

ONTARIO
**SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST**

**IN THE MATTER OF THE RECEIVERSHIP OF
2423402 ONTARIO INC.**

BETWEEN:

BANK OF MONTREAL

Applicant

- and -

2423402 ONTARIO INC.

Respondent

**AFFIDAVIT OF CRAIG KHATTAR
(Sworn November 6, 2020)**

I, Craig Khattar, of the City of Toronto, in the Province of Ontario SWEAR AND SAY THAT:

1. I am a Senior Manager with The Bank of Montreal (the “**Administrative Agent**”). I have been directly involved in the Administrative Agent’s dealings with 2423402 Ontario Inc. (“**Project Co**”), Bondfield Construction Company Limited (“**Bondfield**”), Zurich Insurance Company Ltd. (“**Zurich**”), Cambridge Memorial Hospital (“**CMH**”) and the Ontario Infrastructure and Lands Corporation (“**IO**”) and have had responsibility for managing the senior secured credit facility (the “**Credit Facility**”) provided to Project Co pursuant to the credit agreement between Project Co, as borrower, each of the financial institutions and other entities from time to time parties thereto, as lenders, and the Administrative Agent, as administrative agent, made as of August 28, 2014, as amended since May 2020. Prior to this time, another Senior Manager, Eden Orbach, had responsibility for managing the Credit Facility.

2. I have personal knowledge of the matters and facts sworn to in this affidavit, except where stated to be based on information and belief, in which case, I believe the same to be true.

3. I swore an affidavit on October 28, 2020 (the “**October Affidavit**”) in support of a motion by the Administrative Agent for an order, among other things (the “**Approval and Discharge Order**”):

- (a) approving the settlement (the “**Settlement**”) contemplated by the Minutes of Settlement to be entered into between the Administrative Agent, Bondfield, Zurich, CMH and IO (the “**Minutes of Settlement**”), and all associated steps, transactions and releases effected thereby;
- (b) approving the activities of Alvarez & Marsal Inc. (“**A&M**”) in its capacity as receiver, without security, of all of the assets, undertakings and properties of Project Co. (the “**Receiver**”) and the fees and disbursements of the Receiver and its counsel;
- (c) authorizing an increase in the Receiver’s borrowing limit from \$200,000 to \$225,000;
- (d) authorizing and directing the Receiver, on behalf of Project Co, to (A) execute the Releases (as defined in the Minutes of Settlement); and (B) assign Project Co into bankruptcy; and
- (e) terminating these proceedings and discharging A&M as Receiver effective upon delivery of the Receiver’s Certificate to the E-Service List.

4. This affidavit is also sworn in support of the Administrative Agent’s motion for the Approval and Discharge Order.

5. In the October Affidavit, I stated that, while an agreement in principle had been reached on the terms of the Settlement, the Minutes of Settlement remained subject to further negotiation. The Minutes of Settlement have now been finalized.

6. A copy of the Minutes of Settlement to be executed by the Parties, with certain financial and banking information redacted, is attached hereto as **Exhibit "A"**.

SWORN BEFORE ME over videoconference on this 6th day of November, 2020. The affiant was located in the City of Toronto, in the Province of Ontario and the Commissioner was located in the Town of Whitchurch-Stouffville, in the Province of Ontario. This affidavit was commissioned remotely as a result of the COVID-19 pandemic.



Craig Khattar



A Commissioner for taking Affidavits
Trevor Courtis (LSO#: 67715A)

This is **Exhibit “A”** referred to in the
affidavit of **CRAIG KHATTAR**
sworn before me this
6th day of November, 2020

A handwritten signature in black ink, consisting of a stylized 'Z' followed by a large, loopy flourish.

A Commissioner for taking affidavits

MINUTES OF SETTLEMENT
dated this 6th day of November, 2020
(the "**Settlement**")

BETWEEN:

CAMBRIDGE MEMORIAL HOSPITAL
(hereinafter referred to as "**CMH**")

- and -

BANK OF MONTREAL, acting as agent for and on
behalf of the Lender
(hereinafter referred to as "**Agent**")

- and -

**BONDFIELD CONSTRUCTION COMPANY
LIMITED**
(hereinafter referred to as "**Bondfield**")

- and -

ZURICH INSURANCE COMPANY LTD.
(hereinafter referred to as "**Zurich**")

-and-

**ONTARIO INFRASTRUCTURE AND LANDS
CORPORATION**
(hereinafter referred to as "**IO**")

(collectively, the "**Parties**")

- A. **WHEREAS** 2423402 Ontario Inc. ("**Project Co**") entered into a Project Agreement with CMH dated August 28, 2014 (the "**Project Agreement**") pursuant to which, among other things, Project Co agreed to perform the Work as defined in the Project Agreement;
- B. **AND WHEREAS** Project Co entered into a Construction Contract with Bondfield dated August 28, 2014 (the "**Construction Contract**") pursuant to which Bondfield agreed to perform the Construction Work as defined in the Construction Contract (the "**Construction Work**"), which states that Bondfield is to perform the Construction Work in such a manner so as not to cause Project Co to be in breach of its obligations to CMH pursuant to the Project Agreement;

- C. **AND WHEREAS** Project Co, its Affiliates, and the Lender entered into certain Lending Agreements (as defined in the Lender's Direct Agreement) relating to the financing of the Project by the Lender;
- D. **AND WHEREAS** pursuant to the Lending Agreements, the Agent acts as agent for and on behalf of the Lender;
- E. **AND WHEREAS** CMH, Project Co, and the Agent entered into a Lender's Direct Agreement dated August 28, 2014 (the "**Lender's Direct Agreement**") in relation to the Lending Agreements, the exercise of rights under the Lending Agreements, and the remedying of breaches by Project Co under the Project Agreement;
- F. **AND WHEREAS** Zurich issued Performance Bond No. 6342957 to Project Co dated August 28, 2014, (the "**Performance Bond**") and a Multiple Obligee Rider naming the Agent and CMH as Additional Named Obligees under the Performance Bond with respect to the Construction Contract;
- G. **AND WHEREAS** Zurich issued Labour and Materials Payment Bond No. 6342957 to Project Co dated August 28, 2014, (the "**Labour and Materials Payment Bond**") and a Multiple Obligee Rider naming the Agent and CMH as Additional Named Obligees under the Labour and Materials Payment Bond with respect to the Construction Contract;
- H. **AND WHEREAS** Zurich issued Demand Bond No. 6342958 to the Agent dated August 28, 2014 (the "**Lender's Demand Bond**") with respect to the Lending Agreements;
- I. **AND WHEREAS** CMH notified Project Co and the Agent of several Project Co Events of Default under the Project Agreement by its letter dated August 10, 2018;
- J. **AND WHEREAS** pursuant to Section 7 of the Construction Contract, a Project Co Construction Event of Default (as defined in the Construction Contract) constitutes a default by Bondfield under the Construction Contract;
- K. **AND WHEREAS** Bondfield has defaulted in the performance of its obligations under the Construction Contract and by its letter dated, December 7, 2018, Project Co has provided notice of such default to Zurich and has called upon Zurich to perform its obligations under the terms of the Performance Bond;
- L. **AND WHEREAS** by the Order of the Honourable Justice Hailey made December 6, 2018 (the "**Receivership Order**" and such proceedings, being the "**Receivership Proceedings**"), Alvarez & Marsal Canada Inc. ("**A&M**") was appointed the Receiver of Project Co (in such capacity and not in its personal or corporate capacity, the "**Receiver**"): (i) at the request of the Agent, (ii) without taking possession or control of Project Co's business, assets or books and records, and (iii) with the specific duties, obligations, authorizations and protections as more specifically set forth in the Receivership Order;

- M. **AND WHEREAS** Bondfield is the subject of proceedings under the *Companies' Creditors Arrangement Act*, R.S.C. 1985, c. C-36 pursuant to which Ernst & Young Inc. has been appointed as the Monitor of Bondfield (the "**Monitor**");
- N. **AND WHEREAS** the Parties agree that all provisions under the Project Agreement and the Construction Contract to invoke the default remedies under the Project Agreement, Construction Contract and Lending Agreements and Performance Bond have been satisfied;
- O. **AND WHEREAS** the Parties acknowledge that there is Construction Work to be completed under the Construction Contract;
- P. **AND WHEREAS** the Parties acknowledge that Phase 1 and Phase 2 of the Project are complete (save and except for Interim Minor Deficiencies listed in **Schedule "G"**, work that has been deferred, and any warranty claims which shall remain the responsibility of Zurich);
- Q. **AND WHEREAS** to complete the Construction Work, Zurich shall retain a new contractor pursuant to a completion contract (the "**Completion Contract**");
- R. **AND WHEREAS** Zurich's estimate of the cost of completing the Construction Work is \$103,000,000.00;
- S. **AND WHEREAS** the Parties acknowledge that Project Co is indebted to the Agent and/or Lender in the amount of \$71,314,382.00;
- T. **AND WHEREAS** the Parties wish to settle the disputes regarding the defaults of Bondfield and have agreed on the manner in which the Construction Work shall be completed on the basis set out herein and to document their agreement regarding the manner in which the Construction Work is to be completed and any additional agreements necessary to complete the Construction Work.

NOW THEREFORE, IN CONSIDERATION OF THE MUTUAL COVENANTS AND AGREEMENTS OF THE PARTIES HEREINAFTER CONTAINED AND FOR OTHER GOOD AND VALUABLE CONSIDERATION, THE RECEIPT AND SUFFICIENCY OF WHICH ARE HEREBY ACKNOWLEDGED, THE PARTIES COVENANT AND AGREE:

General

1. The recitals as stated above form an integral part of this Settlement.
2. The Parties acknowledge and agree that the Settlement shall be a Project Document.
3. All capitalized terms used but not otherwise defined herein shall have the meanings ascribed to them in the Project Agreement and the Construction Contract, as they each may be amended and restated by this Settlement.

4. For the avoidance of doubt, this Settlement assigns, amends and restates each of the Project Agreement and the Construction Contract. The Construction Contract incorporates by reference the provisions of the Project Agreement *mutatis mutandis* relating to the Construction Work and this Settlement amends and restates the terms and conditions of the Construction Contract and the Project Agreement with the intent that neither CMH nor Zurich will owe the other any greater obligation than those as set out in the Construction Contract (as amended and restated herein). Subject to paragraph 24 of this Settlement, for the purposes of allocating responsibility to perform the Construction Work under this Settlement, all references to:

- (a) Project Co in the Construction Contract shall be to CMH;
- (b) Bondfield in the Construction Contract shall be to Zurich; and
- (c) Project Co, solely in relation to the Construction Work in the Project Agreement (as amended herein) shall be to Zurich.

5. The Parties agree that the terms and conditions of the Project Agreement and the Construction Contract, as each are amended by this Settlement, shall be incorporated by reference herein and shall be applicable under the Settlement for the allocation of responsibility for the Construction Work described under the Project Agreement and the Construction Contract.

6. In the event of ambiguities, conflicts or inconsistencies between the Settlement, Project Agreement, and the Construction Contract, the provisions of this Settlement shall govern and take precedence over such other documents.

7. For the purposes of this Settlement:

- (a) the Construction Work required to be completed under the Construction Contract is one and the same as Project Co's obligations to complete the Construction Work under the Project Agreement;
- (b) all remaining obligations for completion of the Construction Work under the Construction Contract shall be performed by Zurich in accordance with this Settlement;
- (c) the certification for Substantial Completion and Final Completion under the Construction Contract shall be treated as the certification of Substantial Completion and Final Completion under the Project Agreement;
- (d) the definition of "Construction Work" under the Construction Contract and "Construction Work" under the Project Agreement comprises all obligations, covenants, activities, terms and conditions under the Project Agreement and Construction Contract to construct, install, test, Commission, and complete the Facility, including the rectification of the Interim Minor Deficiencies listed in **Schedule "G"**, Minor Deficiencies, all warranty work, work deferred from Phases 1 and 2 to Phase 3, Exiting Construction (as

defined in paragraph 36(h) herein), and other related activities;

- (e) Zurich and CMH covenant to each other to observe and perform, or cause to be observed and performed, all of their obligations under the Project Agreement in respect of the Construction Work (as amended herein) and all of their obligations under the Construction Contract to complete the Construction Work, other than as set out in Schedule "L".

Conditions Precedent

8. The Settlement is conditional upon:

- (a) the Agent bringing a motion in the Receivership Proceedings and obtaining an order (the "**Receivership Settlement Approval and Bankruptcy Authorization Order**") substantially in the form attached at **Schedule "E"** on or before November 6, 2020 (or such longer time as may be agreed by the Parties in writing) (the "**Court Date**") for, among other things:
 - (i) approving the Settlement;
 - (ii) authorizing, empowering and directing the Receiver, for and on behalf of Project Co, to (A) execute the Releases, and (B) assign Project Co into bankruptcy appointing Ira Smith Trustee & Receiver Inc. as bankruptcy trustee, or such other bankruptcy trustee as the Parties may agree (the "**Project Co Trustee**"), with Zurich responsible for all fees and expenses of Project Co Trustee;
 - (iii) authorizing the Receiver to borrow additional funds not to exceed \$225,000.00, for the purpose of funding its activities in connection with the Settlement and the exercise of its powers and duties conferred upon it by the Receivership Order and the Receivership Settlement Approval and Bankruptcy Authorization Order;
 - (iv) approving the fees and activities of the Receiver, with all such fees being paid for by the Lender, and releasing and discharging A&M from any and all liabilities, by reason of or arising out of, its acts or omissions in its capacity as Receiver;
 - (v) declaring that by completing its obligations as set out in the Receivership Settlement Approval and Bankruptcy Authorization Order, the Receiver (A) has not been empowered to manage the business or property of Project Co, and (B) shall not be deemed to have taken possession or control of the business or property of Project Co; and
 - (vi) terminating the Receivership Proceedings upon the Receiver emailing a certificate, in a form to be scheduled to the Receivership Settlement Approval and Bankruptcy Authorization Order (the

“Receiver’s Certificate”) to the E-Service List in the Receivership Proceedings, upon (i) the receipt of each Implementation Notice in accordance with paragraph 42 of this Settlement, (ii) the Receiver executing the Releases for and on behalf of Project Co and completing the assignment of Project Co into bankruptcy, and (iii) the completion of all other matters to be attended to in connection with the receivership of Project Co as set out in the Receivership Order and the Receivership Settlement Approval and Bankruptcy Authorization Order, to the satisfaction of the Receiver.

The Parties shall consent to and will cooperate and assist the Agent to obtain the Receivership Settlement Approval and Bankruptcy Authorization Order on or before the Court Date;

- (b) Zurich or the Monitor bringing a motion in the Bondfield CCAA proceeding and obtaining an order on or before the Court Date (the **“CCAA Settlement Order”** and together with the Receivership Settlement Approval and Bankruptcy Authorization Order the **“Settlement Orders”**) among other things, authorizing Bondfield to enter into the Settlement and declaring Phase 1 and Phase 2 as being substantially performed. The Monitor will prepare the CCAA Settlement Order, which shall be in a form satisfactory to all other Parties;
- (c) subject to paragraph 13, the expiry of twenty-one (21) days after the rendering of the Settlement Orders without any appeal of such orders being commenced and pending before a Court of competent jurisdiction;
- (d) delivery by CMH of the sum referred to in paragraph 12(a) of this Settlement plus HST to Miller Thomson LLP (**“MT LLP”**), in trust, which shall be held in escrow by MT LLP on the terms of this Settlement, pending satisfaction of all conditions precedent set out in paragraph 8 herein;
- (e) delivery by CMH of the amounts referred to in paragraphs 16(c), 16(e), and 16(g) of this Settlement plus HST to MT LLP, in trust, which shall be held in escrow by MT LLP on the terms of this Settlement, pending satisfaction of all conditions precedent set out in paragraph 8 herein;
- (f) delivery by Zurich of the CMH Demand Bond referred to in paragraph 37 of this Settlement and the Release of Holdback Bond referred to in paragraph 16(c) of this Settlement to MT LLP which bonds shall be held in escrow by MT LLP on the terms of this Settlement, pending satisfaction of all conditions precedent set out in paragraph 8 herein;
- (g) delivery by the Parties (as applicable) of all the fully executed releases referred to in paragraph 39 of this Settlement in the forms attached at Schedule “D” (the **“Releases”**) to each Party’s respective counsel, which shall be held in escrow by counsel on the terms of this Settlement, pending

satisfaction of all conditions precedent set out in paragraph 8 herein;

- (h) the delivery by the Agent of the original Lender's Demand Bond to MT LLP which shall be held in escrow by MT LLP on the terms of this Settlement, pending satisfaction of all conditions precedent set out in paragraph 8 herein;
- (i) the delivery by Zurich of a rider to the Performance Bond to MT LLP that shall (1) reduce the penal sum of the Performance Bond to \$10,000,000.00; (2) amend the scope of the Performance Bond to include solely any warranty obligations of Zurich under the Construction Contract; (3) allow CMH to make claims as primary obligee on the Performance Bond; and (4) extend the suit limitation period in respect of the warranty obligations as set out herein (the "**Warranty Rider**") in the form attached hereto as **Schedule "I"**, and which shall be held in escrow by MT LLP on the terms of this Settlement, pending satisfaction of all conditions precedent set out in paragraph 8 herein, provided that such Warranty Rider has no effect on Zurich's admissions and obligations under this Settlement, including without limitation paragraphs 18, 27, 28, and 29;
- (j) the delivery by Zurich, at Zurich's cost, to CMH of certificate(s) of insurance, satisfactory to CMH, evidencing that Zurich and CMH have their respective interests in the Construction Work pursuant to this Settlement covered under all insurance policies obtained pursuant to the Project Agreement, the Construction Contract, and the Completion Contract and such insurance is in full force and effect. This condition precedent is for the exclusive benefit of CMH and may be waived, amended, or otherwise modified solely by CMH in writing; and
- (k) the written approval of the Ontario Ministry of Health ("**MOH**") of the terms and conditions of this Settlement, in MOH's sole and absolute discretion.

9. The Effective Date of this Settlement shall be the date on which all of the conditions precedent in paragraph 8 have been confirmed satisfied and the requirements of paragraph 11 have been satisfied.

10. If the conditions precedent in paragraph 8 and the requirements of paragraph 11 are not satisfied on or before December 7, 2020 (or such longer time as may be agreed by the Parties in writing):

- (a) this Settlement shall be terminated and of no force and effect;
- (b) all payments made to MT LLP in escrow, which are being held in escrow pursuant to this Settlement, will be returned;
- (c) all documents executed in furtherance of this Settlement, including, without limitation, the Releases, and any bonds and rider provided by Zurich, will be of no force and effect, and any such bonds and rider shall be returned to

Zurich for cancellation.

11. Once all of the conditions precedent set out in paragraph 8 have been satisfied, MT LLP shall provide each of the Parties with written notice and the monies and documents that are being held in escrow and which are to be delivered pursuant to this Settlement referred to in paragraph 8 shall only be disbursed with:

- (a) the written direction of each of the Parties addressed to MT LLP and each Party's counsel; or
- (b) a final non-appealable order of a court of competent jurisdiction (a "**Judgment**");

and MT LLP and each Party's counsel shall be entitled to act on such joint written direction or Judgment, as the case may be.

Payment Obligations

12.

- (a) On the Effective Date, MT LLP on behalf of CMH shall pay the amount of \$58,005,779.00 to the Agent in accordance with paragraph 15 and in full and final settlement of any and all amounts which are or may become due and payable to the Agent and/or the Lender in connection with the Project, including (i) pursuant to Sections 8.3 and 9.1 of the Lender's Direct Agreement, (ii) under the Lending Agreements and (iii) pursuant to the Receivership Order or the Receivership Settlement Approval and Bankruptcy Authorization Order in connection with any amounts borrowed by the Receiver or Project Co Trustee thereunder, but in each case subject to the terms and conditions of the Releases. The payment of such amount shall be a deduction from the Guaranteed Price;
- (b) Notwithstanding such full and final settlement, and solely for the purpose of Zurich enforcing its assigned rights pursuant to paragraph 23(c)(vii) herein, the Parties acknowledge that Project Co is indebted to the Agent and/or Lender in the amount of \$13,308,603.00 in addition to the amount paid herein (the "**Project Co. Debt**"), and Zurich, as assignee of the Project Co. Debt, shall be entitled to pursue such amounts against Project Co.

13. In the event of an appeal of either or both of the Receivership Settlement Approval and Bankruptcy Authorization Order or the CCAA Settlement Order then:

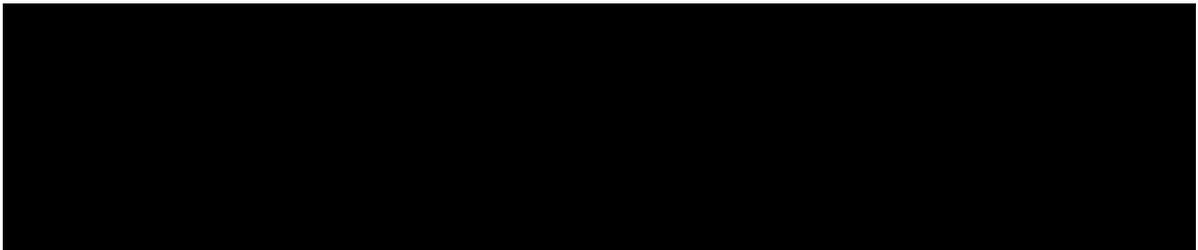
- (a) if the appeal does not enjoin the payment to be made pursuant to paragraph 12(a) then the Settlement shall continue in full force and effect, save and except for any other payment to be made pursuant to this Settlement that cannot be paid in accordance with this Settlement as a result of the appeal, which amount(s) shall continue to be held in escrow by MT LLP in an interest bearing account in trust for the recipient(s) of such funds pursuant

to the final disposition or settlement of the appeal and this Settlement;

- (b) if the appeal does enjoin the payment to be made pursuant to paragraph 12(a) then the Parties undertake and agree to work cooperatively and diligently to ensure that the payment to be made pursuant to paragraph 12(a) is made to the Agent and/or Lender as expeditiously as possible and upon payment of the amount in paragraph 12(a) to the Agent and/or Lender the Settlement shall continue in full force and effect, save and except for any other payment to be made pursuant to this Settlement that cannot be paid in accordance with this Settlement as a result of the appeal, in which case paragraph 13(a) shall then apply. In the interim, the payment to be made pursuant to paragraph 12(a), and any other payment enjoined by the appeal shall continue to be held in escrow by MT LLP in an interest bearing account in trust for the recipient(s) of such funds pursuant to the final disposition or settlement of the appeal and this Settlement.

