim against the Surety, for indemnity or otherwise, in respect of any alleged error or omission on the part of the Surety in issuing or failing to issue any Bond.

**24. DISCHARGE FROM SURETYSHIP**

- (a) The Indemnitors shall, at any time upon the request of the Surety, procure the discharge of the Surety from any Bond and from all liability by reason thereof.
- (b) The Surety may, at any time, take such action as it deems necessary or proper to obtain its release from any and all liability under any Bond.

**25. TERMINATION**

- (a) An Indemnitor may give thirty (30) days' prior written notice of termination to the Surety by registered mail to the Surety at its head office, specifying the effective date of such termination. No such notice of termination shall be deemed to have been received by the Surety, and such thirty (30) day period shall not commence, unless and until such notice is actually delivered to the Surety and the Surety has given a written acknowledgement of such delivery. Any such notice shall not operate to modify, bar, limit, affect, impair or discharge the liability of the Indemnitor(s) so terminating or the remaining Indemnitors (if any), upon or by reason of any and all such Bonds executed:
  - (i) before the effective date of termination, or
  - (ii) executed after the effective date of termination:
    - (A) upon the award of a contract on a bid, proposal or tender with respect to which the Surety has executed a bid bond, agreement to bond (or "surety's consent") or similar undertaking prior to such date, or
    - (B) which the Surety has become obligated, prior to such date, to execute.
- (b) Such a notice of termination shall operate only with respect to the Indemnitor(s) giving it. This Agreement shall remain in full force and effect, with respect to the other Indemnitor(s), without obligation for the Surety to notify such other(s) of the termination by one or more of the Indemnitors.
- (c) It shall be the responsibility of the terminating party to ascertain the correct address for the time being of the head office of the Surety. Such address is always a matter of public record. The head office of the Surety is now at Bay Adelaide Centre, 333 Bay Street, Suite 1610, Box 22 Toronto ON, M5H 2R2.

**26. ADDITIONAL INDEMNITORS**

Any person may, by completing, executing and delivering to the Surety an Adhesion in the form annexed to this Agreement, become bound as an Indemnitor hereunder as if such person had been an original signatory hereto.

**27. DEMANDS BY SURETY**

Any demand by the Surety on any of the Indemnitors may be hand delivered, telecopied, telexed or sent by registered mail to such party at the address shown above, or to such other address as such party may have notified to the Surety in writing (including any address shown in an Adhesion), and shall be conclusively deemed to have been received:

- (a) if hand delivered, telecopied or telexed:
  - (i) on the date of delivery or transmission, if prior to 4:00 p.m. (local time) on a day (other than a Saturday) on which chartered banks in the municipality named in such address are open for business during normal business hours (a "Business Day"); or
  - (ii) otherwise, on the next following Business Day; or
- (b) if mailed, on the second Business Day after mailing.

**28. GOVERNING LAW AND JURISDICTION**

This Agreement is made under, and shall be interpreted in accordance with, the laws of the province named on the first page hereof and the laws of Canada applicable in such province; each of the Indemnitors hereby expressly submits to the non-exclusive jurisdiction of the Courts of such province.

**29. SEVERABILITY**

If any provision or provisions hereof are held to be void or unenforceable under the laws governing its construction or enforcement, this Agreement shall not be void or unenforceable thereby but shall continue in effect and be enforced as though such provision or provisions were omitted.

**30. ENUREMENT**

This Agreement is binding jointly and severally upon the Indemnitors, their heirs, executors, personal representatives, successors and assigns. This Agreement shall enure to and benefit any successor to the Surety (including without limitation any person to whom the Surety may in future transfer all or any substantial part of its business assets).