14. The Lender's Demand Bond shall be null and void on the Effective Date and MT LLP shall deliver the original from escrow to Zurich on the Effective Date.

15. The Parties direct that MT LLP on behalf of CMH, in respect of the payment contemplated at paragraph 12(a), will release on the Effective Date the funds in escrow in respect of the payment contemplated in paragraph 12(a) in accordance with the terms, conditions and time periods provided for in this Settlement, by depositing such payments electronically to the Agent using the following electronic transaction coordinates and such payments will be complete satisfaction of all payment obligations under the Settlement to the Agent:



16. Notwithstanding the terms of the Project Agreement, the Construction Contract, the Performance Bond, the Lender's Direct Agreement, or any of the Lending Agreements, CMH is released from and has no further payment obligations in respect of the Project to any Party, other than the following payments to be made in accordance with this Settlement:

- (a) the amount pursuant to paragraph 12(a) of this Settlement (plus HST, which is to be paid in accordance with paragraph 22);
- (b) the sum of \$46,621,171.00 (plus HST, which is to be paid in accordance with paragraph 22) being the "**Balance of the Guaranteed Price**" as defined and shown in **Schedule "A"** (exclusive of the Legislative Holdback), to Zurich in monthly payments certified by the Consultant, which

monthly payments shall be calculated as follows:

% of the Construction Work certified as complete by the Consultant in the prior month (payment period)	X	\$46,621,171.00 (Balance of the Guaranteed Price)
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The amounts certified by the Consultant shall be without regard to amounts paid by Zurich under the Completion Contract. Payment to Zurich shall be as directed pursuant to paragraph 20(a) in accordance with the terms and conditions of the Construction Contract (*mutatis mutandis*);

- (c) provided that Zurich has procured and delivered to MT LLP the Release of Holdback Bond for the penal amount of \$12,785,941.00 in the form attached hereto as **Schedule "H"** to be retained by CMH until the expiry of the lien registration period following Substantial Completion of the Construction Work, the amount set out in Schedule "A" in respect of the Phase 1&2 Legislative Holdback to the Monitor (on behalf of Bondfield), as directed pursuant to paragraph 20(b), and in accordance with the *Construction Act* (Ontario), which amount shall be in addition to the Balance of the Guaranteed Price, and such amount shall be paid by CMH on the Effective Date of this Settlement in satisfaction of any trust obligation of CMH with respect to such payments under Section 7 of the *Construction Act* (Ontario), pursuant to Section 10 of the *Construction Act* (Ontario) and this Settlement. Zurich and/or the Monitor shall obtain an Order on consent that Phase 1&2 are substantially performed as of November 8, 2019 and that the right to preserve a lien in respect of Phase 1&2 expires on 60 days following the date of CCAA Settlement Order;
- (d) to Zurich in respect of the release of the balance of the Legislative Holdback in the amount set out in Schedule "A" or such other amount as amended, as directed pursuant to paragraph 20(a), and in accordance with the *Construction Act* (Ontario), which shall be paid by CMH on the Legislative Holdback Payment Date in accordance with the terms of Article 4.7 of the Construction Contract (*mutatis mutandis*) and in satisfaction of any trust obligation of CMH with respect to such payments under Section 7 of the *Construction Act* (Ontario), pursuant to Section 10 of the *Construction Act* (Ontario) and this Settlement;
- (e) to the Monitor (on behalf of Bondfield) in respect of the outstanding Change Orders in the amount of \$430,280.75 (plus HST), as directed pursuant to paragraph 20(b), and as set out in **Schedule "F"**, to be paid on the Effective Date.;

- (f) to Zurich, following and in respect of the period after the Effective Date, under which CMH is expressly responsible for an Additional CMH Payment, as directed pursuant to paragraph 20(a), subject to and in accordance with section 4.7 and Schedule 18 of the Project Agreement, as applicable, and Article 4 and GC 4.7 of the Construction Contract (*mutatis mutandis*) and this Settlement;
- (g) to the Monitor (on behalf of Bondfield) in respect of Interim Deliverables and Interim Minor Deficiencies certified by the Consultant as complete on or before the Effective Date, as directed pursuant to paragraph 20(b), in the amount of \$2,803,550.00 to be paid on the Effective Date;
- (h) to the Monitor (on behalf of Bondfield) in respect of the amount retained on account of the Interim Minor Deficiencies listed in **Schedule "G"**, in the amount of \$124,200.00 (plus HST), to be paid as such Interim Minor Deficiencies are certified by the Consultant as complete, or in such amounts as CMH and Zurich may agree, as directed pursuant to paragraph 20(b).

17. Changes in the Scope of the Construction Work arising after the Effective Date, including, for greater clarity, any work associated with Change Orders already approved by CMH and to be completed by Zurich, shall be issued and approved in accordance with the Construction Contract and this Settlement, provided, however, that the following shall apply with respect to the unit prices in Appendix A to Schedule 11 of the Construction Contract – Unit Prices for Facility (the "**Unit Prices**"):

- (a) the Unit Prices shall only apply to Changes in the Scope of the Construction Work that adjust the Guaranteed Price by \$100,000.00 (exclusive of HST) or less; and
- (b) where the Unit Prices apply pursuant to paragraph 17(a), the Unit Prices shall be increased by 20%.

18. Zurich shall fund and pay for the performance of the Construction Work as required under this Settlement including, for greater certainty, any items arising from Article 36 (Warranty) of the Project Agreement and GC 36 (Warranty) of the Construction Contract, and its portion of the Exiting Construction as set out in paragraph 19.

- (a) For Phases 1 & 2, Zurich's warranty responsibility, including any responsibility for preventative maintenance, shall expire on November 8, 2020, save and except for
 - (i) Zurich's ongoing responsibility to respond and to perform warranty work in respect of all warranty claims advanced by CMH, in accordance with the Construction Contract, on or before November 8, 2020, and
 - (ii) Zurich's responsibility for preventative maintenance of the equipment identified in blue highlighting in the Mechanical Equipment Warranty

Divisions 21, 22, and 23, Issued for Addendum 08 dated March 28, 2014, attached hereto as **Schedule "B"**, for which Zurich's sole responsibility shall be for preventative maintenance, which shall continue until Substantial Completion.

- (b) For the balance of the Construction Work, Zurich's responsibility for Warranty shall expire 1 year after the Substantial Completion Date.
 - (c) Without limitation, in the event that the actual cost to complete the Construction Work, excluding any Change Orders, is in excess of the amounts set out in paragraphs 16(b) and 16(d), Zurich shall be responsible for such excess amounts, without any recourse to CMH other than as provided in the Construction Contract and this Settlement, and for completion of the Construction Work in accordance with this Settlement, provided, however, the responsibility of Zurich for such excess amounts to complete the Construction Work, other than in respect of Warranty work, shall not be greater than the declining balance of the CMH Demand Bond. For Warranty work, Zurich's responsibility shall not be greater than the amount of the Performance Bond as reduced by the Warranty Rider. For greater certainty, the limitation of liability set out in this paragraph shall be exclusive of any amounts recoverable by Zurich against any third parties, including, without limitation, claims against any applicable policy of insurance required to be maintained under either Schedule 13 of the Project Agreement or Schedule 13 of the Construction Contract.
19. Exiting Construction, as defined in paragraph 36(h), shall be dealt with as follows:
- (a) Exiting Construction shall be paid for as set out in subparagraphs 19(a)(i) and 19(a)(ii), below. As part of the process for allocating any of the costs for Exiting Construction to CMH, Zurich shall make available to CMH for examination all financial books, documents, records, invoices, vouchers, data and any other relevant information prepared or maintained by Zurich and/or EllisDon in respect of the costs of Exiting Construction:
 - (i) as to the first \$1,300,000.00 (plus HST) of Exiting Construction costs, Zurich shall be responsible for payment as part of its funding of the Construction Work, and such payment shall be applied to, first, that portion of the Exiting Construction costs that is attributable to performance of the Exiting Construction work, rather than that portion attributable to labour, services or materials arising from an extension of or delay in the performance of the Construction Work;
 - (ii) as for all costs of Exiting Construction in excess of the first \$1,300,000.00 (plus HST), such costs shall be split equally as between Zurich (50%) and CMH (50%).

- (b) Any amount paid by CMH for Exiting Construction in accordance with subparagraph 19(a)(ii) that is attributable to labour, services or materials arising from an extension of or delay in the performance of the Construction Work (the “**CMH Share**”) shall be recoverable by CMH in the event subsequent changes in the Construction Work result in a reduction in or shortening of the Construction Work schedule. Such recovery, if any, shall be on the following terms:
- (i) The CMH Share shall be divided by the number of weeks by which the Construction Work schedule was extended as a result of the Exiting Construction and the result will be the “**CMH Weekly Credit**”.
 - (ii) Whenever a change in the Construction Work results in a reduction in or shortening of the Construction Work schedule (a “**Schedule Reduction**”) of one (1) week or more, CMH will be entitled to a credit (the “**Exiting Credit**”) equivalent to the dollar amount obtained by multiplying the CMH Weekly Credit by the number of weeks of Schedule Reduction. Each Exiting Credit will be applied against and will reduce the amount payable by CMH under the relevant change in the Construction Work resulting in the reduction or shortening of the Construction Work schedule, or where the Exiting Credit exceeds the amount payable by CMH under the relevant change, the balance of the Exiting Credit will be applied against the Balance of the Guaranteed Price. Provided that (A) there shall be no Exiting Credit for any Schedule Reduction of less than one (1) week; and (B) the aggregate amount of all Exiting Credits shall not exceed the CMH Share.
- (c) Any amount paid by CMH for Exiting Construction in accordance with subparagraph 19(a)(ii) that is not part of the CMH Share referred to in paragraph 19(b) shall be recoverable by CMH in the event subsequent changes in Exiting Design result in a credit to or reduction in the cost of Exiting Construction. Such recovery shall be applied against and will reduce the amount payable by CMH under the relevant change in Exiting Design or, where the credit exceeds the amount payable by CMH under the relevant change, the balance of the credit will be applied against and will reduce the Balance of the Guaranteed Price. Provided that the aggregate amount of such recovery shall not exceed the amount paid by CMH in accordance with subparagraph 19(a)(ii).

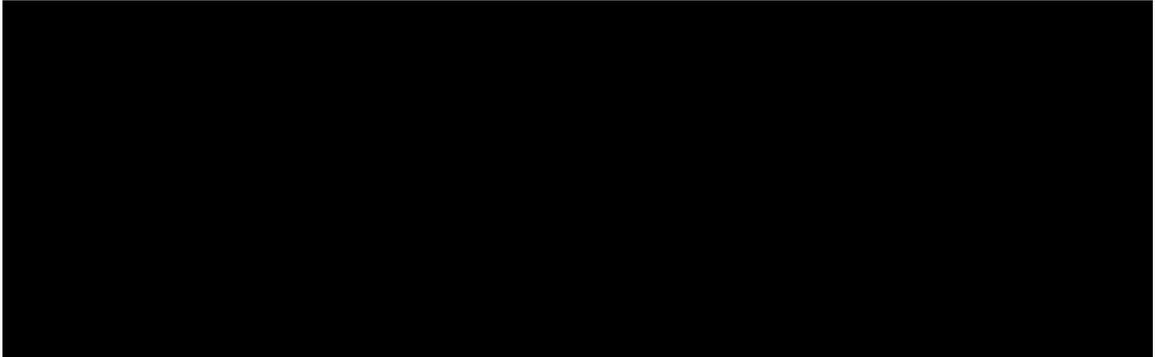
20. The Parties direct that,

- (a) CMH will make the payments contemplated in paragraphs 16(b), 16(d) and 16(f) in accordance with the terms, conditions and time periods provided for in this Settlement, by depositing such payments electronically to Zurich using the following electronic transaction coordinates and such payments will be partial satisfaction of CMH's payment obligations for payment in

respect of the Construction Work and this Settlement to any Party:



- (b) CMH will make the payments contemplated in paragraphs 16(c), 16(e) 16(g) and 16(h) in accordance with the terms, conditions and time periods provided for in this Settlement, by depositing such payments electronically to the Monitor (on behalf of Bondfield) using the following electronic transaction coordinates and such payments will be partial satisfaction of CMH's payment obligations for payment in respect of the Construction Work and this Settlement to any Party:



21. Bondfield and Project Co each agree that the amounts of any HST refunds issued to Project Co after December 6, 2018 shall be paid to Zurich as partial repayment of the indebtedness of Project Co to Zurich.

22. CMH agrees to pay the applicable HST in respect of all amounts to be paid by CMH pursuant to this Settlement including in paragraphs 12(a) and 16. Zurich, Bondfield and Project Co direct CMH to pay, and CMH agrees to pay such HST as follows: (i) to Zurich, the HST payable in respect of amounts paid under paragraphs 16(b), 16(d) and 16(f) under this Settlement; (ii) to the Monitor (on behalf of Bondfield), the HST payable in respect of amounts paid under paragraphs 16(c), 16(e) , 16(g) and 16(h); and (iii) to Project Co, as to be directed by the Project Co Trustee, the HST payable in respect of the amount paid pursuant to paragraph 12(a) hereof. Project Co agrees that it shall, immediately upon the granting of the Receivership Settlement Approval and Bankruptcy Authorization Order, deliver an invoice to CMH with respect to the Step Out Amount pursuant to paragraph 12(a) hereof, including HST.

Step-Out by the Agent

23. It is acknowledged and agreed that:

- (a) CMH provided notice(s) of Project Co Event(s) of Default pursuant Section 26.3 of the Project Agreement and Project Co Default Notice(s) pursuant to Section 6.1 of the Lender's Direct Agreement, which triggered the commencement of the one hundred and twenty (120) day Notice Period pursuant to the Lender's Direct Agreement, on August 13, 2018;
- (b) notwithstanding the Lender's Direct Agreement, for the purposes of this Settlement, the Notice Period pursuant to the Lender's Direct Agreement hereby expires on the Effective Date; and
- (c) notwithstanding anything contained in the Lender's Direct Agreement, on the Effective Date:
 - (i) the Agent is deemed to Step Out pursuant to Section 8.3 of the Lender's Direct Agreement on the Effective Date, and the "Step-Out Date" under the Lender's Direct Agreement shall be deemed to be the Effective Date;
 - (ii) the payment set out in paragraph 12(a) is deemed to be the Step-Out Amount;
 - (iii) it is acknowledged and agreed that the Agent did not appoint a Appointed Representative;
 - (iv) CMH shall have no obligation to the Agent, the Lender, or Project Co to pay the Substantial Completion Payment to any of them on the achievement of Substantial Completion;
 - (v) CMH shall have the full benefit and entitlement to the Bonds, without regard to any interest therein of the Agent, the Lender or Project Co, and the Agent agrees that CMH may thereafter proceed to enforce all of its rights under the Bonds, without regard to any rights in favour of the Agent, the Lender or Project Co;
 - (vi) the Agent hereby assigns all of its and the Lender's interest, right, title and benefits in the Bonds and the Guarantee to CMH, on the Effective Date, and the Agent covenants to execute and deliver any further assurances and take such other actions and do such other things as may be necessary that CMH requires, at CMH's sole expense, in order to give effect to this paragraph;
 - (vii) the Agent, on behalf of itself and each of the Lenders, hereby irrevocably assigns to Zurich on the Effective Date on an "as-is, where-is basis", without any representation or warranty, including as to its validity or enforceability and without recourse to the Agent or Lender, other than as set out in paragraph 23(c)(viii) below, all of the Agent's and the Lenders' interest, right, title and benefits in: (i) the Lending Agreements, the Security Documents and any other

documents or instruments delivered pursuant thereto; (ii) all financing statements, financing change statements, registrations, filings and other publications made in connection with the Lending Agreements, the Security Documents and any other documents or instruments delivered pursuant thereto, including, the financing statement registered under the *Personal Property Security Act* (Ontario) against Project Co in favour of the Agent under file number 699091956 and registration number 20140820 1426 1590 8669; (iii) all claims, suits, causes of action and any other right of the Agent and the Lenders against Project Co, whether known or unknown, arising under or in connection with the Lending Agreements, the Security Documents any other documents or instruments delivered pursuant thereto or the loan transactions governed thereby or in any way based on or related to any of the foregoing; and (iv) the Project Co. Debt; and the Agent covenants to execute and deliver any further assurances and take such other actions and do such other things as may be necessary that Zurich requires, at the request and expense of Zurich, in order to give effect to this paragraph. Project Co hereby acknowledges and consents to the assignment of the Lending Agreements, the Security Documents and any other documents or instruments delivered pursuant thereto to Zurich and acknowledges, confirms and agrees that (i) each of the Security Documents shall continue in full force and effect and shall continue to constitute legal, valid and binding obligations of Project Co, enforceable against it in accordance with its terms, and (ii) by virtue of such assignment, the Security Documents shall secure the Project Co. Debt owing to Zurich and may be enforced as such against it by Zurich. Notwithstanding the assignment of any security as contemplated in this paragraph, the assignees shall have no obligations to perform any of the terms of the Lending Agreements and/or the Security Documents;

- (viii) the Agent (i) represents and warrants to Zurich that the Lending Agreements, the Security Documents and any other documents or instruments delivered pursuant thereto have not been assigned (other than pursuant hereto), pledged, hypothecated and no security interest has been granted therein by it; and (ii) acknowledges and agrees that, following the consummation of the transactions herein contemplated, it shall have no further claim against Project Co in respect of, or interest in, the Lending Agreements, the Security Documents and any other documents or instruments delivered pursuant thereto;
- (ix) CMH is entitled to exercise all rights and take all benefits of the primary Obligee, and the Parties acknowledge and agree that on the Effective Date, CMH shall become the primary Obligee as defined in

and under the Performance Bond with all of the rights, obligations and privileges as primary Obligee thereunder;

- (x) the provisions of Section 4.6(a) of Schedule 12 to the Project Agreement - Compensation on Termination shall not apply, and any obligation of CMH to make Base Progress Payments shall be of no force and effect;
- (xi) the provisions of Section 4.4 - Direction of Lump Sum Payments of the Project Agreement are terminated and shall be of no force and effect; and
- (xii) other than as set out in this Settlement, CMH shall have no liability to make any payments to the Agent, the Lender, Zurich, Project Co, or Bondfield, including, without limitation, as contemplated by the Lender's Direct Agreement or by Section 4.2(a) of the Project Agreement.

24. On the Effective Date:

- (a) Pursuant to Receivership Settlement Approval and Bankruptcy Authorization Order, Project Co shall assign and transfer on an "as-is, where-is basis", without any representation or warranty, including as to its validity or enforceability and without recourse to Project Co, all of its interest, right, title and benefit in the Project Agreement (as amended herein) to Zurich, and Zurich hereby accepts the assignment and transfer of the Project Agreement (as amended herein), and Zurich hereby covenants and agrees with CMH that, from and after the Effective Date, Zurich will assume, observe, perform, fulfill and be bound by each and every obligation of Project Co contained in the Project Agreement (as amended herein) insofar as such obligations relate to the Construction Work.
- (b) CMH covenants with Zurich that CMH shall observe and perform its obligations under the Project Agreement (as amended herein) provided that it is agreed that the obligations assumed by CMH pursuant to this paragraph are not greater than the obligations owed by CMH under the Construction Contract.
- (c) The Assignable Subcontract for Construction Contract becomes effective and, pursuant to the Receivership Settlement Approval and Bankruptcy Authorization Order, all of Project Co's right, title, interest and benefit in the Construction Contract is assigned to CMH and CMH shall be entitled to exercise all of its rights under the Assignable Subcontract for Construction Contract and CMH hereby accepts the assignment and CMH hereby covenants and agrees with Zurich that, from and after the Effective Date, CMH will assume, observe, perform, fulfill and be bound by each and every

obligation of Project Co contained in the Construction Contract (as amended herein).

- (d) Bondfield hereby assigns and transfers on an "as-is, where-is basis", without any representation or warranty, including as to its validity or enforceability and without recourse to Bondfield, all of its interest, right, title and benefit in the Construction Contract (as amended herein) to Zurich, and Zurich hereby accepts the assignment and transfer of the Construction Contract (as amended herein) and Zurich hereby covenants and agrees with CMH that, from and after the Effective Date, Zurich will assume, observe, perform, fulfill and be bound by each and every obligation of Bondfield contained in the Construction Contract (as amended herein).
- (e) Subject to paragraph 12(b), the Lender's Direct Agreement is terminated and shall be of no further force or effect.
- (f) Without limiting the assignment and assumption of the Project Agreement hereunder, Project Co shall have no recourse, rights, title, interest or obligations under the Project Agreement whatsoever.
- (g) Without limiting the assignment and assumption of the Construction Contract hereunder, Bondfield and Project Co shall have no recourse, rights, title, interest, or obligations under the Construction Contract whatsoever.
- (h) To give effect to the assignments in this paragraph 24, Zurich is hereby authorized by Project Co and Bondfield (as applicable) to execute and deliver such further or other documents and do all such other acts and things on behalf of Project Co under the Project Agreement and Bondfield under the Construction Contract as may be necessary to give effect to the terms of this Settlement and to carry out the provisions hereof.
- (i) To give effect to the assignments in this paragraph 24, CMH is hereby authorized by Project Co to execute and deliver such further or other documents and do all such other acts and things on behalf of Project Co under the Construction Contract as be necessary to give effect to the terms of this Settlement and to carry out the provisions thereof.

25. For greater certainty, it is the intention of the Parties that provided the Agent and Lender have received payment in full pursuant to paragraph 12(a): any and all entitlements and obligations of Project Co pursuant to the Project Agreement are assigned by the Receivership Settlement Approval and Bankruptcy Authorization Order, and any and all entitlements and obligations of Bondfield pursuant to the Construction Contract are assigned pursuant to these Minutes, as set out in paragraph 24; and (b) that Project Co shall thereby have no rights, obligations and entitlements under the Project Agreement or Construction Contract and Bondfield shall thereby have no rights, obligations and entitlements under the Construction Contract. To the extent that such

intention is not enforceable for any reason, then provided the Agent and Lender have received payment in full pursuant to paragraph 12(a), it is the further intention of the Parties that Project Co is indebted to: (i) CMH in respect of the amounts paid by CMH pursuant to paragraph 12(a) and all losses, damages and claims that CMH may have under the Project Agreement (other than those that have been expressly released pursuant to this Settlement); and (ii) to Zurich in respect of all amounts paid by Zurich on account of the Balance of the Construction Contract Price as that term is defined in the Performance Bond, for which the assignment of security referred to in paragraph 23(c)(vii) is made.

Completion Arrangements

26. The Parties acknowledge and agree that Bondfield is in default in respect of its obligations to Project Co under the Construction Contract.

27. Zurich acknowledges and accepts that a proper demand on the Performance Bond has been made and Zurich admits liability for completion of the Project and the Construction Work under, and up to the amount of the CMH Demand Bond.

28. Zurich hereby exercises option #2 under the Performance Bond and agrees it is obliged to complete all of Bondfield's obligations under the Construction Contract in accordance with its terms and conditions and subject to and in accordance with this Settlement.

29. Zurich shall be bound to CMH for the completion of the Construction Work in accordance with this Settlement, provided, however, that CMH shall, where requested by Zurich, provide a "Direct Assignment Notice" (as defined in the Assignable Subcontract Agreement) to any subcontractor of Bondfield where such subcontractor is bound by such Assignable Subcontract Agreement.

30. Without altering or limiting Zurich's obligations hereunder, CMH acknowledges that Zurich has retained EllisDon Corporation ("**EllisDon**") to perform the Construction Work and to discharge all obligations of the "constructor" in accordance with section 11.6(a)(iv) of the Project Agreement for the purposes of this Settlement. Prior to the execution of the Completion Contract between Zurich and EllisDon, Zurich covenants to:

- (a) include a "third party beneficiary" provision in the Completion Contract that entitles CMH to directly enforce the warranty provisions of the Completion Contract; and
- (b) deliver a copy of the CCDC performance bond with dual obligee rider listing CMH as a dual obligee, in the form attached hereto as **Schedule "J"** that is issued to EllisDon, as principal, in respect of the Completion Contract (the "**EllisDon Bond**").

31. CMH shall cause the Consultant:

- (a) to observe and perform its responsibilities as set out in the Project

Agreement and the Construction Contract, as amended herein in a professional and commercially reasonable manner;

- (b) to remove and replace Paul Myska from the Project; and
- (c) at CMH's cost and expense, to provide all design services for the preparation of design drawings and specifications for the sequencing of public exiting during Phase 3. Such design drawings and specifications shall be completed on or before January 31, 2021 and shall be attached as **Schedule "K"** (collectively the "**Exiting Design**"). Provided that the Consultant shall issue a Change Directive based on the current draft Exiting Design to Zurich on November 30, 2020 to allow Zurich to commence with the Construction Work while such Exiting Design is being completed by the Consultant. Payment of such Exiting Construction shall be in accordance with paragraph 19(a).

32. The Parties agree that the Construction Work shall commence on November 30, 2020.

33. Zurich represents and warrants to CMH that as at the Effective Date, the revised Scheduled Substantial Completion Date is a realistic date and is achievable by Zurich complying with its obligations under this Settlement.

34. In the event that Zurich defaults on any of its obligations to CMH including (without limitation) pursuant to this Settlement, and such default is not cured pursuant to the provisions of the Construction Contract (if applicable), then, subject to the limitations in paragraph 35, CMH is entitled to exercise any of its default remedies available under the Construction Contract, or this Settlement, against Zurich including without limitation:

- (a) to set-off its costs and losses, including to complete the Construction Work, against the payment(s) to be made to Zurich under paragraph 16(b);
- (b) to make demand on the CMH Demand Bond or on the Performance Bond as amended by the Warranty Rider or both subject to their terms;
- (c) to claim indemnification by Zurich in accordance with Section 33.1 of the Project Agreement and GC 33.1 of the Construction Contract (mutatis mutandis) and this Settlement; and/or
- (d) to otherwise exercise any rights or remedies it may have at law or in equity.

35. Notwithstanding any provision in this Settlement, the Project Agreement, or the Construction Contract, CMH acknowledges and agrees that, because of the reductions to the Guaranteed Price set out in Lines 2, 3, and 7 in Schedule "A", totalling \$11,172,453.00 (plus HST) (the "**CMH Current Losses**") any further liability of Zurich to CMH for costs, damages, or losses of any kind, in law or in equity, whether based on tort, negligence, contract, warranty, strict liability or otherwise arising from or relating to this Project after the Effective Date, and CMH's corresponding right to set-off or advance a

claim, is restricted to amounts that are recoverable by CMH as set out in:

- (a) Article 35.2(a)(i) and Article 35.2(a)(iii) of the Project Agreement;
- (b) Article 8.2(a)(i) and Article 8.2(a)(iii) of the Construction Contract; and
- (c) Article 35.2(a) of the Project Agreement and Article 8.2(a) of the Construction Contract in respect of recoverable insurance proceeds.

Amendments to the terms of the Project Agreement and Construction Contract

36. With effect on the Effective Date (subject to paragraphs 4 and 7), the terms and conditions of the Project Agreement and Construction Contract shall each be amended and restated, *mutatis mutandis*, to give effect to the terms of this Settlement and their respective incorporation by reference herein, including, but not limited to, the following amendments to the terms and conditions of the Project Agreement and Construction Contract for the purposes of reference:

- (a) All references, provisions and schedules of the Project Agreement relating to the Agent, the Cost of the Financing, the Financing, the Financial Model, Hedge Provider, Hedging Agreement, Insurance and Bonding Trust Agreement, Lender, Lender's Consultant, Lender's Direct Agreement, Lending Agreements, Permitted Borrowing, Refinancing, Senior Lenders, Trust Account and Trust Account Acknowledgement Agreement shall be deleted and be of no force or effect.
- (b) Section 2.1(a) of the Construction Contract shall be deleted and replaced with "subject to the provisions of Article 1 and the provisions of this Construction Contract, the Contractor shall perform all of the Construction Work in compliance with this Construction Contract and in a manner that is fully compliant with the terms and conditions of the Project Agreement in respect of the Construction Work".
- (c) Section 3.1(a) of the Construction Contract shall be deleted.
- (d) All payments contemplated under this Settlement shall replace the payments under the Construction Contract regardless of any process stated under the Construction Contract and shall reduce the Guaranteed Price accordingly.
- (e) The Scheduled Substantial Completion Date and Scheduled Final Completion Date shall be in accordance with, and subject to adjustment as set out in, the Completion Contract.
- (f) CMH shall have no liability to pay, any Base Progress Payments and all references to Base Progress Payments shall be deleted and replaced with

the payment terms contained herein.

- (g) The provisions of Article 4 of the Construction Contract shall apply as between CMH and Zurich except as amended herein.
- (h) The supply of all labour, services, and materials (including any labour, services, or materials arising from an extension of or delay in the performance of the Construction Work) necessary for the performance of the coordination, implementation and construction of the Exiting Design, but excluding any Exiting Design obligations (the "**Exiting Construction**"), shall be included as part of the Construction Work. For certainty, Exiting Construction includes labour, services and materials (including any labour, services, or materials arising from an extension of or delay in the performance of the Construction Work) required as a result of changes to the Exiting Design that are not the result of a design error. Changes to the Exiting Design that are the result of a design error shall be borne by CMH.
- (i) The CMH Demand Bond, the Performance Bond with Warranty Rider, and the Labour and Material Payment Bond shall remain in full force and effect, with any necessary rider or modifications, required by this Settlement.
- (j) Except as agreed or provided in this Settlement, nothing herein shall comprise a waiver or release by either CMH or Zurich of their rights or obligations under this Settlement with respect to any facts, events, or circumstances in respect of the Project that occur subsequent to the Effective Date.
- (k) The CMH Demand Bond, the Performance Bond with Warranty Rider, and Labour and Materials Payment Bond shall apply to this Settlement as if the Settlement was named as the "contract" therein and the CMH Demand Bond, the Performance Bond with Warranty Rider, and Labour and Materials Payment Bond shall be deemed to be amended accordingly.
- (l) Any other changes or modifications to the terms and conditions of the Project Agreement, Construction Contract and any other Project Document that are necessary to give effect to the provisions of this Settlement.
- (m) The terms and conditions of the Construction Contract shall be deemed to be amended and restated to give effect to all necessary amendments required by this Settlement.
- (n) The terms and conditions of the Project Agreement and all Project Documents shall be deemed to be amended and restated to give effect to all necessary amendments required by this Settlement.

CMH Demand Bond

37. On the Effective Date, Zurich shall issue and deliver a demand bond in the amount of \$103,000,000.00, to CMH in the form attached hereto as **Schedule “C”** (the **“CMH Demand Bond”**). The CMH Demand Bond amount shall have a declining Bond Amount based on the certified value of the Construction Work performed on a monthly basis in accordance with this Settlement, but excluding any Additional CMH Payments.

BNY Agreements

38. On the Effective Date, the Agent shall deliver to BNY Trust Company of Canada (“**BNY**”) a default notice as contemplated in section 5(a) of Schedule 17 to the Project Agreement (Insurance and Bonding Trust Agreement) and a declaration that CMH requires possession of the original copy of the Bonds for the purpose of enforcing its right as Multiple Obligee thereunder, and a direction for BNY to forthwith deliver the Bonds to CMH.

Other Commercial Terms and Releases

39. On the Effective Date, counsel for the Parties deliver the Releases referred to in paragraph 8(g) to their respective clients, and MT LLP shall deliver the Performance Bond with Warranty Rider to CMH.

40. Provided that CMH has made all payments to Zurich and the Monitor (on behalf of Bondfield) when due as required by this Settlement, Zurich shall:

- (a) not create, incur, or permit to exist any Encumbrance to be filed, issued or registered against the Site or any part thereof or any interest therein due to the Construction Work. Zurich shall indemnify and hold CMH harmless from any Encumbrance being filed, issued or registered against the Site or any part thereof or any interest therein due to the Construction Work.
- (b) in the event that the Site or any part thereof or any interest therein becomes subject to any Encumbrance arising in relation to the performance of the Construction Work, Zurich shall, at its sole cost and expense, immediately take all steps necessary to remove, vacate or discharge such Encumbrance. In the event that CMH is made a party to any proceedings related to any Encumbrance, Zurich shall, at its sole cost and expense, defend the proceeding in CMH’s name and will hold CMH harmless from any and all losses, damages, costs, expenses, including, without limitation, legal fees and disbursements.
- (c) also take all necessary steps to resolve, settle and pay any amounts owing to resolve any claims by subcontractor and suppliers in respect of the Construction Work, including any Encumbrances in respect of the Construction Work, under the Labour and Materials Payment Bond without any recourse to CMH whatsoever, including, without limitation, any recourse against CMH through assigned or subrogated rights of third parties.

- (d) in addition to any other indemnification provided in the Project Agreement, the Construction Contract, the Completion Contract, and this Settlement or in law or equity, Zurich shall indemnify and save harmless CMH and the CMH Indemnified Parties against all liabilities, costs, expenses, damages and losses (including any direct, indirect or consequential losses, all interest, penalties and legal and other professional costs and expenses) suffered, sustained or incurred by CMH as a result of, in respect of or arising from any obligations of CMH to satisfy judgments and pay costs that arise after the Effective Date resulting from:
- (i) any construction lien(s) arising from the performance of the Construction Work on or before the Effective Date other than in respect of CMH's statutory obligations under the *Construction Act*; or
 - (ii) any other claim(s) or lawsuit(s) brought against CMH by any person that provided services or materials to the Site on or before the Effective Date which constituted part of the Construction Work.

The above paragraphs 40(a), (b), (c) and (d) shall survive termination of this Settlement and Zurich shall comply with paragraphs 40(a), (b), (c) and (d) notwithstanding any dispute under this Settlement.

41. Notwithstanding anything in paragraph 40, Zurich shall retain the right to commence a civil proceeding against CMH in respect of: (a) a reduction by CMH of any of the amounts payable pursuant to paragraph 16; (b) the exercise of any remedies by CMH pursuant to paragraph 34; (c) a breach by CMH of the terms of the Settlement; or (d) any claims for unapproved Change Orders arising in connection with or in relation to the performance of the Construction Work after the Effective Date.

General Terms

42. On the Effective Date and upon the satisfaction of each Party's payment obligations under this Settlement, each of Zurich, the Monitor, the Agent and CMH shall deliver to the Receiver written notice (which may be by way of e-mail) confirming that all of the payment obligations under this Settlement and the conditions precedent and requirements of paragraph 8 and paragraph 11 have been satisfied (each, an "**Implementation Notice**"). Upon receipt by the Receiver of an Implementation Notice from each of Zurich, the Monitor, the Agent and CMH, the Receiver shall, as soon as reasonably practicable, email a copy of the Receiver's Certificate to the E-Service List in the Receivership Proceedings and as soon as reasonably practicable thereafter, file a copy with the Court. The Receiver shall be entitled to rely exclusively on each Implementation Notice without any obligation whatsoever to verify the satisfaction of the applicable conditions or payments.

43. Each of the Parties acknowledges and agrees that A&M, acting in its capacity as Receiver of Project Co, and Ernst & Young Inc., acting in its capacity as Monitor, and provided they have complied with their obligations herein, shall have no liability in

connection with this Settlement whatsoever in its capacity as Receiver or Monitor, as applicable, in its personal or corporate capacity or otherwise. For greater certainty, the Receiver shall be under no obligation to (i) bring current or keep current any tax filings, tax returns or tax accounts of Project Co, (ii) make any tax filings or tax returns for and on behalf of Project Co, or (iii) take any steps or actions in respect of Project Co's tax obligations, tax returns, tax filings or tax refunds, whether pursuant to the *Excise Tax Act* or otherwise. In addition, the Monitor shall be under no obligation to (i) bring current or keep current any tax filings, tax returns or tax accounts of Bondfield, (ii) make any tax filings or tax returns for and on behalf of Bondfield, or (iii) take any steps or actions in respect of Bondfield's tax obligations, tax returns, tax filings or tax refunds, whether pursuant to the *Excise Tax Act* or otherwise.

44. The Settlement may be executed in any number of counterparts, each of which shall be deemed an original but all of which together shall constitute one and the same instrument. A signature of this settlement by facsimile is deemed as valid as an original signature.

45. The Settlement shall be governed by, enforced, construed and interpreted in accordance with the laws of the Province of Ontario.

46. The Parties, each acting reasonably, hereby agree from time to time to execute and deliver such further or other documents and do all such other acts and things as may be necessary to give effect to the terms of this Settlement and to carry out the provisions hereof.

47. This Settlement and any documents delivered pursuant to it constitute and express the entire agreement of the Parties with respect to the subject matter hereof and thereof and supersede any and all previous agreements, communications, representations, or understandings, whether written or oral, with respect to such subject matter.

48. Any modification of this Settlement, additional obligation assumed by the Parties in connection with this Settlement, or waiver of any provision or obligation that is a part of this Settlement shall be binding only if evidenced in writing signed by each of the Parties or an authorized representative of each Party.

49. This Settlement shall enure to the benefit of and be binding upon the Parties and their respective successors, assigns and affiliates.

[Remainder of the page intentionally left blank – signature pages follow]

DATED AT, ONTARIO this day of November, 2020

BANK OF MONTREAL

Per: _____
Stanley Julien/Craig Khatter
(I have authority to bind the corporation)

DATED AT, ONTARIO this day of November, 2020

**BONDFIELD CONSTRUCTION
COMPANY LIMITED**

Per: _____
●
(I have authority to bind the corporation)

DATED AT, ONTARIO this day of November, 2020

ZURICH INSURANCE COMPANY LTD.

Per: _____
Adrian A. Braganza,
Senior Claims Counsel
(I have authority to bind the corporation)

DATED AT, ONTARIO this day of November, 2020

**ONTARIO INFRASTRUCTURE AND
LANDS CORPORATION**

Per: _____
Eric Tilley
General Counsel
*(I have authority to bind the
corporation)*

DATED AT CAMBRIDGE, ONTARIO this day of November, 2020

CAMBRIDGE MEMORIAL HOSPITAL

Per: _____
Patrick Gaskin/David Pyper
*(I have authority to bind the
corporation)*

List of Schedules to the Minutes of Settlement

SCHEDULE	TITLE
“A”	Financial Summary
“B”	Mechanical Equipment Warranty Divisions 21, 22, and 23, Issued for Addendum 08
“C”	CMH Demand Bond
“D”	Releases
“E”	Form of Receivership Settlement Approval and Bankruptcy Authorization Order
“F”	Outstanding Change Orders
“G”	Interim Minor Deficiencies
“H”	Release of Holdback Bond
“I”	Warranty Rider
“J”	Ellis-Don Performance Bond
“K”	Exiting Design Drawings
“L”	Amendments to the Construction Contract

Schedule "A"
Financial Summary

	Guaranteed Price	\$187,102,400.00
Line 1	Less: Interim Completion Payment, pursuant to Project Agreement (previously remitted)	\$50,899,797.00
Line 2	Less: Delay set-off cap	\$10,000,000.00
Line 3	Less: Utilities and CMH direct costs to complete work	\$1,108,603.00
Line 4	Less: Bankruptcy Costs	\$0.00
Line 5	Less: Amount for Interim Deliverables and Interim Minor Deficiencies certified as complete on or before the Effective Date	\$2,803,550.00
Line 6	Less: Retained amount for Interim Minor Deficiencies to be completed and paid as certified by the Consultant;	\$124,200.00
Line 7	Less: Retained amount (credit) for Interim Minor Deficiencies not completed or completed by CMH	\$63,850.00
Line 8	<u>Equals:</u> Balance pursuant to Project Agreement	<u>\$122,102,400.00</u>
Line 9	Less: Phase 1&2 Legislative Holdback (Construction Act)	\$12,785,941.00
Line 10	Less: Phase 3 Legislative Holdback	\$4,689,509.00
Line 11	<u>Equals: Subtotal</u>	<u>\$104,626,950.00</u>
Line 12	Less: Step Out Amount paid to Agent (paragraph 12(a) of the Settlement)	\$58,005,779.00
Line 13	<u>Equals:</u> Balance of the Guaranteed Price	<u>\$46,621,171.00</u>

Amounts are exclusive of HST.

	EQUIPMENT (CMH DESIGNATION) DIVISION 21
	BLUE IS PROJECT CO TO PERFORM PM's UNTIL PHASE 3 SUBSTANTIAL COMPLETION.
	ORANGE IS CMH MAINTENANCE TO TAKE OWNERSHIP AND PERFORM PM's AFTER FULL PHASE 2 COMPLETION AND FULLY COMMISSIONED.
	GREEN ARE ITEMS NOT INSTALLED UNTIL DURING PHASE 3 THUS CMH WILL TAKE OWNERSHIP UPON SUBSTANTIAL COMPLETION AND PROJECT CO IS TO PERFORM PM's UNTIL THAT TIME.
1	Dry Sprinkler Air Compressor
2	Dry Sprinkler Air Compressor
3	Fire Pump
4	Jockey Pump
5	Double Interlocked Preaction Spinkler Control Panel
6	Double Interlocked Preaction Spinkler Control Panel

	EQUIPMENT (CMH DESIGNATION) DIVISION 22
	BLUE IS PROJECT CO TO PERFORM PM's UNTIL PHASE 3 SUBSTANTIAL COMPLETION.
	ORANGE IS CMH MAINTENANCE TO TAKE OWNERSHIP AND PERFORM PM's AFTER FULL PHASE 2 COMPLETION AND FULLY COMMISSIONED.
	GREEN ARE ITEMS NOT INSTALLED UNTIL DURING PHASE 3 THUS CMH WILL TAKE OWNERSHIP UPON SUBSTANTIAL COMPLETION AND PROJECT CO IS TO PERFORM PM's UNTIL THAT TIME.
1	Medical Vacuum Plant (Quadplex)
2	Medical Air Plant (Triplex)
3	Instrument Air Plant (Triplex)
4	Nitrogen Manifold (Existing Relocated)
5	Carbon Di-Oxide (CO2) Manifold (Existing Relocated)
6	Nitrous Oxide (N2O) Manifold
7	DW-P04, DW-P05, DW-P06 Domestic Water Pressure Booster Pump (Triplex) (DCW_Pump_04/05/06)
8	DW-P01, DW-P02, DW-P03 Domestic Water Pressure Booster Pump (Triplex) (DCW_Pump_01/02/03)
9	DWR-P03, DWR-P04 Domestic Hot Water Recirc Pump B Wing (HWR_Pump_03/04)
10	DWR-P01, DWR-P02 Domestic Hot Water Recirc Pump A Wing (HWR_Pump_01/02)
11	DWR-P05 Domestic Hot Water Recirc Pump A Wing (HWR_Pump_05)
12	DT-01 Decontamination Tank Control Panel
13	DWS-01, DWS-02, DWS-03 Domestic Water Softeners (Triplex)
14	HEX-01 Domestic Hot Water Heaters-A1
15	HEX-02 Domestic Hot Water Heaters-A2
16	SAN-P01 Elevator Sump Pump (SAN_ELEV_PUMP-01)
17	SAN-P02, SAN-P03 Elevator Sump Pump Duplex (SAN_ELEV_PUMP-02/03)

	EQUIPMENT (CMH DESIGNATION) DIVISION 22
	BLUE IS PROJECT CO TO PERFORM PM's UNTIL PHASE 3 SUBSTANTIAL COMPLETION.
	ORANGE IS CMH MAINTENANCE TO TAKE OWNERSHIP AND PERFORM PM's AFTER FULL PHASE 2 COMPLETION AND FULLY COMMISSIONED.
	GREEN ARE ITEMS NOT INSTALLED UNTIL DURING PHASE 3 THUS CMH WILL TAKE OWNERSHIP UPON SUBSTANTIAL COMPLETION AND PROJECT CO IS TO PERFORM PM's UNTIL THAT TIME.
18	SAN-P04, SAN-P05 Elevator Sump Pump Duplex (SAN_ELEV_PUMP-04/05)
19	STM-P01, STM-P02 Storm/Weeping Tile Sump Pump-Duplex (STORM_PUMP-01/02)
20	STM-P03, STM-P04 Storm/Weeping Tile Sump Pump-Duplex (STORM_PUMP-03/04)
21	RO-02 Reverse Osmosis System (MDRD)