**31. RIGHTS AND REMEDIES OF SURETY**

The rights, powers and remedies afforded to the Surety by the terms hereof may not be waived or modified orally and no written change or modification shall be effective until signed by an authorized officer of the Surety. No agent or broker is authorized to sign any such change or modification on behalf of the Surety. All rights and remedies of the Surety under this Agreement shall be cumulative, and the exercise of or failure to exercise any right or remedy at any time shall not be an election of remedy or a waiver of any other right or remedy or of the same right or remedy as at any other time. The Surety is not required to exhaust its remedies or rights against the principal or to await receipt of any dividends from the legal representatives of the principal before asserting its rights under this Agreement against the Indemnitors, and





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333 Bay Street, Suite 1610, Box 22  
Toronto, ON M5H 2R2  
Phone: (416) 214-2555  
Fax: (416) 214-9597

may assert such rights against one or more of the Indemnitors without asserting them against all or other Indemnitors. The rights, powers and remedies conferred upon the Surety by this Agreement are in addition to any other rights the Surety may have or acquire against the Indemnitors or others, whether arising by the terms of any other agreement, by operation of law or otherwise.

### 32 CHOICE OF LANGUAGE

The parties hereto have requested that the present Agreement be drafted in the English language. Les parties aux présentes ont requis que la présente entente soit rédigée dans la langue anglaise.

### 33. ENTIRE AGREEMENT

EACH OF THE INDEMNITORS REPRESENTS TO THE SURETY THAT SUCH INDEMNITOR HAS CAREFULLY READ THE ENTIRE AGREEMENT AND THAT THERE ARE NO OTHER AGREEMENTS OR UNDERSTANDINGS WHICH IN ANY WAY LESSEN OR MODIFY THE OBLIGATIONS SET FORTH HEREIN.

### 34. CONSENT TO SURETY'S OBTAINING INFORMATION

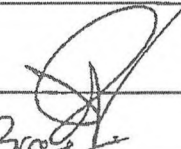
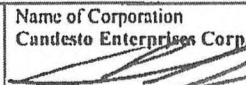
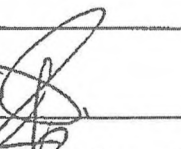
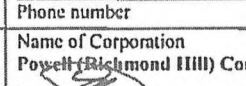
Each of the Indemnitors:

- (a) authorizes the Surety to obtain any credit or other information concerning the affairs and operations of each of the Indemnitors (including any "personal information", as defined by the *Personal Information Protection and Electronic Documents Act* (Canada) and other applicable personal information laws) and any transaction between or among any of the Indemnitors from any banks, depositories, sureties, obligees of the Bonds, materialmen, supply houses, credit reporting agencies, brokers or other persons (collectively, "Sources");
- (b) expressly instructs all such Sources to furnish such information to the Surety (and for greater certainty, instructs any broker(s) to release to the Surety any information relating to any Bond(s) or Bonding Facility); and
- (c) consents to the collection, use and disclosure by the Surety of any personal information about such Indemnitor for the purposes of the entering into, administration and enforcement of this Agreement and any Bond(s).

IN WITNESS WHEREOF the Indemnitors have executed and delivered these presents as their respective deeds, each who is an individual having hereto set his or her hand (and having, by so signing, adopted the word ("seal") hereon as his or her personal seal), and each which is a partnership, joint venture, trust, corporation or unincorporated association having caused this Agreement to be duly executed by its duly authorized representative or representatives, as of the date shown on the first page hereof, which date each of the Indemnitors hereby affirms as the effective date of this Agreement, regardless of the date on which such Indemnitor in fact executed this Agreement.

SIGNED, SEALED AND DELIVERED:

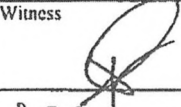

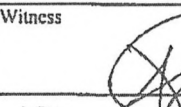
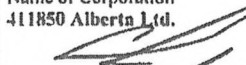
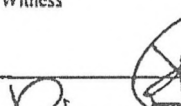
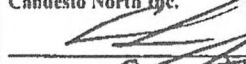
Corporations and/or Partnerships Sign Hereunder