	EQUIPMENT (CMH DESIGNATION) DIVISION 23
	BLUE IS PROJECT CO TO PERFORM PM's UNTIL PHASE 3 SUBSTANTIAL COMPLETION.
	ORANGE IS CMH MAINTENANCE TO TAKE OWNERSHIP AND PERFORM PM's AFTER FULL PHASE 2 COMPLETION AND FULLY COMMISSIONED.
	GREEN ARE ITEMS NOT INSTALLED UNTIL DURING PHASE 3 THUS CMH WILL TAKE OWNERSHIP UPON SUBSTANTIAL COMPLETION AND PROJECT CO IS TO PERFORM PM's UNTIL THAT TIME.
1	AHU No.1 Air Handling Unit Supply Fan (AHU-101)
2	AHU No.2 Air Handling Unit Supply Fan (AHU-102)
3	AHU No.3A Air Handling Unit Supply Fan (AHU-103A)
4	AHU No.3B Air Handling Unit Supply Fan (AHU-103B)
5	AHU No.4 Air Handling Unit Supply Fan (AHU-104)
6	AHU No.5 Air Handling Unit Supply Fan (AHU-105)
7	AHU No.6A Air Handling Unit Supply Fan (AH-106A)
8	AHU No.6B Air Handling Unit Supply Fan (AHU-106B)
9	AHU No.7 Air Handling Unit Supply Fan (AHU-107)
10	AHU No.8A Air Handling Unit Supply Fan (AHU-108A)
11	AHU No.8B Air Handling Unit Supply Fan (AHU-108B)
12	AHU No.9A Air Handling Unit Supply Fan (AHU-109A)
13	AHU No.9B Air Handling Unit Supply Fan (AHU-109B)
14	AHU No.10 Air Handling Unit Supply Fan (AHU-110)
15	AHU No.11 Air Handling Unit Supply Fan (AHU-111)
16	AHU No.12A Air Handling Unit Supply Fan (AHU-112A)
17	AHU No.12B Air Handling Unit Supply Fan (AHU-112B)
18	AHU No.13A Air Handling Unit Supply Fan (AHU-113A)
19	AHU No.13B Air Handling Unit Supply Fan (AHU-113B)
20	AHU No.14 Air Handling Unit Supply Fan (AHU-114)
21	AHU No.15 FUTURE MRI NIC Air Handling Unit Supply Fan (AHU-115)
22	AHU No.16 Air Handling Unit Supply Fan (AHU-116)
23	AHU No.17 Air Handling Unit Supply Fan (AHU-117)
24	AHU No.18 Air Handling Unit Supply Fan (AHU-118)
	AHU No.18 Air Handling Unit Return Fan (AHU-RF118)

	EQUIPMENT (CMH DESIGNATION) DIVISION 23
	BLUE IS PROJECT CO TO PERFORM PM's UNTIL PHASE 3 SUBSTANTIAL COMPLETION.
	ORANGE IS CMH MAINTENANCE TO TAKE OWNERSHIP AND PERFORM PM's AFTER FULL PHASE 2 COMPLETION AND FULLY COMMISSIONED.
	GREEN ARE ITEMS NOT INSTALLED UNTIL DURING PHASE 3 THUS CMH WILL TAKE OWNERSHIP UPON SUBSTANTIAL COMPLETION AND PROJECT CO IS TO PERFORM PM's UNTIL THAT TIME.
25	AHU No.19 Air Handling Unit Supply Fan (AHU-119)
	AHU No.19 Air Handling Unit Return Fan (AHU-RF119)
26	AHU No.20 Air Handling Unit Supply Fan (AHU-120)
27	Return Fan No.1 (AHU No.1) (AHU-101-RF)
28	Return Fan No.2 (AHU No.2) (AHU-102-RF)
29	Return Fan No.3A (AHU No.3A) (AHU-103A-RF)
30	Return Fan No.3B (AHU No.3B) (AHU-103B-RF)
31	Return Fan No.4 (AHU No.4) (AHU-104-RF)
32	Return Fan No.5 (AHU No.5) (AHU-105-RF)
33	Return Fan No.6A (AHU No.6A) (AHU-106A-RF)
34	Return Fan No.6B (AHU No.6B) (AHU-106B-RF)
35	Return Fan No.7 (AHU No.7) (AHU-107-RF)
36	Return Fan No.8A (AHU No.8A) (AHU-108A-RF)
37	Return Fan No.8B (AHU No.8B) (AHU-108B-RF)
38	Return Fan No.9A (AHU No.9A) (AHU-109A-RF)
39	Return Fan No.9B (AHU No.9B) (AHU-109B-RF)
40	Return Fan No.10 (AHU No.10) (AHU-110-RF)
41	Return Fan No.11 (AHU No.11) (AHU-111-RF)
42	Return Fan No.12A (AHU No.12A) (AHU-112A-RF)
43	Return Fan No.12B (AHU No.12B) (AHU-112B-RF)

EQUIPMENT (CMH DESIGNATION) DIVISION 23	
	BLUE IS PROJECT CO TO PERFORM PM's UNTIL PHASE 3 SUBSTANTIAL COMPLETION.
	ORANGE IS CMH MAINTENANCE TO TAKE OWNERSHIP AND PERFORM PM's AFTER FULL PHASE 2 COMPLETION AND FULLY COMMISSIONED.
	GREEN ARE ITEMS NOT INSTALLED UNTIL DURING PHASE 3 THUS CMH WILL TAKE OWNERSHIP UPON SUBSTANTIAL COMPLETION AND PROJECT CO IS TO PERFORM PM's UNTIL THAT TIME.
44	Return Fan No.13A (AHU No.13A) (AHU-113A-RF)
45	Return Fan No.13B (AHU No.13B) (AHU-113B-RF)
46	Return Fan No.14 FUTURE NIC (AHU No.14) (AHU-114-RF)
47	Return Fan No.15 (AHU No.15) (AHU-115-RF)
48	Return Fan No.16 (AHU No.16) (AHU-116-RF)
49	Return Fan No.17 (AHU No.17) (AHU-117-RF)
50	Return Fan No.18 (AHU No.18)
51	Return Fan No.19 (AHU No.19)
52	Return Fan No.20 (AHU No.20) (AHU-120-RF)
53	Supply Fan No.1 Pressurization Stair A1.STA.0.001 (SF-201)
54	Supply Fan No.2 Pressurization Stair A2. STA.0.002 (SF-202)
55	Supply Fan No.3 Pressurization Stair A3. STA.0.003 (SF-203)
56	Supply Fan No.4 Chiller Room A.0.102 (SF-204)
57	Supply Fan No.5 Pressurization Vestibule Level 1 CRC.1.101 (SF-205)
58	Supply Fan No.6 Pressurization Vestibule Level 2 CRC.2.101 (SF-206)
59	Supply Fan No.7 Pressurization Vestibule Level 3 CRC.3.101 (SF-207)
60	Exhaust Fan No.1 Sanitary A Wing North (EF-301)
61	Exhaust Fan No.2 Sanitary A Wing Core (EF-302)
62	Exhaust Fan No.3 Sanitary A Wing Core (EF-303)

EQUIPMENT (CMH DESIGNATION) DIVISION 23	
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	GREEN ARE ITEMS NOT INSTALLED UNTIL DURING PHASE 3 THUS CMH WILL TAKE OWNERSHIP UPON SUBSTANTIAL COMPLETION AND PROJECT CO IS TO PERFORM PM's UNTIL THAT TIME.
63	Exhaust Fan No.4 Sanitary A Wing Core (EF-304)
64	Exhaust Fan No.5 Electrical Room A.5.105 (EF-305)
65	Exhaust Fan No.6 Electrical Room A.5.102 (EF-306)
66	Exhaust Fan No.7 Manifold Room A.5.101 (EF-307)
67	Exhaust Fan No.8 Elevator Shaft (EF-308)
68	Exhaust Fan No.9 Elevator Shaft (EF-309)
69	Exhaust Fan No.10 Elevator Shaft (EF-310)
70	Exhaust Fan No.11 Level 0 Coffee Shop (EF-311)
71	Exhaust Fan No.12 Level 5 Mechanical Room A.5.101 (EF-312)
72	Exhaust Fan No.13 Level 5 Mechanical Room A.5.101 (EF-313)
73	Exhaust Fan No.14 Level 0 Mechanical Room A.0.101 (EF-314)
74	Exhaust Fan No.15 Level 0 Chiller Room A.0.102 (EF-315)
75	Exhaust Fan No.16 Level 0 Mechanical Room A.0.104 (EF-316)
76	Exhaust Fan No.17 Level 0 Electrical Room A.0.106 (EF-317)
77	Exhaust Fan No.18 Level 0 Electrical Room A.0.001 (EF-318)
78	Exhaust Fan No.20 Level 0 Mechanical Room A.0.120 (EF-320)
79	Exhaust Fan No.21 Level 1 Reprocessing (EF-321)

EQUIPMENT (CMH DESIGNATION) DIVISION 23	
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	ORANGE IS CMH MAINTENANCE TO TAKE OWNERSHIP AND PERFORM PM's AFTER FULL PHASE 2 COMPLETION AND FULLY COMMISSIONED.
	GREEN ARE ITEMS NOT INSTALLED UNTIL DURING PHASE 3 THUS CMH WILL TAKE OWNERSHIP UPON SUBSTANTIAL COMPLETION AND PROJECT CO IS TO PERFORM PM's UNTIL THAT TIME.
80	Exhaust Fan No.22A PACU (EF-322A)
81	Exhaust Fan No.22B PACU (EF-322B)
82	Exhaust Fan No.23 Level 0 Mech Room (EF-323)
83	Exhaust Fan No.24 Level 1 Sanitary (EF-324)
84	Exhaust Fan No.25 Level 1 Sanitary (EF-325)
85	Exhaust Fan No.26 Level 0 Sanitary (EF-326)
86	Exhaust Fan No.27A Bronchoscopy (EF-327A)
87	Exhaust Fan No.27B Bronchoscopy (EF-327B)
88	Exhaust Fan No.28B Procedure (EF-328B)
89	Exhaust Fan No.29 Level 1 Sanitary (EF-329)
90	Exhaust Fan No.30 Waiting A.1.300 (EF-330)
91	Exhaust Fan No.31 Sterilizers A.0.300B (EF-331)
92	Exhaust Fan No.32 Decontamination A..1.445 (EF-332)
93	Exhaust Fan No.33 Level 0 and 1 Sanitary (EF-333)
94	Exhaust Fan No.34 CCU Sanitary (EF-334)
95	Exhaust Fan No.35 Level 2 Mech Room (EF-335)
96	Exhaust Fan No.36 Ambulance Garage (EF-336)
97	Exhaust Fan No.37 Dryer Booster Fan (EF-337)
98	Exhaust Fan No.38 Levels 2,3,4 B-Block Sanitary (EF-338)

	EQUIPMENT (CMH DESIGNATION) DIVISION 23
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	GREEN ARE ITEMS NOT INSTALLED UNTIL DURING PHASE 3 THUS CMH WILL TAKE OWNERSHIP UPON SUBSTANTIAL COMPLETION AND PROJECT CO IS TO PERFORM PM's UNTIL THAT TIME.
99	Exhaust Fan No.39 Levels 2,3,4 B-Block Sanitary (EF-339)
100	Exhaust Fan No.40 Histology Stores B.1.102 (EF-340)
101	Exhaust Fan No.41 RT/BioMedical Equipment A.0.115 (EF-341)
102	Exhaust Fan No.42 MDRD Decontamination (EF-342)
103	Exhaust Fan No.43 MDRD Washers (EF-343)
104	Exhaust Fan No.44 MDRD Cart Washer (EF-344)
108	Exhaust Fan No.45 Level 0 Electrical Room A.0.106 (EF-345)
109	Range Hood
110	Laboratory Exhaust Fan 1A/1B
111	Laboratory Exhaust Fan 2
112	Laboratory Exhaust Fan 3
113	Isolation Room Exhaust Fan 1A/1B Level 2 A Wing Medical Surgical A2.220 Isolation) (EF01-A/B)
114	Isolation Room Exhaust Fan 2A/2B (Level 1 A Wing Labour Birthing A1.256 Isolation) (EF02-A/B)
115	Isolation Room Exhaust Fan 3A/3B (Level 4 A Wing SCN A4.179 Isolation) (EF03-A/B)
116	Isolation Room Exhaust Fan 4A/4B (Level 3 A Wing Mental Health A3.154 Isolation) (EF04-A/B)
117	Isolation Room Exhaust Fan 5A/5B (Level 4 A Wing Paeds A4.136 Isolation) (EF05-A/B)
118	Isolation Room Exhaust Fan 6A/6B (Level 2 A Wing ICU A2.134 APR) (EF06-A/B)

EQUIPMENT (CMH DESIGNATION) DIVISION 23	
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	ORANGE IS CMH MAINTENANCE TO TAKE OWNERSHIP AND PERFORM PM's AFTER FULL PHASE 2 COMPLETION AND FULLY COMMISSIONED.
	GREEN ARE ITEMS NOT INSTALLED UNTIL DURING PHASE 3 THUS CMH WILL TAKE OWNERSHIP UPON SUBSTANTIAL COMPLETION AND PROJECT CO IS TO PERFORM PM's UNTIL THAT TIME.
119	Isolation Room Exhaust Fan 7A/7B (Level 2 A Wing ICU A2.124 APR) (EF07-A/B)
120	Isolation Room Exhaust Fan 8A/8B (Level 1 A Wing Emergency A1.467 Isolation) (EF08-A/B)
121	Isolation Room Exhaust Fan 9A/9B (Level 1 A Wing Emergency A1.488 Isolation) (EF09-A/B)
122	Isolation Room Exhaust Fan 10A/10B (Level 1 A Wing Resuscitation A1.449 APR) (EF10-A/B)
123	Isolation Room Exhaust Fan 11A/11B (Level 1 B Wing PACU B1.250 Isolation) (EF11-A/B)
124	Isolation Room Exhaust Fan 12A/12B (Level 1 B Wing PACU B1.254 Isolation) (EF12-A/B)
125	Isolation Room Exhaust Fan 13A/13B (Level 2 B Wing Med Surg Inpatient B2.216 APR) (EF13-A/B)
126	Isolation Room Exhaust Fan 14A/14B (Level 3 B Wing Rehabilitation B3.216 APR) (EF14-A/B)
127	Isolation Room Exhaust Fan 15A/15B (Level 4 B Wing Med Surg Inpatient B4.216 APR) (EF15-A/B)
128	Isolation Room Exhaust Fan 16A/16B (Level 2 B Wing Med Surg Inpatient B2.126 APR) (EF16-A/B)
129	Isolation Room Exhaust Fan 17A/17B (Level 4 B Wing Med Surg Inpatient B4.126 APR) (EF17-A/B)
130	Pump No. 1A Chiller No.1 (CHLR1-P1A)
131	Pump No. 1B (Standby) Chiller No.1 (CHLR1-P1B)
132	Pump No. 2A Chiller No.2 (CHLR1-P2A)
133	Pump No. 2B (Standby) Chiller No.2 (CHLR1-P2A)

EQUIPMENT (CMH DESIGNATION) DIVISION 23	
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	ORANGE IS CMH MAINTENANCE TO TAKE OWNERSHIP AND PERFORM PM's AFTER FULL PHASE 2 COMPLETION AND FULLY COMMISSIONED.
	GREEN ARE ITEMS NOT INSTALLED UNTIL DURING PHASE 3 THUS CMH WILL TAKE OWNERSHIP UPON SUBSTANTIAL COMPLETION AND PROJECT CO IS TO PERFORM PM's UNTIL THAT TIME.
134	Pump No. 3 Condenser (P-003)
135	Pump No. 4 Condenser (P-004)
136	Pump No. 5A Hot Water Glycol (AHU No.10) (P-005A)
137	Pump No.5B (Standby) Hot Water Glycol (AHU No.10) (P-005B)
138	Pump No.6 Hot Water Glycol (AHU No.10 Purge) (P-006)
139	Pump No. 7A Snow Melting System (P-007A)
140	Pump No. 7B Snow Melting System (P-007B)
141	Pump No. 8A Hot Water Glycol (AHU No. 11, 12A, 12B, 13A, 13B) (P-008A)
142	Pump No. 8B Hot Water Glycol (Standby) (AHU No. 11, 12A, 12B, 13A, 13B) (P-008B)
143	Pump No. 9 Hot Water Glycol Purge (AHU No. 11, 12A, 12B, 13A, 13B) (P-009)
144	Pump No. 10A Hot Water Glycol (AHU No. 1, 2,3A,3B, 4,5,6A,6B,7,8A,8B,9A,9B) (P-510A)
145	Pump No. 10B Hot Water Glycol Standby (AHU No. 1, 2,3A,3B, 4, 5, 6A, 6B, 7, 8A, 8B, 9A, 9B) (P-510B)
146	Pump No. 11 Hot Water Glycol Purge (AHU No. 1, 2,3A,3B, 4, 5, 6A, 6B, 7, 8A, 8B, 9A, 9B) (P-511)
147	Pump No. 12 Hot Water Reheat Coils Block A (P-512)
148	Pump No. 13 Hot Water Radiation Block A (P-513)
149	Pump No. 14 (Standby) Hot Water Reheat Coils and Radiation Block A (P-514)
150	Pump No. 15A Hot Water Glycol (AHU No.14, 15, 16) (P-215A)
151	Pump No. 15B Hot Water Glycol Standby (AHU No.14, 15, 16) (P-215B)
152	Pump No. 16 Hot Water Glycol Purge (AHU No.14, 15, 16) (P-216)

	EQUIPMENT (CMH DESIGNATION) DIVISION 23
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	ORANGE IS CMH MAINTENANCE TO TAKE OWNERSHIP AND PERFORM PM's AFTER FULL PHASE 2 COMPLETION AND FULLY COMMISSIONED.
	GREEN ARE ITEMS NOT INSTALLED UNTIL DURING PHASE 3 THUS CMH WILL TAKE OWNERSHIP UPON SUBSTANTIAL COMPLETION AND PROJECT CO IS TO PERFORM PM's UNTIL THAT TIME.
153	Pump No. 17A Hot Water Glycol (AHU No.18, 19) (P-517A)
154	Pump No. 17B Hot Water Glycol (AHU No.18, 19) (P517B)
155	Pump No. 18 Hot Water Glycol Purge (AHU No.18, 19) (P-518)
156	Pump No. 19 Hot Water Reheat Coils Block B (P-519)
157	Pump No. 20 Hot Water Radiation Block B (P-520)
158	Pump No. 21 Hot Water Reheat and Radiation Standby Block B (P-521)
159	Pump No. 22 Hot Water Reheat Block A (P-022)
160	Pump No. 23 Hot Water Radiation Block A (P-023)
161	Pump No. 24 Hot Water Reheat and Radiation Standby Block A (P-024)
162	Pump No. 25A Hot Water Preheat Coils Block B (P-025A)
163	Pump No. 25B Hot Water Preheat Coils Standby Block B (P-025B)
164	Pump No. 26A Hot Water Reheat Coils Block B (P-026A)
165	Pump No. 26B Hot Water Reheat Coils Block B (P-026B)
166	Pump No. 27A Hot Water Radiation Block B (P-027A)
167	Pump No. 27B Hot Water Radiation Block B (P-027B)
168	Pump No. 28A Hot Water Glycol (AHU No.20) (P-028A)
169	Pump No. 28B Hot Water Glycol (AHU No.20) (P-028B)
170	Pump No. 29 Hot Water Glycol Purge (AHU No.20) (P-029)
171	Pump No. 30A Hot Water Glycol (AHU No.17) (P-030A)

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	GREEN ARE ITEMS NOT INSTALLED UNTIL DURING PHASE 3 THUS CMH WILL TAKE OWNERSHIP UPON SUBSTANTIAL COMPLETION AND PROJECT CO IS TO PERFORM PM's UNTIL THAT TIME.
172	Pump No. 30B Hot Water Glycol (AHU No.17) (P-030B)
173	Pump No. 31 Hot Water Glycol Purge (AHU No.17) (P-031)
174	Condensate Receiver No.1 (CR-01)
175	Condensate Receiver No.2 (CR-02)
176	Condensate Receiver No.3 (CR-03)
177	Condensate Receiver No.4 (CR-04)
178	Condensate Receiver No.5 (CR-05)
179	Condensate Receiver No.6 (CR-06)
180	Condensate Receiver No.7 (CR-07)
181	Condensate Receiver No.8 (CR-08)
182	Condensate Receiver No.9 (CR-09)
183	Condensate Receiver No.10 (CR-10)
184	Condensate Receiver No.11 (CR-11)
185	Glycol System No.1
186	Glycol System No.2
187	Glycol Fill System No.3
188	Glycol System No.4
189	Glycol System No.5
190	Glycol System No.6
191	Glycol System No.7
192	Glycol Fill Pump No.8
193	Chiller No.1 (CHLR-1)
194	Chiller No.2 (CHLR-2)
195	Cooling Tower No.1 (CT-1)
196	Cooling Tower No.2 (CT-2)
197	Fire / Smoke Control Dampers
198	Air Curtain Heater AC1

EQUIPMENT (CMH DESIGNATION) DIVISION 23	
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	ORANGE IS CMH MAINTENANCE TO TAKE OWNERSHIP AND PERFORM PM's AFTER FULL PHASE 2 COMPLETION AND FULLY COMMISSIONED.
	GREEN ARE ITEMS NOT INSTALLED UNTIL DURING PHASE 3 THUS CMH WILL TAKE OWNERSHIP UPON SUBSTANTIAL COMPLETION AND PROJECT CO IS TO PERFORM PM's UNTIL THAT TIME.
199	Air Curtain Heater AC2
200	Air Curtain Heater AC3
201	Air Curtain Heater AC4
202	Cabinet Unit Heater FF1 AND FF2
203	Unit Heaters UH1 & UH2
204	Unit Heaters UH3
205	Air Conditioning Unit No.1 (ACU)
206	Condensing Unit No.1 (DS-A01)
207	Fan Coil Unit No.1 (FC-1)
208	Ductless Air Conditioning System-A Ductless Air Conditioning Unit A-1 (DS-A01-01)
209	Condensing Unit A-1 (DS-A01)
210	Ductless Air Conditioning Unit A-2 (DS-A02-01)
211	Condensing Unit A-2 (DS-A02)
212	Ductless Air Conditioning Unit A-3 (DS-A03-01)
213	Condensing Unit A-3 (DS-A03)
214	Ductless Air Conditioning Unit A-4 (DS-A04-01)
215	Condensing Unit A-4 (DS-A04)
216	Ductless Air Conditioning Unit A-5 (DS-A05-01)
217	Condensing Unit A-5 (DS-A05)
218	Ductless Air Conditioning System-B Ductless Air Conditioning Unit B-1 (DS-B01-01)
219	Ductless Air Conditioning Unit B-2 (DS-B02-01)
220	Ductless Air Conditioning Unit B-3 (DS-B03-01)
221	Ductless Air Conditioning Unit B-4 (DS-B04-01)
222	Ductless Air Conditioning Unit B-5 (DS-B05-01)
223	Condensing Unit B-1 (DS-B01)

	EQUIPMENT (CMH DESIGNATION) DIVISION 23
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	ORANGE IS CMH MAINTENANCE TO TAKE OWNERSHIP AND PERFORM PM's AFTER FULL PHASE 2 COMPLETION AND FULLY COMMISSIONED.
	GREEN ARE ITEMS NOT INSTALLED UNTIL DURING PHASE 3 THUS CMH WILL TAKE OWNERSHIP UPON SUBSTANTIAL COMPLETION AND PROJECT CO IS TO PERFORM PM's UNTIL THAT TIME.
	Ductless Air Conditioning System-C
224	Ductless Air Conditioning Unit C-1 (DS-C01-01)
225	Ductless Air Conditioning Unit C-2 (DS-C02-01)
226	Ductless Air Conditioning Unit C-3 (DS-C03-01)
227	Ductless Air Conditioning Unit C-4 (DS-C04-01)
228	Ductless Air Conditioning Unit C-5 (DS-C05-01)
229	Condensing Unit C-1 (DS-C01)
	Ductless Air Conditioning System-D
230	Ductless Air Conditioning Unit D-1 (DS-D01-01)
231	Ductless Air Conditioning Unit D-2 (DS-D02-01)
232	Ductless Air Conditioning Unit D-3 (DS-D03-01)
233	Condensing Unit D-1 (DS-D01)
	Ductless Air Conditioning System-E
234	Ductless Air Conditioning Unit E-1 (DS-E01-01)
235	Condensing Unit E-1 (DS-E01)
	Ductless Air Conditioning System-F
236	Ductless Air Conditioning Unit F-1 (DS-F01-01)
237	Condensing Unit F-1 (DS-F01)
	Ductless Air Conditioning System-G
238	Ductless Air Conditioning Unit G-1 (DS-G01-01)
239	Ductless Air Conditioning Unit G-2 (DS-G02-01)
240	Ductless Air Conditioning Unit G-3 (DS-G03-01)
241	Ductless Air Conditioning Unit G-4 (DS-G04-01)
242	Ductless Air Conditioning Unit G-5 (DS-G05-01)
243	Ductless Air Conditioning Unit G-6 (DS-G06-01)
244	Ductless Air Conditioning Unit G-7 (DS-G07-01)
245	Ductless Air Conditioning Unit G-8 (DS-G08-01)
246	Ductless Air Conditioning Unit G-9 (DS-G09-01)
247	Ductless Air Conditioning Unit G-10 (DS-G10-01)
248	Ductless Air Conditioning Unit G-11 (DS-G11-01)

	EQUIPMENT (CMH DESIGNATION) DIVISION 23
	BLUE IS PROJECT CO TO PERFORM PM's UNTIL PHASE 3 SUBSTANTIAL COMPLETION.
	ORANGE IS CMH MAINTENANCE TO TAKE OWNERSHIP AND PERFORM PM's AFTER FULL PHASE 2 COMPLETION AND FULLY COMMISSIONED.
	GREEN ARE ITEMS NOT INSTALLED UNTIL DURING PHASE 3 THUS CMH WILL TAKE OWNERSHIP UPON SUBSTANTIAL COMPLETION AND PROJECT CO IS TO PERFORM PM's UNTIL THAT TIME.
249	Ductless Air Conditioning Unit G-12 (DS-G12-01)
250	Ductless Air Conditioning Unit G-13 (DS-G13-01)
251	Ductless Air Conditioning Unit G-14 (DS-G14-01)
252	Ductless Air Conditioning Unit G-15 (DS-G15-01)
253	Ductless Air Conditioning Unit G-16 (DS-G16-01)
254	Ductless Air Conditioning Unit G-17 (DS-G17-01)
255	Ductless Air Conditioning Unit G-18 (DS-G18-01)
256	Ductless Air Conditioning Unit G-19 (DS-G19-01)
257	Ductless Air Conditioning Unit G-20 (DS-G20-01)
258	Ductless Air Conditioning Unit G-21 (DS-G21-01)
259	Condensing Unit G-1 (DS-G01A)
260	Condensing Unit G-2 (DS-G01B)
	Ductless Air Conditioning System-H
261	Ductless Air Conditioning Unit H-1 (DS-H01-01)
262	Ductless Air Conditioning Unit H-2 (DS-H02-01)
263	Ductless Air Conditioning Unit H-3 (DS-H03-01)
264	Ductless Air Conditioning Unit H-4 (DS-H04-01)
265	Ductless Air Conditioning Unit H-5 (DS-H05-01)
266	Ductless Air Conditioning Unit H-6 (DS-H06-01)
267	Ductless Air Conditioning Unit H-7 (DS-H07-01)
268	Ductless Air Conditioning Unit H-8 (DS-H08-01)
269	Condensing Unit H-1 (DS-H01)
	Ductless Air Conditioning System-J
270	Ductless Air Conditioning Unit J-1 (DS-J01-01)
271	Condensing Unit J-1 (DS-J01)
	Ductless Air Conditioning System-K
272	Ductless Air Conditioning Unit K-1 (DS-K01-01)
273	Condensing Unit K-1 (DS-K01)
	Ductless Air Conditioning System-L
274	Ductless Air Conditioning Unit L-1 (DS-L01-01)

	EQUIPMENT (CMH DESIGNATION) DIVISION 23
	BLUE IS PROJECT CO TO PERFORM PM's UNTIL PHASE 3 SUBSTANTIAL COMPLETION.
	ORANGE IS CMH MAINTENANCE TO TAKE OWNERSHIP AND PERFORM PM's AFTER FULL PHASE 2 COMPLETION AND FULLY COMMISSIONED.
	GREEN ARE ITEMS NOT INSTALLED UNTIL DURING PHASE 3 THUS CMH WILL TAKE OWNERSHIP UPON SUBSTANTIAL COMPLETION AND PROJECT CO IS TO PERFORM PM's UNTIL THAT TIME.
275	Ductless Air Conditioning Unit L-2 (DS-L02-01)
276	Condensing Unit L-1 (DS-L01)
277	Ductless Air Conditioning System-M Ductless Air Conditioning Unit M-1 (DS-M01-01)
278	Condensing Unit M-1 (DS-M01)

CMH Demand Bond

Bond No.: _____

Bond Amount: **\$103,000,000.00**
 (Declining Balance)

KNOW ALL PERSONS BY THESE PRESENTS, THAT WE, **Zurich Insurance Company Ltd**, a corporation organized and existing under the laws of Switzerland and duly authorized to transact the business of Suretyship in all provinces and territories of Canada (hereinafter called "**Surety**"), are held and firmly bound unto Cambridge Memorial Hospital (hereinafter called "**Obligee**") in the full and just sum of **One Hundred and Three Million** dollars (**\$103,000,000.00**) ("**Demand Amount**") of good and lawful money of Canada to be paid to the Obligee, the payment of which, well and truly to be made, we bind ourselves, our heirs, administrators, executors, successors and assigns, jointly and severally, firmly by these presents.

WHEREAS the Obligee entered into a written contract with 2423402 Ontario Inc. ("**Project Co**") dated August 28, 2014 pursuant to which, among other things, Project Co agreed to perform the Work as defined in the agreement for a project known as the Cambridge Memorial Hospital Redevelopment Project (the "**Project**");

WHEREAS Project Co entered into a Construction Contract with Bondfield Construction Company Limited ("**Bondfield**") dated the 28th day of August, 2014 (the "**Construction Contract**") for the Project;

AND WHEREAS the Surety issued Performance Bond No. 6342957 to Project Co dated the 28th day of August, 2014 (the "**Performance Bond**") and a Multiple Obligee Rider naming the Obligee as an Additional Named Obligee under the Performance Bond with respect to the Construction Contract;

AND WHEREAS Bondfield is in default of the Construction Contract and has been declared in default under the Performance Bond;

AND WHEREAS a proper demand has been made on the Performance Bond;

AND WHEREAS the Surety has entered into a completion contract with EllisDon Corporation (the "**Completion Contract**") for the completion of the Project;

AND WHEREAS as a result of the demand on the Performance Bond, the Surety has entered into Minutes of Settlement with the Obligee and others dated _____ (the "**Settlement**") for the completion of the Project;

AND WHEREAS pursuant to the Settlement, the Surety is to provide the Obligee with this Demand Bond as security for the completion of the Construction Work by the Surety, as

defined in the Construction Contract and amended in the Settlement;

AND WHEREAS the Surety has provided this Demand Bond to the Obligee to guarantee completion of the Construction Work by the Surety, as defined in the Construction Contract and amended in the Settlement;

NOW THEREFORE, in consideration of Ten (\$10.00) Dollars and other good and valuable consideration, receipt of which is hereby acknowledged by each of the parties;

This Demand Bond is executed by the Surety and accepted by the Obligee subject to the following express conditions:

1. If the Obligee declares the Surety is in default under the Settlement and the Obligee anticipates, in its sole and unfettered discretion, it may therefore suffer any loss or damage in excess of the Balance of the Guaranteed Price (as defined in the Settlement), then the Obligee may make a demand for payment under this Demand Bond for the Surety to unconditionally pay to the Obligee all or a portion of the Demand Amount (a "**Demand**").
2. A Demand(s) shall be made by the Obligee in the form attached hereto as Schedule A.
3. The Surety shall pay the Obligee the amount set out in the Demand no later than ten (10) business days after the Surety's receipt of a Demand from the Obligee.
4. The Surety's obligation to pay the amount set out in a Demand will arise solely upon the Obligee delivering a Demand to the Surety; which shall be accepted by the Surety as conclusive evidence that the conditions for demand against this Demand Bond have occurred and the amount set out in the Demand is payable to the Obligee from the Surety. All payments shall be made by the Surety to the Obligee free and clear without deduction, setoff or withholding by the Surety.
5. The Surety shall make payment of the amount of the Demand(s) notwithstanding any dispute between the Surety and the Obligee, and the Surety shall not assert as a defense or grounds for not making payment of the amount of the Demand(s), in whole or in part, that a default has not occurred, that the amount set out in the Demand is not appropriate, warranted or otherwise not in accordance with the Settlement or that the Obligee is in default of its obligations under the Settlement. Provided, however, that any payment made by the Surety under this Demand Bond shall not be, and shall not be deemed to be, an admission of liability on behalf of the Surety and will be made without prejudice to any right or cause of action which the Surety may have against the Obligee, including any claim that the Demand was unreasonable, that a default has not occurred, that the amount set out in the Demand was not appropriate, warranted or otherwise not in accordance with the Settlement or that the Obligee was in default of its obligations under the Settlement.

6. The amount of this Demand Bond shall be reduced monthly, effective on the first of each month, beginning November 1, 2020, by the percentage of the Construction Work certified as complete by the Consultant under the Completion Contract in the prior month in accordance with the Settlement, until there is a Demand by the Obligee or upon Final Completion of the Construction Work, whichever is earlier.
7. The monthly reduction of this Demand Bond, provided for above, and all payments made by the Surety to the Obligee under this Demand Bond shall reduce the amount of this Demand Bond dollar for dollar.
8. The Surety represents and warrants to the Obligee that:
 - a. The Surety has the legal power to execute and deliver this Demand Bond and to perform in accordance with its terms. All necessary actions have been taken to authorize the execution and delivery of this Demand Bond and performance in accordance with its terms. This Demand Bond is a legal, valid, and binding obligation of the Surety.
 - b. There is no fact that the Surety has not disclosed in writing to the Obligee of which the Surety is aware or which the Surety can reasonably foresee that would materially adversely affect the Surety or the ability of the Surety to perform its obligations under this Demand Bond.
9. The Surety shall not be liable under this Demand Bond for any sum greater than the amount of this Demand Bond (as reduced from time to time in accordance with its terms).
10. No right of action shall accrue on this Demand Bond, to or for the use of, any persons or corporation other than the Obligee named herein.

THIS DEMAND BOND shall in all respects be interpreted in accordance with the laws of the Province of Ontario.

IN WITNESS WHEREOF, the Surety has signed and sealed this Demand Bond on this _____.

Cambridge Memorial Hospital

Zurich Insurance Company Ltd

By: _____
 Name:
 Title:

By: _____
 Name:
 Title: Attorney-in-fact

**“Schedule A”
DEMAND**

[Date]

Zurich Insurance Company Ltd
Suite 5500, 100 King St. West
Toronto, ON M5X 1C9

Attention: Surety Claims

RE: Demand Bond No.:
 Obligee: Cambridge Memorial Hospital

To Whom It Will Concern:

In accordance with the conditions of the above referenced Demand Bond we hereby certify that the Surety is in default of its obligations under the Minutes of Settlement and the Obligee anticipates it may suffer any loss or damage in excess of the Balance of the Guaranteed Price and that we are entitled to make demand against the Demand Bond.

We hereby demand that the Surety honour its obligations under the Demand Bond and we hereby demand payment forthwith of \$_____ under the terms of the Demand Bond.

Payment should be made as follows:
[Insert payment instructions – including bank wire instructions as applicable]

Yours truly,

Cambridge Memorial Hospital

By: _____

Name:

Title:

I have authority to bind the Hospital.

Zurich – CMH Release

RELEASE

THIS RELEASE (the “**Release**”) is made as of _____, 2020

BETWEEN:

2423402 ONTARIO INC., (“Project Co”) by Alvarez & Marsal Canada Inc. as its court appointed receiver and not in its personal or corporate capacity

OF THE FIRST PART,

- and -

BONDFIELD CONSTRUCTION COMPANY LIMITED (“Bondfield”)

OF THE SECOND PART,

- and -

ZURICH INSURANCE COMPANY LTD. (“Zurich”)

OF THE THIRD PART,

- and -

CAMBRIDGE MEMORIAL HOSPITAL (“CMH”)

OF THE FOURTH PART,

- and -

ONTARIO INFRASTRUCTURE AND LANDS CORPORATION (“IO”)

OF THE FIFTH PART,

(collectively, the “**Parties**” and individually a “**Party**”)

WHEREAS:

- A. Project Co entered into a Project Agreement with CMH dated August 28, 2014 (the “**Project Agreement**”) pursuant to which, among other things, Project Co agreed to perform the Work as defined in the Project Agreement (the “**Project**”).
- B. Certain of the Parties entered into various agreements in connection with the Project (collectively, the “**Agreements**”) including, without limitation, the following:

1. the Project Agreement; and
 2. a Construction Contract between Project Co and Bondfield made as of August 28, 2014.
- C. Zurich issued the following bonds in connection with the Project (collectively, the “**Bonds**”):
1. Performance Bond No. 6342957 in the amount of \$87,377,250;
 2. Labour and Material Payment Bond No. 6342957 in the amount of \$87,377,250; and
 3. Demand Bond No. 6342958 in the amount of \$8,737,725 (the “**Lender’s Demand Bond**”).
- D. On December 6, 2018, at the request of the Agent, Alvarez & Marsal Canada Inc. (“**A&M**”) was appointed as receiver (but not manager) of Project Co (in such capacity and not in its personal or corporate capacity, the “**Receiver**”) pursuant to an Appointment Order issued by the Honourable Mr. Justice Hainey (the “**Receivership Order**”) in proceedings before the Ontario Superior of Justice (Commercial List) bearing Court File No. CV-18-610236-00CL (the “**Receivership Proceedings**”): (i) without taking possession or control of Project Co’s business, assets or books and records, and (ii) with the specific duties, obligations, authorizations and protections as more specifically set forth in the Receivership Order.
- E. The Parties (other than Project Co) entered into Minutes of Settlement on the date hereof (the “**Settlement**”) wherein, among other things:
1. CMH and IO agreed to provide a release to Project Co, Bondfield and Zurich in the form herein; and
 2. Bondfield, and Zurich agreed to provide a release to CMH and IO in the form herein.
- F. On November 6, 2020, at the request of the Agent, the Ontario Superior Court of Justice [Commercial List] granted an order in the Receivership Proceedings which, among other things, authorized, empowered and directed the Receiver to execute this Release for and on behalf of Project Co.

NOW THEREFORE in consideration of the mutual promises contained in the Settlement and for good and valuable consideration, the receipt and sufficiency of which are hereby irrevocably acknowledged, the Parties hereby agree as follows:

1. All terms not otherwise defined herein have the meanings ascribed to them in the Settlement.
2. Nothing in this Release shall affect the admissions, obligations and undertakings arising out of the Settlement. For clarity, Zurich’s admission of liability under the Performance Bond cannot under any circumstance be resiled, undone or withdrawn.

3. CMH and IO, on behalf of themselves, and their respective partners, administrators, agents, servants, representatives, employees, officers, directors, affiliates, successors and assigns (hereinafter collectively referred to as the "**CMH Parties**"), hereby release, remise, and forever discharge (i) Project Co, Bondfield and Zurich, as well as their partners, administrators, agents, servants, representatives, employees, officers, directors, affiliates, successors, and assigns (hereinafter collectively referred to as the "**Zurich Parties**"), and (ii) A&M and the Receiver, as well as their partners, administrators, agents, servants, representatives, employees, officers, directors, affiliates, successors, and assigns (hereinafter collectively referred to as the "**Receiver Parties**") from any and all actions, causes of action, debts, liabilities, damages, losses, costs, expenses, claims, demands, and complaints of any kind in connection with the Project which CMH or IO (or any of them) knew of prior to, or reasonably ought to have known by, the Effective Date (the "**CMH Released Claims**"). For clarity, CMH shall not claim any damages or losses subsequent to the Effective Date except for any failure by the Zurich Parties to perform their obligations and undertakings under the Settlement, including, in the case of Zurich, the completion of the Construction Work.
4. FOR GREATER CERTAINTY: the CMH Released Claims expressly exclude, *inter alia*, (a) the Zurich Parties' obligations in respect of the Construction Work at the Project, including any obligation to remedy any deficiencies or defects in the Construction Work, as required under the Settlement; and (b) any liability of the Zurich Parties with respect to Warranty as required under the Settlement.
5. Zurich Parties, on behalf of themselves, and their respective partners, administrators, agents, servants, representatives, employees, officers, directors, affiliates, successors and assigns, hereby release, remise, and forever discharge the CMH Parties, the Receiver Parties and Her Majesty the Queen in Right of Ontario (the "**Crown**") and their respective partners, administrators, agents, servants, representatives, employees, officers, directors, Ministers, affiliates, successors and assigns, from any and all actions, causes of action, debts, liabilities, damages, losses, costs, expenses, claims, demands, and complaints of any kind in connection with the Project which the Zurich Parties (or any of them) knew of prior to, or reasonably ought to have known by, the Effective Date, including without limitation any subrogated and/or assigned liens and/or trust claims, any and all pending, disputed, and/or outstanding change orders, contemplated change orders, or change directives, and any other delay or other claims, other than as set out in the Settlement (the "**Zurich Released Claims**").
6. FOR GREATER CERTAINTY and subject to paragraphs 40 and 41 of the Settlement, the Zurich Released Claims exclude any subrogated or assigned liens and/or trust claims in connection with the Legislative Holdback for Construction Work performed by Zurich under the Settlement after the Effective Date.
7. SAVE AND EXCEPT for the Auditor Claims, which are defined on **Schedule "A"** to this Release, the Parties acknowledge and agree that no Party will commence, maintain or continue any claim, demand or complaint, or take any action or proceeding as against any individual, corporation, partnership, the Crown, or any other entity in relation to or arising out of the CMH Released Claims or the Zurich Released Claims anywhere in the world, including without limitation a claim under the *Negligence Act*, R.S.O. 1990, c. N.1 and the amendments thereto and/or under any successor legislation thereto, and/or under the *Rules of Civil Procedure*, R.R.O. 1990, Reg. 194 which results in a claim, demand,

complaint, action or proceeding being taken against any of the Parties with respect to the CMH Released Claims or the Zurich Released Claims, including without limiting the generality of the foregoing, a claim for contribution or indemnity. For greater certainty, the CMH Released Claims and the Zurich Released Claims include any claim, demand or complaint, action or proceeding, whether subrogated, assigned or otherwise held by Zurich or CMH, as against Stantec Architecture Ltd., Architects, in connection with any matters relating to the Project prior to the Effective Date. Nothing herein is an acknowledgment by any Party that the defendants in the Auditor Claims have any valid claim against the CMH Parties.

8. The Parties agree and understand that if any of the Parties commences or continues a claim, demand or complaint, or takes any action or proceeding in relation to or arising out of the CMH Released Claims or the Zurich Released Claims and a Party is added to such proceedings in any manner whatsoever, whether justified in law or not, the Party that commenced or continued the proceedings will immediately discontinue those proceedings and shall be liable to the Party against whom the proceedings are brought or threatened for their legal costs incurred in any such proceeding on a substantial indemnity scale. This Release shall operate conclusively as an estoppel in the event of any claim, demand, complaint, action or proceeding which might be brought in the future by any of the Parties with respect to the CMH Released Claims or the Zurich Released Claims. This Release may be pleaded in the event any such claim, demand, complaint, action or proceeding is brought, as a complete defence and reply, and may be relied upon in any proceeding to dismiss the claim, demand, complaint, action or proceeding, on a summary basis and no objection will be raised by the Party in any subsequent action that the other parties in the subsequent action were not privy to the formation of this Release. Provided that this paragraph 8 does not apply to the Auditor Claims.
9. If there is a conflict or inconsistency between the provisions of this Release and the provisions of the Settlement, the provisions of the Settlement will prevail to the extent of the conflict or inconsistency. Nothing in this Release is intended to or will impair or limit, as between any of the Parties, the obligations of any of the Parties under the Settlement.
10. If any provision of this Release or any part of any provision of this Release is held under any circumstances to be invalid or unenforceable in any jurisdiction, then (i) such provision or part thereof shall, with respect to such circumstances and in such jurisdiction, be deemed amended to conform to applicable laws so as to be valid and enforceable to the fullest possible extent, (ii) the invalidity or unenforceability of such provision or part thereof under such circumstances and in such jurisdiction shall not affect the validity or enforceability of such provision or part thereof under any other circumstances or in any other jurisdiction, and (iii) such invalidity or unenforceability of such provision or part thereof shall not affect the validity or enforceability of the remainder of such provision or the validity or enforceability of any other provision of this Release. Each provision of this Release is separable from every other provision of this Release, and each provision of this Release is separable from every other part of such provision.
11. This Release shall be governed by the laws of the Province of Ontario, without regard to conflicts of laws or choice of law principles, and the federal laws of Canada applicable therein. The courts of the Province of Ontario, and any appellate court thereof, shall have exclusive jurisdiction to adjudicate any dispute or claim arising out of or in connection with this Release. Each of the Parties hereby irrevocably and unconditionally submits to the

jurisdiction of the courts in the Province of Ontario, in respect of any proceedings brought in connection with this Release. Each of the Parties acknowledges and agrees that the courts in the Province of Ontario are the most appropriate and convenient courts to settle any such dispute in connection with this Release and agrees not to argue to the contrary, and waives any objection to those courts on the grounds of inconvenient forum or otherwise in relation to proceedings in connection with this Release.