<p>Witness</p> <p> (Signature)</p> <p>Print name Dan Bragg</p> <p>Address of Witness 180 Ram Forest</p> <p>City, Postal Code Stouffville Ont L4A 2G8</p> <p>Phone number 905, 727 2518</p>	<p>Name of Corporation Candesto Enterprises Corp. (Seal)</p> <p> (Signature)</p> <p>Print Name: Chris Baker</p> <p>Print Title: O-M</p> <p>I have the authority to bind the corporation</p> <p>Unit 9 &amp; 10, 3909 - 84th Avenue</p> <p>Address of Corporation Leduc, Alberta T9E 2M5</p> <p>City, Postal Code</p> <p>Phone number</p>
<p>Witness</p> <p> (Signature)</p> <p>Print name Robert Bragg</p> <p>Address of Witness 180 Ram Forest</p> <p>City, Postal Code Stouffville Ont L4A 2G8</p> <p>Phone number 905, 727-2518</p>	<p>Name of Corporation Powell (Richmond Hill) Contracting Limited (Seal)</p> <p> (Signature)</p> <p>Print Name: Mark Bush</p> <p>Print Title: Secretary</p> <p>I have the authority to bind the corporation</p> <p>180 Ram Forest Road</p> <p>Address of Corporation Gormley, Ontario L0H 1G0</p> <p>City, Postal Code 9057272518</p> <p>Phone number</p>



TRISURA

Bay Adelaide Centre  
333 Bay Street, Suite 1610, Box 22  
Toronto, ON M5H 2R2  
Phone: (416) 214-2555  
Fax: (416) 214-9597

<p>Witness</p> <p> (Signature)</p> <p>Robert Bray</p> <p>Print name</p> <p>180 Ram Forest</p> <p>Address of Witness</p> <p>Stouffville Ont L4A2G8</p> <p>City, Postal Code</p> <p>905 727-2518</p> <p>Phone number</p>	<p>Name of Corporation</p> <p>1964740 Alberta Inc. (Seal)</p> <p> (Signature)</p> <p>Print Name: Matt Poast</p> <p>Print Title: Secretary</p> <p>I have the authority to bind the corporation</p> <p>Units 9, 10 - 3909-84 Avenue</p> <p>Address of Corporation</p> <p>Leduc, Alberta T9E 8M5</p> <p>City, Postal Code</p> <p>Phone number</p>
<p>Witness</p> <p> (Signature)</p> <p>Robert Bray</p> <p>Print name</p> <p>180 Ram Forest</p> <p>Address of Witness</p> <p>Stouffville Ont L4A2G8</p> <p>City, Postal Code</p> <p>905 727 2518</p> <p>Phone number</p>	<p>Name of Corporation</p> <p>411850 Alberta Ltd. (Seal)</p> <p> (Signature)</p> <p>Print Name: <del>Chris Bokenfor</del></p> <p>Print Title: G.M.</p> <p>I have the authority to bind the corporation</p> <p>1500, 205-5th Ave SW c/o Bokenfor Prof Corp.</p> <p>Address of Corporation</p> <p>Calgary, Alberta T2P 2V7</p> <p>City, Postal Code</p> <p>Phone number</p>
<p>Witness</p> <p> (Signature)</p> <p>Robert Bray</p> <p>Print name</p> <p>180 Ram Forest</p> <p>Address of Witness</p> <p>Stouffville Ont L4A2G8</p> <p>City, Postal Code</p> <p>905 727 2518</p> <p>Phone number</p>	<p>Name of Corporation</p> <p>Candesto North Inc. (Seal)</p> <p> (Signature)</p> <p>Print Name: <del>Chris Bokenfor</del></p> <p>Print Title: G.M.</p> <p>I have the authority to bind the corporation</p> <p>Unit 9 &amp; 10, 3903-84th Avenue</p> <p>Address of Corporation</p> <p>Leduc, Alberta T9E 8M5</p> <p>City, Postal Code</p> <p>Phone number</p>

**Special Instructions:**

Signatures should be witnessed unless corporate officers are signing with corporate seal.

If the Indemnitor is a corporation execute in full corporate name by proper officers, affix corporate seal and attach a Directors' Resolution.

If the Indemnitor is a Partnership, set forth name in full, with the signature(s) of the partner(s) executing on its behalf set out immediately below. Each partner should also separately sign as an Indemnitor.

If Alberta is specified on page 1, or the Indemnitor is an Alberta resident or governed by Alberta law, comply with The Guarantees Acknowledgement Act (Alberta).