12. Except as expressly provided herein and except for the Settlement, this Release sets forth the entire agreement of the Parties with respect to the CMH Released Claims and the Zurich Released Claims, and supersedes any prior written or oral agreement or arrangement, and all agreements, covenants, representations and warranties, express and implied, oral and written, of the Parties with regard to the subject matter of this Release are contained herein. Nothing in this Release creates any implied duty or obligation on the part of any Party to any other.
13. No modification of or amendment to this Release shall be valid unless in writing signed by the Parties hereto referring specifically to this Release and stating the Parties' intention to modify or amend the same. No waiver of any breach of or failure to comply with any of the terms of this Release shall be effective unless such waiver is made expressly in writing and executed and delivered by the Party against whom such waiver is claimed. No waiver of any breach or failure to comply with any of the terms of this Release shall be deemed to be a further or continuing waiver of such breach or failure to comply or a waiver of any other or subsequent breach or failure to comply. Except as otherwise expressly provided herein, no failure on the part of any Party to exercise, and no delay in exercising, any right, power or remedy hereunder, or otherwise available in respect hereof at law or in equity, shall operate as a waiver thereof, nor shall any single or partial exercise of such right, power or remedy by such Party preclude any other or further exercise thereof, or the exercise of any other right, power or remedy.
14. This Release shall inure to the benefit of and will be binding upon each Party and each Party's successors and permitted assigns. The rights and obligations of the Parties under this Release are not assignable in whole or in part without the prior written consent of all other Parties hereto.
15. This Release is intended solely for the benefit of the Parties, and except as otherwise expressly provided herein, is not intended to (and shall not) confer any benefit upon, or create any rights in favour of, any person other than the Parties. For greater certainty, this Release is intended to confer a benefit upon and create rights in favour of the Receiver Parties.
16. This Release may be executed in any number of separate counterparts and delivered by facsimile or other method of electronic transmission, each of which shall be deemed to be an original, but all such separate counterparts shall together constitute one and the same instrument.

[Remainder of page left intentionally blank]

IN WITNESS WHEREOF the parties hereto have executed this Release as of _____, 2020.

2423402 ONTARIO INC.,
by **ALVAREZ & MARSAL CANADA INC.**, in its
capacity as court-appointed receiver (but not
manager) and not in its personal capacity and
without personal liability or recourse to its assets

Per: _____
Name:
Title:

I have the authority to bind the Corporation.

BONDFIELD CONSTRUCTION COMPANY LIMITED

Per: _____
Name:
Title:

I have the authority to bind the Corporation.

ZURICH INSURANCE COMPANY LTD.

Per: _____
Name:
Title:

I have the authority to bind the Corporation.

[Remainder of page left intentionally blank]

CAMBRIDGE MEMORIAL HOSPITAL

Per: _____
Name:
Title:

I have the authority to bind the Corporation.

ONTARIO INFRASTRUCTURE AND LANDS
CORPORATION

Per: _____
Name:
Title:

I have the authority to bind the Corporation.

[Remainder of page left intentionally blank]

Schedule "A"

1. *Bondfield Construction Company Limited, through its litigation trustee, Roman Droniuk v. Deloitte LLP and Pricewaterhousecoopers LLP*, Court File No. CV-20-00636604-0000
2. *Zurich Insurance Company Ltd. V. Deloitte LLP and Pricewaterhousecoopers LLP*, Court File No. CV-19-00626018-0000

Lender Release

FULL AND FINAL RELEASE

THIS FULL AND FINAL RELEASE (the “**Release**”) is made as of _____, 2020

BETWEEN:

BANK OF MONTREAL, in its capacity as administrative agent (the “**Administrative Agent**”) pursuant to the credit agreement between 2423402 Ontario Inc., as borrower, each of the financial institutions and other entities from time to time parties thereto, as lenders, and the Bank of Montreal, as administrative agent, made as of August 28, 2014, as amended (the “**Credit Agreement**”)

OF THE FIRST PART,

- and -

FÉDÉRATION DES CAISSES DESJARDINS DU QUÉBEC and THE TORONTO-DOMINION BANK (together with the Administrative Agent, the “**Lenders**”)

OF THE SECOND PART,

- and -

2423402 ONTARIO INC. (“Project Co”) by Alvarez & Marsal Canada Inc. as its court appointed receiver and not in its personal or corporate capacity

OF THE THIRD PART,

- and -

BONDFIELD CONSTRUCTION COMPANY LIMITED (“Bondfield”)

OF THE FOURTH PART,

- and -

ZURICH INSURANCE COMPANY LTD. (“Zurich”)

OF THE FIFTH PART,

- and -

CAMBRIDGE MEMORIAL HOSPITAL (“CMH”)

OF THE SIXTH PART,

- and -

ONTARIO INFRASTRUCTURE AND LANDS CORPORATION (“IO”)

OF THE SEVENTH PART

(collectively, the "**Parties**" and individually a "**Party**")

WHEREAS:

- A. Project Co entered into a Project Agreement with CMH dated August 28, 2014 (the "**Project Agreement**") pursuant to which, among other things, Project Co agreed to perform the Work as defined in the Project Agreement (the "**Project**").
- B. Certain of the Parties entered into various agreements in connection with the Project (collectively, the "**Agreements**") including, without limitation, the following:
1. the Project Agreement;
 2. the Credit Agreement;
 3. a Construction Contract between Project Co and Bondfield made as of August 28, 2014;
 4. a Contractor Direct Agreement between Bondfield, the Administrative Agent and Project Co made as of August 28, 2014;
 5. a Lender's Direct Agreement between the Administrative Agent, Project Co and CMH made as of August 28, 2014; and
 6. a General Security Agreement between Project Co and the Administrative Agent made as of August 28, 2014.
- C. Zurich issued the following bonds in connection with the Project (collectively, the "**Bonds**"):
1. Performance Bond No. 6342957 in the amount of \$87,377,250;
 2. Labour and Material Payment Bond No. 6342957 in the amount of \$87,377,250; and
 3. Demand Bond No. 6342958 in the amount of \$8,737,725 (the "**Lender's Demand Bond**").
- D. On December 6, 2018, at the request of the Agent, Alvarez & Marsal Canada Inc. ("**A&M**") was appointed as receiver (but not manager) of Project Co (in such capacity and not in its personal or corporate capacity, the "**Receiver**") pursuant to an Appointment Order issued by the Honourable Mr. Justice Hainey (the "**Receivership Order**") in proceedings before the Ontario Superior of Justice (Commercial List) bearing Court File No. CV-18-610236-00CL (the "**Receivership Proceedings**"): (i) without taking possession or control of Project Co's business, assets or books and records, and (ii) with the specific duties, obligations, authorizations and protections as more specifically set forth in the Receivership Order.
- E. The Parties (other than Project Co) entered into Minutes of Settlement on the date hereof (the "**Settlement**") wherein, among other things:

1. Bondfield, CMH, IO and Zurich agreed to provide a release to the Lenders in the form herein; and
 2. The Lenders agreed to provide a release to Project Co, Bondfield, CMH, IO and Zurich in the form herein.
- F. On November 6, 2020, at the request of the Agent, the Ontario Superior Court of Justice [Commercial List] granted an order in the Receivership Proceedings which, among other things, authorized, empowered and directed the Receiver to execute this Release for and on behalf of Project Co.

NOW THEREFORE in consideration of the various obligations and undertakings contained in the Settlement and for good and valuable consideration, the receipt and sufficiency of which are hereby irrevocably acknowledged, the Parties hereby agree as follows:

1. All terms not otherwise defined herein have the meanings ascribed to them in the Settlement.
2. Except as to those obligations and undertakings arising out of the Settlement, each of Project Co, Bondfield, CMH, IO and Zurich, on its own behalf and on behalf of its current and former affiliates, and the respective officers, directors, employees, clients, shareholders, consultants, legal counsel, representatives, advisors, agents, successors and assigns of such Party and its current and former affiliates, as applicable (collectively, the “**Project Releasors**”) hereby release, remise and forever discharge each of the Lenders, A&M and the Receiver and their respective current and former affiliates, and the respective officers, directors, employees, clients, shareholders, consultants, legal counsel, representatives, advisors, agents, successors and assigns of such Party and its current and former affiliates, as applicable (collectively, the “**Lender & Receiver Releasees**”) from any and all actions, causes of action, suits, debts, dues, accounts, bonds, covenants, contracts, complaints, claims and demands which the Project Releasors knew of prior to, or reasonably ought to have known of by, the Effective Date against the Lender & Receiver Releasees with respect to the Project, the Agreements, the Bonds and/or the Receivership Proceedings (the “**Lender & Receiver Released Matters**”).
3. The Receiver hereby releases, remises and forever discharges each of the Lenders, Project Co, Bondfield CMH, IO and Zurich and their respective current and former affiliates, and the respective officers, directors, employees, clients, shareholders, consultants, legal counsel, representatives, advisors, agents, successors and assigns of such Party and its current and former affiliates, as applicable (collectively, the “**Receiver Releasees**”) from any and all actions, causes of action, suits, debts, dues, accounts, bonds, covenants, contracts, complaints, claims and demands which the Receiver knew of prior to, or reasonably ought to have known of by, the Effective Date against the Receiver Releasees with respect to the Project, the Agreements, the Bonds and/or the Receivership Proceedings (the “**Receiver Released Matters**”).
4. Except as to those obligations and undertakings arising out of the Settlement, and subject to paragraph 5, each of the Lenders, on its own behalf and on behalf of its current and former affiliates, and the respective officers, directors, Ministers, employees, clients, shareholders, consultants, legal counsel, representatives, advisors, agents, successors and assigns of such Party and its current and former affiliates, as applicable (collectively,

the “**Lender Releasors**” and collectively with the Project Releasors and the Receiver, the “**Releasors**”) release, remise and forever discharge each of Project Co, Bondfield, CMH, IO, Zurich and Her Majesty the Queen in Right of Ontario (the “**Crown**”) and their respective current and former affiliates, and the respective officers, directors, employees, clients, shareholders, consultants, legal counsel, representatives, advisors, agents, successors and assigns of such Parties and their current and former affiliates, as applicable (collectively, the “**Project & Receiver Releasees**” and collectively with the Lender & Receiver Releasees and the Receiver Releasees, the “**Releasees**”) from any and all actions, causes of action, suits, debts, dues, accounts, bonds, covenants, contracts, complaints, claims and demands whatsoever which the Lender Releasors knew of prior to, or reasonably ought to have known of by, the Effective Date against the Project & Receiver Releasees with respect to the Project, the Agreements, the Bonds and/or the Receivership Proceedings (the “**Project & Receiver Released Matters**” and collectively with the Lender & Receiver Released Matters and the Receiver Released Matters, the “**Released Matters**”).

5. For greater clarity, the Project & Receiver Released Matters shall not include a release by the Lenders of Project Co for the Project Co. Debt, which debt and any security held by the Lenders in respect of such debt are assigned to Zurich pursuant to the terms of the Settlement.
6. SAVE AND EXCEPT for the Auditor Claims, which are defined on **Schedule “A”** to this Release, the Parties acknowledge and agree that the Releasors will not commence, maintain or continue any claim, demand or complaint, or take any action or proceeding as against any individual, corporation, partnership, the Crown, or any other entity arising out of the Released Matters anywhere in the world, including without limitation a claim under the *Negligence Act*, R.S.O. 1990, c. N.1 and the amendments thereto and/or under any successor legislation thereto, and/or under the *Rules of Civil Procedure*, R.R.O. 1990, Reg. 194 which results in a claim, demand, complaint, action or proceeding being taken against any of the Releasees with respect to the Released Matters, including without limiting the generality of the foregoing, a claim for contribution or indemnity. Nothing herein is an acknowledgment by any Party that the defendants in the Auditor Claims have any valid claim against the Releasees.
7. The Parties agree and understand that if any of the Releasors commences or continues a claim, demand or complaint, or takes any action or proceeding arising out of the Released Matters, and a Releasee is added to such proceedings in any manner whatsoever, whether justified in law or not, the Releasor that commenced or continued the proceedings will immediately discontinue those proceedings and shall be liable to the Releasee against whom the proceedings are brought or threatened for their legal costs incurred in any such proceeding on a substantial indemnity scale. This Release shall operate conclusively as an estoppel in the event of any claim, demand, complaint, action or proceeding which might be brought in the future by any of the Releasors with respect to the Released Matters. This Release may be pleaded in the event any such claim, demand, complaint, action or proceeding is brought, as a complete defence and reply, and may be relied upon in any proceeding to dismiss the claim, demand, complaint, action or proceeding, on a summary basis and no objection will be raised by the Releasors in any subsequent action that the other parties in the subsequent action were not privy to the formation of this Release. Provided that this paragraph 7 does not apply to the Auditor Claims.

8. If there is a conflict or inconsistency between the provisions of this Release and the provisions of the Settlement, the provisions of the Settlement will prevail to the extent of the conflict or inconsistency. Nothing in this Release is intended to or will impair or limit, as between any of the Parties, the obligations of any of the Parties under the Settlement.
9. Except as expressly provided in the Settlement, the Parties acknowledge and agree that this Release does not contain any admission of liability by the Releasees in any way whatsoever and that liability is in fact denied.
10. If any provision of this Release or any part of any provision of this Release is held under any circumstances to be invalid or unenforceable in any jurisdiction, then (i) such provision or part thereof shall, with respect to such circumstances and in such jurisdiction, be deemed amended to conform to applicable laws so as to be valid and enforceable to the fullest possible extent, (ii) the invalidity or unenforceability of such provision or part thereof under such circumstances and in such jurisdiction shall not affect the validity or enforceability of such provision or part thereof under any other circumstances or in any other jurisdiction, and (iii) such invalidity or unenforceability of such provision or part thereof shall not affect the validity or enforceability of the remainder of such provision or the validity or enforceability of any other provision of this Release. Each provision of this Release is separable from every other provision of this Release, and each provision of this Release is separable from every other part of such provision.
11. This Release shall be governed by the laws of the Province of Ontario, without regard to conflicts of laws or choice of law principles, and the federal laws of Canada applicable therein. The courts of the Province of Ontario, and any appellate court thereof, shall have exclusive jurisdiction to adjudicate any dispute or claim arising out of or in connection with this Release. Each of the Parties hereby irrevocably and unconditionally submits to the jurisdiction of the courts in the Province of Ontario, in respect of any proceedings brought in connection with this Release. Each of the Parties acknowledges and agrees that the courts in the Province of Ontario, are the most appropriate and convenient courts to settle any such dispute in connection with this Release and agrees not to argue to the contrary, and waives any objection to those courts on the grounds of inconvenient forum or otherwise in relation to proceedings in connection with this Release.
12. Except as expressly provided herein and except for the Settlement, this Release sets forth the entire agreement of the Parties with respect to the Released Matters, and supersedes any prior written or oral agreement or arrangement, and all agreements, covenants, representations and warranties, express and implied, oral and written, of the Parties with regard to the subject matter of this Release are contained herein. Nothing in this Release creates any implied duty or obligation on the part of any Party to any other.
13. No modification of or amendment to this Release shall be valid unless in writing signed by the Parties hereto referring specifically to this Release and stating the Parties' intention to modify or amend the same. No waiver of any breach of or failure to comply with any of the terms of this Release shall be effective unless such waiver is made expressly in writing and executed and delivered by the Party against whom such waiver is claimed. No waiver of any breach or failure to comply with any of the terms of this Release shall be deemed to be a further or continuing waiver of such breach or failure to comply or a waiver of any other or subsequent breach or failure to comply. Except as otherwise expressly provided herein, no failure on the part of any Releasee to exercise, and no delay in exercising, any

right, power or remedy hereunder, or otherwise available in respect hereof at law or in equity, shall operate as a waiver thereof, nor shall any single or partial exercise of such right, power or remedy by such Releasee preclude any other or further exercise thereof, or the exercise of any other right, power or remedy.

14. This Release shall inure to the benefit of and will be binding upon each Party and each Party's successors and permitted assigns. The rights and obligations of the Parties under this Release are not assignable in whole or in part without the prior written consent of all other Parties hereto.
15. This Release is intended solely for the benefit of the Parties, and except as otherwise expressly provided herein, is not intended to (and shall not) confer any benefit upon, or create any rights in favour of, any person other than the Parties. For greater certainty, this Release is intended to confer a benefit upon and create rights in favour of A&M and the Receiver and their current and former affiliates, and the respective officers, directors, employees, clients, shareholders, consultants, legal counsel, representatives, advisors, agents, successors and assigns.
16. This Release may be executed in any number of separate counterparts and delivered by facsimile or other method of electronic transmission, each of which shall be deemed to be an original, but all such separate counterparts shall together constitute one and the same instrument.

[Remainder of page left intentionally blank]

IN WITNESS WHEREOF the parties hereto have executed this Release as of _____, 2020.

BANK OF MONTREAL,
in its capacity as Administrative Agent and Lender

Per: _____
Name:
Title:

I have the authority to bind the [Corporation](#).

FÉDÉRATION DES CAISSES DESJARDINS DU QUÉBEC

Per: _____
Name:
Title:

I have the authority to bind the [Corporation](#).

THE TORONTO-DOMINION BANK

Per: _____
Name:
Title:

I have the authority to bind the [Corporation](#).

[Remainder of page left intentionally blank]

2423402 ONTARIO INC.,
by ALVAREZ & MARSAL CANADA INC., in its
capacity as court-appointed receiver (but not
manager) and not in its personal capacity and
without personal liability or recourse to its
assets

Per: _____
Name:
Title:

I have the authority to bind the Corporation.

BONDFIELD CONSTRUCTION COMPANY
LIMITED

Per: _____
Name:
Title:

I have the authority to bind the Corporation.

ZURICH INSURANCE COMPANY LTD.

Per: _____
Name:
Title:

I have the authority to bind the Corporation.

[Remainder of page left intentionally blank]

CAMBRIDGE MEMORIAL HOSPITAL

Per: _____
Name:
Title:

I have the authority to bind the Corporation.

ONTARIO INFRASTRUCTURE AND LANDS CORPORATION

Per: _____
Name:
Title:

I have the authority to bind the Corporation.

ALVAREZ & MARSAL CANADA INC., IN ITS
CAPACITY AS COURT-APPOINTED RECEIVER
(BUT NOT MANAGER) AND NOT IN ITS
PERSONAL CAPACITY AND WITHOUT
PERSONAL LIABILITY OR RECOURSE TO ITS
ASSETS

Per:
Name:
Title:

I have the authority to bind the Corporation.

[Remainder of page left intentionally blank]

Schedule "A"

1. *Bondfield Construction Company Limited, through its litigation trustee, Roman Droniuk v. Deloitte LLP and Pricewaterhousecoopers LLP*, Court File No. CV-20-00636604-0000
2. *Zurich Insurance Company Ltd. V. Deloitte LLP and Pricewaterhousecoopers LLP*, Court File No. CV-19-00626018-0000

**ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST**

THE HONOURABLE MR.) FRIDAY, THE 6TH
JUSTICE HAINEY) DAY OF NOVEMBER, 2020

**IN THE MATTER OF THE RECEIVERSHIP OF
2423402 ONTARIO INC.**

BETWEEN:

BANK OF MONTREAL

Applicant

- and -

2423402 ONTARIO INC.

Respondent

APPROVAL AND DISCHARGE ORDER

THIS MOTION, made by Bank of Montreal in its capacity as administrative agent under the Credit Agreement (the “**Administrative Agent**”) for an order:

- (i) approving the settlement (the “**Settlement**”) contemplated by the Minutes of Settlement dated November ●, 2020 between (each a “**Party**” and collectively the “**Parties**”) the Administrative Agent, Cambridge Memorial Hospital (“**CMH**”), Bondfield Construction Company Limited (“**Bondfield**”), Zurich Insurance Company Ltd. (“**Zurich**”) and the Ontario Infrastructure and Lands Corporation (“**IO**”) (the “**Minutes of Settlement**”) and all associated steps, transactions and releases effected by the Settlement;
- (ii) approving the activities of Alvarez & Marsal Inc. (“**A&M**”) in its capacity as receiver (the “**Receiver**”) without security, of all of the assets, undertakings and properties of 2423402 Ontario Inc. (“**Project Co**”), as described in the report of the Receiver dated ●, 2020 (the “**Report**”);

- (iii) approving the fees and disbursements of the Receiver and its counsel and authorizing the Receiver to borrow certain additional funds for the purpose of funding its activities in connection with the Settlement and the exercise of its powers and duties conferred upon it by the Appointment Order (defined below) and this Order;
- (iv) authorizing and directing the Receiver, for and on behalf of Project Co, to: (A) execute the Releases (as defined in the Minutes of Settlement); and (B) assign Project Co into bankruptcy; and
- (v) terminating these proceedings and discharging A&M as Receiver effective upon delivery of the Receiver's Certificate (defined below) to the E-Service List,

was heard this day by way of Zoom judicial video conference due to the COVID-19 pandemic.

ON READING the notice of motion, the affidavit of Craig Khattar, sworn October 28, 2020 (the "**Khattar Affidavit**"), the Report, the affidavits of the Receiver and its counsel as to fees (the "**Fee Affidavits**") and on hearing the submissions of counsel for each of the Agent, Zurich, CMH, IO, and the Receiver and those other parties listed on the counsel slip, and on being advised that those parties listed in the affidavit of service, filed, were given notice of the Motion:

Service and Interpretation

1. **THIS COURT ORDERS** that the time for service of the Motion Record of the Agent and the Report is hereby abridged and validated so that this motion is properly returnable today and hereby dispenses with further service thereof.
2. **THIS COURT ORDERS** that all capitalized terms used but not otherwise defined herein shall have the meanings ascribed thereto in the Khattar Affidavit.

Approval and Implementation of Settlement

3. **THIS COURT ORDERS AND DECLARES** that the Minutes of Settlement are fair and reasonable in all the circumstances and for the purposes of these proceedings.

4. **THIS COURT ORDERS AND DECLARES** that the Settlement and all associated steps, transactions and releases effected thereby, including the assignment by Project Co of the Project Agreement to Zurich and the Construction Contract to CMH and the further authorizations made by Project Co to each of Zurich and CMH as provided for in the Settlement, are hereby approved.

5. **THIS COURT ORDERS** that the Receiver is hereby empowered, authorized and directed to execute the Releases (as defined in the Minutes of Settlement) for and on behalf of Project Co upon receipt by the Receiver of the Implementation Notices (as defined in the Minutes of Settlement).

6. **THIS COURT ORDERS** that, upon delivery of each of the Implementation Notices (as defined in the Minutes of Settlement) to the Receiver (which for greater certainty, may be provided by way of e-mail) and following the execution of the Releases by the Receiver for and on behalf of Project Co, the Receiver is hereby empowered, authorized and directed to assign Project Co into bankruptcy nominating Ira Smith Trustee & Receiver Inc. as bankruptcy trustee, or such other bankruptcy trustee as the Parties may agree.

7. **THIS COURT ORDERS AND DECLARES** that in completing its obligations as set out herein, the Receiver (a) has not been empowered to manage the business or property of Project Co, and (b) shall not be deemed to have taken possession or control of the business or property of Project Co.

Increasing Receiver's Borrowing Charge

8. **THIS COURT ORDERS AND DIRECTS** that paragraph 18 of the order dated December 6, 2018 appointing the Receiver (the "**Appointment Order**"), is hereby amended and restated as follows:

THIS COURT ORDERS that the Receiver be at liberty and it is hereby empowered to: (a) with the consent of the Applicant, borrow by way of a revolving credit or otherwise, such monies from time to time as it may consider necessary or desirable, provided that the outstanding principal amount does not exceed \$225,000 (or such greater amount as this Court may by further Order authorize) at any time, at such rate or rates of interest as it deems advisable for such period or periods of time as it may arrange, for the purpose of

funding the exercise of the powers and duties conferred upon the Receiver by this Order and any other order issued by the Court in these proceedings; and (b) open one or more new accounts to hold any amounts borrowed pursuant to foregoing paragraph (a). The whole of the Property shall be and is hereby charged by way of a fixed and specific charge (the “**Receiver’s Borrowings Charge**”) as security for the payment of the monies borrowed, together with interest and charges thereon, in priority to all security interests, trusts, liens, construction liens, charges and encumbrances, statutory or otherwise, in favour of any Person, but subordinate in priority to the Receiver’s Charge and the charges as set out in sections 14.06(7), 81.4(4), and 81.6(2) of the BIA.

Approval of Activities and Fees

9. **THIS COURT ORDERS** that the Report is hereby approved and the actions and activities of the Receiver as described in the Report are hereby approved; provided, however that only the Receiver, and only with respect to its own liability (whether in its personal capacity or otherwise), shall be entitled to rely upon or utilize in any way such approval.

10. **THIS COURT ORDERS** that the fees and disbursements of the Receiver and its counsel, as set out in the Report and the Fee Affidavits, are hereby approved.

11. **THIS COURT ORDERS** that the fees and disbursements of the Receiver and its counsel to complete the Receiver’s remaining activities in these receivership proceedings shall only be subject to approval by further Order of this Court in the event that the Administrative Agent requests that such approval be sought.

Termination and Discharge

12. **THIS COURT ORDERS AND DIRECTS** that upon (i) the delivery of each of the Implementation Notices (as defined in the Minutes of Settlement) to the Receiver (which for greater certainty, may be provided by way of e-mail), (ii) the Receiver executing the Releases on behalf of Project Co and completing the assignment of Project Co into bankruptcy, and (iii) the completion of all other matters to be attended to in connection with the receivership of Project Co as set out in the Appointment Order and this Order, to the satisfaction of the Receiver, the Receiver

shall e-mail a Receiver's certificate to the E-Service List in these receivership proceedings, substantially in the form attached as Schedule "A" hereto (the "**Receiver's Certificate**").

13. **THIS COURT ORDERS AND DIRECTS** the Receiver to file with the Court a copy of the Receiver's Certificate, as soon as reasonably practicable after delivery thereof to the E-Service List.

14. **THIS COURT ORDERS** that the Receiver may rely on the Implementation Notices and shall incur no liability with respect to the assignment of Project Co into bankruptcy or the delivery or filing of the Receiver's Certificate, save and except for any gross negligence or willful misconduct on its part.

15. **THIS COURT ORDERS** that upon the delivery of the Receiver's Certificate to the E-Service List, the Receiver shall be discharged as Receiver and relieved from any further obligations, liabilities, responsibilities and/or duties in its capacity as Receiver, provided however that notwithstanding its discharge herein, the Receiver shall continue to have the benefit of the provisions of all Orders made in this proceeding, including all approvals, protections and stays of proceedings in favour of A&M in its capacity as Receiver.

16. **THIS COURT ORDERS** that upon the delivery of the Receiver's Certificate to the E-Service List: (i) the Receiver shall be deemed to have satisfied all of its duties and obligations pursuant to the Appointment Order and this Order; (ii) these receivership proceedings shall be terminated and the stay of proceedings imposed pursuant to the Appointment Order shall be lifted; and (iii) the Receiver's Charge and the Receiver's Borrowings Charge as defined in and created by the Appointment Order shall be fully and finally terminated, discharged and released.

17. **THIS COURT ORDERS AND DECLARES** that A&M is hereby released and discharged from any and all liability and other than as expressly contemplated by this Order, any obligation, responsibility and/or duty that it now has or may hereafter have by reason of, or in any way arising out of, the acts or omissions of A&M while acting in its capacity as Receiver in the within receivership proceedings, including, without limitation, in connection with the execution of the Releases for and on behalf of Project Co, the assignment of Project Co into bankruptcy and the delivery and filing of the Receiver's Certificate, save and except for any gross negligence or willful misconduct on the part of the Receiver or its counsel. Without limiting the generality of the

foregoing, A&M is hereby forever released and discharged from any and all liability relating to matters that were raised, or which could have been raised, in the within receivership proceedings, save and except for any gross negligence or wilful misconduct on the Receiver's part.

18. **THIS COURT ORDERS** that notwithstanding any provision of this Order and the termination of these receivership proceedings, nothing herein shall affect, vary, derogate from, limit or amend, and the Receiver shall continue to have the benefit of, any of the protections in favour of the Receiver at law, the Appointment Order or otherwise.

Assignment of Agreements by Project Co

19. **THIS COURT ORDERS** that Project Co shall be bound by the Minutes of Settlement and that the actions of Project Co required by the Minutes of Settlement, including the authorizations and assignments by Project Co described in paragraph 24 of the Minutes of Settlement, shall occur and be effective, in each case on the Effective Date and without any further action, step or other requirement.

General

20. **THIS COURT ORDERS** that the Receiver and the Parties may each apply to this Court from time to time for advice and direction with respect to any matter arising from or under this Order.

21. **THIS COURT HEREBY REQUESTS** the aid and recognition of any court, tribunal, regulatory or administrative body having jurisdiction in Canada or in the United States to give effect to this Order and to assist the Receiver and its agents in carrying out the terms of this Order. All courts, tribunals, regulatory and administrative bodies are hereby respectfully requested to make such orders and to provide such assistance to the Receiver, as an officer of this Court, as may be necessary or desirable to give effect to this Order or to assist the Receiver and its agents in carrying out the terms of this Order.

Schedule A – Form of Receiver’s Certificate

Court File No.: CV-18-610236-00CL

**ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST**

**IN THE MATTER OF THE RECEIVERSHIP OF
2423402 ONTARIO INC.**

BETWEEN:

BANK OF MONTREAL

Applicant

- and -

2423402 ONTARIO INC.

Respondent

RECEIVER’S CERTIFICATE

RECITALS

A. Pursuant to an Order of the Honourable Mr. Justice Hainey of the Ontario Superior Court of Justice (the "**Court**") dated December 6, 2018, as amended and restated (the "**Appointment Order**"), Alvarez & Marsal Canada Inc. ("**A&M**") was appointed as the receiver (the "**Receiver**") without security, of all of the assets, undertakings and properties of 2423402 Ontario Inc. ("**Project Co**").

B. Pursuant to an Order of the Court dated November 6, 2020 (the "**Approval and Discharge Order**"), A&M is to be discharged as Receiver effective upon the delivery of a certificate by the Receiver to the E-Service List confirming (i) the delivery of each of the Implementation Notices to the Receiver (which for greater certainty, may be provided by way of e-mail), (ii) the Receiver having assigned Project Co into bankruptcy, and (iii) the completion of all other matters to be attended to in connection with the receivership of Project Co as set out in the Appointment Order and the Approval and Discharge Order, to the satisfaction of the Receiver.

C. The Minutes of Settlement provide that upon the satisfaction of each Party’s payment obligations under the Settlement, each of Zurich, the Administrative Agent and CMH were

required to deliver to the Receiver written notice confirming that all of the payment obligations under the Settlement and the conditions precedent and requirements of paragraph [8] and [11] of the Settlement have been satisfied (the “**Implementation Notices**”).

D. The Receiver has received the Implementation Notices as required by the Minutes of Settlement.

E. Unless otherwise indicated herein, terms with initial capitals have the meanings set out in the Approval and Discharge Order.

THE RECEIVER CERTIFIES the following:

1. The Receiver has received the Implementation Notices.
2. The Receiver has assigned Project Co into bankruptcy.
3. The Receiver is satisfied that all other matters to be attended to in connection with the receivership of Project Co as set out in the Appointment Order and the Approval and Discharge Order have been completed.
4. This Certificate was delivered by the Receiver at _____ [TIME] on _____ [DATE].

**Alvarez & Marsal Canada Inc., LIT, in its
capacity as Receiver and not in its personal or
corporate capacity**

Per: _____

Name:

Title:

**ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST**

Proceeding commenced at Toronto

APPROVAL AND DISCHARGE ORDER

McCarthy Tétrault LLP

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Heather L. Meredith LSO#: 48354R

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Lawyers for The Bank of Montreal in its
capacity as administrative agent under the
Credit Agreement
20534890



CO Progress Summary

Project No:

Project Title: CMH - CRP - Phase 1 & 2

TABLE 1 - CO COMPLETE & BALANCE PD

CO No.	CCN No.	Description	Cost		
			Amount	Amount Paid	Outstanding
109.0	CCN 117	Bollards for Parking Lot Emergency Com Stations	\$ 2,640.00	\$ -	\$ 2,640.00
131.0	CCN 141.2	Door Hardware for Curtain Wall Doors Revised	\$ 66,770.31	\$ 66,520.31	\$ 250.00
132.0	CCN 105	Security Camera Coordination	\$ 56,264.93	\$ 53,666.12	\$ 2,598.81
144.0	CCN 208	Additional TV Requirements	\$ 11,719.38	\$ 10,279.38	\$ 1,440.00
149.0	CCN 206	Reconnect FA Annunciator at Switchboard	\$ 21,344.49	\$ 19,265.21	\$ 2,079.28
152.0	CCN 207	Additional South Driveway Paving	\$ 12,000.00	\$ 9,000.00	\$ 3,000.00
171.0	CCN 181	Sliding Door Interferences, A.1.413, A.1.415 & A.1.417	\$ 22,604.84	\$ 18,962.44	\$ 3,642.40
203.0	CCN 249	Nurse Call System Installation Integration	\$ 38,837.88	\$ 37,690.57	\$ 1,147.31
212.0	CCN 211.1/CD 32	FA Pull Stations Per OBC for CCN 211.1	\$ 16,192.93	\$ 15,592.93	\$ 600.00
213.0	CD 36	Relocate CCTV From Existing to New Gift Shop	\$ 1,272.38	\$ 885.18	\$ 387.20
225.0	CD 49	Replace Motors to Isolation Exhaust Fans 10A & 10B	\$ 6,234.67	\$ 6,234.67	\$ -
226.0	CD 54	Barriers Below Feature Stairs	\$ 7,579.69	\$ 7,000.00	\$ 579.69
227.0	CCN 236	L1 MH Glazing Clarification (RFI 539)	\$ 2,267.54	\$ -	\$ 2,267.54
228.0	CCN 250	Alum Closures Below Stair A13	\$ 2,111.45	\$ -	\$ 2,111.45
229.0	CCN 260	Directory Signage Revision	\$ 3,454.00	\$ -	\$ 3,454.00
233.0	CCN261	Nurse Call VSTN Requirements	\$ 21,098.12	\$ -	\$ 21,098.12
234.0	CCN 258	Replace Exist Chilled Water Isolation Valves	\$ 43,617.90	\$ 33,176.05	\$ 10,441.85
236.0	CCN 263	A.1.675.1 Leaf Operation Sequencing	\$ 3,629.68	\$ -	\$ 3,629.68
244.0	CD 66	Additional Pavement Markings	\$ 742.50	\$ -	\$ 742.50
245.0	CD 62	Add Tracker Board & Communications	\$ 2,836.51	\$ -	\$ 2,836.51
246.0	CD 67	Add Data Outlets in Tim Hortons	\$ 1,607.76	\$ -	\$ 1,607.76
247.0	CCN 187	Revise Glass Screens	\$ 7,426.10	\$ -	\$ 7,426.10
248.0	CCN 162	Revise Donor Wall in Cafeteria Court	-\$ 1,267.50	\$ -	-\$ 1,267.50
249.0	CD 55	Site Seals on Pivot Doors	\$ 5,553.05	\$ 4,300.50	\$ 1,252.55
250.0	CD 57	Relocate Contractor Site Trailer	\$ 10,956.07	\$ -	\$ 10,956.07
251.0	CCN 262	Delete Glass Shelf in Gift Shop	-\$ 600.00	\$ -	-\$ 600.00
252.0	CCN 264	Wheelchair Bollards at L2 Stair	\$ 6,364.50	\$ -	\$ 6,364.50
253.0	CCN 272	Roofing Filter Cloth	\$ 747.50	\$ -	\$ 747.50



CO Progress Summary

Project No:

Project Title: CMH - CRP - Phase 1 & 2

CO No.	CCN No.	Description	Cost		
			Amount	Amount Paid	Outstanding
254.0	CCN 273	Door Pulls at A.3.554a & A.3.154.1	\$ 553.10	\$ -	\$ 553.10
255.0	CD 38	Remove Installed Exit Lights	\$ -	\$ -	
256.0	CD 61	Curtain Wall Door Sweeps & Thresholds	\$ 2,175.24	\$ -	\$ 2,175.24
257.0	CD 64	Revise Door Maglock Location	\$ -	\$ -	\$ -
258.0	CD 65	Remove Installed Exit Light	\$ -	\$ -	\$ -
259.0	CD 14	Revise Modular Headwalls - Amico	-\$ 81,943.00	\$ -	-\$ 81,943.00
260.0	CD 53	St. St. Bases to MH Wardrobes	\$ 9,322.50	\$ -	\$ 9,322.50
261.0	CD 63	Revise Lockset A.1.496	\$ -	\$ -	\$ -
262.0	CD 68	Revise Lockset A.3.209	\$ -	\$ -	\$ -
263.0	CCN 19	Delete N-Parking Lot Surface Curbs	-\$ 1,400.00	\$ -	-\$ 1,400.00
264.0	CCN 244	Delete BGL Glass Trim	-\$ 596.00	\$ -	-\$ 596.00
265.0	CD 1	Rework Existing Concrete Retaining Wall CCN 5	\$ 25,446.27	\$ 25,401.14	\$ 45.13
266.0	CCN 147	Revise Lavatory Sinks	-\$ 476.38	\$ -	-\$ 476.38
267.0	CCN 83	Delete Fire Rated Plywood in Walls	-\$ 10,138.44	\$ -	-\$ 10,138.44
268.0	CD 58	AHU-20 Duct Heater	\$ 20,509.61	\$ -	\$ 20,509.61
269.0	CD 21/ CCN 174	Replace AHU-8S Ducting at Str 10	\$ 10,908.50	\$ 9,916.82	\$ 991.68
270.0	CD 74	Soft Key for FACP Smoke Detection	\$ 18,705.15	\$ -	\$ 18,705.15
271.0	CD 69	Remote Fire Alarm Annunciator	\$ 19,578.36	\$ -	\$ 19,578.36
272.0	CCN 274	Revise OR Water Backflow	\$ 1,109.56	\$ -	\$ 1,109.56
273.0	CCD 271	Revise Glass Panel in Quiet Rm	-\$ 5,000.00	\$ -	-\$ 5,000.00
274.0	CCN 10	Locate U/G Sanitary Line, PH1	\$ 4,672.26	\$ -	\$ 4,672.26
275.0	CCN 50	Louver Opening Support, Mech Rm A.0.101	\$ 18,912.22	\$ -	\$ 18,912.22
276.0	CD 81	Revise Copper Rain Water Leaders	-\$ 1,708.00	\$ -	-\$ 1,708.00
277.0	CD 59	ESV for CFSM Feed to A-Block	3592.87	\$ -	\$ 3,592.87
278.0	CD 73	L1Insulate Diffusers in Critical Care	3190	\$ -	\$ 3,190.00
279.0	CCN 212	Sprinkler Zone for SI-302	17943.32	\$ -	\$ 17,943.32
Total Table 1				\$	111,472.50



CO Progress Summary

Project No:

Project Title: CMH - CRP - Phase 1 & 2

TABLE 2 - CCN/CD TO BECOME CO'S

CCN No.	CD	Description	Cost		
			Amount	Amount Paid	Outstanding
6	CD 04	Temporary Triage Electrical Completion	\$ 124,122.97	\$ 87,895.51	\$ 36,227.46
21	CD 05	Smoke Seal, Level 0, Corridors (RFI-81)	\$ 44,027.62	\$ 33,020.72	\$ 11,006.90
42		Revise Section 08 44 00 on Accredited Lab Testing	-\$ 26,500.00	\$ -	-\$ 26,500.00
49	CD 08	Revised Hardware Groupings - Phases 2 & 3 Revised	\$ 250,512.22	\$ 187,884.17	\$ 62,628.05
75	CD 16	Arch & Mech Modifications to Suit Patient Bed Low Level Grilles	\$ 38,003.07	\$ 8,579.82	\$ 29,423.25
84	CD 11	SSI-041 Link Foundation-Underpinning	\$ 35,034.34	\$ 13,320.00	\$ 21,714.34
90		Bridge Glass (RFI-285)	\$ 49,480.36	\$ -	\$ 49,480.36
93	CD 13	Urology O.R. A.1.675 Articulating Arm Revisions	\$ 94,916.99	\$ 68,785.17	\$ 26,131.82
126		Revised Design Prep for Donor Wall	\$ 1,593.28	\$ -	\$ 1,593.28
127	CD 17	Reinforce Ambulance Apron HD Conc. Paving With Snow Melting Piping	\$ 62,832.85	\$ 4,646.85	\$ 58,186.00
211	CD 31	Glass Door Hardware Add Scope From SI-384.x	\$ 143,492.66	\$ 107,619.50	\$ 35,873.16
	CD 07	1Hr Fire Rating to Housekeeping Closets	\$ 34,174.54	\$ 21,130.91	\$ 13,043.63

Total Table 2 \$ 318,808.25

SUMMARY

Table 1	\$ 111,472.50
Table 2	\$ 318,808.25
Total	\$ 430,280.75

Outstanding Interim Minor Deficiencies

As listed on Consultant's report on Minor Deficiencies dated May 22, 2020.

Interior Deficiencies

Item No.	Description	Value at IC
213	Interview/Treatment Rm	\$ 100.00
377	Corridor	\$ 1,000.00
498	Nurse Call System	\$ 15,000.00
499	Integ. Security System	\$ 8,000.00
500	Video Surveillance	\$ 5,000.00
501	RTLA/EPPS/HUGS	\$ 20,000.00
502	Various Door Hdwre	\$ 13,000.00
	Total	\$ 62,100.00
	Multiplied by 2	\$ 124,200.00

Release of Holdback Bond

Bond No. _____

Amount: \$12,785,941.00

KNOW ALL MEN BY THESE PRESENTS that Zurich Insurance Company Ltd. (hereinafter called the Surety), is held and firmly bound unto Cambridge Memorial Hospital (hereinafter called the Obligee) in the full and just sum of TWELVE MILLION SEVEN HUNDRED EIGHTY FIVE THOUSAND NINE HUNDRED FORTY ONE DOLLARS (\$12,785,941.00) of lawful money of Canada, for the payment of which sum well and truly to be made, the Surety binds itself, its heirs, administrators, executors, successors and assigns, jointly and severally, firmly by these presents.

WHEREAS the Obligee entered into a written agreement with 2423402 Ontario Inc. ("Project Co") dated August 28, 2014 pursuant to which, among other things, Project Co agreed to perform the Work as defined in the agreement for a project known as the Cambridge Memorial Hospital Redevelopment Project (the "Project").

WHEREAS Project Co entered into a written contract with Bondfield Construction Company Limited ("Bondfield"), dated August 28, 2014 (the "Contract"), pursuant to which Bondfield agreed to perform certain Construction Work, as defined in the Contract and amended pursuant to Minutes of Settlement dated _____ (the "Settlement"), which Contract as properly amended is referred to herein as the Contract, in relation to the Project.

AND WHEREAS Bondfield is the subject of proceedings under the *Companies' Creditors Arrangement Act* (Canada) pursuant to which Ernst & Young Inc. has been appointed as the Monitor of Bondfield (the "Monitor").

AND WHEREAS pursuant to the Settlement, the Obligee has agreed to release the sum of \$12,785,941.00 to the Monitor in respect of Legislative Holdback related to the Construction Work for Phase 1&2 under the Contract, subject to the Surety providing this Release of Holdback Bond in respect of any obligations the Obligee may have under the *Construction Act* (Ontario) to retain the holdbacks for Construction Work for Phase 1&2.

NOW THEREFORE:

1. Whenever a lien or liens against the holdback in respect of Phase 1&2 under the Contract are registered or claimed and have not been satisfied, discharged or otherwise provided for under the *Construction Act* (Ontario), the Obligee may make demand on this Bond for an amount necessary for the Obligee to comply with its holdback obligations under the *Construction Act* (Ontario) (a "Demand"). For greater clarity, the Demand may include amounts required for security for costs. Partial and multiple Demands not exceeding the Bond Amount in the aggregate may be made. The Demand shall certify the amount of the lien or liens against the holdback in respect of Phase 1 or 2 under the Contract and that such liens have not expired or been satisfied, discharged or otherwise provided for under the *Construction Act* (Ontario).

2. This Bond shall be irrevocable and payment will be made within ten (10) business days of receipt of a Demand, notwithstanding any objection by Bondfield or Project Co. The Demand shall be accepted by the Surety as conclusive evidence that the amount set out in the Demand is an appropriate amount, and the Surety shall not assert as a defense or grounds for not paying the Bond Amount, in whole or in part, pursuant to such Demand that a default has not occurred, that the amount set out in the Demand is not appropriate, warranted or otherwise not in accordance with the Contract or that the Obligee is in default under the Contract. The Surety's liability under this Bond is unconditional and shall not be discharged or released or affected by any dispute between the Surety and Bondfield, or by any alteration, change, addition, modification, or variation in Bondfield's obligations under the Contract, or by the exercise by the Obligee of any of the rights or remedies reserved to it under the Contract or the Minutes of Settlement or by any forbearance to exercise any such rights or remedies whether as to payment, time, performance or otherwise (whether or not any arrangement, alteration or forbearance is made without the Surety's knowledge or consent). All payments by the Surety shall be made free and clear without deduction, set-off or withholding. The Surety's obligation to pay a Demand arises solely upon the Obligee delivering a Demand to the Surety, and the Surety shall not assert as a defence that the lien is invalid and shall not seek relief in any court to avoid this payment or assert any other defence.
3. All Demands and notices under this Bond shall be delivered by facsimile or registered mail to the Surety at the address set out below, subject to any change of address in accordance with this Section. All other correspondence may be delivered by any of facsimile, regular mail, registered mail, email or courier:
4. The condition of this obligation is such that if the Surety shall indemnify and save harmless the Obligee against any and all liens, losses, damages, claims, suits, demands, costs, charges and expenses arising out of or related to claims arising under the *Construction Act* (Ontario), including but not limited to liens claimed with respect to Construction Work for Phase 1&2, then this obligation shall be void, otherwise to remain in full force and effect.

PROVIDED, HOWEVER that this Release of Holdback Bond is subject to the following conditions and limitations, the performance or existence of each of which shall be a condition precedent to any right of recovery hereunder:

1. That the Surety shall not be liable for a greater sum than the specified penalty of this Release of Holdback Bond.
2. Any Demand shall be delivered to the Surety promptly and in no event later than sixty (60) days after the Obligee shall receive written notice of the registration of a lien.

3. It is a condition of this Release of Holdback Bond that any suit or action must be commenced before 90 days following the date of Substantial Completion of the Construction Work as such terms are defined in the Settlement.

Signed, sealed this ____ day of _____, 2020.

Zurich Insurance Company Ltd.

Cambridge Memorial Hospital

By: _____
c/s

By: _____
c/s

Name:
Attorney-in-fact

Name:
Title:
I have authority to bind the Hospital

Warranty Rider

Warranty Rider

This rider is to be attached to and form part of performance bond number 6342957 dated August 28, 2014 (the "Performance Bond") executed by Zurich Insurance Company Ltd., a corporation created and existing under the laws of Switzerland and duly authorized to transact the business of suretyship in all provinces and territories of Canada as surety (the "Surety") on behalf of Bondfield Construction Company Limited ("Bondfield") in favour of 2423402 Ontario Inc. ("Project Co") as obligee.

WHEREAS Project Co entered into the Construction Contract, as defined in the Performance Bond, with Bondfield, pursuant to which the Surety issued the Performance Bond;

AND WHEREAS, pursuant to Minutes of Settlement dated _____ (the "Minutes of Settlement"), the Construction Contract, and scope of work therein, was amended;

AND WHEREAS pursuant to the Minutes of Settlement, the Surety is to deliver a rider to the Performance Bond securing only the Surety's obligations under the Construction Contract, as amended by the Minutes of Settlement, with respect to Warranty during the relevant warranty periods (hereinafter the "Warranty Obligations");

NOW THEREFORE pursuant to the Minutes of Settlement, the Performance Bond is hereby amended as follows:

1. The amount of the Performance Bond shall be reduced to TEN MILLION DOLLARS (\$10,000,000.00);
2. The Principal under the Performance Bond shall be amended to read "Zurich Insurance Company Ltd." and the Obligee under the Performance Bond shall be amended to read "Cambridge Memorial Hospital";
3. The third and fourth unnumbered paragraphs of the Performance Bond shall be amended to read as follows:
 - a. The condition of this obligation is such that if the Principal shall promptly and faithfully perform its obligations to the Obligee under the Construction Contract, solely with respect to any Warranty Obligations as set out in the Minutes of Settlement, then this obligation shall be null and void; otherwise it shall remain in full force and effect.
 - b. Whenever the Principal shall be, and declared by the Obligee to be in default in respect of its obligations to the Obligee under the Construction Contract, solely with respect to any Warranty Obligations as set out in the Minutes of Settlement, (a "Contractor Event of Default"), the Obligee having performed the Obligee's

obligations under the Construction Contract, the Surety shall promptly select and carry out one of the four following options:...

4. The paragraph numbered as "2" shall be amended to read as follows:
complete the Warranty Obligations in accordance with the terms and conditions of the Construction Contract, or
5. The paragraph numbered as "3" shall be deleted.
6. The paragraph numbered as "4" shall be amended to read as follows:
pay the Obligee the lesser of (1) the Bond Amount or (2) the Obligee's proposed cost to complete the Warranty Obligations.
7. The seventh unnumbered paragraph of the Performance Bond shall be amended to read as follows:
 - a. It is a condition of this Performance Bond that any suit or action must be commenced before November 8, 2022 in respect of any Warranty Obligations for Phase 1&2 under the Contract, except Warranty Obligations related to work deferred to Phase 3; and before 2 years after the date of Substantial Completion in respect of any Warranty Obligations for Phase 3 including Warranty Obligations related to deferred Phase 1&2 work.

These changes are effective as of the effective execution date of the Performance Bond to which it is attached.

Signed, sealed this ____ day of _____, 2020.

Zurich Insurance Company Ltd.

Cambridge Memorial Hospital

By: _____
c/s

By: _____
c/s

Name:
Attorney-in-fact

Name:
Title:
I have authority to bind the Hospital

**Bondfield Construction Company
Limited**

By: _____
c/s

Name:

Attorney-in-fact

PERFORMANCE BOND

CCDC 221 - 2002

No. _____

Bond Amount \$ _____

_____ as Principal, hereinafter called the Principal, and
 _____ a corporation created and existing under the laws
 of _____ and duly authorized to transact the business of Suretyship in _____ as Surety, hereinafter
 called the Surety, are held and firmly bound unto _____ as
 Obligee, hereinafter called the Obligee, in the amount of _____
 _____ Dollars (\$ _____) lawful money of Canada, for the payment
 of which sum the Principal and the Surety bind themselves, their heirs, executors, administrators, successors and assigns, jointly and severally.

WHEREAS, the Principal has entered into a written contract with the Obligee, dated _____ day of _____, in the year _____
 for _____

hereinafter referred to as the Contract.

The condition of this obligation is such that if the Principal shall promptly and faithfully perform the Contract then this obligation shall be null and void; otherwise it shall remain in full force and effect.

Whenever the Principal shall be, and declared by the Obligee to be, in default under the Contract, the Obligee having performed the Obligee's obligations thereunder, the Surety shall promptly:

- 1) remedy the default, or;
- 2) complete the Contract in accordance with its terms and conditions or;
- 3) obtain a bid or bids for submission to the Obligee for completing the Contract in accordance with its terms and conditions and upon determination by the Obligee and the Surety of the lowest responsible bidder, arrange for a contract between such bidder and the Obligee and make available as work progresses (even though there should be a default, or a succession of defaults, under the contract or contracts of completion, arranged under this paragraph) sufficient funds to pay to complete the Principal's obligations in accordance with the terms and conditions of the Contract and to pay those expenses incurred by the Obligee as a result of the Principal's default relating directly to the performance of the work under the Contract, less the balance of the Contract price; but not exceeding the Bond Amount. The balance of the Contract price is the total amount payable by the Obligee to the Principal under the Contract, less the amount properly paid by the Obligee to the Principal, or;
- 4) pay the Obligee the lesser of (1) the Bond Amount or (2) the Obligee's proposed cost of completion, less the balance of Contract price.

It is a condition of this bond that any suit or action must be commenced before the expiration of two (2) years from the earlier of (1) the date of Substantial Performance of the Contract as defined in the lien legislation where the work under the Contract is taking place, or, if no such definition exists, the date when the work is ready for use or is being used for the purpose intended, or (2) the date on which the Principal is declared in default by the Obligee.

The Surety shall not be liable for a greater sum than the Bond Amount.

No right of action shall accrue on this Bond, to or for the use of, any person or corporation other than the Obligee named herein, or the heirs, executors, administrators or successors of the Obligee.

IN WITNESS WHEREOF, the Principal and the Surety have Signed and Sealed this Bond dated _____ day of _____, in the year _____.

SIGNED and SEALED

Principal

in the presence of

ATTORNEY IN FACT

Signature

Name of person signing

Surety

Signature

Name of person signing



SCHEDULE "L"

1. Zurich shall not be required
 - a. to provide an "updated cash flow" with each application for payment, pursuant to Article 4.4(f) of the Construction Contract;
 - b. to provide a "cash flow forecast", pursuant to GC 12.1(a)(ii) of the Construction Contract;
 - c. to continuously monitor the "cash flow" and to update the "cash flow forecast", pursuant to GC 12.1(a)(v) of the Construction Contract, and
 - d. to submit as part of the monthly construction status report the "updated cash flow report and projections" pursuant to GC 18.2(a)(vii) of the Construction Contract; and
 - e. to submit as part of the monthly construction status report the "the status of Contractor Design Issues" pursuant to GC 18.2(a)(xi) of the Construction Contract.
2. The cumulative total of cash allowances under the Construction Contract, including under Article 3.2, shall not exceed \$2,202,357.48 (excluding HST), of which \$262,596.54 has already been allocated to Construction Work that is to be performed. Further, CMH shall not be entitled to use cash allowances to fund Changes in the Scope of the Construction Work under Article 3.2(d)(v).
3. The Insurance and Bonding Trust Agreement shall not apply, including under GC 4.10 and Section 7.1 of Schedule 13 to the Construction Contract.
4. GCs 5.1(a), 5.1(b), 5.1(c), 5.2(a), 5.2(b), and 7.1(a)(i) of the Construction Contract are deleted and replaced with Appendix "A" to this Schedule "L". For the purposes of Appendix "A", the term "Commencement Date" shall mean the date established in paragraph 32 of the Minutes of Settlement.
5. Zurich shall not be required to employ a separate mechanical and electrical coordinator and equipment coordinator as set out in GC 8.3(a) of the Construction Contract but, in such case, shall ensure its personnel have the specified competencies necessary to perform the required mechanical, electrical and equipment coordination services required for the Construction Work, such that the coordination does not impact CMH operations.
6. GC 8.4 of the Construction Contract is deleted and replaced with the following:

"8.4 Key Personnel

 - (a) Contractor and the Contractor Parties shall commit as many people and man-hours to the Project as are needed, from time to time, to meet its obligations under the Construction Contract.

- (b) Brad Lacroix and Ashley Maxwell (the “**Key Personnel**”) will be dedicated to the Project on a full-time basis.
 - (c) Contractor shall not replace any of the Key Personnel without the prior written approval of Project Co. If any of the Key Personnel become unavailable to perform services in connection with the Construction Contract due to revisions to the Construction Schedule or ill health or death or discharge by Contractor, then Contractor shall promptly designate a replacement(s) who shall be subject to Project Co’s written approval. Project Co shall be entitled to complete information on any such replacement of the Key Personnel, including a current resume. Further, Project Co shall have the right, acting reasonably, to require Contractor to replace any of the Key Personnel.”
7. For the purpose of GC 11.2(a)(vii), CMH shall provide Contractor with access to Utilities for use as temporary services as described in the Specifications, and Zurich shall arrange for and pay for the installation and maintenance of all required metering equipment and will pay for the use of such Utilities upon receipt of CMH’s invoice therefor, provided, however, that Zurich shall only pay the amount charged by the Utilities providers, without markup.
 8. Zurich shall not be required to provide any hard or physical copies of any documents and will instead provide only digital copies in pdf (in searchable format and with a searchable file structure where original documents are searchable) and in native format, through the E-Builder platform, including but not limited to, under GC 12.1(a)(ii) and 29.5(b) of the Construction Contract. Provided that the preceding sentence does not apply to the record drawings to be prepared and maintained in accordance with GC 11.11(h) of the Construction Contract, which shall be in paper format. However, a paper format of such record drawings is only required to be available with the application for final payment; during the Work, record drawings along with other project documentation will be uploaded to E-Builder within a reasonable time, which can be accessed by CMH. For certainty, E-Builder is the “project management software system(s) and/or online collaboration system(s)” that Zurich is being directed to use in accordance with GC 11.2(a)(xii).
 9. Zurich shall not be required to provide a weekly report as set out in GC 11.18(f) of the Construction Contract and will instead provide a monthly RFI log.
 10. CMH shall not be permitted to take any steps to remove, vacate or discharge an Encumbrance pursuant to GC 11.22(c) of the Construction Contract unless Zurich has failed to remove, vacate or discharge the Encumbrance within 10 Business Days of Zurich becoming aware of the creation, filing, issuance or registration of such Encumbrance.

11. General Condition 11.24 of the Construction Contract shall not apply.
12. Zurich shall be entitled to appoint two representatives to the Works Committee in place of the 2 representatives appointed by Project Co pursuant to GC 13.1(a)(iv).
13. For the purpose of GC 16.2 of the Construction Contract, given the declaration of substantial completion of Phase 1 and 2 pursuant to the CCAA Settlement Order, Substantial Completion, including determination of Substantial Completion, shall be only in respect of "Construction Work", as that term is defined in the Settlement which, for certainty, includes Phase 1 and 2 work that has been deferred.
14. [Intentionally Deleted]
15. Zurich shall be required to provide the relevant reports listed in GC 13.2(b)(iv) and 18.2(b) of the Construction Contract on a bi-weekly basis, and in accordance with the requirements of Division 01 Construction Requirements.
16. Zurich shall maintain the records required under GC 18.1 of the Construction Contract electronically.
17. GC 22.1(a)(iii) of the Construction Contract is deleted and replaced with the following:
 - "(iii) an opening up of the Construction Work pursuant to Section 17.2 where such Construction Work is not subsequently found to be defective or not in compliance with the requirements of the Construction Contract (including the Contract Documents), unless such opening up of the Construction Work is part of a systematic opening up of an entire component of the Construction Work where defects or non-compliance in the same or similar component of the Construction Work were previously discovered."
18. GC 24.3(b) of the Construction Contract is deleted and replaced with the following:
 - "(b) To the extent that the Party claiming relief does not comply with its obligations under this Section 24.3, such failure shall be taken into account in determining such Party's entitlement to relief pursuant to this Article 24."
19. There shall not be a Contractor Event of Default:
 - a. Pursuant to GC 26.1(a)(v) of the Construction Contract unless Contractor has wholly abandoned the Construction Work for a period which exceeds 5 Business Days from receipt by Zurich of a written request to return to the

Site, other than as a consequence of a Delay Event or a breach by CMH of its obligations under the Construction Contract; or

- b. Pursuant to GC 26.1(a)(viii) of the Construction Contract unless Contractor has, subject to the provisions of s. 4.6 of the body of the Construction Contract, failed to remove an Encumbrance that arose due to an act or omission of Contractor or any Contractor Party (other than any Encumbrances derived through CMH) within 45 days of the earlier of:
 - i. The registration of such Encumbrance against title to the Site or any part thereof; and
 - ii. The date on which Contractor knew, or ought to have known, about the existence of the Encumbrance.

20. The Construction Contract is amended by adding the following new GC 26.3(b):

“26.3(b) Where Contractor has disputed the alleged Contractor Event of Default set out in the notice under Section 26.3(a), the remedy available to Project Co as set out in Section 26.3(a)(i) shall be suspended and not available to Project Co until such time as the dispute has been resolved pursuant to Schedule 14 – Dispute Resolution Procedure and if the dispute is resolved in favour of Project Co and Contractor has not remedied the Contractor Event of Default within the applicable time period to remedy set out in Section 26.1 which time period shall commence on the issue of the decision under the Dispute Resolution Procedure.”

21. The indemnities provided to Zurich under GC 33.2(a) of the Construction Contract shall include any Direct Losses suffered as a result of:

- a. Any safety infractions committed by CMH or any CMH Party under OHSA or resulting from any failure by CMH or any CMH Party to properly ensure other contractors engaged by CMH or any CMH Party are following the safety instructions of Zurich; and
- b. Any fines levied against Zurich due to CMH or any CMH Party's violation of Applicable Law.

22. Amend the Construction Contract to add a new GC 34.2 as follows

“34.2 Waiver of Claims by Project Co

- (a) As of the date of the final certificate for payment, Project Co expressly waives and releases Contractor from all claims against Contractor or any Contractor Parties, including those that might arise from the wilful misconduct, negligence or breach of contract by Contractor except:

- (i) claims made in writing prior to the date of the final certificate for payment and still unsettled;
- (ii) claims arising pursuant to GC 36 – Warranty;
- (iii) claims arising from the provisions of any indemnity given by Contractor pursuant to GC 33.1;
- (iv) claims arising from acts or omissions which occur after the date of the final certificate for payment;
- (v) any latent defects or deficiencies, which shall be subject to the usual rules for discoverability as set out in the *Limitations Act, 2002*; and
- (vi) for contribution or indemnification for claims advanced against Project Co by third parties for which a right of indemnification may be asserted by Project Co against the Contractor.”

23. [Intentionally Deleted]

24. [Intentionally Deleted]

25. Subject to any circumstance(s) giving rise to an emergency, CMH shall provide at least 24 hours notice to Zurich to remove waste or debris under GC 11.14(d) of the Construction Contract.

26. The definition of “Indirect Losses” set out in s. 8.1(a) of the body of the Construction Contract shall include damages sustained by CMH in respect of delay claims arising from delay to a subsequent project that is managed or controlled by CMH that is caused by Zurich failing to achieve Substantial Completion by the Scheduled Substantial Completion Date.

27. The report “Hazardous Building Materials Reassessment, Cambridge Memorial Hospital, 700 Coronation Boulevard, Cambridge, Ontario” dated December 31, 2019 (Pinchin File: 249722) shall be added to Schedule 2 of the Construction Contract. Any remediation work that may be required as a result of hazardous materials identified in such report will be processed as and expended by a Cash Allowance Disbursement Authorization.

28. Schedule 15 of the Construction Contract shall be deleted.

Appendix “A”
to Schedule “L” to the Minutes of Settlement

GC 5.1 Concealed or Unknown Conditions

- (a) Contractor acknowledges that it has performed the Site Inspection and has been provided with, has reviewed, and is familiar with the Contract Documents (including the Site Information, all in accordance with the standard of care set out in Section 11.2(a)(viii) of the Construction Contract (the “**Standard of Care**”). If Contractor encounters conditions at the Site which are not described in the Contract Documents or are not reasonably inferable or readily apparent upon the review of the Contract Documents as described in the Contract, are not reasonably inferable or readily apparent from the Site Inspection carried out by Contractor or any Contractor Party prior to the Commencement Date, Contractor will promptly notify the Consultant who will promptly investigate such conditions. Following its investigation, the Consultant shall promptly report to Project Co and Contractor with a finding as to whether such conditions were or were not described in the Contract Documents, were or were not reasonably inferable or readily apparent by the Contractor upon the review of the Contract Documents as described in the Contract, performed in accordance with the Standard of Care, or were not reasonably inferable or readily apparent from the Site Inspection carried out by Contractor or any Contractor Party prior to the Commencement Date.
- (b) If the Consultant reports that the conditions were described in the Contract Documents or would have been reasonably inferable or readily apparent to the Contractor upon the review of the Contract Documents as described in the Contract, performed in accordance with the Standard of Care, or would have been reasonably inferable or readily apparent from the Site Inspection carried out by the Contractor, then the Contractor shall not be entitled to any adjustment in the Guaranteed Price or in the Contract Time.
- (c) If the Consultant reports that the conditions were not described the Contract Documents, were not reasonably inferable or readily apparent to the Contractor upon the review of the Contract Documents as described in the Contract, performed in accordance with the Standard of Care, or were not reasonably inferable or readily apparent from the Site Inspection carried out by the Contractor, and the conditions justify an increase in the Guaranteed Price or an extension of the Contract Time, or both, the Consultant shall issues appropriate instructions for a Change in the Scope of the Construction Work as provided in Schedule 11 - Change Procedure, which increase in the Guaranteed Price or extension of the Contract Time shall be subject to Section 14 of the body of the Construction Contract.

GC 5.2 Document Review

- (a) Contractor acknowledges having conducted a thorough review of the Contract Documents, in accordance with the Standard of Care, prior to the Commencement Date, and has reported to the Consultant and to Project Co any Design Issue found by Contractor in the Contract Documents during its review. The Parties acknowledge that this review may not have identified all potential Design Issues, and that additional Design Issues may be raised by Contractor after the

Commencement Date, for which Contractor may be entitled to compensation in accordance with Section 11.18. If Contractor does discover any Design Issue in the Contract Documents, after the Commencement Date, Contractor shall not proceed with the affected Construction Work until Contractor has first complied with the provisions of Section 11.18. It is intended that the review of the Contract Documents conducted by Contractor pursuant to this Section 5.2(a) be carried out by Contractor and the Contractor Parties using their own experiences and expertise in accordance with the Standard of Care and in accordance with the representations and warranties of Contractor set out in Section 7.1.

- (b) Contractor shall not be responsible for verifying that the Contract Documents are in compliance with Applicable Law, but this shall not relieve the Contractor of the obligation to provide for all standard Building Code requirements applicable to the performance of the Construction Work, whether or not set out in the Specifications. Notwithstanding the previous sentence, the parties agree that this shall not include any liability, obligation or responsibility for the Existing Design, which is explicitly excluded from the Construction Work.

GC 7.1 Contractor Representations and Warranties

- (a) Contractor represents and warrants to Project Co that as of the date of the Construction Contract.
 - (i) Contractor and certain of the Contractor Parties have had limited access to the Site, and have visited the Site only in order to view general Site logistics and conditions to evaluate their impact on the Work and construction means and methods (the “**Site Inspection**”). Contractor represents and warrants to Project Co that as of the date of the Contract, Contractor and certain of the Contractor Parties have investigated and examined the Contract Documents, and any other documents made available to Contractor by Project Co (which include, to the extent made available to Contractor by Project Co, equipment lists, a legal description of the Site, copies of any registered and unregistered agreements affecting the Site, results of tests, reports of independent testing agencies and surveys and documents indicating the location of Utilities and other structures to the extent obtained by Project Co) so as to ascertain the nature or location of the Construction Work and the Site, the physical conditions of the Site, the interface with the Existing Facility, and protocols, rules and regulations if any, possible delays in commencing the Work, conditions relating to the transportation, handling and storage of materials and availability of labour and the character and availability of equipment, materials and facilities needed to perform the Construction Work and to identify any Design Issues. Contractor has delivered to Project Co requests for information in respect of all questions arising out of the foregoing Site Inspection, investigations and examinations and in respect of each Design Issue identified. The Parties agree that this in no way limits the Contractor’s rights in respect of identifying and being compensated for Design Issues, where appropriate in accordance with Section 11.18.

Ontario
**SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST**

Proceedings commenced in Toronto

**AFFIDAVIT OF CRAIG KHATTAR
(Sworn November 6, 2020)**

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